

THE SIKKIM CODE

VOLUME 1



THE
SIKKIM **CODE**

FIRST EDITION

Volume I

SIKKIM ACTS

(1975-1982)

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*Kevalam Shastramashritya Na Kartavyo Hi Nirayah:
Yuktiheene Vichar Tu Dharmahanith Prajayate.*

Brihaspati

Decisions must not be made solely by having recourse to the letters of the written codes; for if decisions are not made according to the reasons of the law, there would be a failure of justice.

NATURA APPETIT PERFECTUM - ITA ET LEX

THE SIKKIM CODE

VOLUME I

Foreword by

JUSTICE A. M. BHATTACHARJEE
*Judge, High Court of Sikkim
And Chairman
Law Commission of Sikkim*

LAW DEPARTMENT

GOVERNMENT OF SIKKIM

GANGTOK

CONTENTS

FOREWORD	1
PREFACE	VI
Chronological Table of Enactments printed in this Volume	VIII
Enactments: Sikkim Acts 1975 to 1982	1-556

FOREWORD

There cannot probably be a worse form of tyranny than to subject people to the operation of laws and to affect their lives, rights and liberties by such laws, without publishing such laws in some reasonable manner and recognizable method to enable the people to know what the laws are. If ours is a Government of laws and our people are ruled, not by men but, by laws, but yet they do not know, and do not have reasonable scope to know, what those laws are, then they are obviously ruled and governed by something foreign, something alien and one cannot obviously have any love or respect for foreign rule. Reasonably easy access to law is a condition precedent to the proper growth and development, of Rule of Law.

Rather recently we have been reminded by our apex Court of what Lord Atkin said about half a century ago, namely, that though there is no, and there never has been any, presumption that everyone knows the law, yet the rule has always been that ignorance of the law does not excuse. But the application of the rule “Ignorantia Juris Non Excusat” would be abhorrently shocking to conscience, unless before applying the rule with all its rigor, reasonable steps have been taken to remove such ignorance and to make the laws known to them whom they are meant to govern. The Supreme Court once declared that^{vii} it would be against the principles of natural justice to permit the subjects of a State to be punished or penalized by laws of which they had knowledge and of which they could not even with the exercise of reasonable diligence have acquired any knowledge. Natural Justice requires that before a law can become operative, it must be promulgated or published. It must be broadcast in some recognizable way so that all men may know what it is; or, at the very least, there must be some special rule or regulation or customary channel by or through which such knowledge can be acquired with the exercise of due and reasonable diligence” The Supreme Court has again affirmed these observations in recent years and has observed further that” the cult of the occult is not the rule of the law even as access to law is integral to our system” Allen has also observed that “on the face of it, it would seem reasonable that legislation of any kind should not be binding until it has somehow been “made known

(ii)

to the public", though the learned Jurist has taken care to point out that however reasonable or desirable that may be, "that is not the rule of law" because *it* were, the automatic cogency of a Statute, which has received the Royal Assent, would be seriously and most inconveniently impaired". "Reasonableness" has now been found to pervade Article 14 as a brooding omnipresence; the expression "personal liberty" in Article 21 has been endowed with the widest possible amplitude to cover and comprise all the residue of the variety of rights which go to constitute the personal liberty of man except only those specifically dealt with in Article 19; and Article 2 I, forbidding deprivation of "life or personal liberty except according to procedure established by law", has been restructured, so to say, by the Supreme Court as forbidding deprivation of "life or personal liberty except according to fair, just and reasonable procedure established by valid law". That being the current upsurge of our Supreme Law, any law prescribing procedure affecting the rights and the liberties of the people, even if otherwise fair, just and reasonable, might still run the risk of being condemned as unfair, unjust and unreasonable. If reasonably sufficient steps are not taken to enable the people to know the law. Publication of collection of the laws, therefore, in handy volumes and at a reasonably moderate price has now become more imperative than it was ever before and the Government of Sikkim. In its Law Department has taken the right step in the right direction in publishing the Sikkim Code.

The present volume, being the first of the series, contains all the laws Enacted by the Sikkim Legislature since the incorporation of Sikkim as a component State of, India with effect from the 26th day of April, 1975, by and under the provisions of the Constitution (Thirty-Sixth Amendment) Act, 1975, up to the end of 1982. A good start and a most necessary and desirable project without doubt; but while expressing my gratefulness to the Legal Remembrance and Secretary to Government in the Law Department for the honor accorded to me by his request to write a Foreword for the first Volume of the Sikkim Code, I would take this opportunity of making two suggestions which may be taken into consideration while bringing out the later Volumes and republishing the present Volume of the Sikkim Code.

Most of our modern legislations provide that commencement thereof shall be effected by the Executive by issuing notifications to that effect. Even though it has been settled by the Privy Council since as early as in 1878 and affirmed

by our Supreme Court in a series of decisions that such authorization by the Legislature in favour of the Executive to bring an enactment into operation at such time or in such area as it may decide, is only "conditional, and not delegated, legislation" and, therefore, would not give rise to any question of excessive or impermissible delegation, yet such a conditional legislation exists only in paper devoid of any effective force until the Executive chooses to bring it into operation. While theoretically such an enactment is nonetheless a law, but for all practical purposes it becomes a law when action is taken by issuing the necessary notification bringing the same into operation. The present Volume of the Sikkim Code also abounds with such enactments, but no reference to the relevant notifications enforcing those enactments has been made anywhere in the Code. Needless to say that reference of such notifications, which really go to make the relevant legislations complete as law, at appropriate places in the Code would have made the Code much more useful to the Bench, the Bar and to all concerned

Again, though the Editors have taken care to note the subsequent amendments made to the enactments published in this Volume, the provisions substituted or deleted by the relevant amendments have not been recorded in the footnotes or anywhere else, though the same would have been very much useful to ascertain the purpose of and the reason behind the amendments and thus to arrive at proper interpretation and construction of the relevant provisions. The present

Chief Justice of India has observed that principles of statutory construction, with rules pulling in different directions, have become a murky area and just as a case-law digest can supply an authority on almost any thinkable proposition, so also the new editions of the old classics have collected over the years formulae which can fit in with any interpretation which one may choose to place. Denning has also pointed out that "if you find a maxim or rule on your side, your opponent will find one on his side to counteract it". But notwithstanding the quagmire of confusion created by the mass of such perplexing, bewildering and sometimes irreconcilable dogmas, the truth nevertheless remains that "he knoweth not the law, who knoweth not the reason of the law", and I have no doubt that if the provisions, as they stood before substitutions or deletions effected by the later Amendment Acts, were also recorded at appropriate places, they would have added much to the utility of the present Volume.

(iv)

The Law Secretary, who is the senior most Judge of the State Judiciary, has observed elsewhere that in Sikkim, before its incorporation in the Union of India in 1975, "legislative enactments were scanty and could be counted on fingers". But even if by

"Making innumerable Statutes, men

Merely confuse what God achieved in ten",

in such vast a country and such large a democracy as ours with its manifold and multidimensional problems, we cannot but have large number of laws. It is, however, said that the uncontrolled flood of numberless legislations in our country has already, caused vast inundation and along with that has started another flood, the flood of case-laws, pouring in daily from as many as eighteen High Courts and the Supreme Court, attempting desperately. but not always with success, to make the plethora of legislations meaningful, coherent and consistent and these two floods together have caused a suffocating deluge. The present position is so flabbergasting that it is not possible even for a well-trained, well-read and well-equipped lawyer to ascertain the law on any particular point with reasonable certainty. And, therefore, the plight of the ordinary common men, for whom these laws are meant and who cannot afford legal service and to have lawyers constantly at their elbows, can easily be imagined. The State of Sikkim, therefore, must be congratulated if it has been able to run the government effectively and successfully by enacting, as it appears from the contents of this Volume, about 32 legislations only during this long period of about 8 years from 1975 to 1982. Having joined the mainstream of India in 1975, Sikkim has also adopted the Indian method of law-drafting borrowed mainly from the United Kingdom. May I remind the authorities concerned of what Denning has said about this method? "The trouble lies" according to Denning "with our method of drafting" and that in pursuit of certainty "the draftsman or draftswoman has brought forth obscurity" and "sometimes even absurdity". I hope that such a charge would not be levelled against the enactments published in this Volume.

A.M. Bhattacharjee.

Dated Gangtok, the 18th March, 1984.

(v)

REFERENCES—

- 1 M.P. Sugar Mills--AIR 1979 SC 621 (629)
- 2 Evans vs. Bartlam (1937 AC 473)
- 3 Harla—AIR 1951 SC 467(468)
- 3A Sunil Batra AIR 1978 SG 1675(1721)
- 4 C.K.Allen---Law and Orders-2nd Edition -p 132

Allen's view has been quoted with approval of the Supreme Court in Mayer Hans George—AIR 1965 SC 722(724) without, however, any reference to Harla, and the value of the observation in Harla, quoted hereinabove, as a general proposition remains unimpaired particularly in view of its being affirmed in Sunil Batra

- 5 Maneka Gandhi –AIR 1978 SC 597 (624)
- 6 Ibid—p622; Kharak Singh—AIR 1963 SC 1275 (1301, 1302)
Satwant Singh AIR 1967 SC 1836 (1844)
Francis Mullin --AIR 1981 SC 746 (753, 754)
- 7 Bachan Singh –AIR 1980 SC 898 (930)
- 8 Burah—ILR 4 Cal 172 (181,182)
- 9 For example, Inder Singh --AIR 1957 SC 510 (515)
- 10 Sankalchand Seth—AIR 1977 SC 2328(2336)
- 11 Discipline of Law---1979—p9
- 12 Editorial to the first issue of Sikkim Law Journal

PREFACE

Till Sikkim joined the mainstream of the India Union on the 26th April, 1975, the laws of the erstwhile State of Sikkim were contained in different forms like proclamations, regulations, rules, notifications, orders, bye-laws and Acts.

All these old laws although very few in number were not to be found in any codified form at one place. As a result it was not easy for the judges, the lawyers and the students of law to know easily the law prevailing in force on the subject. Solution of any legal problem, thus, involved quite a bit of research work to be done by the judges, the lawyers and the students of law whenever occasion arose. Having been a judicial officer in the State of Sikkim for more than two decades the difficulty experienced by me was of a recurring nature. The necessity of codification of all Sikkim laws was felt by everybody concerned so that one could find the laws in a compiled form without any difficulty.

After Sikkim became the 22nd State of the Indian Union, all laws began to take the form of legislative enactments. Since the year 1977 the Law Department started the Sikkim Law Journal in which we have been publishing the Acts, Ordinances and other subordinate legislations. But the publication of Sikkim Laws in different issues of the Sikkim Law Journal also did not fulfill the requirement of having the laws in a compiled form for the benefit of busy Presiding officers of the courts and the members of the Bar. Having had the opportunity of heading the Law Department for some years, I have now been able to get the opportunity to do this work of compilation of all Sikkim laws enacted by the State Legislature after the 26th day of April, 1975. The present publication of the first Volume of the Sikkim Code consists of all laws enacted by the State Legislature till the end of the year 1982. I do hope and believe that the Bench, the members of the Bar and people in general will find this Volume handy and useful.

Mr. Justice A. M. Bhattacharjee, Judge, High Court of Sikkim and Chairman, Law Commission of Sikkim from its very inception, had been requested to write a foreword for this

first Volume of the Code in view of his long involvement in the affairs of this State in various capacities. As expected, Mr. Justice Bhattacharjee has very kindly contributed a very illuminating foreword which I am sure would add to the value of this first Volume of the Sikkim Code. The suggestions made by him in his foreword will be given the consideration they deserve and we would be only too pleased to adopt them for the improvement of the next Volume which we hope to bring out within the next financial year.

Acknowledgements are due to Sri P. Jethwani, Joint Secretary, Sri B.P. Pradhan, Deputy Secretary, Miss Nalini Gupta, Under Secretary, Law Department and Sri T.P. Basnett, at present Under Secretary, Local Self Government and Housing Department (since been transferred from Law Department) and all members of the staff of Law Department without whose untiring effort and cooperation, it would not have been possible to bring out this Code. Mr. Ashok Kumar Bhujel, Proof-Reader, Law Department, deserves my thanks and appreciation for the keen interest and devotion with which he read the proof of the manuscript. Thanks are also due to the management of the Gangtok Press for the interest shown by them in ensuring quality production of the first Volume of the Sikkim Code.

B. R.Pradhan, Secretary to the Government
of Sikkim. Law Department.

Gangtok.
The 19th March, 1984

(Viii)

CHRONOLOGICAL TABLE OF ENACTMENTS (1975-1982)

<u>Year</u>	<u>No.</u>	<u>Short title</u>	<u>Volume</u>	<u>Page</u>
	2	3	4	5
SIKKIM ACTS.				
1975	I	The Sikkim Cultivators' Protection (Temporary Provisions) Act, 1975	I	
1975	II	The Gangtok Municipal Corporation Act, 1975	I	9
1975	III 1	The Sikkim Regulation of Transfer and Use of Lands Act, 1975	I	87
1976	I	The Sikkim Criminal Procedure Act, 1976	I	89
1977	I	The Sikkim Salaries and Allowances Act, 1977	I	91
1977	II	The Sikkim Official Languages Act, 1977	I	97
1977	III	The Sikkim Interpretation and General Clauses Act, 1977	I	99
1978	I	The Sikkim Land (Requisition and Acquisition) Act, 1978	I	113
1978	II	The Sikkim Legislative 'Assembly Members' Removal of Disqualification Act, 1978	I	125
1978	III	The Sikkim Essential Services Maintenance Act, 1978	I	129
1978	IV	The Sikkim Police (Repealing) Act, 1978	I	133
1978	V	The Sikkim Civil Courts Act, 1978	I	135
1978	VI	The Sikkim Khadi and Village Industries Board Act, 1978	I	143
	VII	The Sikkim Co-operative Societies Act, 1978	I	161
	VIII	The Sikkim Agricultural Land Ceiling and Reforms Act, 1978	I	224

CHRONOLOGICAL TABLE OF ENACTMENTS (1975-1982) Contd.

<u>Year</u>		<u>No.</u>	<u>Short Title</u>	<u>Volume</u>	<u>Page</u>
		2	3	4	5
SIKKIM ACTS-					
1978	IX		The Sikkim Vigilance Police Act, 1978	I	255
1978	X		The Sikkim Board of School Education Act, 1978	I	259
1978	XI		The Sikkim Cinemas (Regulation) Act, 1978	I	273
1979	I		The Sikkim Housing and Development Board Act, 1979	I	280
1980	I		The Sikkim Fisheries Act, 1980	I	300
1980	II		The Sikkim Weights and Measures Act, 1980	I	310
1980	III		The Police (Sikkim Amendment) Act, 1980	I	350
1980	IV		The Sikkim Entertainment Tax Act, 1980	I	354
1980	V		The Sikkim Public Premises (Eviction of unauthorized Occupants and Rent Recovery) Act, 1980	I	362
1981	I		The Sikkim Advocates Act, 1981	I	372
1981	II		The Sikkim Armed Police Force Act, 1981	I	375
1981	III		The Sikkim Fire Services Act, 1981	I	393
1981	IV		The Sikkim Nationalized Transport. (Prevention of Ticketless Travel & Miscellaneous Provisions) Act, 1981	I	419
1981	V		The Sikkim Show Houses and Public Halls (Prohibition of Smoking) Act, 1981	I	434
1982	I		The Sikkim Panchayat Act, 1982	I	438
1982	II		The Sikkim Children Act, 1982	I	510
1982	III		The Sikkim Motor Vehicles Taxation Act, 1982	I	542

**THE SIKKIM CULTIVATORS' PROTECTION
(TEMPORARY PROVISIONS) ACT, 1975
ACT NO 1 OF 1975
AN
ACT**

to make temporary provision for protection of cultivators against termination of cultivation of lands cultivated by them, for restoration of such lands in case of illegal termination, for limiting the liability of the cultivator and for other matters connected therewith.

[8th September, 1975]

WHEREAS it is expedient to make temporary provisions for protection of the cultivators against termination of their cultivation of lands cultivated by them, for restoration of such lands in case of illegal termination, for limiting the liability of the cultivators and for other matters connected therewith;

It is hereby enacted as follows:

1. (1) This Act may be called the Sikkim Cultivators' Protection (Temporary Provisions) Act, 1975.

(2) It extends to the whole of Sikkim.

(3) It shall come into force at once and shall remain in force for a period of two years from the date of its commencement; but the State Government may, by notification in the Sikkim Government Gazette, extend the period of its duration for a further period not exceeding [six] years.

*Short title, extent,
commencement and
duration.*

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

(1) "agriculture year" means the year commencing from the first day of February;

(2) "civil court" does not include the High Court or the Supreme Court;

(3) "Cultivator" means a person who cultivates

Definitions.

the land *of* another person on condition *of* payment *of* rent, in cash or in kind, or on condition *of* delivering or receiving share or any fixed quantity *of* the produce and includes a person who cultivates the land *of* another person on any terms and conditions except as a paid servant or hired laborer;

(4) "owner" means a person whose land is cultivated by a cultivator;

(5) "prescribed" means prescribed by rules made under this Act;

(6) "prescribed authority" means the District Officer within whose jurisdiction the land is situated and shall also include any other officer specially empowered by the State Government in this behalf.

Act to prevail over other laws etc. and overriding effect of the Act.

3. (1) The provisions of this Act and *of* any rules made there under shall have effect notwithstanding anything to the contrary contained in any other law or in any custom, usage, contract or instrument.

(2) Any law or custom or usage having the force *of* law in force immediately before the commencement *of* this Act shall cease to have effect with respect to any matter for which provision is made in this Act.

(3) Any other law in force immediately before the commencement *of* this Act shall cease to have effect in so far it is inconsistent with any *of* the provisions contained in this Act.

Protection of Cultivators against termination of cultivation and restoration of land.

4. (1) No owner shall be entitled to terminate the cultivation *of* his land by a cultivator except in execution of an order made by the prescribed authority on the ground that the cultivator has without any reasonable cause failed to cultivate the land.

(2) Any order of ejectment passed under the provisions of this Act shall be executed by the prescribed authority, but proper compensation as³ may be determined by the prescribed authority shall be paid by the owner to the cultivator for his share of the standing crops, if any.

(3) If any owner terminates or causes to be terminated the cultivation of any land by a cultivator in contravention of the provisions of this Act, the prescribed authority shall, on receipt of any application made by or on behalf of the cultivator and after giving the cultivator and the owner an opportunity of being heard and after making such inquiries as he may deem necessary, by order direct

(a) in a case where such land has not been cultivated or has been cultivated by the owner or by any person on his behalf other than a cultivator, that the land be immediately restored to the cultivator and further that forty per cent of any produce of the land shall be forfeited to the State Government and the remaining sixty per cent of such produce shall be retained by the cultivator.

(b) in a case where such land has been cultivated by a new cultivator engaged by the owner, that the land be restored at the end of the cultivation season to the applicant cultivator and further that the new cultivator shall retain fifty per cent of the produce harvested before restoration and make over the remaining fifty per cent of such produce to the applicant cultivator.

Limit of liability of cultivator.

5. For the cultivation of any land, no cultivator shall be required to pay or deliver to the owner and no owner shall be entitled to receive from the cultivator, more than half of the principal produce of the land or the price thereof, as the case may be, as rent or share or on any other Account.

Surrender or abandonment.

6. (1) If a cultivator
(a) surrenders his right to cultivate in respect of land cultivated by him as a cultivator, or

(b) abandons cultivation of such land, the owner of the land shall give information in writing of such surrender or abandonment to the prescribed authority.

(2) On receipt of such information the prescribed authority shall, after giving the cultivator and the owner an opportunity of being heard and making such inquiries as he may deem necessary, by order determine whether the cultivator voluntarily surrendered or abandoned his right of the cultivation in, relation to such land.

(3) If the prescribed authority determines that the cultivator had not voluntarily surrendered or abandoned the cultivation of the land which was being cultivated by him as such and that he had been compelled by force or otherwise to surrender or abandon the cultivation of such land, the prescribed authorities shall restore the cultivator to the cultivation of the land.

(4) If the cultivator is not available or is not willing to be restored to the cultivation of such land, or if the prescribed authority determines that the cultivator had voluntarily surrendered or abandoned the cultivation of such land, the owner shall not resume personal cultivation of such land, but may,

with the permission of the prescribed authority, have the land cultivated by another cultivator of the locality who is willing to cultivate the land as cultivator.

7. (1) Where a cultivator cultivating any land dies, the cultivation of such land may be continued for the remaining period of that agricultural year by the lawful heir of the cultivator and if such lawful heir continues the cultivation, he shall have all the rights and be subject to all the liabilities of a cultivator under this Act in respect of such remaining period.

Continuation of right of cultivation on cultivator's death.

(2) Where

(a) no lawful heir of the cultivator is in

a position to cultivate the land personally,

or

(b) the lawful heir omits or fails to take any steps for the continuation of the cultivation of the land within fifteen days from the date of the death of the cultivator, or if the agricultural operations in the neighboring lands are not then in progress, within fifteen days from the date of commencement of such operation, the cultivation of the land may be continued by such person as may be nominated by the owner.

8. (1) If a cultivator fails or omits or neglects to pay the rent or share or fixed quantity of the produce payable to the owner, the owner shall be entitled to recover such rent or produce due to him or its money value.

(2) If the produce of any land cultivated by a cultivator whether before or after it is harvested is taken away by the owner forcibly or otherwise, the cultivator shall be entitled to recover from such

Cultivator and the owner to receive their dues.

owner the share or quantity of the produce due to him or its money value.

*Jurisdiction to
decide certain
disputes.*

9. Every dispute between a cultivator and the owner in respect of the following matter, namely:

- (a) division or delivery of the produce
or payment of rent,
- (b) recovery of rent, share or fixed quantity of the produce
under the provisions of sub-section (1) or sub-
section (2) of section 8,
- (c) termination of cultivation by the cultivator

shall be decided by the prescribed authority.

Appeal.

10. Appeal shall lie within the prescribed period to an Appellate Officer to be appointed by the State Government against any final order of the prescribed authority made under this Act, except where such order was made by the prescribed authority with the consent of the parties to the dispute.

*Procedure and
execution.*

11 (1) The procedure to be followed by the prescribed authority or by the Appellate Officer shall be as may be prescribed.

(2) An order made by prescribed authority or the Appellate Officer shall be executed by the prescribed authority in such manner as may be prescribed.

*Protection' to
persons.*

12. No suit, prosecution or other legal proceedings shall lie against any persons for anything which is in good faith done or intended to be done under or in pursuance of the provisions of this Act, or the Sikkim Cultivators' (Protection) Ordinance, 1975.

Bar of Jurisdiction.

13. No order or other proceedings whatsoever under this Act, shall be questioned in any Civil Court and no Civil Court shall entertain any suit
or

...

15. (1) The Sikkim Cultivators' (Protection) Ordinance, 1975 is hereby repealed.

(2) Notwithstanding the repeal of the said Ordinance any proceeding or remedy in respect of any right privilege, obligation or liability under the said Ordinance and relating to the period before such repeal may be instituted. continued or enforced as if the said Ordinance had been in force and had not been repealed.

Repeal *and*
Savings.

proceeding in respect of any matter for which

THE GANGTOK MUNICIPAL CORPORATION ACT, 1975

provision is made in this Act.

14. (1) The State Government may make rules for carrying out the purposes of this Act.

Power to make rules.

CHAPTER I-PRELIMINARY

(2) In particular, and without prejudice to the generality of the foregoing provisions, such rules may provide for all or any of the following matters, namely:

1. Short title, extent and commencement.

2. Definitions.

(a) the period within which the cultivator shall pay or deliver to the owner the rent, or share or fixed quantity of the produce to which the owner is

CHAPTER II

3. Constitution and incorporation of Corporation and number of Councillors.
4. Power to divide Corporation into wards and fix the number of Councillors of each Ward
5. Disqualification for being a Councillor
6. Oath of allegiance taken by Councillors
7. Election of Chairman and Vice Chairman
8. Removal of Councillors
9. Appointment of Subordinate Officers
10. Appointment of Executive Officer by the State Government.
11. Powers of the Executive Officer.
12. Meetings and persons to preside at meeting.
13. Decisions of questions and casting Vote and prohibition from voting.
14. Quorum and adjournment for want of quorum.
15. Notice of meeting and list of business and minutes of proceedings.
16. Formation of Standing Committee.
17. Formation of Joint Committee.
18. Decision of disputes between local authorities.
19. Power to make rules as to business of Corporation and the Committee.
20. Violation of acts and proceedings.

CHAPTER III

Municipal property and finance.

22. Corporation may acquire and dispose property
23. Property of the Corporation
24. Execution of contracts
25. Municipal Funds
26. Budget
27. Power to make rules

THE GANGTOK MUNICIPAL CORPORATION ACT, 1975

ARRANGEMENT OF SECTIONS

1. Short title, extent and commencement.
2. Definitions.

3. Constitution and incorporation of Corporation and number of Councillors. Corporation
4. Power to divide Corporations into wards and fix the number of Councillors of each Ward
Disqualification for being a Councillor
Oath of allegiance taken by Councillors
Election of Chairman and Vice Chairman

8. Removal of Councillors
9. Appointment of Subordinate Officers.
10. Appointment of Executive Officer by the State Government.
- II. Powers of the Executive Officer.
12. Power to make rules.
13. Meetings and persons to preside at meeting.
14. Decisions of questions and casting Vote and prohibition from voting.
15. Quorum and adjournment for want of quorum.
16. Notice of meeting and list of business and minutes of proceedings.
17. Formation of Standing Committee.
18. Formation of Joint Committee.
19. Decision of disputes between local authorities.
20. Power to make rules as to business of Corporation and the Committee.
21. Violation of acts and proceedings.

CHAPTER IV
Municipal Taxation.

- 28 Power to impose taxes.
- 29 Annual value of Holdings.
- 30 Restriction on the Imposition of rates.
- 31 Preparation of Valuation Lists.
- 32 Determination of percentage of rate of Holdings & preparation of assessment of List.
- 33 Amendment and alteration of lists and reduction or remission of rates.
- 34 Publication of Notice of Assessments & review.
- 35 Tax to be paid Quarterly in advance & notice of Demand.
- 36 Levy by Distress & realization by suit.
- 37 Tax on Profession, Trades & Calling.
- 38 Power of the Government to direct Corporation to make payment to the Departments of the Government..
- 39 Power to make rules.

CHAPTER V-Streets.

- 40. Power of Corporation to layout, make improvements of & close Public streets.

CHAPTER VI
Conservancy and Drainage.

- 41. Duties of Corporation for Conservancy & for the removal of Drainage
- 42. . Appointed Hours for placing rubbish etc. on Public Street.
- 43. Corporation to provide water supply and Lighting.

CHAPTER VII
Buildings.

- 44. Building sites & erection of buildings.
- 45. Application for sanction.
- 46. Permission to Execute work when to be given or refused
- 47. Duration and expiry of permission to erect a building.
- 48. Application of Act to alteration or addition to building.
- 49. Order for demolition of alteration of buildings.
- '50. Power to make rules.

CHAPTER VIII
In sanitary and Dangerous Property.

- 51. Power to direct the filling up etc. of unwholesome walls, Ditches etc.
- 52. Procedure in case of buildings deemed unfit for human habitation.
- 53. Prevention of danger from ruinous buildings etc.

CHAPTER IX**Offensive and Dangerous Trades, Occupation or Processes.**

- 54. Power to prohibit certain offensive & Dangerous trades without Licences
- 55. . Licensing for keeping cattle & Horses etc.
- 56. 'Conditions for keeping Pigs, Sheep and Goats.
- 57. Power to make By-law regulating places used for offensive trades, etc.

CHAPTER X**Fairs and Melas.**

- 58. Power of Corporation to grant licences for Fairs or Melas.
- 59. Rules for Fairs & Melas.

CHAPTER XI**Market and Slaughter
Place.**

- .60 Power to provide and maintain. Municipal market, slaughter houses and stock yards.
- 61 Power to close Municipal markets, slaughter houses and Stock-yards.
- 62 Prohibition *of* use of municipal market without permission.
- 63 Power to permit opening or running *of* private market.
- 64 Licensing *of* private slaughter houses and prohibition.
- 65 Duration *of* Licences.

CHAPTER XII**Restrain of Infection.**

- 66. Restrain *of* Infection.

CHAPTER XIII**Nuisance.**

- 67. Nuisance.
- 68. Inspection for ascertaining existence of nuisance.
- 69. Municipal Officer to give information as to nuisance.
- 70. Notice to remove nuisance.
- 71. Procedure in case persons fails to comply with notice.
- 72. Magistrate may order local authority to execute works in certain cases .

CHAPTER XIV**Places for disposal of the Dead and Registration of Births and Deaths.**

- 73. Provisions *of* place to be used as burial grounds.
- 74. Registration *of* birth and death.

CHAPTER XV
Penalties and Miscellaneous.

- 75. Offence punishable with fine.
- 76. Sanction and limitation for prosecution.
- 77. Notice of suit against Corporation.
- 78. Corporation to provide public Urinals and Latrines.
- 79. Licensing of certain trade and business.
- 80. Power of Chairman and delegation to Vice-Chairman.
- 81. Councillors, Municipal Officers etc. to be public servants.
- 82. Power of entry to inspect, survey or execute work.
- 83. Service how to be effected.
- 84. Residuary power to make rules and by-laws.
- 85. Protection of action.
- 86. Overriding effect of this Act.

Act, 1975:

(Act No. IV of 1975).
AN,
ACT

to make provisions for the establishment of a Municipal Corporation in Gangtok and for matters con

[12th October, 1975]

WHEREAS, it is expedient to make provisions for the establishment of a Municipal Corporation at Gangtok and matters connected therewith.

It is hereby enacted: as follows;

CHAPTER I
Preliminary

Short title, extent and commencement.

1 (i) This Act may be called the Gangtok Municipality, Corporation Act, 1975.

(2) It extends and applies to the town of Gangtok; but the State Government, may- by notification extend all or any of the provisions of, this Act to areas outside the town of Gangtok.

(3) It shall come into force [at once.]

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,
2[(1) "Administrator" means the officer appointed by the State (Government under sub-section (5) of section 3 ;]

" Administrator"

{I a} "bridge" includes a culvert;

(2) building includes a, house, out-house, stable, privy, urinal, shed, hut" wall (Other than a boundary wall not exceeding ten feet in height and any other such structure," whether of masonry" bricks, wood, mud, metal or any' other material whatsoever but

"Bridge".

1. Subs, by sec. 3 of G. M. C. (Amd.) Act No. 5 of 1976. (w.e. f. 9.12.76). 2. Ins. by sec. 2 of G. M. C. (Amd.) Act No. 1 of 1982 (w. e. f. 9. 12. 76).

does not include any temporary shed erected on ceremonial or festive occasions:

"Conservancy" (3) 'conservancy' means the removal and disposal of sewerage, offensive matter and rubbish

., Corporation" 3[(3a) "Corporation" means the Gangtok Municipal Corporation constituted under subsection (1) of section 3;]

"Dangerous disease" (4) "dangerous disease" means
 . (a) cholera, plague, small-pox', cerebrospinal meningitis and diphtheria: and
 (b) any other disease which the State, Government may, by" notification, declare to be a dangerous disease for all or any of the purposes of this Act.

"Drain" (5) "drain" includes a sewer, a house-drain, a drain of any other description, a tunnel, a culvert, a ditch, a channel and 'any other such device for carrying of salvage, sewage, offensive matter, polluted water rainwater or sub-soil water; .

"Executive Officer" (5a) "Executive Officer" means the Officer appointed by the State Government under section 10;]

" Holding" (6) "holding" means land held under one title or agreement and surrounded by one set of boundaries:

Provided that where two or more adjoining holdings from part and parcel of the site or premises of a dwelling house, manufactory, warehouse or place of trade or business, such holdings shall be deemed to be one holding for the purpose of this Act.

Explanation.- Holdings separated by a street or other means of communication shall be deemed to be adjoining within the meaning of this proviso;

" Hut" (7) "hut" means any building which is constructed principally of wood, bamboo,' mud, leaves, grass
or thatch and includes any temporary structure of

3, Ins. by sec. 2 of G, M. C. (Amd.) Act NQ, 1 of 1982 (w. c}. 9. 12. 76).

4. Ins. by *ibid*.

Whatever, size, or any small building (not being masonry building) of whatever material made;

(8) "inhabitant" used with reference to any local area means' any "person' ordinarily residing or carrying on business or owing of occupying immovable property therein; *"Inhabitant"*

(9) "land" includes benefits arising out of land, .and things attached to the earth, or permanently fastened to any thing attached to the earth;" *"Land"*

(10) "'market" includes anyplace where 'persons assemble for the sale of any living thing' intended *for* human food *or of* any article 'of food; *" Market"*

(11) "notification" means a notification published in the official Gazette;'. *"Notification"*

(12) "occupier" mean any person *for* the time being in possession or deemed *to* be in possession of any land ,or building, in respect of which 'the word is used and includes' an' owner living in, or' otherwise using ,his own land or building' ' ' , *"Occupier".*

(13) owner'.' includes the person for: the time being receiving the "rent *of* any land or building or any part *of* any land. or building 'whether on 'his own account or as agent *or* trustee for any person or society *or* for any religious *or* ,:charitable purpose, or as a receiver, or who would so receive such rent if the land building is part thereof were let. *to* a tenant; *" Owner"*

(14) "prescribed" means prescribed by this Act *or, by* .rules, *or* by-laws made there under; *Prescribed"*

. (15), "private street" means, any street, road, lane, gully, alley. passage or square which is *not* a public street as defined in this section, but does *not* include a passage securing access to less than four premises, *or* a passage provided in effecting the partition *of* any building amongst joint-owners; *"Private Street"*

(16) "public street" means any street *road*, lane, gully, alley, passage, pathway, square or,. Court, *.. Public Street"*

whether a thoroughfare or not, over which the public have a right of 'way,' and includes

- (a) the roadway over any, public bridge or causeway,
- (b) the footway attached to any such' street, public bridge, or causeway;
- (c) the passage connecting two, public streets; and,
- (d) the drains attached to any such" street, public bridge or 'causeway and" where there; is, no drain: attached to any, such street, shall be deemed to include also, unless the contrary' 'is shown, all land up to the boundary wall, hedge or, pillar of the premises" if any, abutting on the street,. 'or if a street alignment have been fixed then up to 'the, alignment; .

Sewage

(17) "(Sewage" means night soil and other contents of privies; a urinal, cesspools of drains and includes trade effluent and discharges from manufactories of all kinds;

"Slaughter-house"

'(18) 'slaughterhouse" means any place used for the slaughter 'of .cattle, sheep, goat, kids -or pigs for the purpose 'of selling the flesh there Of as meat

"Tribunal"

5{(18a) "Tribunal" means the Tribunal constituted by the State Government under section 49F ;}

"Year"

(19) ,"year" means a year beginning on the "first day 'Of April.

CHAPTER

The Municipal Authorities

Constitution and

3. (I) There shall be established for the town

5. In;,, by see, :2 of the 0, M. Co (Amd,) Act No.1 of 1982 (w. e. f 12-10"7a).

of Gangtok a Municipal Corporation consisting of such number of Councillors not exceeding nine in number as the State Government may specify in -the notification constituting the Corporation The boundaries of the Corporation shall be specified in the notification and may, by notification be altered by the State Government from time to time

(2) The Corporation" shall be a body corporate' by 'the name of the Gangtok Municipal, Corporation having

perpetual succession and a common seal and by that name shall sue and be sued,.

(3) The first Councillors shall be nominated by the Government by notification and shall hold office for 'four years commencing from the date of the first meeting of the newly formed ,Corporation after the notification at which a quorum is present:

6[Provided that the Government may by notification ,nominate a new Councillor or Councillors in 'the place of the existing Councillor or Councillors within the said period of four years.] ,

(4) Subject to the provision of sub-section (3), the. Councillors. shall be elected on the basis of adult franchise in the manner prescribed by rules made by the State Government and shall hold office for four years commencing from the date of the first meeting of the Corporation after such election at which a ,quorum is present.

7[(5) If before the expiry of the term of the first Councillors nominated under subsection (3) no new Councillors have, been

Incorporation of Corporation and number of Councillors.

6. Ins. by sec. 3 of the G. M. C. (Amd.) Act No.2 of 1978 (w. e. f. 30-3-78). Ins. by see, 7. 2 of the G. M. C. (Amd.) Act No.5 of 1980 (w. e. f. 11-12-79).

elected as required under sub-section (4), the State Government may by order published in the Official Gazette, appoint an officer (hereinafter referred to as Administrator) for the Corporation for a period of 8[four years] or until the reconstitution of the Corporation, whichever is earlier.

9[Provided that the State Government may by a like order, extend the period of appointment of the Administrator for a further period of one year or until the reconstitution of the Corporation, whichever is earlier.]

- (6) When an order is issued under sub-section (5) the following consequences shall ensue:
- (a) all the powers, functions and duties of the Corporation, its Chairman, Vice Chairman and Committee, if any, shall be exercised, performed and discharged by the Administrator until the reconstitution of the Corporation;
 - (b) the administrator shall be deemed in law to be the Corporation 10[the Corporation at meeting] Chairman, Vice Chairman or Committee, if any, as the occasion may require;
 - (c) such salary and allowances as the State Government may, by order, in that behalf fix, shall be paid to the Administrator out of the Corporation Fund;
 - (d) notwithstanding anything in the Act, the Administrator may review any act done or decision taken by the outgoing

8 Subs. by sec. 3 of the G. M. C. (Amd.) Act No.1 of 1982 (w. e. f. 16-12-81).

9 Ins. by *ibid.*

10. Ins. by *ibid.*

Corporation Chairman, Vice-Chairman or Committee in the exercise or performance of their powers and duties under the Act."

4. The State Government may, by notification, divide the Corporation into Wards and for the purpose of the election of the Councillors determine the number of Councillors to be elected from each such Ward.

Power to divide Corporation into Wards and fix the number of Councillors of each Ward. Disqualification for being a Councillor.

5. (l) A person shall not be eligible for nomination or election as a Councillor if such person

(a) has been adjudged by a competent Court to be of unsound mind; or.

(b) is under twenty one years of age; or

(c) is an undischarged insolvent; or

(0)

(d) being a discharged insolvent, has not obtained from the Court a certificate that his insolvency was caused by misfortune without any misconduct on his part; or

(e) is a municipal officer or servant or holds any office of profit under the Corporation; or

(f) has directly or indirectly by himself or by his partner or employer or any employee, any share or interest in any contract or employment with, by, or on behalf of, the Corporation; or

(g) is in arrears for more than six months in payment of any rate or tax; or

II[(h) having held any office under the Government of any State, has been dismissed for corruption or disloyalty to the State, unless a

11. Ills. by sec. 4 of the G. M. C. (Amd.) Act No.2 of 1978 (w. e. f. 30-3-78).

period of five years has elapsed since his dismissal; or
 (i) is disqualified under sub-section (4) of section
 8 of the Act.] .

(2) If any person is or has been convicted by a Criminal Court of an offence punishable with imprisonment for a period of more than six months, such person shall not be eligible for election or nomination for five years from the date "of expiration of the sentence:

Provided that, on application made by a person disqualified under this sub-section, the State Government shall by an order made in this behalf, remove the disqualification if in the opinion of the State Government the offence does not involve moral turpitude.

6. Every person who is nominated or elected as Councillor shall before taking; his. Seat makes and subscribe before such officer as the State' Government may authorize in this'. behalf an oath or affirmation in the following form, namely,

"I, A.B., having been nominated/elected a Councillor of the Gangtok Municipal Corporation, do swear in the name of God (or solemnly affirm) that I will bear true faith .and allegiance to the Constitution of India as by law established and that I will faithfully discharge the duties upon which I am about to enter."

*Oath of allegiance to
 be taken by the
 Councillor*

7. At the first meeting of the Corporation, the Councillors, after making and subscribing the oath of allegiance under section 6 shall appoint one of their member to preside at the meeting and shall proceed to elect a Chairman and a Vice-Chairman of the Corporation,

8. (1) The State Government may remove a_Councillor

*Election of Chairman
 and Vice-Chairman.*

*Removal of Counci-
 llors.*

- (a) if the removal is recommended by a resolution of the Corporation passed at a special meeting called for the purpose and supported by the votes of not less than two-thirds of the total number of the Councillors of the Corporation holding office for the time being; or

- (b) if he has been declared by the State Government by notification issued after due enquiry to have violated his oath of allegiance; or

- (c) if he absents himself from the meetings of the Corporation for six months continuously without having obtained permission from the Chairman, or in his absence from the Vice. Chairman; or

- (d) if he refuses to act or becomes incapable of acting or is declared insolvent or if, after his appointment as Councillor, he is convicted of an offence which in the opinion of the State Government involves moral turpitude or

- (e) if he acquires or continues to have directly or indirectly by himself or his partner or his agent, any share Of interest in any contract or employment with, by, or on behalf of the Corporation or holds any office of profit under the Corporation; or

- (f) if he is in arrears for more than one year in payment of rates and taxes payable under this Act; or

12[(g) if he has acted as a Councillor by voting or taking part in the discussion of any matter in which he has directly or indirectly a personal interest or in which he is professionally interested on behalf of a client, principal or any other person; or

(h) if he has flagrantly abused his position or has been guilty of gross misconduct in the discharge of his duty as such Councillor].

(2) Before removing a Councillor under subsection (1), the State Government shall allow the Councillor concerned an opportunity of being heard.

(3) All acts' and proceedings of any Councillor shall, if done previously to such removal, be valid and effectual to all intents and purposes.

13[(4) A person who has been removed from the Councillorship of the Corporation under subsection (1), shall be disqualified for being elected or nominated and being a Councillor of the Corporation for a period of four years from the date of his removal:

Provided that the State Government may at any time by order remove the disqualification.]

Casual Vacancy.

14[8A. (1) Where before the expiry of the term of office of a Councillor or his seat becomes vacant owing to death, resignation' or any other cause, a new Councillor shall be elected or nominated as the case may be, in the same manner as is provided for the nomination or election of Councillors under the Act:

Provided that where the term of an outgoing Councillor would be in the ordinary course expire

12. Ins. by sec. 5 of the G. M. C. (Amd.) Act No.2 of 1978 (w.e.f. 30-3-78). 13. Ins. by *ibid.*

14. Ins. by sec. 6 of the G. M. C.(Amd.) Act No.2. of 1978 (w.e.f. 30-3-78).

within four months of the occurrence of, the vacancy his seat shall be left unfilled unless the Government decides otherwise.

(2) The existence of a casual vacancy will not at any time render any action of the Corporation invalid or inoperative in anyway whatsoever.

8B. A Councillor may at any time resign by writing under his hand addressed to the Chairman and his resignation shall take effect from the date of its acceptance by the Councillors at a meeting. In case the Chairman wishes to resign he shall address his resignation letter to the Government and his resignation shall take effect from the date of its acceptance by the Government.]

Resignation.

9. (1) The Corporation may subject to the provisions of this Act and the rules made there under from time to time determine what officers and other servants of the Corporation are necessary for the Corporation and may make appointments of such officers and servants and fix their salaries and allowances.

Appointment of Sub-ordinate Officers.

(2) The Corporation may delegate to the Chairman the power to appoint and dismiss such officers and Servants as it may deem fit.

(3) No appointment to and dismissal from the post of any officer or servant carrying a monthly salary rising by periodical increments to more than 15(eight hundred] rupees shall be made by the Corporation under sub-section (1) or by the { ' Chairman under sub-section (2) without the approval of the State Government.

(4) No person shall be eligible for employment as an officer or servant of the Corporation if he has, directly or indirectly by himself or his partner

or employer or employee, any share or interest in any contract or employment with, by, or on behalf of the Corporation and if any such officer or servant subsequently acquires such share or interest he may be removed from service in accordance with rules which may be prescribed.

Appointment of Executive Officer' by the State Government.

10. (1) The State Government may, after consulting with the Councillors, if it thinks necessary so to do in the public interest, appoint by notification, an Executive Officer for the Corporation and shall make such appointment if in its opinion the affairs of the Corporation are not properly managed or can not be managed in accordance with law, for such period -not exceeding one year at a time as may be specified in the notification.

(2) The Executive Officer shall be paid out of the Municipal Fund such salary and allowances as may from time to time to be fixed by the State Government.

(3) The Executive Officer appointed under this section shall exercise such powers of the Chairman or of the Corporation as may be conferred on him by notification by the State Government, and on such notification such powers shall cease to be exercisable by the Chairman or by the Corporation as the case may be.

(4) The Corporation may delegate to the Executive Officer all or any of the powers of the Corporation.

(5) The State Government may at any time suspend, remove, dismiss or otherwise punish the Executive Officer appointed under this section.

Powers of the Executive Officer..

11. (1) The Executive Officer shall be the principal executive officer of the Corporation and all other officers and servants of the Corporation shall be

subordinate to him. He shall have the same right of being present at a meeting of the Corporation or any special or standing committee, and of taking part in the discussion thereat as if he was a Councillor or a member of the Committee, but he shall not be entitled to vote at such meeting.

(2) Subject to the provisions of sub-section (3) and sub-section (4) of section 10, the Executive Officer. shall act in respect of all other matters under "the direction of the Chairman through whom he shall be responsible to the Corporation.

12 16[The State Government may,} make rules as to

- (i) the appointment, leave, duties, conditions of service, disciplinary proceedings, punishment or dismissal and removal of the officers and servants, of the Corporation:
- (ii) the granting of pensions, gratuities, bonuses or other grants and allowances to or for the officers and servants of the Corporation out of the Municipal Funds;
- (iii) the creation and management of a provident fund or annuity fund, for compelling contributions to such provident or annuity fund on the part of their officers and servants, and for supplementing such contributions out of the Municipal Fund;
- (iv) the nature and amount of security to be furnished by different classes' of officers and servants of the corporation for the proper discharge of their duties;
- (v) the payment to be made out of the Municipal-Fund to the Chairman, Vice-Chairman, Councillors and officers and servants of the Corporation for traveling expenses as may be incurred in performing journey for carrying out for purposes of this Act.

Power to make rules.

6. Subs. by sec. 7 of the G. M. C. (Amd.) Act No.2 of 1978 (w. e. f. 30.3. 7.8).

Conduct of business.

Meetings and persons to preside at meeting.

13. (1) The Chairman or in his absence, the Vice Chairman shall call a meeting of the Corporation at least once in every month.

(2) The Chairman or in his absence the Vice Chairman shall call a special meeting of the Corporation on a requisition signed by not less than one-third of the total number of Councillors; if the Chairman or Vice-Chairman fails to give notice of a special meeting to be held within fifteen days after such requisition has been made, the meetings may be called on seven days' notice by the Councillors signing the requisition.

(3) The Chairman, or in the absence, the Vice Chairman shall preside at every meeting and in his absence of both the Chairman and the Vice Chairman, the Councillors shall choose one of their member to preside.

Decisions of questions and casting Vote and prohibition from Voting.

"14.(1) All questions which may come before the Corporation at a meeting shall be decided by a majority of votes and in case of equality of votes, the person presiding shall have a second or casting vote.

(2) No Councillor shall vote on any matter affecting his own pecuniary interest or on any question exclusively relating to his liability to any tax, rate, toll or fee or any assessment of himself or valuation of any property in which he is in any way interested as owner, manager or agent or otherwise.

Quorum and adjournment for want of quorum.

15.(1) No business shall be transacted in any meeting of the Corporation unless a quorum shall be present.

(2) One-third of the total of the Councillors holding office for the time being shall be the quorum: provided that in case where the total number of

Councillors holding office for the time being is not evenly divisible by three, the one-third shall be ascertained by taking the number next above such total number which is evenly divisible by three, as the number to be divided.

(3) If at the appointed time for a meeting, or within half an hour thereafter, a quorum is not present, the meeting, shall be adjourned to some future day to be appointed by the Chairman or, in his absence, by the Vice-Chairman and three days; notice of such adjourned meeting shall be given, and no quorum shall be necessary for such adjourned meeting.

16. (1) A list of the business to be transacted at a meeting and, in the case of meeting called on a requisition, the terms of the requisition, shall be sent to every Councillor at least three days before the date appointed for the meeting and no business of which such notice has not been given shall be brought forward at a meeting.

Notice of meeting and list of business and minutes of proceedings.

(2) Minutes of the proceedings of all meetings of the Corporation, in which shall be recorded inter alia the names of all the Councillors present, and the person presiding, shall be entered into a book to be kept for the purpose and shall be signed by the person presiding over the meeting and such book shall be open to inspection of the tax-payers.

(3) The minutes shall be laid before the next meeting of the Corporation for confirmation and shall be also signed by the person presiding at such meeting.

17. (1) The Corporation may from time to time appoint standing committees and by specific resolution delegate to, or withdraw from, such committees any of its functions, powers and duties.

Formation of standing Committee.

(2) Each standing committee shall consist of Councillors who shall not be less than two-thirds of the total number of the members of the Committee and such other persons not exceeding one-third in number as the Corporation at a meeting may, from time to time, determine and nominate for this purpose.

(3) All the proceedings of any such committee shall be subject to confirmation or modification by the Corporation unless in special case the Corporation at a meeting otherwise directs.

(4) All questions regarding the removal or resignation of members of a Committee shall be decided by the Corporation.

18. (1) The Corporation may join with any other local authority in constituting out of their respective bodies a joint committee for any purpose in which they may be jointly interested and in delegating to any such joint committee any power which might be exercised by the Corporation or any of the local authorities concerned.

Formation of Joint Committees.

(2) Such joint committee may, from time to time, make rules as to its proceedings and as to the conduct of correspondence relating to the purpose for which it is constituted.

Decision of disputes between local authorities.

19. If a dispute arises between the Corporation and any other local authority on any matter in which they are jointly interested, such dispute shall be referred to the State Government whose decision shall be final and shall not be questioned in any Court.

Power to make rules as to business of Corporation and the Committee.

20. 17[* * *] State Government may make rules as to
(a) the time of its meetings, the business to be transacted at meetings and the

17. Omitted by sec. 8 of the G. M. C. (Amd.) Act No.2 of 1978 (w. e. f. 30-3-78).

- ! period *of* notice of meetings and the manner in which such notice shall be given;
- (b) the conduct and control *of* proceedings at meetings, the due record of all discussion and dissents and the adjournment *of* meetings;
- (c) the custody of the common seal;
- (d) the division *of* duties among the Councillors and the powers to be exercised by the Councillors to whom particular duties are assigned;
- (e) the manner of appointment and constitution *of* committees and the regulation and conduct *of* their business; and
- (f) the delegation *of* powers or duties to committees or to the Chairman of a committee.

21. (1) No act done or proceedings taken under this Act shall be questioned on the ground merely *of* *Validation of acts and proceedings.*
- (a) the existence of any vacancy in or any defect in the constitution *of* the Corporation or any standing, joint or other committees or any disqualification in less than half *of* the Councillors or members *of* the Committee present when the act *Of* proceeding was done or taken;
 - (b) any defect or irregularity not affecting the merits *of* the case.
- (2) Every meeting *of* the Corporation, or any *of* the standing, joint or other committees, the minutes *of* the proceedings *of* which have been duly signed by the person presiding over the meeting, shall

be deemed to have been duly convened and when the minutes are confirmed at a subsequent meeting shall be deemed to be free from all defects and irregularities and the accidental omission to serve notice of a meeting on any Councillor shall not affect the validity of the meeting.

Additional duties and functions of the Corporation.

18[21A. In addition to the duties and functions already provided for in the Act the State Government may by notification entrust any other duty or function to the Corporation and thereafter it shall be the duty of the Corporation to make reasonable provision therefore within the municipal corporation limits.]

CHAPTER III

Municipal property and finance

Corporation may acquire and dispose property.

22. The Corporation may acquire by gift, purchase or otherwise and hold property whether moveable or immovable within or without the limits of the Corporation and may also sell or otherwise dispose of such property in pursuance of a resolution at a meeting.

Property of the Corporation.

23. (I) All property within the limits of the Corporation of the nature hereinafter in this section specified, other than property owned or maintained by the Central or the State Government or any other local authority, shall vest in and belong to the Corporation and shall, with all other property of whatsoever nature or kind which may become vested in the Corporation, be under its direction, management and control, that is to say

18. Ins. by sec. 9 of the G. M. C (Amd.) Act No.2 of 1978 (w. e. r. 30-3-78)

- (a) all public streets and all things connected with or provided for such streets;
- (b) all public channel,. water courses, springs, tanks, reservoirs, cisterns, walls and other water-works, bridges, buildings and all other materials or things connected therewith;
- (c) all public sewers and drains and all works, materials and things pertaining thereto and other conservancy works;
- (d) all sewage, rubbish and offensive matters deposited on streets or collected by the Corporation from streets, latrines, urinals, sewers, cess-pools and other places;
- (e) all public lamps, lamp-posts and apparatus connected therewith or appertaining thereto; and
- (f) all buildings erected by the Corporation and all lands, buildings or other property transferred to the Corporation or acquired by gift, purchase or otherwise.

[2] The State Government may, by notification, exclude any street bridge, sewer or drain from the operation of the Act or any specified provisions of this Act.

24. [1] The Corporation may enter into and perform any contract necessary for the purpose of this Act.

[2] Every contract made on behalf of the Corporation in respect of any sum exceeding five hundred rupees or which shall involve a value exceeding five hundred rupees shall be sanctioned by the Corporation at a meeting and shall be in writing and signed by at least two Councillors, one of whom shall be the Chairman or Vice-Chairman and shall be sealed with the Common seal of the Corporation and unless so executed, such contract shall not be binding on the Corporation.

Execution of contracts.

THE MUNICIPAL FUND

Municipal Fund.

25. (1) There shall be one Municipal Fund held by the Corporation in trust for the purpose of this Act to which all sums realized or realizable under this Act and all sums otherwise received by the Corporation shall be credited.

2) Unless the State Government otherwise directs, all sums received on account of the Municipal Fund shall be paid into a Government Treasury or into any Bank used as a Government Treasury and shall be credited to an account to be called the account of the Gangtok Municipal Corporation.

(3) All sums from time to time credited to the Municipal Fund shall be applied in payment of all sums, charges and costs necessary for carrying out the purposes of this Act or of which payment is duly directed or sanctioned by or under any of the provisions of this Act or payment of which is directed or sanctioned by the Corporation with the approval of the State Government.

26. (1) At least two months before the close of the year, the Corporation shall have prepared a complete account of the actual and expected receipts and expenditure for that year together with a budget estimate of the income and expenditure of the Corporation for the next year.

Budget.

(2) When the budget has been passed at a meeting, the Corporation shall obtain the approval of the State Government and shall not incur any expenditure except in accordance with the budget approved by the State Government.

(3) A revised or supplementary budget may be passed by the Corporation in the course of the year and, if approved by the State Government, the Corporation may incur expenditure in accor

dance with the revised or supplementary budget.

19["26A. The Corporation may, with the previous sanction of the State Government, borrow money from banks and other financial institutions, on the security of the Municipal Fund or any of its other assets for the purposes of this Act."]
 see sec5 of the G. M. C. (Amd.) Act No. I of 1982 (w. e. f. 12.10. 1975.)

Borrowing powers.

27. The State Government may make rules

Power to make rules.

- (a) to regulate the application of the Municipal Fund to the purposes to which it is applicable;
- (b) to regulate the keeping, checking and publication of accounts and periodical audit thereof;
- (c) to regulate the preparation of the budget estimate including revised or supplementary budget estimate and the expenditure of money for purposes provided therein;
to provide for the retention of adequate working and closing balances;
- (d) to regulate the preparation, submission and publication of returns, statements and reports by the Corporation and to prescribe registers and forms;
- (e) to regulate the preparation, submission and publication of returns, statements and reports by the Corporation and to prescribe registers and forms;
- (f) to determine the persons by whom orders for payment of money from the Municipal Fund may be signed, how such payments shall be made and by whom receipts may be given;
- (g) to provide for the supply of certified copies of municipal records to the public and the levy of fees for such supply.

CHAPTER IV MUNICIPAL TAXATION

Power to Impose Taxes.

28. The Corporation may, from time to time at a meeting convened expressly for the purpose, subject to the provision of the Act, impose within the limits of the Corporation the following rates, taxes and fees or any of them:

- (a) 20[a rate on holdings situated within the limits of the Corporation assessed on their annual value including different rates for different grades of valuation.]
a conservancy rate on the annual value
- (b) of holdings;
a water-rate on the' annual value of the holdings;
- (c) a tax on trades, profession and callings;
- (d) any other tax, rate or fees which the Corporation is
- (e) empowered to impose under any law for the time being in force

Annual value of Holdings.

29. (1) The annual value of a holding shall be deemed to be the gross annual rental at which the holding may reasonable be expected to let.

(2) If such gross annual rental cannot be easily estimated or ascertained, the annual value of such holding shall be deemed to be an amount which may be equal to but not exceeding seven and half per centum on the value of the building or buildings on such holding at the time of assessment plus a reasonable ground rent for the land comprised in the holding.

(3) The value of any machinery or furniture which may be on a holding shall not be taken

into consideration in estimating the annual value of such holding, under this section.

30. (1) The rate on holdings shall not exceed fifteen per centum on the annual value of holdings.

Restriction on the Imposition of rates.

(2) 21[The rate imposed under clause (a) of section 28 shall be levied in respect of all holdings within the limits of the corporation except

(a) holdings belonging to the State and

Central Government;

(b) holdings used exclusively as a place of public charity or a public burial or burning ground or as a mortuary;

(c) any holding the annual value of which is less than an amount to be fixed by Government before the close of the year next preceding the year to which such fixation will be applicable.]

(3) The water rate shall not be levied at more than seven and half per centum and shall be imposed only on holdings within an area for the supply of water to which the Corporation has made arrangements.

(4) The conservancy rate shall not be levied at more than ten per centum on the annual value of the holdings and the Corporation shall make arrangements for the cleansing of all latrines, urinals and cess-pools. A rebate of seventy-five per centum of the conservancy rate levied on a holding shall be allowed if the holding is provided with necessary sanitary-type latrines in working order and with no service privy or service-urinal.

Preparation of valuation Lists.

31. (1) When it has been decided to impose any rate to be assessed on the annual value of holdings, the Corporation at a meeting shall appoint an assessor for the purpose who shall determine annual value of all buildings within the Corporation and shall enter such value in a valuation list.

(2) A new valuation list shall unless otherwise ordered by the State Government be prepared in the same manner once in every five years.

Determination of percentage of rate of Holding & preparation of assessment List.

32. (1) The Corporation at a meeting to be held before the close of the year next preceding the year to which the rate will apply shall determine the percentage on the valuation of holdings at which any rate on the annual value of holdings shall be levied and the percentage so fixed shall remain in force until the Corporation at a meeting shall determine some other percentage on the valuation of holdings at which the rate will be levied from the beginning of the next year.

(2) As soon as possible after the percentage at which the rate or rates shall be levied for the next year has been determined under subsection (1), the Corporation shall cause to be prepared by the assessor an assessment list, which shall contain the following particulars and any other which the Corporation may think proper to include:

- (a) the name and/or number and other particulars of the street in which the holding is situated;
- (b) the number of the holding on the register;
- (c) a description of the holding;
- (d) the annual value of the holdings;
- (e) the name of the owner and occupier;
- (f) the amount of rate payable for the year showing each rate separately;

(g) the amount of quarterly installment

33. The Corporation at a meeting may' for good and sufficient reasons recorded in writing, at any time, direct alteration or amendment of the assessment list by revaluing or re-assessing any building.

Amendment and alteration of lists and reduction or remission of rates.

(2) The Corporation at a meeting may reduce or remit the amount payable as rate or rates on account of any holding. If it is satisfied that the levy of such rate or rates would be productive of excessive hardship to the person liable to pay the the same.

34. (1) When the assessment list mentioned in section 32 has been prepared or reviewed, the Chairman shall sign the same and shall cause it to be deposited in the office of the Corporation and shall also give notice of assessment to the owners and occupiers in respect of their respective holdings.

Publication of Notice of Assessments & review.

(2) Any person who is dissatisfied with the amount of assessment in respect of his holding or disputes his liability to be assessed, may apply to the Corporation to review the amount of assessment or valuation or to exempt him from the assessment of rate and such application shall be disposed of by the Corporation at a meeting or by any committee constituted and authorised by the Corporation by a resolution.

(3) No such application shall be received after the expiration of 60 days from the date of service! of the notice under sub-section (1).

(4) An appeal against any decision under sub.' section (2) may be filed within 30 days from the date of such decision before the District Officer within whose jurisdiction the Corporation is situated, and the decision on appeal ,shall be final and shall not be questioned in any Court.

*Tax to be paid
Quarterly in advance
& notice of Demand.*

35. (1) The rate or rates assessed shall be payable by the owner in quarterly installments and every such installment shall be due in the first day of the quarter in respect of which it is payable.

(2) As soon as may be after any sum has become due on account of any tax, rate or fee, the Corporation shall cause to be presented to the persons liable a notice of demand in the prescribed form.

*Levy by Distress &
realization by suit.*

36. (1) If any person does not within sixty days of the service of a notice of demand under subsection (2) of section 35 pay the sum due either at the office of the Corporation or to some person authorised by the Corporation in this behalf or show sufficient cause for not paying the same, the amount of the arrear due along with interest at the rate of twelve per centum per annum and with costs, may, at any time be levied by distress and sale of any movable property belonging to the defaulter' except ploughs, plough-cattle, tools or implements of agriculture or trade.

(2) In the event of failure to recover the whole or any part of the sum due by distress and sale under sub-section (I), the Corporation may sue the person liable to pay the same in any Court of competent jurisdiction.

*Tax on profession,
Trades & Calling.*

37. When it has been determined that a tax shall be imposed on any profession, trade or callings, every person who exercises within the Corporation either by himself or by an agent or representative any such profession, trade or calling shall take out a yearly licence .and pay the tax as may be imposed by the Corporation which shall be realized in quarterly instalments.

38. The, State Government may by notification direct that the works as may be specified in the notification may be continued to be undertaken by the concerned departments of. The State Government within the limits of the Corporation and that so long such. works will be so continued to be undertaken by the concerned departments of the State Government, a portion of the taxes collected by the Corporation as may be fixed by the State Government shall be paid by the Corporation to the departments concerned.

Power of the Government to direct Corporation to make payments to the Departments of the Government.

39. The State Government may make rules

Power to make Rules.

(a) prescribing the qualifications of and the procedure to be followed by, an assessor appointed under this Act;

(b')-prescribing the procedure to be followed for reviewing assessments;

(c) prescribing the form of notices of demand under sub-section (2) of section 35. and fixing the fees payable in connection with distress under. this. Act;

(d) prescribing the conditions and limitations under which a licence may be granted for the purpose of a tax on trades, professions and callings;

...
(e) regulating any other matter relating to tax, fees or rates in respect of which this Act makes no provision or insufficient provision and for which provision is, in the opinion of the State Government t, necessary.

CHAPTER V.

Streets.

Power of Corporation to layout, make improvements of & close public streets.

40. The Corporation in pursuance of a decision at a meeting may-----

- (a) lay out new streets, squares and gardens; construct new
- (b) bridges, causeways, culverts and sub-ways;
- (c) turn, divert or temporarily or permanently close any public square, street or garden; widen, open, enlarge or otherwise improve any public street, square or garden;
- (d) pass order regulating or prohibiting any description of traffic on any particular or on public streets in general or preventing obstruction, encroachment or excavation on or near such street or streets.
- (e)

CHAPTER VI

Conservancy and Drainage.

Duties of Corporation for conservancy & for the removal of Drainage.

41. The Corporation shall provide for the removal

- (a) of sewage, rubbish and offensive matters from all public latrines, urinals and drains and from all public streets and other property vested in the Corporation:
- (b) if a conservancy-rate has been imposed under section 28, of sewage and offensive matters from all private latrines, urinals and cesspools.

Appointed hours for placing rubbish etc. on public street.

42. (1) The Corporation at a meeting may from time to time publish an order prescribing the hours within which only an owner or occupier of any house or land may place rubbish or offensive matters on the public street adjacent to his house or lands, in a proper receptacle provided by the

Corporation in order that such rubbish or offensive matters may be removed by the servants of the Corporation.

(2) No person shall place or, cause to be placed' rubbish or offensive matters on a public street at other than the times appointed and except in the receptacles provided for by the Corporation under sub-section (I).

Water Supply and Lighting.

43. (1) It shall be lawful for the Corporation
 (a) to provide a sufficient supply of water for the domestic use of the inhabitants;
 (b) to cause the public streets to be sufficiently lighted.

Corporation to provide water supply and Lighting.

(2) . If a water-rate has been imposed under section 28, the Corporation shall provide a sufficient supply of water for the domestic use of the inhabitants.

If lighting-rate has been imposed under section 28, the Corporation shall cause, the public streets to be sufficiently lighted.

CHAPTER VII

Buildings.

44. No piece of land shall be used as a site for the erection of a building and no building shall be erected otherwise than in accordance with the provision of this Chapter and of any rule or by-law made under this Act, relating to the use of building sites or to the erection of buildings, as the case may be. .

Building-sites & erection of buildings

Application for sanction.

45. Every person who intends to erect a building shall first submit an application in the forms prescribed to the Corporation together with, such plans, specifications and, other particulars as may be prescribed in any rule or by-law made²² [under the Act

Permission to execute work when to be given or refused.

46. (1). Within 23[sixty days] after the receipt of any application made under section 45 or of any information or documents; which the Corporation may reasonably require, the applicant to furnish before deciding whether permission shall be granted to execute any work under the aforesaid section, the Corporation shall by written order" either

(a) grant permission conditionally or uncon-

ditionally to execute the work, or

(b) refuse permission on the ground that the plans, specifications and other, particulars are not in conformity with the rules or bylaws made in this behalf or that the proposed building is likely to affect the safety of, the site or its adjoining area or, safety or sanitation of any neighboring building or buildings or of the locality.

(2) **When** the Corporation grants permission conditionally' under clause (a) of sub-section (I), it may in regard thereto impose such condition consistent with this Act, as it may think fit.

(3) The decision of the Corporation in the matter of granting or not granting the permission as stated above shall be final and shall not be questioned in any Court:

Duration and expiry 47. (1) A permission to erect a building granted of permission to under section 46 shall, unless it is renewed on an erect a building. application made to C the Corporation for this only

22. Subs. by sec. 12 of the G. M. C. (Amd.) Act No.2 of 1978 (w. e. f. 30-3-78),

23. Subs. by sec. 6 of the G. M. C. (Amd.) Act No.1 of 1982 (w. e. f. 12-10-75).

For two years after the date on which it is granted, unless the work ~ of erection has been - commenced within that period but in any case shall not continue for a period longer than three years from the' said date: unless it is so renewed.'

. (2) Any person who erects a building or continues. the work. of erection of a building, when the permission granted therefore has expired, shall be deemed to erect, such building . or to continue such work: without sanction.

48. (1) The provisions of this Chapter and any rules or by-laws made under this Act relating to the erection of buildings shall also apply to every material alterations of or additions to, any building, but shall. Not apply to necessary repairs not involving any of the works which constitute a material alteration, or addition.

*Application of Act
to alteration or
addition to buildings*

(2) An alteration or addition in or to a building shall, for the purpose 'of this Chapter and of any rule or by-laws made under' this Act, be deemed to be material. if

(a) it increases or. diminishes the height
of the area covered by or the cubical
Capacity. of the building or any part
thereof or

,(b) it affects or is likely to affect judicially the
stability or safety of the building or the condition
of the building in respect of drainage, ventilation,
sanitation or hygiene; or

(c) it. converts into a place for human habitation a
building or part of a building originally constructed
for other purposes or

- (d) it is an alteration or addition declared
by any rule or by-laws made in this
behalf to be a material alteration or
Addition.

(3) If any question arises as to whether any addition or alteration is necessary repairs not affecting the position, safety, stability, use, sanitary condition or dimension of a building or room, such question shall be referred to the Corporation at a meeting and the decision of the Corporation shall be final.

*Power Of demolition
or alteration of
building etc.*

24[49. (1) if the Corporation is satisfied

- (a) that the erection of any, building
- (i) has been commenced without obtaining any permission required to be obtained by or under this Act, or
 - (ii) Is being carried on or has been completed otherwise than in accordance with the particulars. on which such permission was based, or
 - (iii) . is being carried on or has been completed in breach of any provision of this Act or any rule or bye-law made there under, or any direction or requisition lawfully given or made under this Act or under such rule or
A
- (b) that any alteration of, or addition to, any building or any other work made or done for any purpose in,
to or upon any building, has been

commenced or is being carried on or has been completed in contravention of, or otherwise than in accordance with any sanction granted under section 46 or section 48, or

- (c) that any alteration required by any notice issued under this Act or any rule or bye-law made under this Act, has not been duly made, he may, without prejudice to any action that may be taken under any other provisions of this Act, by a notice in writing require the person responsible, to demolish within ten days of receipt of notice such erection, alteration, as the case may be, or to show cause why such erection, alteration, addition or other work should not be demolished or the alteration should not be made.

(2) The Corporation may issue notice under sub-section (1) notwithstanding the fact that the valuation of such building has been made under this Act and the Corporation has received payment of tax on such valuation.

(3) If the person responsible fails

- (a) to demolish such erection, alteration, addition or other work, or to make the alterations, or
- (b) to show cause to the satisfaction of the Corporation why such erection, alteration, addition or other work should not be demolished, or the alteration should not be made, the Corporation may, by order and

through its officers, employees or workmen demolish the' erection, alteration, addition or other work and recover the expenses of demolition from the person responsible:

Provided that a copy of the order shall be served upon the owner and the occupier thereof and no such action shall be taken until after the expiry of thirty days from the date of the service of the said order.

(4) Notwithstanding anything contained in sub-section (1), sub-section (2) or sub-section (3), no action shall be taken under this section in respect of any erection, alteration, addition or other work executed more than twelve years before or before the commencement of Gangtok Municipal Corporation Act, 1975 whichever is later:

Provided that the onus of proving, that the erection, alteration, addition, or other work was executed more than twelve years before or before the commencement of the Gangtok Municipal Corporation Act, 1975 shall lie on the person responsible:

Provided further that no action shall be taken in respect of any erection, alteration, addition or other work which has been regularized under the provision of this Act.

(5) Whoever contravenes any of the provisions of this Chapter shall be liable to prosecution and upon conviction to a fine which may extend to ten thousand rupees and if the offence is of a continuing nature a further fine of five hundred rupees per day after the first conviction.

Explanation.

In this section, the expression, "person responsible" include the owner, the occupier and any other person who executes the erection, alteration, addition or other work or who is liable to make any alteration required by any notice issued under this. Act or any rule or bye-law made there under.]'

25[49A. (1) When any verandah, platform, building or other structure or any fixture attached to a building so as to form part of. the building, whether erected before or after the commencement of this Act causes a projection, encroachment or obstruction over or on any public street or any land vested in the Corporation, the Corporation, in accordance with such rule or bye-law as may be made by it, may, by written notice, require the owner or occupier of the building to remove or alter such structure or fixture within such time, not being less than fourteen days as may be specified in the .notice

Power of Corporation to remove or alter verandah, etc. or fixtures attached to building which project over public street or land.

(2) If the expenses of removing or altering any such structure or fixture is paid by the occupier of the building, in any case in which the same was not erected by himself, he shall be entitled to deduct any reasonable expense incurred for the purposes of such removal. or alteration from the rent payable by him to the" owner of the building.

(3) If the owner or occupier of the building proves that any such structure or fixture was erected before the commencement of the Gangtok Municipal Corporation Act, 1975 or that it was erected on or after that day with the consent of any authority duly empowered for the time being

in this behalf, the requisition made under sub-section (1) shall not be enforced except in pursuance of specific order of the Corporation made in that behalf and the Corporation shall after such structure or fixture has been removed or altered, pay reasonable compensation to every person who suffers damage by the removal or alteration thereof.

(4) Where any owner or occupier fails to comply with the notice served upon him under sub-section (1), the Corporation may remove such structure or fixture and recover the expenses of such removal from the owner or occupier, as the case may be.

(5) Any proceeding under section 49 pending before any' Magistrate shall abate:

Provided that the Corporation may in respect of the proceedings as abated, take fresh action in accordance with the provisions of this Act.

*Obstructions and
encroachment upon
Public streets and
open spaces.*

49B. (1) Whoever, in any place within the boundaries of the Corporation, shall have built or set up, or shall build or set up, any wall or any fence, rail, posts, stall, verandah, platform, plinth, step or any projection, structure or thing or other encroachment or obstruction, in any public street or shall deposit or caused to be placed or deposited any box, bale, package or merchandise, or any other thing in such street, or in or over or upon, any open drain, sewer in such street, shall be punished with fine which may extend to five hundred rupees and with further fine which may extend to fifty rupees for every day on which such projection, encroachment, obstruction or deposit continues after the date of first conviction.

(2) The Corporation shall have power to

remove any such obstruction or encroachment and shall have the like power to remove any "unauthorized obstruction or encroachment of the like nature in any open space not being private, property whether such space is vested in the Corporation or not, the permission of the Secretary Local Self, Government and, Housing Department of the State Government shall have first been obtained

and, the expenses of such removal shall be paid, by the person who has caused. The, said obstruction, or encroachment and such expenses shall be recoverable under sub-section. (1) or sub-section(2) of section .49K as the case may be..

(3) 'The materials or goods removed under sub-section' (2)' may be stored at such place or places as the Corporation may think fit and if within seven days of such removal, no person claims the return' of such materials .or goods or establishes his claim thereto and pays up the expenses. incurred by the Corporation for removal and storage, the Corporation shall have the power to sell the same by: public auction and recover the expenses incurred including the .expenses of .such auction from the proceeds of ' the sale.

(4) When under sub-section(2),the 'Corporation' causes, any wall. to be. Removed or, removes any other obstruction, projection or encroachment from land which forms part of a public street no compensation shall be payable but the Corporation shall be bound, to provide proper means of access to and from, the .street, if .none exists already.

{.5} whoever not being. duly;' authorised in that behalf, removes earth, 'sand or other material or makes. any: encroachment in or upon any open space. Which .is not: private property shall be punished with fine which may extend *to* two hundred rupees

and, in the case, of an encroachment, which is continuing in nature, with further' fine which may extend to fifty rupees for every day on, which the encroachment continues after the date of first conviction

(6) Nothing contained, in this section shall prevent the Corporation' from 'allowing' any temporary occupation of or erection, in any public street on, occasions of festivals and ceremonies, or the piling of fuel in 'bye-lanes and spaces for not more than seven days and in such manner as not to inconvenience the public or any individual or from allowing the occupation of. or temporary erection or structures for, any other purposes in accordance with any rule or' bye-law made under this Act.

(7) Nothing contained in this section shall apply to any structure duly authorised under this Act or any rule or bye-law "made there under.

Removal of structures etc. which are in ruins or likely to fall.

49C. (1) If at any time it appears to the Corporation that any structure.,(including under this expression any building wall or other structure and: anything affixed to ..or projecting from any. , building, wall or other structure) is in a ruinous condition .or likely to' fall or in any way dangerous to any 'person occupying, resorting to or passing by such structure or any other structures or place in the neighborhood thereof, the Corporation may, by 'a written notice of not less than seven days require the owner or occupier--

(a) . to demolish or to repair such structure in such manner as may be specified in the notice of

(b) to repair, protect or enclose such structure in such manner as may be specified in the notice

(2) Where it 'appears to the Corporation that immediate action is necessary for the purpose of preventing imminent danger to any person or property it shall be' the duty of the Corporation itself to take such immediate action. And in such case, it shall not be necessary' for the Corporation to give notice, if it appears to it that the object of taking immediate action shall, be defeated by the delay incurred in giving notice.'

(3) Where any owner or occupier fails to comply with the notice served upon him, the Corporation may demolish' or remove such structure or fixture under sub-section (1), or sub-section (2) and recover the expenses of such demolition or removal from the owner or occupier, as the case may be.

49D: (1) In an of the following cases, namely

(a) If, within the period prescribed in any notice issued under this Act,

requiring the removal or alteration of a verandah platform or other similar structure or a fixture, the same is not duly removed or altered or

(b) if the owner of any building which is erected or added to a street alignment and the building line fails to remove such building or addition when called upon by the Corporation to do so under this Act, or

© if the owner of any building which is unfit for human habitation, fails to demolish such

building when required to do so under this Act or

- (d) if any privy or urinal be placed in contravention of the made under this Act ,or
- (e) if within the period prescribed in any notice issued under this Act or any rule or bye law made there under requiring the owner or the occupier of the building to comply with any condition on which the erection of any verandah or other projection was permitted ,such condition is not complied with ,or
- (f) if within the period prescribed in any notice issued under this Act or any rule or bye law made there under requiring the owner or occupier of a building to remove a verandah or a projection the same is not duly removed, or
- (g) if within the period prescribed in any notice issued or any rule or bye law made there under requiring the owner of a building to remove or alter an external roof or wall made of inflammable material the same is not duly removed or altered ,or
- (h) if any owner or occupier neglects to execute any work or to take any measure required by any notice issued under this Act or any rule or bye law made there under the Corporation may make an order directing that the pro

jection, building, block of buildings verandah, platform, fixture, additions, roof, wall, as the case may be, shall be demolished by the owner' or occupier thereof who may 'be the person responsible .or altered by such person to 'the satisfaction of the Corporation within, the time specified in the order.

(2) If the person responsible fails-

- (a) to demolish such erection, alteration, addition or other work or to make the alteration, or
- (b) to show sufficient cause to the satisfaction of the Corporation or an officer specially appointed by the Corporation' with the approval of the State Government in this behalf, as -the 'case' maybe, why such erection, alteration, addition or other work should not be demolished or the alteration should not be made, the Corporation may by an order in writing and through its officers, employees and workmen demolish the erection, alteration, addition or other work:

Provided that where the person responsible shows cause, the order to demolish the erection, alteration, addition or other work shall not be made without giving the person responsible, an opportunity of being heard':

'Provided further that a copy of the order referred to in 'this clause or in the .first proviso shall be served upon the owner and the occupier

thereof, and no action shall be taken until the expiry of thirty days from the date of the service of such order

Provided also that the Corporation may make any such order notwithstanding the fact that a valuation of such building has been made under this Act' and, the Corporation has received payment of tax on' such valuation.

(3) Notwithstanding anything contained in

Sub-section. (1), and.(2) no action' shall be taken under this. section in 'respect of any ,erection alteration, addition or other work executed more than twelve years before or before the commencement of the Gangtok' Municipal Corporation Act, whichever is later

. Provided that the. Onus, of proving that the work was done more than twelve years previously on or 'before the commencement of the Gangtok 'Municipal, Corporation Act shall lie on the person responsible. ..

Explanation

In this section the expression, 'person responsible' includes the owner, the occupier, and any other 'person who executes the erection, alteration addition or other work or who is liable to make any alteration required by any notice issued under this Act or any rule or bye-law made under this Act.

49E. (1) In any case in which the erection of a new: building or any other work referred. to in section 49, has been commenced. or is. 'being carried on unlawfully as mentioned in that section, the Corporation may, by written notice, ,require the person carrying on such erection or unlawful work to stop. the same forthwith. ,

Power of Corporation to stop progress of building work unlawfully commenced or carried on.

(2) If any notice issued under subsection(1) ,is not duly' complied with, 'the Corporation may with the' assistance of the police, if necessary, take such' steps as it may deem necessary in order to stop the continuance of such unlawful work.

, (3) The Corporation, if it considers, necessary may depute any municipal officer to watch the premises in order to' prevent the continuance of the unlawful work. (4) Where, any: person after receipt of the notice under sub-section (1) fails to. Comply with the said notice and carries on any' work, relating to the, erection of a new building or any other work the Corporation may demolish or' remove such unlawful work and recover the expenses of such demolition or removal from the owner in accordance with -the provisions of section 49K.

49F (1), The State Government shall constitute
A tribunal to be called the' Gangtok Municipal
Corporation Tribunal- for' the purpose of hearing
Appeals against the orders made or the notices or
Requisitions issued by -the Corporation under this
Act, or any' rule 'or bye-law made there under.

*Gangtok Municipal'
Corporation Tribunal.*

(2) The, Tribunal shall consist of--

(A) The District Judge

(B)an Officer not below the rank of a Joint Secretary to the State Government who has been a member of the Judicial Service of any State for a period of not less than seven years

(C) An Officer who is or has been a member of the Sikkim Judicial Service

(3) The District Judge shall be the President of the Tribunal and during his absence on leave or otherwise, the officer at clause (b) of sub-section (2) shall be the President of the Tribunal.

(4) The Tribunal shall have the power to Regulate its own procedure.

(5) The "quorum of the Tribunal shall have two members.

(6) The State Government may, on a request made by the President of the Tribunal, nominate

not more than two other persons to be members of the Tribunal for specific purposes.

(7) Each member of the Tribunal shall be entitled to receive such remuneration, either by way of monthly salary or by way of honorarium or fees as the State Government may determine.

(8) The Tribunal shall, for the purposes of this Act, have the same-powers as are vested in a court under the Code of Civil Procedure, 1908 when trying, a suit, in respect of following matters, namely:

(a) enforcing the attendance of any person and 'examining him' on oath or affirmation;

(b) compelling the production of accounts and documents

(c) , issuing commissions for the examination of witnesses and every proceeding under this Act before the Tribunal shall be deemed to 'be a judicial proceeding within the meaning of sections

193 and 228 and for the purposes of 'Section 196of the Indian, Penal Code. 45

(9) Tribunal may in disposing of an appeal, exercise the same power, as its Corporation.

49G. The Tribunal may call for and examine the

record of any proceeding in which an appeal lies to it for the purpose of satisfying itself as to the legality or propriety of any order passed and if in any case it shall appear to the Tribunal that any such order should be modified, annulled or reversed, the Tribunal may pass such order thereon as it may deem fit.

49H. (I) The Tribunal may either on its own motion or on the application of any party interested, review its own order in any case, or pass in reference thereto such order as it thinks just:

Provided that no application made by the party interested shall be entertained unless the Tribunal is satisfied that there has been the discovery of new and important matter of evidence, which after the exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the Tribunal made its order or that there has been some mistake or error on the face of the record:

Provided further that no such order shall be varied or revised unless notice has been given to the parties interested to appear and be heard.

(2) An application for review under sub-section

(1) by any party shall be made within ninety days

from the date of communication of the order of the Tribunal.

(3) The Tribunal shall not review any order on its own motion after the expiry of a period of ninety days from the date on which such order was made by it.

*Power of revision by
the Tribunal.*

*Power of review by
Tribunal.*

491. An order passed in appeal or in revision or in review by the Tribunal under this Act shall be final and conclusive and shall not be called in question in any Civil or Revenue court.

*Order of the
Tribunal to be
final.*

Appeal.

49J. Any person aggrieved by an order made or notice issued. By the Corporation, under this Act or any rule or bye-law made there under, may: within thirty days from the date on which such order is communicated to him; prefer an appeal to the Tribunal

Provided that the said Tribunal may entertain the appeal after the expiry of the said period of thirty days if sufficient cause for filing the appeal is shown.

(2)- The appeal referred to in sub-section (1) shall be in the form of a memorandum giving the grounds of appeal and shall be accompanied by a copy of the order appealed against and a fee of three hundred rupees:

Provided that when an appeal is preferred against any notice issued by the Corporation under this Chapter, the fees payable under this sub-section shall be fifty rupees.

Recovery of expenses for demolition or removal.

49K. (1) If any person, after receipt of a notice of demand fails to pay, within thirty days, the expenses incurred by the Corporation under section 49, 49A, 49B, 49C, 49D, and 49E for demolition or removal of any structure or any other work, the Corporation may issue distress directing that the expenses incurred by it may be realized by the sale of movable property belonging to the defaulter except ploughs, plough cattle, tools or implements of agriculture, trade or profession.

(2) In the event of failure to recover the whole or any part of the sum due by distress and sale, under sub-section (1) the Corporation may sue the defaulter in any court of competent jurisdiction for the recovery of such dues.

49L (1) Notwithstanding anything contained in this Chapter, if the Corporation, after considering all the facts and circumstances of the case and after making such inquiry it may deem fit, is of the opinion that the party concerned has not complied with the notice, if any issued under sub-section (1), of section 49 or sub-section (1) of section 49A or in other cases of contravention of the provisions of this Act or any rule or by law made there under, the Corporation, instead, of making an order for

*Power of Corporation
to regularize on
payment of fees.*

- (a) demolition of any building, verandah platform, or other structure; or
- (b) making any alteration of any building or Other work; or
- (c) removal of any verandah, platform or other fixture attached to a building so as to form a part of such building or which causes a projection; encroachment or obstruction over any public street may, if satisfied that. Such demolition alteration or removal of the works of the party concerned referred to in clauses (a), (b) and (c)-;
 - (i) would result in undue hardship to the party concerned; or
 - (ii) would not cause unreasonable inconvenience to the public, order regularizations of such works if the party concerned pays to it such fee not exceeding rupees one hundred per square foot of the constructed area or the area covered by any alteration, verandah, other structure, projection or encroachment as may be specified by the State Government by a notification, having regard to the nature and type of the construction

Provided that where the works referred to in clause (a), (b) and (c) are situated over the land belonging to the Corporation or' the State' Government or any 'other authority owned and controlled by the State Government, the Corporation shall not order regularization of such works 'except, after ascertaining from the State Government the cost of such land and upon payment by the party concerned of such .cost in addition to -the regularization fee.

(2) If the party concerned fails to .pay the fee referred to in subsection (1) or the cost of the land within such time (not being less than one month from the date of making an order) as may be specified by the Corporation this order, it may pass such order as to demolition of building, alteration or other -works as it may deem fit."]

Power to make rules.

, 50. The Corporation may make 26[bye-law] relating to submission and disposal of applications for and plans specifications and other matter in respect of building and any other matter which ,it may deem necessary for carrying out the provisions of this Chapter.

CHAPTER VIII
In sanitary and Dangerous
Property.

power to direct the filling up etc.of unwholesome wells, ditches etc.

- 51. (1) When
 - (a) any ditch, pool, well, tank, pond, pit or marshy or undrained ground; or
 - (b) any cistern, reservoir or' water tank
or any other receptacle or place where

26. Subs. by sec. 13 of the G. M. C. (Amd.) Act No.2 of 1978 (w. e. f. 30-3-78).

water is stored or accumulated or

©any waste or stagnant water whether within any private enclosure or not

appears to the corporation to be or likely to become injurious to health or

offensive to the neighborhood ,the corporation may by written notice require the owner or

- (i) to cleanse the same; or occupier of the land or building to which
- (ii) to re-excavate the same; or ditch ,pool, well, cistern,reservior
- (iii) to fill up the same with suitable materials receptacle
- (iv) to drain off or to remove water from is situated at the expense of such owner or occupier-
- (v) to take such other order therewith as the Corporation may deem necessary

, (2) If the owner or occupier fails to comply with the notice under sub-section (1) the Corporation shall be entitled to get the' works done and recover the cost incurred therefore from the owner or occupier as the case may be as if it were arrear of rate payable under- this Act.

Procedure in case of buildings deemed unfit for human habitation,

portion of a building

52 (1)If, for any reason, any building or

27. omitted by sec. 9, of: the G. M: C: (Amd.) Act 'No I of 1982(w.e.f. 12:10-75)

intended for or used as a dwelling place

appears to the corporation

to be unfit for human habitation ,the corporation may by notice
require the owner or occupier of such a building to make such
building to make such alteration as the corporation

think It necessary in the building in order to make
it fit for human habitation

(2)If after one month after the service of the notice under sub section (1)it appears to the Corporation that the building has not been rendered fit for human habitation and that the necessary steps are not being taken with all due diligence to render it so fit , the Corporation may apply to a Magistrate to prohibit the further use of such building or portions thereof as the case may be or to execute such work as in the opinion of the Magistrate may be necessary to render the building fit for human habitation

53. 27 (* * *) . CHAPTER IX'

Offensive and Dangerous Trades, Occupation or Processes.

54,(1) No person shall use or permit to be used anyplace within such local 'limits as may be fixed by the Corporation at. a. meeting. without a license from the Corporation (which shall be renewable annually) for any. of the following purposes, namely;

(i) for the slaughter- of animals, or for the skinning or disemboweling of, animals for purposes other than human consumption

Provided. that this clause shall not apply to slaughter of .animals for a.bonafide religious purpose. or on a ceremonial occasion; or

(ii) for storing hides,' horns or 'skins or

. (iii) for boiling or storing offal, blood bones

. or 'rags or

(iv)for melting tallow

Power to prohibit certain' offensive & dangerous trades without licenses.

- .,

- (v)for tanning or for the manufacture of leather, or goods
- (vi)for oil boiling or
- (vii)for soap making ,or
- (viii)for burning or baking bricks ,pottery or lime whether for trade or private purposes
- (ix)as a depot for trade in coal or coke or
- (x)for storing kerosene ,petroleum, naphtha or any inflammable oil or spirit or
- (xi)for trading in or storing for other than his own domestic use ,hay, straw, wood, thatching grass, jute or other dangerously inflammable materials

55 No dairyman , milkman or stable keeper shall keep cattle ,ponies, horses or four footed animals for the purpose of trade or business except in a place licensed by the Corporation

56 (1)Within such limits as the Corporation at a meeting ,may direct, no person shall keep pigs or in any place more than twenty sheep or twenty goats without a license from the Corporation which shall be renewable annually

(2)The Corporation at a meeting may charge an annual fee not exceeding 28 (twenty five rupees)for such license and in respect of such license may impose such conditions as to fencing , drainage ,paving cleansing and other matters for the regulation of such places as the Corporation may deem fit

57 The Corporation may make bye laws regulating places used for offensive or dangerous trades

*places used for
offensive trades,
etc.*

CHAPTER X
Fairs and Melas.

*Power of
Corporation to
grant license for
Fairs or
Melas.*

58. The Corporation at a meeting may require the owner or lessee of a fair or mela or an owner or a lessee of land intending to hold a fair or mela thereon, to obtain a licence in this behalf, from the Corporation on such terms and conditions and on payment or such fee as may be prescribed.

*Rules for Fairs &
Melas.*

59. The State Government may make rules regulating the granting of licenses for holding fairs and melas and fixing the fees in respect thereof.

CHAPTER XI
Market and Slaughter Place.

*Power to
provide and maintain.
Municipal markets,
slaughterhouses and
stockyards.*

60. The Corporation at a meeting may
- (a) construct, purchase, or take on lease or otherwise acquire any land, or building for the purpose of establishing a municipal market or municipal slaughter-house or municipal stock-yards or of extending or improving any existing municipal market, municipal slaughter-house or municipal stock-yard, and
 - (b) from time to time build and maintain such, municipal markets, municipal slaughter-house and municipal stock-yards and such stalls, shops, sheds, pens and other buildings or conveniences for the use of persons carrying on trade or business in or frequenting such markets, slaughter house or stock-yards and charge rents, tolls and fees- for the right to expose goods for sale in such market and for

the use of shops" stalls", slaughter' houses stock-yards and standings therein. ,

61. The Corporation at a meeting may, at any time; in the interest of public, temporarily or permanently, close any municipal' market, municipal slaughter-house or municipal stock-yard or any' portion thereof.

Power to close municipal markets, Slaughter; houses and Stock-yards.

62.No Person shall, without the permission of the Corporation, sell or expose' for sale any living thing or arty article within a municipal market.

Prohibition of use of municipal market without permission.

63. If .the, Corporation publishes an order in this behalf, no' person shall establish a new private market or continue to run any existing private market, for the purpose of sale or exposing for sale any article of human food except with the sanction of the Corporation and in conformity with the terms of a licence granted by the Corporation.

Power to Permit opening or running of private market.

64 (1) The Corporation may,' subject to such terms and conditions as may be prescribed grant and withdraw licenses for the use of any premises for the slaughter of animals for the sale of their flesh for human consumption.

Licensing of private slaughter-houses and prohibition.

(2) No person shall slaughter any animal for the sale of its flesh for human consumption within the Corporation at any, place other than a municipal

Slaughter-house or a slaughter-house licensed under sub-section (1).

65 Every licence granted under this Chapter shall be in force until the end of the year during which it is granted.

Duration of License.

CHAPTER XII. Restrain of Infection.

66 The Corporation may make by-laws for the

Restrain of Infection.

effective control, 'restraint and- prevention of any dangerous' disease 'and in particular and without prejudice to the generality of the foregoing power the Corporation may, and when required by the State Government, shall make by-laws regulating, the following matters,

- (a) the restraint, segregation and isolation' of persons. suffering from any dangerous or likely to suffer from any dangerous disease owing to exposure to infection or contagion;
- (b) the' removal, disinfection and destruct . tion of personal effects, goods and other property and disinfection of houses exposed to infection or contagion;~
- (c) the removal to hospital and *the* treatment of persons suffering from any dangerous disease or. likely. to ! suffer' from 'any such. disease, owing to exposure to infection or contagion;
- (d)' the speedy burial or cremation of the: bodies of persons who have died from any dangerous disease;
- (e) house to house visiting and inspection;
- (f) the promotion of cleanliness, ventilation and - disinfection
- (g) the duties and responsibilities in respect of the prevention and notification of any dangerous disease
- (h) the duties and responsibilities of parents or guardians in respect to their school going children who are suffering or have recently suffered from any dangerous disease or have

been exposed to infection or contagion and the, duties and responsibilities of persons in: charge of schools in respect of such children

- (i.) the prevention of, the spread from any animal, or the carcasses or product of any animal, to man, of rabies, glanders, anthrax, plague, tuberculosis, trichinosis or any other disease communicable to man by any animal or the carcass or product of any animal;
- (j) the prevention of the spread and the eradication of malaria, the destruction of mosquitoes and the removal or abatement of condition permitting or favoring. the multiplication or prevalence of mosquitoes
- (k) the prevention of the spread of diseases by flies or other insects and the destruction of such insects, and the removal or abatement of conditions permitting or favoring the prevalence or multiplication of such insects;
- (l) the destruction of rodents and other vermin's and the removal or abatement of conditions permitting or favoring the' harborage or multiplication thereof;
- (m) the 'prevention of the spread of any dangerous disease by the carrying on of any business, trade or occupation;
- (n) the regulation of rag-flock manufacture and the trade in rags in bones and in second-hand' clothing, beddings or any similar article and the requiring of any such article to be disinfected

- before. its importation, r removal, sale or exposure' for sale, or use' in any manufacturing process;
- (0) the disposal of any 'refuse, waste matter or other matter or thing, which has been contaminated with or exposed to infection or contagion; and
- (p) compulsory vaccination, inoculation or their measures in respect of persons residing within the Corporation and such other preventive measures.

CHAPTER XIII

Nuisance.

Nuisance

67. (1) The powers conferred by the Chapter shall be in addition and not in derogation of any powers conferred by the other provisions of this Act.,

- (2) (a) the condition of--
- , (i) any premises or part thereof of such a construction or in such a state or so situated or so dirty as to be a cause of annoyance to the inmates thereof, the neighbors or the public or injurious or dangerous to health or unsafe, including places infected by, or providing haunts for mosquitoes or mosquito larvae, flies or fly maggots, hookworm larvae or ova, or 'rats or other noxious animals or' insects and thereby liable to favor the spread' of infectious disease

(ii) any street tank pool, ditch, gutter water course, sink, cistern, water closet earth-closet, privy urinal, cess pool, drain, dung pit or ash pit so foul or in such a state or so situated as to be a cause of annoyance to the inmates of the premises, the neighbors or the public, or injurious or dangerous to health;

(iii) any premises by reason of abandonment: of disputed owner
ship or for any other reason unoccupied and thereby become a resort of idle and disorderly person;

(iv) any school factory, workshop or other trade premises so unclean 'as to be a cause of, annoyance to the inmates, the neighbors or the public, or injurious to health, or not so ventilated as to render harmless, as far as practicable, all gases, vapors, dust or other' impurities, generated in the course of the work carried on therein, that are a cause' of annoyance to the inmates, the neighbors or the public or injurious to health, or so overcrowded as to be injurious to the health of the persons therein engaged or employed, or not provided with sufficient and suitable privy or urinal accommodation;

(V.) any offensive trade or business so carried on as to be injurious to the health or offensive to the public

(vi) any well tank or any other water supply injurious or dangerous to health

(vii) any stable, cowshed or other buildings or enclosure in which any animal or animals are kept in such a manner as to be a cause of annoyance to the inmates of the premises, the neighbors or the public or injurious or dangerous to health

(viii) any burial or burning ground which in the opinion of the Corporation is injurious or dangerous to the health of persons living in the neighborhood or to the public or offensive to such persons

(ix) any accumulation or deposit of animals or vegetables or animal refuse which is offensive to the neighbors or to the public or any deposit of offensive matter refuse or offal or manure within fifty yards of any public street, wherever situated; and

(b) any act omission, condition or thing which the State Government

shall. declare to be a nuisance or which after due inquiry by the Corporation on the complaint of two or more persons residing in the neighborhood is found by the Corporation to be a cause of annoyance to the neighbors or to the inmates of the premises affected or to the public or to be dangerous or injurious to health ;

Shall be deemed to be a nuisance liable to be dealt with under the provision of this Chapter

provided that no nuisance shall be deemed to have committed in respect of any accumulation or deposit necessary for the effectual carrying on any business, trade or manufacture, if it be proved to the satisfaction of the Court that the accumulation or deposit has not been kept longer than is necessary for the purpose of the business, trade or manufacture and that the best available means have been taken to prevent injury or danger thereby to the public health

68 (1) The Corporation shall cause to be made from time to time inspection with a view to ascertain what nuisance exists calling for removal under the powers of this Act, and shall enforce so far as possible the provisions of this Act in order to remove the same, and otherwise put in force the powers vested in the Corporation relating to public health, so as to secure the proper sanitary condition of all premises within the Corporation

*Inspection for
ascertaining
existence of
nuisance.*

(2) If the Corporation *or* a Health Officer or a Sanitary Inspector has reasonable grounds for believing that a nuisance exists in any premises, the Corporation may order of such officer may make an inspection of such premises at any hour, when the operations suspected to cause nuisance are believed to be in progress or are usually carried on or when the special conditions suspected to cause the nuisance are believed to exist, and may cause such work to be done as may be necessary for an effectual examination of the said premises including the opening of the ground or surface, where necessary, and the testing of the drains.

(3) When the ground or surface has been opened and *no* nuisance is found to exist, the Corporation shall restore the premises at their own cost.

Municipal Officer to gives information as to nuisance.

69. Information of any nuisance under this Chapter may be given to the Corporation by any person and every officer of the Corporation shall bring the existence of any nuisance to the notice of the Corporation or cause it to be brought to the notice of the Corporation

Notice to remove nuisance.

70. The Corporation, if satisfied of the existence of a nuisance, shall serve a notice on the author of the nuisance or if he cannot be found, then on the owner or occupier of the building or premises on which the nuisance arises or continues, requiring him to remove it within the time specified in the notice and to execute such works and do such things as may be necessary for that purpose and if the Corporation thinks it desirable (but not otherwise) specifying any works to be executed to prevent a recurrence of the said nuisance:

Provided that-

(a) Where the nuisance arises from any

want or defect of a structural character, or were the building or

premises are unoccupied, the notice shall be served on the owner;

(o) Where the author of the nuisance cannot be found, and it is clear that the nuisance does not arise or continue by the act or default or sufferance of the owner or occupier of the building or premises, the Corporation may remove the same and, may do what is necessary to prevent the recurrence thereof.

71(1) If the person on whom a notice to remove a nuisance has been served under section 70 fails to comply with any of the requirements, thereof within the time specified, or if the nuisance, although removed, since the service of the notice is in the opinion of the Corporation likely to recur on the same premises shall cause a complaint relating to such nuisance to be made before a Magistrate, and such Magistrate shall thereupon issue a summon requiring the person, on whom the notice was served to appear before him.

(2) If the Magistrate is satisfied that the alleged nuisance exists or that, although removed it is likely to recur on the same premises, he, shall make

(a) an order, on the author thereof, or the owner or occupier of the premises as the case may be, requiring him to comply with all or any of the requirements of the notice or otherwise to remove the nuisance within a

Procedure in case persons fail to comply with notice.

time specified in the order and to do any works necessary, for that purpose or an order prohibiting the recurrence of the nuisance and directing the execution of any works necessary to

prevent the recurrence or an order Both, requiring the removal and prohibiting the recurrence of the nuisance, or

...

(b) an order, on the Corporation directing them to. Remove or prevent the recurrence of, the nuisance or both, at the expense, of the author thereof or the owner or occupier of the premises, as the case may be.

- (3) Before making an order the Magistrate may if he thinks fit adjourn the hearing or further hearing of the case until an inspection, investigation or analysis *in* respect of the nuisance alleged has been made by some competent person.

- (4) Any costs incurred by the Corporation in executing an order of the magistrate under clause (b) of sub-section (2) shall be payable on demand, and 'if not paid on demand recovered by distress and sale of the moveable property of the' defaulter.

Magistrate may order local authority to execute works in certain cases.

72. Whenever it "appears to the satisfaction of the Magistrate that the' author of the nuisance or that the owner or occupier of the premises is not known or cannot be found, the Magistrate may at once order the Corporation to execute the 'works thereby directed and the cost of executing

the same. shall be payable by, the person liable;
 if subsequently found and if not paid on demand
 within fifteen day from the date of .execution of
 The work, may be recovered by distress and, sale,
 of the moveable property of the defaulter, if known

, **Chapter XIV .**

**Places of disposal of the dead and., the registration of
 Births and Deaths**

73. The Corporation at a meeting may from
 time to time cut of the Municipal Fund with the sanction of the State
 Government providing fitting places either within. or without the. Limits,
 of Corporation to 'be used as, burial grounds or burning grounds and may
 impose such fee as may be fixed by the Corporation' at a. 'meeting with
 the
 approval of the State. Government in. respect of every corpse buried or.
 burnt within such burial or burning grounds.

*Provisions. of place, to
 be used as burial
 grounds.*

74. The. Corporation, if required, by thy State Government. to do so shall
 at a, meeting provide for the registration of births and.' deaths within the
 limit of the Corporation and for the issue of, certificate of birth and deaths.

29[74AThe State Government may at' any time'

*Registration of
 birth and death.*

call upon the Corporation to furnish it with any
 Information, report or extract 'from any proceedings, of the, Corporation
 or any, of its 'Committees or from any record under - the control of the
 Corporation and with any statistics concerning or connected' with the
 administration of the' Act and the Corporation shall furnish the' same
 without
 unreasonable delay.

*Power of Government
 to call for extracts
 from proceedings etc.*

74B. (1) In case of emergency the State Government' . may provide for the' execution. through such' agency and in such manner as it may' specify' in its order, of any work or the doing of. any' act which' the- Corporation or the Executive Officer is empowered to execute or do and of- which the immediate' execution or

(2) If the'; expenses are, not, so paid the State Government may make an, order 'directing the person having the custody of the, Corporation, fund to pay' the expenses from. such fund.

doing is, in its opinion, necessary for the safety 'or

protection

of the public and expenses of

may .direct that the executing

Suspension of resolution.

the act shall be paid by

74C. (1) If the State, Government is of the opinion that; the execution _of ,any resolution or order of the Corporation or any Corporation authority, the work or doing the Corporation or of any officer or ,servant of the 'Corporation or the doing of any act which is about to be done or is being done by or on behalf of the Corporation, is 'in' contravention of or in excess of the powers conferred by the Act or the rules' and bye-laws framed 'under the Act or of any other law for the time being in force or has been passed or made in abuse of any such power or is likely to lead a breach of peace or to cause, obstruction, injury or ,annoyance to. the public or to, any class or body of persons or danger to human life ,health or safety ',or is prejudicial to public interest the State Government may by order in writing, suspend the execution of such resolution or order or prohibit the doing of any such act.

(2) A copy of such order shall forthwith be sent to the Corporation by the State. Government.

(3) The State Government may at any time, on representation by the Corporation or otherwise, review, modify or revoke an order passed under sub-section (1).

74D. (1) If at any time it appears to the State Government that the Corporation is not competent to perform, or is persistently making default in the performance of, duties imposed upon it by or under this Act or any other law for the time being in force or has exceeded or abused its powers more than once, the State Government may, after having given the Corporation an opportunity to show cause why such order should not be made, by an order published with the reasons therefor in the Official Gazette; supersede the Corporation for such period as may be specified.

Super session.

(2) The period of suppression specified under sub-section (1) may, if the State Government so consider expedient, be extended from time to time by notification.

(3) When the Corporation is superseded under sub-section (1) the following consequences shall ensue

(a) all the Councillors of the Corporation including the Chairman and Vice-Chairman shall vacate their offices as such from the date of the order of super session

(b) all the powers and duties of the Corporation shall, during the period of super session, be exercised and performed by such person or persons as the State Government may appoint in this behalf from time to time and until a new body of Councillors is elected under the provisions of the Act in pursuance of an order of the State Government issued in this behalf.]

CHAPTER XV
Penalties and Miscellaneous.

Offence punishable with fine.

75. Whosoever commits any offence, by contravening or failing to comply with any provision of this Act or rules or by-laws made there under or, any direction lawfully given to him or any requisition lawfully made upon him under any provision of this Act or rules or by-laws made there under, shall be punished., with fine which may'

Extend to 30(ten thousand rupees:]

And if such offence continues in its nature to further fine which. May extend to 31[five hundred rupees] for each day during which the offence is continued after the first day,

Sanction and limitation for prosecution.

76..No prosecution for an offence under this Act or any rules or by-laws made in pursuance thereof shall be instituted without the order or consent of the Corporation and no such prosecution shall be instituted except within six months next- after the commission-of the offence, unless the offence

is of continuous in its nature, in which case of prosecution may be instituted within six months of the date on which the commission or existence of the offence was first brought to the notice of the Chairman.

Notice of suit against Corporation.

77. (1) No Suit or other legal proceedings shall be brought against the Corporation or the Councilors or any - of the agents, officers or servants of the Corporation, or any person acting under is for their direction,, for any act purporting to be done under this Act or any rules or by-laws made there under, until the expiration of one month next after notice in writing is served on the Corporation or the Councilor or such

30. Subs. by sec. 10 (a) of the G. M. C. (Amd.) Act, No.1 of 1982(w. e. f. 12.10.75).

31. Subs. by sec. 10 (b) of the G. M. C. (Amd.) Act, No.1 of 1982 (w. e. f. 1210.75.).

agent, officer or servant. or 'person' acting under its or their direction as., the case may be, stating, the cause of action and the name and place abode, of the person who intend to bring the suitor or proceeding and the relief claimed.'

(2) Every such suit t or proceeding shall be

commenced Within six months next after the accrual. }
of cause of action and not afterwards.'

78. The Corporation shall, as soon as possible, take steps for the construction of public urinals and latrines at such places as the Corporation will deem fit and shall make necessary arrangements. for their proper cleansing, and disinfection.

Corporation to provide public urinals and latrines.

79. The Corporation may with the previous sanction' of the State Government direct that

Licensing of certain trade and business.

(a) No person shall without or' otherwise in conformity with the terms of licence' granted by the Corporation in this behalf, carry on within the limits of the Corporation the trade or business of a dairy men or milk men or of a baker, confectioner, ice or- aerated water manufacturer or sweet. meat maker or of a keeper of a tea shop, hotel or eating house;

32((b) such person as mentioned in clause (a)' shall observe the terms and conditions which 'may be prescribed by the Corporation by laws.]

80. (1) The Chairman shall for the transaction of business of the Corporation connected with this Act or any other law or for the purpose of making any order authorised thereby, exercise all the powers vested by this Act in the Corporation:

Powers of Chairman and delegation to Vice-Chairman.

32. Subs. by sec; d170f the G. M. C. (Amd.) Act, No.2 of 1978 (w. e. f. 30.3.78).

Provided the Chairman shall not act in opposition to, or in contravention of any order or action of the Corporation at a meeting or exercise any power which is vested in or directed to be exercised by the Corporation at a meeting.

(2) The Chairman may in accordance with the decision of the Corporation at a meeting, delegate all or any of his powers to the Vice Chairman.

Councilors, Municipal Officers etc. to be public servants.

81. Every Councilor, every officer and servant of the Corporation and every person authorised by the Corporation to do any act under this Act or any rule or by-law made there under shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Power of entry to inspect, survey or execute work.

82. The Chairman, Vice-Chairman, Executive Officer or any other person authorised by the Corporation in this behalf, may enter into on any building or land with or without the assistants or workmen in order to make any inquiry, inspection, test, examination, survey, measurement or valuation or for the purpose of lawfully placing or removing pipes, meters or other things, or to execute any other work which is authorised by the provision of this Act or of any rule, by-law or order made there under or which it is necessary for any of the purpose of this Act or in pursuance of the said provision or any resolution passed by the Corporation, to make or execute:

Provided that

- (a) except when it is in this Act or in any rule or by-law made there under otherwise expressly provided, no such entry shall be made between sunset and sunrise

(b) except when it is otherwise expressly provided as aforesaid, no dwelling; house, And 'no part of' a public building used as a dwelling place, shall be so entered without the consent of the occupier thereof, unless the said occupier has received at least twelve hours' previous notice of the intention to make such

entry
(c) reasonable notice shall be given in every case even when any premises may otherwise be entered without notice, to enable the inmates' of any apartment appropriated to women to remove some part of the premises' where their privacy may be preserved.

(d) due regard shall be paid, so far as may be compatible with the exigencies of the purpose of the entry, to the social and religious usages of the occupants of the premises.

33[82A. (1)' The' Chairman, Vice-Chairman, every Councilor and 'every Officer; and servant of the Corporation shall be liable to' surcharge for the loss, waste: or misapplication of any money or property 'of the Corporation, if such loss, waste Or'misapplication is a direct consequence of his neglect or misconduct while acting as such Chairman,' Vice-Chairman, Councilor Officer or servant.

Surcharge.

(2) The procedure, of imposing surcharge and the' manner of recovery of the amount involved in loss, waste' Or, misapplication shall be such, as may be prescribed by rules.

33. Ins. by sec. 18 of the G. M. C. (Amd ;) Ad, No. 2 Of 1978(w.e. f. 30.3.78).

(3) Where no proceeding for imposing surcharge is taken the Corporation may with the previous sanction of the Government, institute a suit for compensation against such Chairman, Vice-Chairman, Councilor, officer or servant.]

Service how to be effected.

83. When any notice, bill, summons or other document is required by the Act or by any rule or by-law made there under to be served upon or issued to any person, such service or issue shall be effected

(a) by giving or tendering such documents to such persons; or

(b) if such person is not found, by leaving such document at his last known place of abode or business within the Corporation or by giving or tendering the same or by sending it by post to any adult male member of his family or adult male servant in his employment; or

(c) if such person does not reside within the Corporation and his address elsewhere is known to the Corporation, by forwarding such document to him by post in a cover bearing the said address; or

(d) if none of the means referred to in clause (a), (b) or (c) be available, by affixing such notice, bill, summons or other document on some conspicuous part of the land or building (if any) or other thing to which the document relates.

Residuary power to make rules and by-laws.

84. (1) Without prejudice to any of the provisions hereinbefore contained, the State Government may make rules for carrying out the purposes and objects of this Act.

(2) Without prejudice to any of the provisions hereby contained the Corporation may make bylaws for the purpose connected with this Act

34[(3) No bye-laws made by the Corporation under the Act shall have any validity unless they are approved by the State Government and while approving the bye-laws, the State Government may make such modification or modifications therein, as it may deem fit.

(4) The rules made by the State Government under sub-section (I) and bye-laws made by the Corporation under sub-section (2) shall take effect from the date of their publication in the Official Gazette.]

85. No suit or legal proceedings shall 35[lie] against the Councilors, or any officer or servant of the Corporation or any other person for anything in good faith done or intended to be done under the provision of this Act or rules or by-laws made under this Act.

Protection of action.

36[85A. Notwithstanding anything contained in any law relating to the Criminal Procedure for the time being in force in this State, it shall be lawful for any Magistrate of the first class specially empowered by the State Government in this behalf to pass a sentence of fine exceeding two thousand rupees on any person convicted of contravening any order made under this Act or any rule or bye-law made there under.

Special provision Regarding fine.

85B. Notwithstanding anything contained in any law relating to the Criminal procedure for the time

Offences to be cognizable.

34 Ins. by section 19 of the G. M. C. (Amd.) Act, No.2 of 1978 (w. e.f. 30~ 3.1978).

35. Subs. by section 11 of the G. M. C. (Amd.) Act, No.1 of 1982 (w. e. f. 12. 10. 1975).

36. Ins. by section 12 of the G. M. C. (Amd.) Act, No.1 of 19 8.2 (w. e. f. 12. 10. 1975).

being in force, in this 'State, offences, punishable

under-' this Act shall' be .cognizable

*Offences by
companies.*

85C (1) where an offence under this Act has been committed by a company, or any person 'who, at the time 'the offense 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. , subsection' shall' render any such person liable of any punishment if he proves that the offence was committed without his knowledge or that he, had exercised all due diligence to prevent the commission of 'such offence. .

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

Explanation - ! for 'the' purposes' of this- 'section

(a), "company 'means any. body corporate; and includes firm or, other association of individuals; and

(b}”director” in relation to firm, means partner in the' firm;]

86. Any law in force immediately before the commencement of this Act with respect to any matter for which provision is made in this Act or which is inconsistent with the provisions of this Act shall cease to have effect in the areas within the jurisdiction of the Corporation constituted under this Act.

Overriding effect of this Act.

[THE SIKKIM REGULATION OF TRANSFER AND
USE OF LANDS ACT, 1975.]
ACT NO. VI OF 1975
AN
ACT

to make provisions for the regulation of transfer' and use of lands by the land owners and other persons and for other matters connected there with.

[17th October 1975.]

WHEREAS the Government of Sikkim has undertaken the task of introducing necessary and suitable measures relating to land-reforms in Sikkim and of giving effect to the policy that lands are so distributed 'as best to sub-serve the common good and that land-properties are not concentrated to the common detriment.

AND WHEREAS to facilitate the implementation of the said task and to give effect to such policy, it is expedient to make provisions for the regulation of transfer and use of lands by the landowners and other persons and for other matters connected therewith;

It is hereby enacted as follows:

1 (1) This Act may be called the Sikkim Regulation of Transfer and Use of Lands Act, 1975.

(2) It extends to the whole of Sikkim.

(3) It shall come into force on such date as the State Government may, by notification in the Sikkim Government 'Gazette, appoint and different dates may be appointed for different areas in Sikkim.

Short title, extent and commencement.

2. (1) Notwithstanding, anything to the contrary contained in any other law or custom or contract,

(a) no landowner shall transfer by sale, lease or any way whatsoever any land or right or interest in any land,

(b) no person shall fell, remove or dispose of any trees in any Land, and

(c) no person shall quarry any land or remove any sub soil material from any land without the permission in writing of the District Officer within whose jurisdiction the land is situated

Regulation of transfer and use of lands.

or of such other officer as may be specially empowered by the State Government' in this behalf.

- (2) The State Government may make rules laying down the principles, and conditions in accordance with which the permission referred to in sub-section (1) may be granted.

EXPLANATION

- (1) "Land" means any land used or capable of being used for any agricultural or non-agricultural purpose and includes forests;
- (2) "Landowners" means any person owing lands more than ten acres in area, whether in his own possession or otherwise, in the State of Sikkim.

Contravention and penalties.

3. (1) Any transfer made in contravention of the provision of clause (a) of sub-section (1) of Section 2 shall be void.

(2) If any person commits a breach of provision of clause (b) or clause (c) of sub-section (1) of section 2, he shall be punished with fine not exceeding two thousand rupees and if the breach is a continuing one, with a further fine not exceeding two hundred rupees for each day during which the breach continues and the trees or sub-soil materials, as the case 'may be shall be forfeited to the State Government.

Repeal and savings.

4. (1) The Sikkim Prevention of Transfer and Unauthorized Use of Lands Ordinance, 1975, is hereby repealed.

(2) Notwithstanding the repeal of the said Ordinance, any proceeding or remedy in respect of any' right, obligation or liability under the said Ordinance and relating to the period before such repeal may be instituted, continued or enforced as if the said Ordinance had been in force and had not been repealed.

The Sikkim Regulation of Transfer and Use of Lands Bill, 1975 passed by the Legislative Assembly of Sikkim on the 6th day of September, 1957, having been reserved by the Governor for the consideration of the President was assented to by the President on 17.10.1975.

1. Repealed by the Sikkim Regulation of Transfer and use of Lands (Repeal) Act No. 11 of 1982 (w. e. f. 1. 1. 1983).

THE SIKKIM CRIMINAL PROCEDURE

ACT 1976

ACT NO.3 OF 1976

AN

ACT

to declare the application of the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898) in the State of Sikkim.

[29th March, 1976

WHEREAS the Indian Penal Code, 1860 (Act XLV of 1860) was adopted in Sikkim by a Notification being No. 160/0.S. dated the 10th July, 1953 and WHEREAS the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898) have thereafter been followed and applied in Sikkim as the law of criminal procedure in the territories comprised in Sikkim with certain changes and modifications and WHEREAS it is expedient to declare that the Code of Criminal Procedure, 1898 (Act V of 1898), with certain changes and modifications, has been the law in force in the territories comprised in the State of Sikkim immediately before the commencement of the Constitution (Thirty-sixth Amendment) Act, 1975 and continues to be the law relating to criminal procedure in the State of Sikkim;

It is hereby enacted as follows:

1. (1) This Act may be called the Sikkim Criminal Procedure Act 1976.

Short title and commencement.

(2) It shall come into force at once.

2. The provisions of the Code of Criminal Procedure, 1898 subject to the exceptions and modifications mentioned in the Schedule below have been the law in force in the territories comprised in the State of Sikkim immediately before the commencement of the Constitution (Thirty-sixth Amendment) Act, 1975 and is and shall be in force as the law relating to criminal procedure in the State of Sikkim until amended or repealed by a competent Legislature or other competent authority.

The Code of Criminal Procedure, 1898 (Act of 1898) is and to be the law relating to criminal procedure in Sikkim.

SCHEDULE

The provisions of Chapter XVIII and Chapter XXIII of the Code of Criminal Procedure, 1898, do not and shall not apply and all cases triable by the Court of Sessions are and shall be filed in such Court and the trial before the Court of Session is and shall be according to the provisions of Chapter XXI of the Code.

**[SIKKIM MINISTERS, SPEAKER, AND DEPUTY SPEAKER AND
MEMBERS OF THE LEGISLATIVE ASSEMBLY
(SALARIES AND ALLOWANCES) ACT, 1977]
ACT NO.4 of 1977
AN
ACT**

to provide for the salaries and allowances of the Ministers, the Speaker, the Deputy Speaker and Members of the Legislative Assembly of the State of Sikkim.

[28th March, 1977]

Be it enacted by the Legislature of Sikkim in the Twenty-eighth Year of the Republic of India as follows:

1. (1) This Act may be called the [Sikkim Ministers, Speaker, Deputy Speaker and Members of the Legislative Assembly (Salaries and Allowances) Act,] 1977. *Short title and Commencement.*
- (2) The provisions of this Act shall come into force at once except the provisions of section 3 which shall come and shall always be deemed to have come into force with effect from the 1st day of April, 1976.
2. In this Act, unless there, is anything repugnant in the subject or context, *Definitions.*
- (a) 'Assembly' means the Legislative Assembly of the State of Sikkim.
- (b) 'Chief Minister', 'Minister', 'Minister of State' and 'Deputy Minister' shall mean respectively the Chief Minister, a Minister, a Minister of State or a Deputy Minister of the State of Sikkim.
- (c) 'Committee' means a Committee of the Assembly and includes a Committee appointed by the State Government.
- (d) 'Deputy Speaker' means Deputy Speaker of the Assembly.
- (e) 'family' in relation to person means the wife or the husband, as the case may be, and minor children of such person and also the parents and adult children of such person, and adult children who are wholly dependent on such person.
- (f) 'furnished' means provided with furniture and fittings --" on such scale and within such limits as may be prescribed.

1. Subs. by see 2 (a) of the S. S. & A. (Amd.) Act, No.6 of 1980 (w. e. f.25.10.1979).

- (g) 'maintenance' in relation to a residence shall include repairs, structural addition and alternations and provision of connections for water and electricity and payment of municipal rates and taxes and other charges in respect of the residence.
- (h) 'member' means a member of the Assembly other than the Chief Minister, a Minister of State, a Deputy Minister, the Speaker and the Deputy Speaker and shall include a member acting as Speaker in the absence of the Speaker and the Deputy Speaker.
- (i) 'month' shall mean a month reckoned according to the English Calendar.
- (j) 'prescribed' mean prescribed by rules made under this Act
- (k) 'rent' includes charges for electricity and water.
- (l) 'residence' includes the garage, garden, lawn, quarters for the staff, servants, security personnel or guards and guest house 'within the compound of the residence.
- (m) 'session' means the whole period from the time when the Assembly meets to the time when it is prorogued.
- (n) 'Speaker' means the Speaker of the Assembly and shall include a 'member of the Assembly appointed by the Governor to perform the duties *or* the Speaker when the posts of the Speaker and the Deputy Speaker are vacant.

(3)(1) there shall be paid to the Chief Minister, the Minister of State, the Deputy Minister the Speaker and the Deputy Speaker such monthly salaries as specified in the Schedule.

(2) There shall be paid to the Chief Minister, the Minister the Speaker and the Deputy Speaker such monthly sumptuary allowances as specified in the Schedule.

(3) There shall be paid to every member of the Assembly a salary at the rate of eight hundred rupees per month and also a consolidated allowance at the rate of three hundred rupees per month for his traveling and other expenses including the expenses necessary for attending the meetings of Assembly

4.' (1) the' Chief Minister, the Minister, the Minister of State, the Deputy Minister, the Speaker' and the Deputy Speaker Shall' be entitled without payment. of rent to use of

a furnished residence in. Gangtok throughout the term of his office and *for* a month after, 'he ceases to hold Such office.

(2). Where any of the persons .mentioned in sub-section (I),is not provided with an residence ,under, sub-section I (1), he shall be paid an allowance. at the rate of *four* . Hundred rupees per month as long as he is not provided With such residence

(3) All .expenditure. for maintenance and furnishing '-any Residence provided under sub section (1) shall be borne by the Government,

(4) every member shall be entitled to such residential accommodation' as may be prescribed at the place of the sitting of the Assembly during the session, or a meeting of a' Committee.

Residence.

5. (1) The Chief Minister, the Minister, the Minister of State. the Deputy Speaker shall be provided with free Vehicle and driver and all expenses *for* the salaries and allowances of the driver, of fuel, up to. such limit as may be prescribed, expenditure of maintenance and repairs of the vehicles shall be borne by the Government. *Conveyance.*

(2) Where any of the persons mentioned in sub-section (1) is not, provided with the facilities of conveyance as specified therein, he shall be paid a conveyance allowance at the rate of four hundred rupees per month and shall in addition be provided with a driver under the employment of the Government.

(3) Every member shall be provided with a free non-transferable first class "pass for traveling by railway from and to any place in India for a distance of not exceeding 5(eight] thousand kilometers: in the aggregate in any financial year and also a free non-transferable pass for traveling within the State of Sikkim by any transport service vehicle owned. controlled or managed by the Government.

6. The Chief Minister, the Minister, the Minister of State, The Deputy Minister, the Speaker, the Deputy Speaker.

5. Subs. by sec. 2 (a) of the S. M. S. D. S: & M. of L. A. (S. & A.) (Amd.) Act, No: 10 of 1980 (w. e. f. 1. 8. 1980). " ' "

and the 'members 'along with their family shall be entitled to free: medical attendance and treatment in any of the Government, hospital of the State and also such other medical facilities as may be prescribed.

7. (1) The Chief Minister, the Minister- the Minister of State

Travelling Allowance.

the Deputy Minister, the Speaker, the Deputy Speaker and the members shall be entitled to travelling allowance while on tour n public business at such rates

and subject to such conditions as may be prescribed.

6 [(2) The members shall be entitled to such traveling allowances and facilities at such rates and subject to such conditions as may be prescribed for attending the meeting of a Committee.]

Power to make rules.

8. The State Government may make rules for carrying out the purposes of this Act and, in particular for any of the matters required to be, prescribed under any of the foregoing provisions of this Act.

Repeal and savings.

9. (1) All laws including rules, regulations, orders, notifications, circulars or other Provisions in respect of any matter governed by this Act, made or issued prior to the commencement of this Act, shall cease and shall always be deemed to have ceased to have any force or effect on, and, from such commencement.

(2) Notwithstanding anything contained in sub-section (1), all claims under any of the provisions mentioned in sub-section (1) relating to the period prior to the commencement of this Act, and remaining unpaid or unadjusted on the date of the commencement of this Act shall be paid; or adjusted; as the case may be under the said provisions as if this Act had not come into force.

(3) Any order issued, claims paid, payments made or any other action taken before the commencement of this Act in respect of salaries and allowances including advance payment thereof and all other matters governed by this Act shall be deemed to have been validly issued, paid, made or taken duly and properly and under proper legal authority.

6. Ins. by sec. 2 (2) of the S. M. S, D. S. & M of L. A (S.& A.) (Amd.) Act, No. 10of1978 (w. e. f. 28.3.1977).

**SCHEDULE (section 3 (1) and
section 3 (21))**

	Designation	Salary	Sumptuary Allowance
1.	Chief Minister	Rs. 2,250/-	Rs. 450/-
2.	Speaker	Rs. 2,000/-	Rs. 300/-
3.	Minister	Rs. 1,750/-	Rs. 225/-
4.	Deputy Speaker	7[Rs. 1,750/-	Rs. 225/-]
5.	Minister of State	Rs. 1,600/-	Nil
6.	Deputy Minister	Rs. 1,200/-	Nil

7 Subs. by sec. 2 (c) of the S. S. & A. (Amd.) Act, No.6 of 1980 (w. e. f. 25.10.1979).

THE SIKKIM OFFICIAL' LANGUAGES ACT 1977

ACT:'NO.' 5' OF '1977

to provide, for the' adoption of the Nepali, 'the Bhutia 1 {, the Lepcha and the Limbu] languages, as, the, languages to'. be used, for the. Official purposes of the State of Sikkim

'17th October, 1977]

WHEREAS

The Legislature of Sikkim, as follows: it is expedient to provide,for the adoption of the Nepali, the Bhutia 2[, the Lepcha and the Limbu] languages as the languages to be used for the official purposes of the State of Sikkim;

It is hereby enacted in the Twenty-eighth Year of the Republic of India by

1. (1) This Act may be called the Sikkim Official Languages Act, 1977. *Short title and extent.*
 - (2) It extends to the whole of Sikkim.
 - (3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint

2. With effect from such date, as the State Government may, by notification in the Official Gazette, specify in this behalf, the Nepali, the Bhutia 3[,the Lepcha and the Limbu] languages shall be the languages to be used for all official purposes of the' State of Sikkim: *Languages to be used for the official purposes of the State.*

Provided that different dates may be specified for different official purposes.

3. (1) The State Government may. by notification in the Official Gazette, make rules for carrying out the purposes of this Act. *Power to make rules.*
 - (2) All rules made under this section shall be laid as soon as may be, after they are made, before the Legislative Assembly while it is in session and if before the expiry

-
1. subs. by sec. 2 of the Sikkim Official Languages (Amendment) Act, No.5 of 1981(w. e. f. 30. 3. 1981).
 2. by ibid.
 3. by ibid.

:

of the session in which they are so laid or the next session immediately following, the Legislative Assembly resolves to make any modification in the rules, or resolves that such rules or any portion thereof shall not have effect, the rules shall thereafter have effect only in such modified form or be of no effect, in whole or in part, as the case may be, so however, that any such resolution shall be without prejudice to the validity of any thing previously done under such rules before such resolution. .

...

SIKKI M INTERPRETATION AND GENERAL CLAUSES ACT
1977

ARRANGEMENT OF SECTIONS.

CHAPTER I

Preliminary

- 1 Short title and commencement.
2. Application.

CHAPTER II

Definitions.

3. Definitions.

CHAPTER III

General Rules of Construction.

4. Territorial extent of Sikkim laws.
5. Coming into operation of Sikkim Law Expiry
6. of temporary laws.
7. Rights of the Government.
8. Effect of incorporation.
9. Offences by Companies.
10. Gender and number
11. Commencement and termination of time in Sikkim law'.
12. Computation of time.
13. Expression of time.
14. Day to be taken pro-rata.
15. Measurement of distance.
16. Penalties provided to be deemed maximum penalties.
17. Deviation from forms.
18. Act done on holidays or outside office hours.
19. Provisions as to offences punishable under two or more Sikkim laws.

CHAPTER IV
Repeal and expiry of
laws.

20. Effect of repeal.
21. Effect of expiration of Sikkim laws.
22. Repeal of law making textual amendment in other laws
23. . Revival of repealed enactment.
24. Construction of references to repealed enactment.

CHAPTER V Powers
and functionaries.

25. Exercise of power and performance of duties.
26. Power incidental for effective exercise of powers granted.
27. Exercise of power and performance of duty by temporary holder of office
28. Power to appoint to include power to appoint ex-officio.
29. Power to appoint to include power to suspend. .remove or dismiss
30. Substitution functionaries.
31. Successors.
32. Official chiefs and subordinates.
33. Construction of rules, notifications, orders, etc. issued under Sikkim laws.
34. .Power to make or issue rules, etc., includes' power to add, vary or rescind.
35. Making of rules or bye-laws or issuing of orders between passing and commencement of Sikkim laws.
36. Publication of rules, etc. in the Official Gazette to be deemed to be due publications.

37. Continuation of rules, orders. appointments. notifications etc. under Sikkim law repealed and re-enacted.
38. Commencement of rules.
39. Provisions applicable to making of rules etc. after previous publication.
40. Laying of rules before Legislative Assembly.
41. Recovery of fines.
42. Meaning of service by post.
43. Citation of law.

ACT NO 6 OF 1977

AN ACT

to provide for and to facilitate the interpretation and construction of Sikkim laws, to shorten the language used therein and to make certain other provisions relating to such laws.

[17th October 1977]

WHEREAS it is expedient to provide for and to facilitate the interpretation and construction of Sikkim laws to shorten the language used therein and to make certain other provisions, relating, to such laws

Be it enacted by the Legislature of Sikkim in the Twenty-eighth Year of the Republic of India as follows:

CHAPTER I

Preliminary

1. (1) This Act may be called the Sikkim Interpretation and General Clauses Act, 1977

Short title and commencement.

(2) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

2. Unless otherwise expressly provided or unless the context otherwise requires, the provisions of this Act shall apply to-

Application.

(a) all Sikkim laws made before or after the commencement of this Act;

encement of this Act;

(b) all notifications, order, schemes, rules, regulations, by-laws or any other instruments having the force of law and made under, or, in exercise of any power conferred by any Sikkim, law.

CHAPTER II

Definitions

3. In all Sikkim laws, unless there is anything repugnant in the subject or context, or unless a contrary intention appears,

Definitions.

(1) "abet with. its grammatical variations and cognate Expressions, has the. Same, meaning as in the Indian Penal

45 of 1860

Code, 1860

- (2) Act used with reference to an offence or a civil wrong" denotes a series of acts, and words which refer to acts done extend also to illegal omissions;
- (3) "affidavit" means a statement in writing signed by the person making it and; confirmed by oath;
- (4) "Central Act" shall mean an Act of Parliament and shall include
- (a) an Act of the Dominion Legislature, or of the Indian Legislature passed before the commencement of the Constitution, and
 - (b) an Act made, before such commencement by the Governor-General-in Council or the Governor General acting in a legislative capacity;
- (5) "Central Government" in relation to anything done or to be done: after commencement of the Constitution (Thirty-sixth Amendment) Act, 1975, means the President and includes, in relation to functions entrusted under clause (1) of Article 258 of the Constitution to the Government of Sikkim, the Government of Sikkim acting within the scope of the authority given to it under that clause;
- (6) "child" in the case of anyone whose personal law permits adoption includes an adopted child;
- (7) "collector" means the chief officer in charge of the revenue administration of a district;
- (8) "commencement", used with reference to an enactment means the day on which such enactment come into force
- (9) "Constitution" means the Constitution, of India
- (10) "daughter", in the case of anyone whose personal law permits adoption, includes an adopted daughter;
- (11) "day" means the period of twenty-four hours beginning at midnight;
- (12) "District Court" means the principal civil court of original jurisdiction constituted for the purpose but shall not include, the High Court in the exercise of its ordinary or extraordinary original civil jurisdiction;
- (13) "District Judge" means the judge of District Court and includes an Additional District Judge;
- (14) "document" includes any matter written, expressed, inscribed, or described upon any substance by means of letters, figures or marks or by more than one of those means which

is intended to be used or which may be used for 'the purpose of recording that matter?

(15) "enactment" means any law and includes any provision contained in any law;

(16) "father", in the case of anyone whose personal law permits adoption, includes an adoptive father;

(17) "financial year" means the year commencing on the first day of April and ending on the thirty-first day of March next following;

(18) "good faith" -a thing is deemed to be done in good faith where it is in fact done honestly, whether it is done negligently or not;

(19) "Government" or "the Government" includes the State Government as well as the Central Government;

(20) "government security" means securities of the Government of Sikkim or any other Government;

(21) "Governor" means, as respects the period after the commencement of the Constitution. (Thirty-sixth Amendment) Act, 1975, the Governor of Sikkim;

(22) "growing crops" mean crops of all sorts attached to the soil and leaves, flowers and fruits upon and juice in, trees and shrubs;

(23) "High Court" means the High Court of Sikkim;

(24) "immovable property" includes land, benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to earth but does not include standing timber growing crops or grass;

45 of 1860 (25) "imprisonment" means imprisonment of either description as defined in the Indian Penal Code, 1860;

(26) "law" means any law, Act, Ordinance, Proclamation, regulation, rule, notification, order, by-law, scheme or other instrument having for the time being the force of law;

(27) "Legislative Assembly" or "State Legislative Assembly" means the Legislative Assembly of the State of Sikkim;

(28) "local authority" means a municipal corporation a municipality, a municipal committee, a local or district board, a Zilla Parishad, a Panchayat Samitee, a Block Panchayat or any other authority legally entitled to or entrusted by the Government with the control or management of municipal or local fund;

(29) "Magistrate" includes every person exercising all or any of the powers of a magistrate under the Code of Criminal Procedure for the time being in force;

(30) "Month" means a month reckoned according to the English calendar;

(31) "mother", in the case of anyone whose personal law permits adoption, includes an adoptive mother;

(32) "movable property" means property of every description except immovable property;

(33) "oath" includes affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing;

(34) "offence" means any act or omission made punishable by any law for the time being in force;

(35) "Parliament" means the Parliament of India;

(36) "person" includes any 'company or association or body of individuals, whether incorporated or not;

(~7) "prescribe" means prescribed by rules made under an enactment in which the expression occurs;

(38) "President" means the President of India;

(39) "public nuisance" has the same meaning as in the Indian Penal Code, 1860;

45 of 1860.

(40) "registered", used with reference to a document, means registered in Sikkim or anywhere else in India under any law for the time being in force for the registration of documents;

(41) "regulation" means regulation made in exercise of a power conferred by any enactment and includes a non-statutory or other independent regulation having for the time being the force of law;

(42) "rule" means a rule made in exercise of a power conferred by enactment and includes a non-statutory other independent rule having for the time being the force of law;

(43) "sign" with its grammatical variations and cognate expressions, used with reference to a person who is unable to write his name, includes "mark" with its grammatical variations and cognate expressions;

(44) "Sikkim laws" mean and include:

- (a) all laws in force in the territories comprised in the State of Sikkim or any part thereof immediately before the commencement of the Constitution (Thirty-sixth Amendment) Act, 1975;
- (b) all laws amending or repealing any such law referred to in sub-clause (a);
- (c) all orders made and passed under clause (1) of Article 371 F of the Constitution making adaptations or modifications of the laws referred to in sub clause (a) whether by way of repeal or amendment;
- (d) all enactments in force in a State *or* some States in India with respect to matters in the State List or the Concurrent List of the Constitution not being Central Acts and extended to the State of Sikkim by notifications under clause (n) of Article 371 F of the Constitution;
- (e) all Ordinances promulgated by the Governor of Sikkim
- (f) all Acts passed by the Sikkim Legislative Assembly which have received the assent of the Governor or the President;
- (g) all laws made by parliament or the President in respect of the State of Sikkim under or in exercise of the powers conferred by Article 356 and Article 357 of the Constitution;

(45) "son", in the case of anyone whose personal law permits adoption, includes an adopted son;

(46) "State Government" or "the Government of Sikkim" in relation to anything done or to be done on and from the commencement of the Constitution (Thirty-sixth Amendment) Act, 1975, means the Governor;

(47) "swear" with its grammatical variations and cognate expressions includes affirming and declaring in the case of person by law allowed to affirm or declare instead of swearing;

39 of 1925. (48) "will" and "codicil" have the meanings respectively assigned to them in the Indian Succession Act, 1925;

(49) "writing" includes printing, type-writing, lithography, photography and other modes of representing or reproducing words in a visible form;

(50) "year" means a year reckoned' according to the English. Calendar.

CHAPTER III"

General Rules of Construction.

- Territorial extent of Sikkim laws. 'Coming into operation of Sikkim law,*
4. Every Sikkim law, unless otherwise expressly provided, Applies to the whole of Sikkim.
5. (1) Where any Sikkim law made after the commencement of the Constitution (Thirty-sixth Amendment) Act, 1975, is not expressed to come into operation on a particular day, and then it shall come into operation
- (a) if it an Act of the Sikkim Legislature, on the day , on which it received the assent of the Governor or the President, as the case may be, and.
- (b) if it is an Ordinance, of the day on which it is first published in the official Gazette. '
- (2) Unless the contrary is expressed, a Sikkim law shall be . construed as coming into operation immediately on the expiration of the day preceding its commencement.
- Expiry of temporary laws.*
- 6, Where any Sikkim law is expressed to expire, lapse or otherwise cease to have effect on a particular day, it shall, unless the contrary intention is expressed, be construed as ceasing to have effect immediately on the commencement of the following day.
- Rights of the Government.*
7. No Sikkim law shall in any manner whatsoever affect the rights of the Government unless it is expressly provided therein or unless it appears by necessary implication there from that the Government is bound thereby.
- Effect of incorporation*
- , 8. Where any Sikkim law constitutes a body corporate by any form of words, that body corporate shall have perpetual succession and common seal and may enter into contracts by its corporate name and acquire, hold and dispose of property, whether movable or immovable and shall sue or be sued by or in its corporate name.
- Offences by Companies.*
9. (I) Where an offence under any Sikkim law has been committed by a company, the company as well as every person in charge of and responsible to the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against' and punished accordingly:

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

(2) Where any offence under any Sikkim law has been committed by a company, any director, manager, secretary or other officer of the company, not being a person in charge of and responsible to the company for the conduct of its business at the time of the commission of the offence shall, if it is proved that the offence has been committed with his consent or connivance or that the commission of the offence is attributable to any neglect on his part, also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanations:- For the purpose of this section

- (a) "Company" means any body corporate and includes a firm or other association of individuals; and
- (b) "director" in relation to a firm, means a Partner in the firm.

10. In all Sikkim laws, unless a different intention appears

- (a) words importing the masculine gender shall be taken to include females; and
- (b) words in the singular shall be taken to include the plural and vice-versa.

Gender and number.

11. In any Sikkim law it shall be sufficient

- (a) to use the word "from" or the word "after" for The purpose of excluding the first in a series of days;
- (b) to use the word "to" for the purpose of including the last in a series of days; and
- (c) to use the word "on" or the word "with" for the purpose of including the day on which the period is expressed to begin or to end.

Commencement and termination of time in Sikkim law.

12. Where by any Sikkim law, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a specified period then if the Court or office is closed on that day on the last day of the specified period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

Computation of time.

- Expression of time:* 13. Where in any Sikkim law any reference to a specified time of the day occurs, such time shall, unless it is otherwise specifically stated, be deemed to mean the Indian Standard Time. '
- Day to be taken pro rata.* 14. Where by any Sikkim law any duty of customs or excise or in the nature thereof, is leviable on a given quantity by weight, measure or value of any goods or merchandise, then a like duty is leviable according to the same rate on any greater or less' quantity.
- Measurement of distance.* 15. In the measurement of any distance for the purpose of any Sikkim law, that distance shall, unless a different intention appears, be measured in a straight line on a horizontal plain
- Penalties provided to be deemed maximum penalties.* 16. Wherever in any Sikkim law a punishment is provided for an offence, such punishment shall, unless a different intention appears, be deemed to be the maximum punishment for that offence.
- Deviation from forms.* 17. Save as otherwise expressly provided by any Sikkim law, wherever a form is prescribed by any Sikkim law, any deviation there from, not affecting the substance or calculated to mislead, shall not invalidate it.
- Act done on holidays or outside office hours.* 18. Save as otherwise expressly provided by any Sikkim law, no act done by any authority, whether legislative, executive or judicial, shall be invalid by reason only of its having been done on a public holiday or before; beyond or after usual office hours.
- Provisions as to offences punishable under two or more Sikkim laws.* 19. Where an act or omission constitutes an offence under two or more Sikkim laws, the offender shall be liable to be prosecuted and punished under either or any of those laws but shall not be liable to be punished more than once for the same offence.

CHAPTER IV

Repeal and expiry of laws.

- Effect of repeal.* 20. Where any Sikkim law repeals any enactment, then, Unless a different intention appears, the repeal shall not
- (a) revive anything not in force or existing at the time at which the repeal takes effect; or
 - (b) affect the previous operation of any enactment so repealed or anything duly done or suffered there Under; or
 - (c) affect any right , privilege ,obligation or liability

acquired, accrued or incurred under any enactment so repealed;
or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(c) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, penalty, liability, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the repealing law had not been passed.

21. Where any Sikkim law ceases to have effect or ceased to operate on the expiration of a particular period or on the happening of a particular contingency, then, unless a different intention appears, such expiry or cessations shall not affect

Effect of expiration of Sikkim laws.

(a) the previous operation of, or anything duly done or suffered under such law; or

(b) any right, privilege; obligation or liability acquired, accrued or incurred under law; or

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against such law; or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the law had not ceased to have effect or ceased to operate.

22. Where any Sikkim law repeals any enactment (not being an enactment which is to cease to have effect or to cease to operate on the expiry of a particular period or on the happening of a particular contingency) by which the text of any law has been amended by the express omission, insertion or substitution of any matter, then unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.

Repeal of law making textual amendment in other laws.

23. In any Sikkim law made after the commencement of this Act, it shall be necessary for the purpose of reviving either

Revival of repealed enactment.

Wholly or partially any enactment wholly or partially repealed, expressly to state that purpose.

Construction of references to repealed enactment.

24. Where any Sikkim law repeals and re-enacts, with or without modification, any former enactment or any provision thereof, then references in any other enactment, or any instrument, to the enactment or provision so repealed shall, unless a different intention appears, be construed as references to the enactment or provision, as the case may be, so re-enacted.

CHAPTER V

Power and

functionaries.

Exercise of Power and performance of duties.

25. Where by any Sikkim law any power is conferred or any duty is imposed, then, unless a different intention appears that power may be exercised and that duty shall be performed from time to time as occasion requires.

Power incidental for effective exercise of powers granted.

26. Where by any Sikkim law a power is conferred on any person or functionary to do or enforce the doing of any act or thing, such power shall be deemed to include all such powers as may be necessary to enable such person or functionary to do or enforce the doing of such act or thing.

Exercise of power and performance of duty by temporary holder of office.

27. Where any Sikkim law confers a power or imposes a duty on the holder of any office as such, then the power may be exercised and the duty shall be performed by the holder for the time being of the office.

Power to appoint to include power to appoint ex-officio.

28. Where by any Sikkim law a power to appoint any person to fill any office or execute any function is conferred, then, unless it is otherwise expressly provided any such appointment may be made by name or by virtue of office.

Power to appoint to include power to suspend, remove or dismiss.

29. Where by any Sikkim law a power to make any appointment is conferred, then, unless a different intention appears, the authority having for the time being the power to make the appointment shall also have power to suspend, remove or dismiss any person appointed, whether by itself or by any authority, in exercise of the power.

Substitution of functionaries.

30. In any Sikkim law, it shall be sufficient for the purpose of indicating the application of the law to every person or

number of persons for the time being executing the functions of an office, to mention the official title of the officer, who is, at the time of the making of the law executing the functions or that of the officer by whom the functions are commonly executed.

31. In any Sikkim law, it shall be sufficient for the purpose of indicating the law relation of a law to the successors of any functionaries or the corporations having perpetual succession, to express its relation to the functionaries or corporations.

Successors.

32. In any Sikkim law, it shall be sufficient for the purpose of expressing that a law relating to the chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior, to specify the duties of the chief or superior.

Official chiefs and Subordinates.

33. Where by any Sikkim law a power to issue or make any rule, notification, order, scheme, form or by-law is conferred, then, expressions used in the rule, notification, order, scheme, form or by-law shall, unless a different intention appears have the same respective meaning as in law conferring the power.

Construction of rules, notifications, orders, etc. issued under Sikkim laws.

34. Where by any Sikkim law, a power to make or issue rules, notification, orders, schemes, forms by-laws is conferred, then, unless a different intention appears, that power includes a power exercisable in the like manner and subject to the like sanction and conditions, if any, to add to, amend, vary or rescind any rules, notifications, orders, schemes, forms or by-laws so made or issued.

Power to make or issue rules, etc. includes power to add to amend, vary or rescind.

35. Where by any Sikkim law which is not to come into operation immediately on the passing thereof a power is conferred to make rules, regulations or by-laws, or to issue orders with respect to the application of law, or with respect to the establishment of any Court or office or the appointment of a judge or officer there under, or with respect to the person by whom or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under such Sikkim law, then, that power may be exercised at any *time* after the passing of such law, but rules, regulations, by-laws or orders so made or issued shall not take effect till the commencement of such law.

Making of rules or by-laws or issuing of orders between passing and commencement of Sikkim laws.

Publication of rules, etc. in the Official Gazette to be deemed to be due publication.

36. Where in any Sikkim law or any rule, regulation or bylaw made there under, it is directed that any rule, regulation, by-law, notification, order, scheme, form or order matter shall be notified or published, then, such notification or publication shall, unless such law, rule, regulation or by-law otherwise provides, be deemed to be duly made if it is published in the official Gazette.

Continuation of rules, orders, appointments, notifications etc. under Sikkim law repealed and re-enacted.

37. Where any Sikkim law is repealed and re-enacted with or without modification, then, unless otherwise expressly provided, any appointment, rule, notification, order, scheme, form or by-law made or issued under the repealed enactment, shall so far as it is not inconsistent with the provisions reenacted, continue in force and be deemed to have been made or issued under the provisions re-enacted, unless and until it is superseded by any appointment, notification, order, scheme, form or by-law made or issued or anything done or action taken under the provisions so re-enacted.

Commencement of rules.

38. Every rule made under any Sikkim law shall be published in the Official Gazette and shall, in the absence of an express provision to the contrary either in the rule or in the law, under which it is made, come into force on the day on which it is published in the Official Gazette.

Provisions applicable to making of rules etc. after previous Publication.

39. Where, by any Sikkim law, a power to make rules, regulations or by-laws, is expressed to be given subject to the condition of the rules, regulations, by-laws, being made after previous publication, then:, unless such law otherwise provides, the following provisions shall apply, namely:

(1) the authority having power to make the rules, regulations or by-laws shall, before making them, publish a draft of the proposed rules, regulations or by-laws for the information of persons likely to be affected thereby;

(2) the publication shall be made in such manner as that authority deems to be sufficient, or if the condition with respect to previous publication so requires, in such manner as the Government prescribes;

(3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;

(4) the authority having power to make the rules, regulations or by-law and, where the rules, regulations or by-laws

are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be received by the authority having power to make the rules, regulations, or by-laws from any person with respect to the draft before the date so specified;

(5) the publication in the Official Gazette of a rule, regulation, by-law purporting to have been made in exercise of a power to make rules, regulations or by-laws after previous publication shall be conclusive proof that the rules, regulations or by-law have been duly made.

40. (1) Where any Sikkim law provides that any regulations or rules made there under shall be laid before the Legislative Assembly, such regulations or rules shall be laid as soon as may be after they are made before the Legislative Assembly while it is in session, and if before the expiry of the session in which they are laid, or the next session immediately following, the Legislative Assembly resolves to make any modification in the regulations or the rules, or resolves that such regulations or rules shall not have effect, the regulations or the rules, as the case may be, shall thereafter have effect only in such modified form or of be of no effect, as the case may be, so, however, that any such regulation shall be without prejudice to the validity of anything previously done under such regulations or rules before such resolution.

*Laying of rules before
Legislative Assembly.*

(2) Where regulations or rules required by any Sikkim law to be laid before the Legislative Assembly, are not laid before the Legislative Assembly in accordance with the provisions of sub-section (1), they shall, on the expiry of two successive sessions immediately following the publication of such regulations or rules, as the case may be, cease to have effect, without prejudice to the continued validity of anything previously done under such regulations or rules.

41. The provisions of Sections 63 to 70 of the Indian Penal Code, 1860, and the provisions of the Code of Criminal Procedure for the time being in force, in relation to the issue and execution of warrants for the levy of fines shall apply to all fines imposed under any Sikkim law or any rule, regulation or by-law made under any Sikkim law, unless such law, rule, regulation or by-law contains an express provision to the contrary.

Recovery of fines.

Meaning of service by post. 42. Where, any Sikkim law authorizes or requires any document to be served by post, whether the expression "serve" or "give" or "send" or any other expression is used, then unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Citation of law. 43. (1) Any Sikkim enactment may be cited by reference to the title or short-title, if any, conferred thereon or by reference to the number and year thereof.

(2) Any provision in any Sikkim enactment may be cited by 'reference to' the section of the law in which the provision is contained.

**THE SIKKIM LAND (REQUISITION AND
ACQUISITION) ACT; 1977
ACT NO.1 OF 1978**

(Received the assent of the President on the 11th day of January, 1978)

**AN
ACT**

to provide for the requisition and speedy acquisition of land for certain purposes.

11th January, 1978}

WHEREAS it is expedient to provide for the requisition and speedy acquisition of land for public purposes as defined hereafter;

Be it enacted by the Legislature of Sikkim in the Twenty-eighth Year of the Republic of India as follows:-"

- | | |
|--|---|
| <p>I. (1) This Act may be called 'the Sikkim Land (Requisition and Acquisition) Act, 1977.</p> <p>(2) It extends to the whole of Sikkim.</p> <p>(3) It shall come into force on such date as the State Government may by notification appoint.</p> | <p><i>Short title, extent and Commencement.</i></p> |
| <p>2. In this Act, unless there is anything repugnant in the subject or context,</p> <p>(1) "Collector" means the Collector of the district where the land is situated and includes any other officer specially empowered by the State Government to perform, the functions of a Collector under this Act;</p> <p>(2) "Court" means a principal Civil Court of, original jurisdiction and includes the Court of any Additional District Judge and also the Court of a Civil Judge whom the State Government may appoint, by name or by virtue of his office, to perform all or any of the functions of the Court under this Act within such local limits, if any, as maybe specified and in the case of a Civil Judge, up to the limits of the pecuniary jurisdiction with which he is vested for the time being;</p> <p>(3) "Cultivator" means a person who cultivates the land of another person on condition of delivering a share or any fixed quantity of the produce of any fixed amount to that person;</p> | <p><i>Definitions.</i></p> |

- (4) "in cumbrance". in relation to any land. includes all rights or interests of whatever nature belonging to any tenant, licensee. cultivator or trespasser or any other person;
- (5) "land" includes benefits to arise out of land and things attached to earth or permanently fastened to anything attached to the earth and also include any in cumbrance in relation to such land;
- (6) "notification" means a notification published in the Official Gazette;
- (7) "person interested" includes all persons claiming an interest in the amount to be paid on account of the requisition or the acquisition of land under this Act; and a person shall be deemed to be interested in the land if he is interested in an easement affecting the land;
- (8) "prescribed" means prescribed by rules made under this Act;
- (9) "public purpose" shall mean and include
 - (a) the provision for sanitary improvements of any kind. including reclamation;
 - (b) the provision for laying out of village sites. townships or the extension, planned development or improvement of existing village sites or townships;
 - (c) the provision of land for town or rural planning under any law relating to such planning;
 - (d) the provision of land.
- (i) for maintaining supplies and services essential to the life of the community;
- (ii) for providing proper facilities for transport. communication, irrigation or drainage;
- (iii) for carrying out any housing scheme. Health scheme or any development scheme relating to agriculture. animal husbandry. irrigational facilities or promotion of tourism, sponsored by the State Government or any local authority;
- (iv) for the creation of better living conditions in rural or urban areas, by clearing slum areas, relieving congestion or otherwise;

- (v) for housing poor, landless' or displaced persons or persons residing in areas affected by land slides floods or other similar natural calamities;
- (e) the provision of land for,
 - (i) residential accommodation for any person serving under the Government where the provision of such accommodation is, in the opinion of the State Government, necessary in the interest of public service;
 - (ii) building for locating a Government or other public offices;
- (f) the provision' of land for the establishment, extension or further development of any trade or industry or other concern owned, managed, controlled or nationalized by the Government;
- (g) the provision of land for establishing industrial estates by way of planned development from public funds and subsequent disposal thereof in whole or in part by lease, assignment or other modes of transfer;
- (h) the provision of land for corporation owned, managed or controlled by the Government or for any municipal corporation or other local authority or for the establishment or development of any educational institution;
- (i) the provision of land for a company, corporation or co-operative society for some work which, in the opinion of the State Government, is to be substantially useful for and beneficial for the public;
- (j) the provision of land for the relief of the 'poor, medical relief, education or advancement, of any other object of general public utility.

3. (1) If the State Government is of the opinion that it is necessary so to do for any public purpose, the State Government may, by order in writing, requisition any land and may make such further orders as appear to it to be necessary or expedient in connection with the requisitioning:

Power to requisition.

Provided no land used for the purpose of religious worship or used by an educational or charitable institution shall be requisitioned under this section.

(2) A Collector, when authorized by the State Government

in this behalf, may exercise within his jurisdiction the power's conferred by sub-section (1).

- (3) An order under sub-section (1) or sub-section (2) shall be served in the manner prescribed on the owner of the land and where the land is in the occupation of an occupier, not being the owner of the land, also on such occupier.
- (4) If any person fails to comply with an order made under sub-section (1) or sub-section (2), the Collector or, any other person authorized by him in writing in this behalf shall execute the order in such manner as he considers expedient and may,-
- (a) if he is a magistrate, enforce the delivery of possession of the land in respect of which the order has been made, to himself, or
- (b), if he is not a Magistrate apply to a Magistrate and such 'Magistrate shall enforce the delivery of possession of such land to him'

Acquisition of Land.

- 4 (1) Where any land has 'been requisitioned under section 3, for any 'public purpose, the State Government may use or deal with, such land *for* such public purpose or any other public purpose. '

1[2 If the State Government is of opinion that it is necessary to acquire for a public purpose any land 'requisitioned under section 3, it may acquire such land by publishing notification to the effect that such land is required to be acquired :for such' purpose and that the State Government has decided to acquire such land:

Provided that' before issuing such notification, the State Government shall call upon the person interested or any other, person who, in the opinion of the State, Government. may be interested in such property to show cause why the property shall not be acquired 'and after considering' the cause. if any, shown by the person interested in the land and after' giving the party an opportunity of being heard, the State' Government may pass such order as it. deems fit]'. "

- (3) Where such a notification is published, the land requisitioned under section 3 shall, on and from the

1 Subs. by sec. 2 (a) of the Sikkim Land (Requisition and Acquisitions) (Amd.) Act, No. 13 of 1978 (w. e. f. 22. 4; 1978). .

Beginning of the day on which the notification is published, vest absolutely in the State Government free from all in cumbrances and the period of requisition of such land shall end forthwith.

5, (1) After the publication of a notification under sub-section (2) of section 4 the Collector shall cause public notice to be given at convenient places on or near the land acquired stating that the State Government has acquired the land and that claims to the amount payable for the acquisition of such land may be made to him.

Notice to persons interested.

(2) Such public notice shall state the particulars of the land so acquired and shall require all persons interested in the land to appear personally or by agent before the Collector at such place and on such date and at such time as may be mentioned therein, not being earlier than fifteen days after the publication of such notice and to state in writing and signed by such person or his agent the nature and particulars of their claims to the amount payable for the acquisition of such land.

(3) The Collector shall also serve notice in the manner prescribed on the occupier, if any, of such land and on all such persons known or believed to be interested therein or to be entitled to act for such occupier or person so interested. as reside or have agents authorized to receive service on their behalf, within the district within which the land is situated.

(4) In case any person so interested resides elsewhere and has no such agent, the notice shall be sent to him by registered post to his last known residence, address or place of business.

6. (1) Where any land requisitioned under section 3 is not acquired and is to be released from requisition, the State Government may, after making such inquiry as it considers necessary, specify, by order in writing, who appears to it to be entitled to the possession of such land.

Release from requisition.

(2) The delivery of possession of such land to the person specified in the order made under sub section (1) shall be a full discharge of any liability of the State Government for any claim for any amount payable for requisition or other claim in respect of such land

for any period after the date of delivery, but shall not prejudice any right in respect of such land which any other person may be entitled by due process of law to enforce against the person to whom possession of the land is so delivered.

(3) Where the person specified in the order made under sub-section (1) cannot be found *or* is not readily traceable *or* has no agent or other person empowered to accept delivery on his behalf, the State Government shall publish a notification declaring that such land is released from requisition and shall cause a copy of such notification to be affixed *on* some conspicuous part of the land.

(4) On the publication of such a notification under sub-section (3), the land specified in such notification shall cease to be subject to requisition on and from the date of such publication and shall be deemed to have been delivered to the person specified in the order made under sub-section (1) and the State Government shall not be liable to pay any amount or *other* claims in respect of such land for any period after the said date.

Amount payable for requisition.

7. (1) Whenever any land is acquired under section 4, there shall be paid to every person interested an amount which shall be determined by the Collector in the manner and in accordance with the principles of section 23 of the Land Acquisition Act, 1894, so far as they may be applicable:

I of 1894.

Provided that the market value referred to in clause first of sub-section (J) of section 23 of the said Act shall, in respect of any land acquired under this Act, be deemed to be the price which such land would have fetched in the open market if it had remained in the same state and condition as it was on the date of the order of requisition under section 3

and been sold on the date of the publication of the notification referred to in sub-section (2) of section 4.

(2) When the amount has been determined under sub-section (1), the Collector shall, in accordance with the provisions of section 11 of Land Acquisition Act, 1894, so far as they may be applicable, make an award under his hand of

- (i) the true area of the land;
- (ii) the amount determined as payable for the land; and
- (iii) the apportionment .of the said amount among all the persons known or believed to be interested, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him:

Provided that interest at the rate of six per centum per annum on the amount under the award from the date of the publication of the notification under sub-section (2) of section 4 until payment shall be included.

(3) (a) Such award shall be filed in the office of the Collector and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested in the land, whether they have respectively appeared before the Collector or not of the true area and value of the land and the apportionment of the amount among the persons interested;

(b) the Collector shall give, in the prescribed manner, immediate notice of his award to such of the persons interested in the land as are not present personally or by their representatives when the award is made; ..

(c) Upon an award being made under the foregoing provisions, the Collector shall proceed to make payment in accordance with the provisions contained in sections 31 to 33 of the Land Acquisition Act, 1894, so far as they may be applicable.

2 [18. (I) Where any land is requisitioned under section 3, there shall be paid to the person interested in respect of the requisitioning of the land an amount, if any, as may be fixed by agreement between the Collector and the person interested and approved by the State Government in the manner prescribed and the Collector shall make an award ordering payment of such amount;

*Amount payable
for requisition.*

(2) Where the Collector and the person interested do

-2. Subs. by sec. 2 of the Sikkim Land (Requisition and Acquisition) Amnd. Act. No. 13 of 1978 (w e f: 22.4. 1978).

not agree as to the amount or where the agreement arrived at by and between them is not approved by the State Government or where the person interested cannot be traced or does not appear before the Collector when called upon to be present for the purpose of the determination of the amount, the amount payable for the requisitioning of the land shall consist of

(a) a recurring payment, in respect of the period of requisition, of a sum which would have been payable for the use and occupation of the land, if it had been taken on lease for that period; and

(b) such sum or sums, if any, as may be found necessary to compensate the person interested

for all or any of the following:

(i) pecuniary loss due to requisitioning;

(ii) expenses on account of vacating the requisitioned land;

(iii) expenses on account of reoccupying the land upon release from requisition, and

(iv) damage (other than normal wear and tear or due to natural causes)-caused to the land during the period of requisition, including the expenses that may have to be incurred for restoring the land to the condition in which it was at the time of requisition;

and the Collector shall make an award ordering payment of the amount so determined and shall give in the prescribed manner immediate notice of his award to the person interested in the land if he is not present personally or by his representative when the award is made]

9. (1) The Collector shall, in every case, where any person interested being aggrieved by an award made under sub-section (2) of section 7 or 8 [* *] sub-section (2) of section 8, makes an application requiring the matter to be referred to the Court, refer the matter for the decision of the Court.

Reference to Court.

(2) The application shall state the grounds on which objection to the award is taken and shall be made

(a) If the applicant was present or represented

¹ Omitted by sec. 2 of the Sikkim Land (Requisition and Acquisition) Amd. Act, No. 13 of 1978 (w. e. f. 22.4. 1978).

before “the Collector at ‘the’ time when’ the award’ was made within six weeks from the date of ‘making’ of the award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under clause (b) of subsection (3) of section 7 or clause’ (b) of sub-section (2) of section 8, as the case may be, or within six months from the date of the making of ‘the award by the Collector whichever period shall first expire.

(3) The provisions contained in sections 19 to 22 and sections 25 to 28 of the Land Acquisition Act, 1894, so far as they may be applicable and the principles set out in sub-section (1) and sub-section (2) of section 7 and 4[* * * . . .] sub-section (2) of section 8 of this Act so far as they may be applicable, shall apply in respect of any reference made to the Court under sub-section (1).

(4) No person who has received any amount under the award otherwise than under protest shall be entitled to make any application under sub-section (1).

10, (I) Notwithstanding anything contained anywhere in this Act or ‘any’ other law for the time being in force if any land which is being cultivated by any cultivator is requisitioned or acquired under this Act, the cultivator shall be paid an amount determined in accordance with the principles set out in subsection (2) out of the amount payable for the requisition or the acquisition of the land, as the case may be, to the person interested in such land.

Payment to Cultivators.

(2) The amount to be paid to the cultivator under subsection (1) shall be determined according to the following principles, namely:

(a) if the cultivator has been cultivating the land for a period of more than five years but not more than ten years on the date of the requisition or the acquisition of the land, as the case may be, fifteen per cent of the amount payable for the requisition or the acquisition of such land, as the case may be;

(b) if the cultivator has been cultivating the land for more than ten years but not more than fifteen years on the date of the requisition or the acquisition of the land, as the case may be, twenty per cent of the amount

. payable for the requisition or the acquisition 'of the land as the case - may be .

(c) if the cultivator has been cultivating' the land for more than fifteen years on 'the date of the requisition or the acquisition of the land, as the' case may be, twenty five per cent of the -amount payable for the requisition or the acquisition of the land, as the' case may be.

Appeal.

11. The provisions of the Code of Civil, Procedure, 1908, relating to appeals' shall apply to an award made by the Court on a reference under section 9" if such award were an original decree passed by, the,' Court in exercise of its civil jurisdiction. 5 of 1908.

Power to enter upon land, etc.

12. The State Government may, with a view to requisitioning or acquiring any land or for the purpose of determination by the Collector of the amount payable under this Act, by order,

- (a) require any person to furnish to such authority as may be specified in the order, such information in his possession relating to land as may be specified;
- (b) authorize- any person
 - (i) to enter upon and survey and take levels of any land in such locality;
 - (ii) to dig or bore into the sub-soil;
 - (iii) to do all other acts necessary to ascertain whether. the land 'is adapted for' such purposes;
 - (iv) to set out the boundaries of the land proposed, to be taken and the intended line of the work (if any) proposed to be made' thereon;
 - (v) to make' such levels,' boundaries and line. by placing marks and cutting trenches.
 - (vi) and, where otherwise the survey cannot be completed and the Levels taken and the boundaries, and line marked, to cut down and clear away any part of the standing crop, Fence, or jungle:

Provided that no person .shall enter into any building or upon any, enclosed court or garden, attached to a dwelling house (unless with the consent ,of the occupier thereof) without previously, giving such

~~4 omitted by sec 2 of the State Law Requisition and Acquisition (Amendment) Act, 1978 wef 22.4.1978.~~

Requisition or

13. If the State Government is of the opinion' that it is neces

sary to requisition or acquire, any land for any of the public purposes as defined and specified in 5 [clause (9)] of section 2, all such requisition and acquisition shall be made under and in accordance with the provisions' of this act and' the rules made there under and not under any" other law inconsistent with provision of this Act and the rules made there under.

Acquisition to be made under this Act,

14. If any person contravenes any order made under this' *Act*, he shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to two thousand rupees or with both

Penalty.

15. Save as otherwise provided in this Act, no decision: or order or award made in exercise of any power conferred by or under this Act shall be called in question in any Court.

16. No suit, prosecution or other legal proceeding shall lie against the State Government or any officer of the State Government or any other person for anything, or for any damage caused or likely to be caused by anything, which is in good faith done or intended to be done in pursuance of this Act or any order made there under..

Protection of action taken under this Act.

17. No award or agreement made under this Act shall be chargeable with any Stamp Duty, and no person claiming under. any such award or agreement shall be liable to pay any fee for a copy thereof.

No Stamp Duty to be paid for award or agreement and no fees to be paid for copies thereof. Power to make rules,

18. (1) The State Government may make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:

- (a) the manner of service of orders on the owner or occupier of land under sub-section (3) of section 3;
- (b) the manner of service of notice on the persons referred to in sub-section (3) of section 5;
- (c) the manner of service of notice of award under clause (b) sub-section (3) of section 7;
- 6 [(d) the manner of approval by the State Govern

5. Subs. by sec. 2 of the Sikkim Land (Requisition and Acquisition) Amd. Act No 13 of 1971 (w.e.f. 22.4.1978).

6. Inserted by
ibid.

ment of the amount fixed, by agreement under sub-section (1) of section 8.]

7 [the manner of, determination of and of giving notice of the award to the, persons interested under [* * *] sub-section (2) of section, 8.]

Certain laws to cease to apply.

19. The provisions of the, Sikkim Public Security" (Requisitioning and Acquisition of Immovable Property) Rules, 1962, and any other law shall cease to apply and have any effect to any matter for which provision is made in this Act.

7. Subs. by sec 2 of the Sikkim Land (Requisition and Acquisition) Amd. Act, No.13 of 1978 (w. e. f. 22.4. 1978).

8. Omitted by ibid.

THE SIKKIM LEGISLATIVE ASSEMBLY MEMBERS REMOVAL OF
DISQUALIFICATIONS ACT, 1978
ACT NO.5 OF 1978
AN
ACT

to declare that certain offices 1[of profit] are not to disqualify the holders thereof for being chosen as, or for being, members of the Legislative Assembly of the State of Sikkim.

[31st March, 1978

WHEREAS it is expedient to declare that certain offices 2[of profit] are not to disqualify the holders thereof for being chosen as, or for being, members of the Legislative Assembly of the State of Sikkim.

It is hereby enacted in the Twenty-ninth Year of the Republic of India by the Legislature of Sikkim, as follows:

1. (1) This Act may be called the Sikkim Legislative Assembly Members Removal of Disqualifications Act, 1978.

Short title.

(2) It shall be deemed to have come into force on the 3rd day of November, 1977.

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

Definitions.

(a) "Compensatory allowance" means any sum of money payable to the holder of an office by way of daily allowance, conveyance allowance, house rent allowance or traveling allowance for the purpose of enabling him to recoup any expenditure incurred by him in performing the functions of that office.

(b) "Legislative Assembly" means the Legislative Assembly of the State of Sikkim.

(c) "Non-statutory body" means any - body of persons other than a statutory body.

(d) "State Government" means the Government of the State of Sikkim.

(e) "Statutory body" means any Corporation, Committee, Commission, Council, Board or other body of persons

1. Ins. by sec. 2 of the Sikkim Legislative Assembly Members' Removal of Disqualification Amd. Act, no. 13 of 1981 (w. e. f. 3. II. 1977).

2. Ins. by *ibid.*

whether incorporated or not, established by or under any law for the time being in force.

Certain offices not to disqualify

3. It is declared that none of the following offices under the Government of India or the State Government, shall disqualify or be deemed ever to have disqualified the holder thereof for being chosen as or for being, a member of the Legislative Assembly 3[in so far as it is an office of profit under the Government] namely:

- (a) the office of the Minister of the State or the Deputy Minister, either for the union or for the State of Sikkim;
- (b) the office of a member of any force raised or maintained under the National Cadet Corps Act, 1948, the Territorial Army Act, 1948, or the Reserve and Auxiliary Air Forces Act, 1952;'
- (c) any office in the Home Guard constituted by or under any law for the time being in force under the authority of the State Government;
- (d) the office of the Chairman or a member of the syndicate, Senate, Executive Council or Court of a University or any Committee, by whatever name called. of any educational institution receiving aid out of the State funds;
- (e) the office of the Chairman or a member of the Committee of management of a Co-operative Society nominated or appointed by the State Government under any law relating to co-operative societies for the time being in force in the State of Sikkim;
- (f) the office of the Chairman or a member of the planning Commission or Committee or Board or similar other authorities appointed by the State Government;
- (g) the office of the Chairman or a member of the Labour Commission appointed by the State Government;
- (h) the office of the Chairman or a member of the pay Commission appointed by the State Government;
- (i) the office of the Chairman or a member of Board of Directors of the State Trading Corporation;

3. Ins. by sec. 3 (a) of the Sikkim Legislative Assembly Members Removal of Disqualification Act, No. 13 of 1981 (w. e' f. 3: 11. 1977).

- (j) the office of the Chairman or a member of the Board of Directors of the State Bank of Sikkim
 - (k) the office of the Chairman or a Member of the State Electricity Advisory Board or the State Electricity Board appointed by the State Government;
 - (l) the office of the Chairman or a member of the Sikkim Khadi and Village Industries Board appointed by the State Government;
 - (m) the office of the Chairman or a member of the Board of the Sikkim Nationalized Transport appointed by the State Government;
 - (n) the office of the Chairman or a member of the Board of Directors of the Sikkim Mining Corporation appointed by the State Government;
 - (o) the office of the Chairman or a member of the Schedule Caste Welfare Board appointed by the State Government;
- 4o (a) the office of the Chairman or a member of the Board Directors of the Sikkim Jewels Limited appointed by the State Government;
- (o(b) the office of the Chairman or a member of the Board of Directors of the Sikkim Distilleries Limited appointed by the State Government;
 - (o(c) the office of the Chairman or a member of the Board of Directors of the Government Fruit Preservation Factory appointed by the State Government;
 - (o(d) the office of the Chairman or a member of the Board of Directors of the Sikkim Tobacco Private Limited appointed by the State Government;
 - (o(e) the office of the Chairman or a member of the Board of Directors of the Sikkim Time Corporation appointed by the State Government;"]
 - (p) the office of the Block Mandal appointed by the State Government;
 - (q) the office of the Chairman, Deputy Chairman or a member or Secretary of any Committee, Commission,
4. Ins. by sec. 3 (b) of the Sikkim Legislative Assembly Members Removal of Disqualification Act, No. 13 of 1981 (w. e. f. 3. 11.1977).

Corporation or similar other authorities constituted by the Government of India or the State Government or any other authority in respect of any public matter, if the holder of such office is not entitled to any remuneration other than compensatory allowance or any residential accommodation or any arrangement for conveyance to facilitate the performance of the function of such office.

Explanation:- For the purpose of this Act, the office of the Chairman, Deputy Chairman or Secretary shall include every office of that description, by whatever name called.

Repeal.

4. The Sikkim Legislative Assembly Members Removal of Disqualifications Ordinance, 1977, is hereby repealed.

THE SIKKIM ESSENTIAL SERVICES MAINTENANCE ACT, 1978

ACT No.7 of 1978

AN

ACT

to make provisions for the maintenance of certain essential services and the normal life of the community.

[31st March, 1978]

WHEREAS it is expedient to make provisions for the maintenance of certain essential services and the normal life of the community.

It is hereby enacted in the Twenty-ninth Year of the Republic of India by the Legislature of Sikkim, as follows:

1. (1) This Act may be called the Sikkim Essential Services Maintenance Act, 1978. *Short title.*

(2) It shall remain in force for a period of 1 [seven] years from the date of its commencement.

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

(a) "Essential Service" means

(i) any service connected with the supply of water;

(ii) any service connected with any department of the State Government or any local authority relating to procurement, storage, distribution and supply of food and other essential commodities;

(iii) any service connected with the supply of electricity;

(iv) any service connected with medical aid, treatment or administration of hospitals, dispensaries and other similar establishments or institutions;

(v) any service connected with any department of the State Government or any local authority or other organization or institution relating to fire-service, extinguishment or control of fire, or conservancy or drainage or sanitation;

(vi) any transport service for the carriage of passenger or goods;

1. Subs. by sec. 2 of the Sikkim Essential Services Maintenance (Amendment) Act No.4 of 1981 (with effect from 30. 3. 1981).

- (vii) any service-connected with the loading unloading or storage' of goods
- (viii) any other, service which. the State Government, being of opinion that strikes therein would prejudicially affect the the-maintenance of any public service, the public safety or the maintenance of supplies and service necessary for the life. of the community or. would result .in the infliction *of* great hardship on the. Community, may, by notification in the Official Gazette declare to be an essential service for the purpose of this *Act* ,
- (b) "strike" means the cessation of work by persons employed in any essential service acting in combination of concerted refusal or a-refusal under common understanding of any 'number: of persons who are or have been so employed .to continue to work or. to accept employment, and include
 - (a) refusal to work over time where such work is
'Necessary.-.for. the' maintenance. of any essential service
 - (b) . any other, conduct which is likely to. Result in.
or results in, cessation or substantial retardation
of work in any essential service,

Power to prohibit Strikes in essential services.

- 3(1) If the State Government is satisfied that in the public .interest it is necessary or expedient so to do, it may, by general or special order. prohibit strikes in any essential service. specified in the Order,
- (2) An Order under sub-section (1) shall be published in the Official Gazette or in such manner as the State Government considers best. calculated to bring' it to the notice of the persons to be affected by' the Order and shall remain in force for a period of six months only from the date of the Order unless any shorter period is specified therein. '
- (3) Upon the issue of an Order under sub section (1),
 - (a) no person employed in any essential service to which the Order relates shall go or remain on strike;
 - (b) any strike. Declared or commenced, whether before or after the issue of the Order, by persons em

Ployed in any such service shall be illegal.

4. Any person,
- (a) who commences a strike which is illegal under this Act or goes or remains on, or otherwise takes part in, any such strike, or
 - (b) who instigates, or incites other persons to take part in, or otherwise acts in furtherance of a strike which is illegal under this Act, or
 - (c) who knowingly expends or supplies any money in furtherance or support of a strike which is illegal under this Act, or
 - (d) who, by the use of force or show of force or otherwise, prevents or attempts any other person employed in any essential service, specified in the Order issued under sub-section (1) of section 3, from performing his duties under such employment, shall be punishable with imprisonment Of a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Punishment.

5. Any offence under this Act shall be cognizable and nonbailable.

Offence to be cognizable and non-bailable.

6. The Sikkim Essential Services Maintenance Ordinance, 1977, is hereby repealed.

Repeal.

THE SIKKIM POLICE (REPEALING) ACT NO.8 ACT, 1978
OF 1978
AN
ACT

to repeal. the Sikkim Police Act, 1969.

[31st march, 1978}

WHEREAS it is expedient to have the Police Act, 1861, extended to and enforced in the State of Sikkim;

AND WHEREAS it is necessary to repeal the Sikkim Police Act, 1969, immediately with the extension and enforcement of the Police Act, 1861 in the State of Sikkim.

It is hereby enacted by the Legislature of the State of Sikkim in the Twenty-ninth Year of the Republic of India as follows:

1. (1) This Act may be called The Sikkim Police (Repealing) Act, 1978;
(2) It extends to the whole of Sikkim. *Short title and extent.*

2. On and immediately with effect from the extension to and enforcement in the State of Sikkim of the Police Act, 1861, the Sikkim Police Act, 1969, shall stand repealed and the entire Police establishment constituted under the Sikkim Police Act, 1969 shall be deemed to be constituted: under the provisions of the Police Act, 1861. *Repeal of the Sikkim Police Act, 1969.*

3. Notwithstanding the repeal of the Sikkim Police Act, 1969, the repeal shall not *Savings.*
 - (a) affect the previous operation of the said Act, or any thing duly done or suffered there under; or
 - (b) affect any right, privilege, obligation or liability acquired, accrued or incurred under the said Act; or
 - (c) affect any penalty, forfeiture or punishment incurred under the said Act; or
 - (d) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, mentioned or enforced and such penalty, forfeiture or punishment may be imposed as if this Act had not been passed.

**THE SIKKIM CIVIL COURTS ACT, 1978 SIKKIM ACT
NO.9 OF 1978
AN
ACT**

to consolidate the law relating to Civil Courts subordinate to the High Court in the State of Sikkim.

[31st March, 1978

WHEREAS it is expedient to consolidate the law relating to Civil Courts subordinate to the High Court in the State of Sikkim;

It is hereby enacted in the Twenty-ninth Year of the Republic of India by the Legislature of Sikkim as follows:

**CHAPTER I PRELIM
IN AR Y**

1. (1) This Act may be called the Sikkim Civil Courts Act, 1978.

Short title and commencement.

- (2) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint

**CHAPTER II
CONSTITUTION OF CIVIL COURTS**

2. Besides the High Court and the Courts constituted under any other law for the time being in force, there shall be the following classes of Civil Courts, namely:

Classes of Courts.

- (1) the Court of the District Judge;
(2) the Court of the Additional District Judge; and
(3) the Court of the Civil Judge.

Number of Judges. 3. The State Government may increase or otherwise alter the number of the District Judge, the Additional District Judge and the Civil Judge now fixed.

Vacancies among District or Civil Judges. 4. '(1) Whenever the office of any Judge' is, vacant by reason of the death, resignation, removal of ,the Judge or other cause, or whenever an increase in the number of Judge or Judges ,has been made under the provisions of section 3, the High Court or, as the case may be, the State Government may fill up the vacancy or make the appointments.

(2) Nothing in this section shall prevent the State Government from appointing a Civil Judge to discharge, for such period as it thinks fit; in 'addition to the functions devolving on him as such Civil Judge, all or any of the functions of the Court of any other Civil Judge.

Additional District Judge. 5. (1) If by reason of any increase in the business in the Court of the District Judge or for any other reason, the State Government thinks fit so to do, it may, in consultation with the High Court, appoint such Additional District Judges as may be requisite, in accordance with the provisions of Article 233 of the Constitution of India.

(2) Additional District Judges so appointed shall discharge any of the functions of the District Judge which the District Judge may assign to them and, in the discharge of those functions, shall 'exercise the same powers as the District Judge.

Administrative control of courts. 6. Subject to the provisions of the Constitution of India, the District Judge shall have administrative control over all the Civil Courts under this Act.

Temporary charge the District Court. 7. (1) In the event of the death, resignation or removal of the District Judge, or his being incapacitated by illness or otherwise for the' performance of

his duties or of his absence from the place at which his Court is held, the senior Additional District Judge present thereat, or if an Additional District Judge is not present at that place, the Senior Civil Judge present thereat, shall, without relinquishing his ordinary duties, assume charge of the office of the District Judge and shall continue in charge thereof until the office is resumed by the District Judge or assumed by an officer appointed thereto. '

(2) While in charge of the office of the District Judge, the Additional District Judge or the Civil Judge, as the case may be, may, subject to any rules and to any general or special direction which the High Court may make in this behalf, exercise any of the powers of the District Judge.

8. (1) In the event of the death, resignation or removal of an Additional District Judge, or his being incapacitated by illness or otherwise for the performance of his duties, or his absence from the place at which his Court is held. the District Judge may transfer all or any of the proceedings pending in the Court of the Additional District Judge either to his own Court or to the Court of any other Additional District Judge.

Transfer of proceeding on vacation of office of Additional District Judge.

(2) The District Judge may re-transfer to the Court of the Additional District Judge, or his successor any proceeding transferred under subsection (1) to his own Court or the Court of any other Additional District Judge.

9. (1) In the event of the death, resignation or removal of a Civil Judge, or of his being incapacitated by illness or otherwise for the performance of his duties. or of his absence from the place at which his Court is held, the District Judge may transfer all or any of the proceedings pending in the Court of the Civil Judge either to his own Court

Transfer to proceedings or vacation of office of Civil Judge.

or to any Court under his administrative control competent to dispose of them.

(2) Proceedings transferred under sub-section (1) shall be disposed of as if they had been instituted in the Court to which they are so transferred.

(3) The District Judge may re-transfer to the Court of the Civil Judge or his successor any proceedings transferred under- sub-section (1) to his own or any other Court.

(4) For the purpose of proceedings which are not pending in the Court of the Civil Judge and with respect of which that Court has exclusive jurisdiction, the District Judge may exercise all or any of the jurisdictions of that Court on the occurrence of an event referred in to sub-section (1).

Power to fix local limits of jurisdiction of Courts.

10 (1) The State Government. may, in consultation with the High Court, by notification in the Official Gazette, fix and alter the local limits of the Jurisdiction of any Civil Court under this Act.

(2) If the same local jurisdiction is assigned to two or more Civil Judges, the District Judge may, subject to any general or special orders of the High Court, assign to each of them such Civil business cognizable by a Civil Judge and arising from such local area within the local jurisdiction, as he thinks fit.

(3) When civil business. arising in any local area is assigned by the District Judge under subsection (2) to one or two or more Civil Judges, a decree or order passed by the Civil Judge shall not be invalid by reason only of the case, in which it was made, having arisen wholly or in part in a place beyond the local area if that place is within the local limit~ fixed by the State Government.

. (4) The present local limits of the jurisdic

tion of every Civil Court under this Act shall- be deemed to have been fixed under this section.

11. (1) The State Government may, in consultation with the High Court, by notification in the Official Gazette, fix and alter the place or places at which any Civil Court under this Act is to be held.

Place of sitting of Courts.

(2) All places at which any such Courts are now held shall be deemed to have been fixed under this section.

12. (1) The days to be observed in each year as closed holidays in the Civil Courts under this Act shall be in accordance with the list as may be prepared by the High Court for the purpose.

Vacation of Court.

(2) The list shall be published in the Official Gazette.

(3) A judicial act done by a Civil Court on a day specified in the list shall not be invalid by reason only of its having been done on that day.

13. (1) Every Civil Court under this Act shall use a seal of such form and dimension as are prescribed by the High Court.

Seals of Court.

(2) Until seals are prescribed under subsection (1) the Civil Courts under this Act shall continue to use such seals as are now used by such Courts.

14. (1) Where any Civil Court under this Act has from any cause ceased to have jurisdiction with respect to any case, any proceeding in relation to that case which, if that Court had not ceased to have jurisdiction, might have had therein, may be had in the court to which the business of the former Court has been transferred.

Continuance of proceeding of Court ceasing to have jurisdiction.

(2) Nothing in this section applies to cases for which provisions have been or are made in any

other law for the time being in force.

CHAPTER III JURISDICTION OF COURTS

Extent of original jurisdiction of District Judge.

15. Save as otherwise provided in any law for the time being in force, the jurisdiction of a District Judge extends to all original suits for the time being cognizable by Civil Courts.

Extent of jurisdiction of Civil Judge.

16.(1) Save as aforesaid and subject to the provisions of subsection (2), the jurisdiction of a Civil Judge shall extend to all ,suits of which the value does not exceed ten thousand rupees.

(2) The State Government may, on the recommendation of the High Court, direct, by notification in the Official Gazette, with respect to any Civil Judge named therein that his jurisdiction shall extend to all like .suits of such value not exceeding twenty thousand rupees as may be specified in the notification:

Provided that the State Government may, by notification in the Official Gazette, delegate to the High Court its power under this section.

Appeals from District and Additional District Judge.

17. (1) Save as otherwise provided in any law for the time being in force, an appeal *from* a decree or order of the District Judge or an Additional District Judge shall lie to the High Court.

(2) An appeal shall not lie to the High Court from a decree or order of an Additional District Judge in any case in which, if the decree or order had been made by the District Judge, an appeal would not lie to that Court.

Appeals from Civil Judge.

18. (1) Save as aforesaid, an appeal from a decree or order of a Civil Judge shall lie,

(a) to the District Judge where the value of the original suit in which or in any proceeding arising out of which the decree or order was made did not exceed five thousand rupees, and

(b) to; the High Court in any other cases.

(2) Where the function of receiving an appeals which lie to the District Judge under sub section (1) has been assigned to an Additional District Judge, the appeals may be preferred to the Additional District Judge.

CHAPTER IVA SUPPLEMENTARY PROVISIONS

19. (1) The Presiding Officer of a Civil Court under this Act shall not try any suit or other proceeding to which he is a party or in which he is personally interested.

Judges not to try suits in which they are interested.

(2) The presiding Officer of an appellate Civil Court under this Act shall not try an appeal against a decree or order passed by himself in another. Capacity.

(3) When any such suit, proceeding or appeal as is referred to in sub-section (1) or sub-section (2) comes before any such officer, the officer shall forth with transmit the the record of the case to the District Judge with a report of the circumstances attending the reference.

(4) The District Judge shall thereupon dispose of the case himself or transfer the case to any other Court of competent jurisdiction.

20.. All Civil Courts, except the High Court of Sikkim, exercising jurisdiction in the State of Sikkim immediately before the commencement of this Act shall deem to have been duly constituted and to be exercising jurisdiction under the provision of this Act

Savings.

and all appointments, nomination rules and orders made, jurisdiction and powers conferred and all other actions done or taken relating to such Civil Courts, or purporting expressly' or "impliedly to have been so made, conferred, done' or taken, shall be deemed to have been respectively made, conferred, done **or** taken under the provisions of this Act.

Repeal.

21 All laws including rules, regulation, notifications, orders or instructions, in force immediately before the commencement of this Act, in so far they are inconsistent with the provisions of this Act shall to the extent of such inconsistency, cease to have effect and stand repealed from the date of such commencement.

**THE SIKKIM KHADI AND VILLAGE INDUSTRIES BOARD
ACT. 1978.**

ARRANGEMENT OF SECTIONS

**CHAPTER I
PRELIMINARY**

1. Short title, extent and commencement.
2. Definitions.

**CHAPTER II
THE. SIKKIM KHADI AND VILLAGE INDUSTRIES BOARD**

3. Establishment and incorporation of Board.
4. Constitution of the Board.
5. Appointment of Financial Adviser of the Board.
6. Resignation.
7. Proceedings presumed to be good and valid.
8. Temporary association of persons with the Board for particular purpose.
9. Meetings of the Board.
10. Terms of office and conditions of services of Chairman, Secretary, Vice Chairman & other members of the Board.
11. Powers and duties of the Secretary.
- IIA. Officers and servants of the Board and the conditions of their services.
12. Standing Finance Committee.
13. Appointment of other committees.

**CHAPTER III
FUNCTIONS AND POWERS OF THE BOARD**

14. Functions of the Board.
15. General Powers of the Board.
16. Power to make contracts.
17. Power to the Khadi & Village Industries Commission to give directions.

**CHAPTER IV
PREPARATION AND SUBMISSION OF PROGRAMME**

18. Preparation & submission of programme.
19. Sanction of programme.
20. Supplementary programme.
21. Power of Board to alter scheme.

CHAPTER V
FINANCE, ACCOUNTS, AUDIT AND REPORTS

- 22. Transfer of property.
- 23. Funds of the Board.
- 24. Application of fund and property.
- 25. Subventions and loans to the Board.
- 26. Budget.
- 27. Supplementary Budget.
- 28. Annual Report.
- 29. Returns and reports.
- 30. Accounts.

CHAPTER VI

- 31. Member of Board and Officers & servants of Board to be public servants
- 32. Protection of action taken under this Act.
- 33. Power to make rules.
- 34. Power to make regulations.
- 35. Dissolution of the Board.
- 36. Recovery of arrears.
- 37. Power to write off losses.

**THE SIKKIM KHADI AND VILLAGE
INDUSTRIES BOARD ACT, 1978
ACT NO. 11 OF 1978
AN
ACT**

to provide for the establishment of a Board for the development of the Khadi and Village industries in the State of Sikkim and for matters connected therewith.

[5th April, 1978]

Be it enacted by the Legislative Assembly of the State of Sikkim in the Twenty-ninth Year of the Republic of India as follows:

**CHAPTER I
PRELIMINARY**

- I. (1) This Act may be called the SIKKIM KHADI AND VILLAGE INDUSTRIES BOARD ACT, 1978. *Short title, extent and commencement.*
- (2) It extends to the whole of Sikkim.
- (3) It shall come into force on such date as the State Government may by a notification in the Official Gazette appoint in this behalf.
- 2. In this Act, unless the context otherwise requires *Definitions.*
- (a) "Board" means the Sikkim Khadi & Village Industries Board established under section 3.
- (b) "Khadi & Village Industries Commission" means the Khadi & Village Industries Commission of India established under section 4 of the Khadi & Village Industries Commission Act, 1956.
- (c) "Khadi" means any cloth woven on handlooms in India from cotton, silk or woolens yarn handspun in India or from a mixture any two or all of such yarns and shall include ready-made garments made out of such cloths.
- (d) "Village Industries" means:
- (i) all or any of the Industries specified in the schedule to the Khadi and Village Industries Commission Act, 1956, and includes any other industry deemed to be specified in the said schedule by reason of a notification issued by the Government of India under section 3 of the said Act, and

- (ii) any other industry specified in this behalf by the Government by notification in the Official Gazette in consultation with the Khadi & Village Industries Commission of India and the Board.
- (e) "Government" means the Government of Sikkim.
- (f) "prescribed" means prescribed by rules made under this' Act.
- (g) "Regulations" means regulations made "by the Board under this Act.
- (h) "Chairman". means Chairman .of the, Board.
- (i) Vice. Chairman"- means Vice-Chairman of the ,Board.
- (j) "Members"" mean members of the Board.

CHAPTER II

THE SIKKIM KHADI AND VILLAGE INDUSTRIES BOARD

*Establishment and
In-corporation of
Board.*

3. With effect from such date as the -Government may, by Notification, fix in this behalf, there shall be established a Board to be called the Sikkim Khadi and Village Industries Board. It shall be a body corporate by the', name' 'aforesaid having perpetual succession and a common ,seal, with ,power to acquire, hold and dispose of property and to contract and may, by the said name, sue and: be sued.

*Constitution of the'.
Board.*

- 4 (a) 'the Board shall consist of not less than seven and not. more than eleven members, all of whom shall be non-officials who are already interested in constructive activities relating to and who have abiding interest in the Khadi and Village Industries programme.
- (b) One of the members of the Board shall be appointed , by the Government as the Chairman of the Board.
- (c) The Government may appoint one of the other members as the Vice-Chairman who shall exercise such of the powers and perform such of the duties of the Chairman as may be prescribed or as may be delegated to him by the Chairman.
- (d) The Government shall, after consultation with the Board, appoint a member other than the Chairman and the Vice-Chairman to be, the Secretary of the Board.
- (e), The appointments of Chairman, Vice-Chairman and Secretary shall be made by' the Government in cons

ultation with the Khadi & Village Industries Commission.

(f) In the event of any vacancy in the office of a member of the Board by reason of death, resignation or removal, such vacancy shall be filled in by appointment 'by' the Government and, the member appointed in , such 'vacancy shall hold office *for* the unexpired term of his' predecessor;

(g) The Chairman, Vice-Chairman and the other members of the Board shall receive such allowances as may be prescribed and all such allowances shall be paid from 'the ' fund of' the Board.

5. (i) The Government shall appoint a person, not being a member of the Board to be the Financial Adviser to the Board. The Financial-Adviser may also function as 'the' Chief Accounts Officer.

(ii) The term of office, the conditions of service and the functions; of the' Financial Adviser shall 'be such as may be' 'prescribed in consultation with the Khadi and Village: Industries Commission.

*Appointment of
Financial Adviser
of the Board.*

6. Any, member of *the* Board may, resign, his office by giving notice; in, writing to. the Government and on, such resignation being' notified' in the. Official Gazette. by, the Government shall be deemed to have vacated his office.

Resignation.

'7.No' act 'or proceeding of the Board shall be questioned or invalidated merely by reason of any vacancy in its membership on account of resignation, " death or otherwise, or by reason' of any defect in the Constitution thereof

*Proceedings presu-
med to be good and
valid.*

8. (i) The' Board may associate with 'itself in such manner' .and *for* such purpose as may be determined .by- regulations made under this Act, any person whose assistance or advice it may desire in complying with any of the provisions of this Act.

*Temporary associ-
ation of persons
with the' Board for
particular purpose.*

(2) .A person associated with the Board under sub-section (1) *for* any purpose 'shall have the right to take part in the discussion of the Board relevant to that purpose, but shall 'not have the right' to vote' and shall not be a member *for* any purpose.

(3) , The Government.. may, by order, depute one or more

officers of the Government to attend any meeting of the Board and take part in the discussions of the Board but such officer or officers shall not have the right to vote.

Meetings of the Board.

9. (1) The Board shall meet at such times and at such places and shall, subject to the provisions of sub-sections (2), (3) and (4), observe such rules of procedure in regard to transaction of business at its meetings (including the quorum at meetings) as may be provided by regulations made by the Board under this Act:

Provided that the Board shall meet at least once in every two months.

(2) The Chairman, may whenever he thinks fit, call special meetings of the Board.

(3) The Chairman or in his absence, the, Vice-Chairman or if he is also absent, such member as may be chosen by the members present from among themselves shall preside at a meeting of the Board.

(4) All questions at a meeting of the Board shall be decided by the majority of the votes of the members present and voting in the case of equality of votes the Chairman or, in his absence, the person presiding shall have a second or casting vote.

(5) The proceeding of the meeting of the Board shall be forwarded to the Government and the Khadi and Village Industries Commission within fifteen days of every meeting.

*Terms of office and conditions of services, of Chairman, Secretary Vice Chairman. & other members of the Board.
Powers and duties of the Secretary.*

10. The term of office and the terms and conditions of services of the Chairman, the Vice-Chairman, the Secretary and other members of the Board shall be such as may be prescribed.

11. The Secretary shall exercise such powers and discharge such duties' as may be prescribed or as may from time to time, be delegated to him by the Government or by the Chairman.

Officers and servant

11. A (1) (a) The Board shall appoint an Executive Officer to

manage the affairs of the Board, who shall also function as Secretary to the Board.

- (b) The functions, duties and powers of the Executive Officer shall be such as may be fixed by the Board.

The Executive Officer may be a Government servant whose services are placed at the disposal of the Board by the Government and if he is Government servant, his remuneration, allowances and other conditions of service shall be such as may be fixed by the Government. In case of a person other than a Government servant being appointed as the Executive Officer, his remuneration, allowances and other conditions of service shall be fixed by the Board with the prior approval of the Government.

*ants of the Board
and the conditions
of their services,*

- (2) The Board may appoint such other officers and servants it may consider necessary for the efficient discharge of its functions:

Provided that the Board may delegate its powers in this behalf to the Chairman or other members or officers of the Board

- (3) Subject to the provisions of clause (c) of sub-section, (1); the remuneration, allowances and other conditions of service of the officers and servants of the Board, shall be such as may be determined by regulations.

12. The Board may constitute, from among the members of the Board a Standing Finance Committee to exercise such powers and perform such functions relating to the finances of the Board as may be laid down by regulations made by the Board.

*Standing Finance"
Committee.*

13. Subject to any rules made in this behalf, the Board may from time to time appoint one or more committees for the purpose of securing the efficient discharge of its functions and, in particular, for purpose of securing that the functions are discharged with regard to the circumstances and requirements of Khadi or any particular village Industry. Such committees may be appointed for any specific areas.

*Appointment of
other committees.*

CHAPTER III

FUNCTIONS AND POWERS OF THE BOARD.

14. (1) It shall be the duty of the Board to encourage, organize,

Functions of the

Board.'

develop and regulate Khadi and Village Industries and perform such functions as the Government may prescribe from time to time.

- (2) Without prejudice to the generality of the provisions of subsection (1), the Board shall also in particular, discharge and perform all or any of the following duties and functions, namely:--:
- (a) to start encourage, assist, and carry on Khadi and Village Industries and to carry on trade or business in such industries and in matters incidental to such trade or business.
 - (b) to help the people by providing them with works in their homes and to give' loans and other forms of monetary help to individuals or societies or institutions on such terms as may be 'prescribed.
 - (c) to encourage establishment of co-operative, Societies for Khadi and, Village Industries.
 - (d) to conduct training centers and to train people thereat ,with a view to equip them with,the,necessary knowledge for starting or carrying, on Khadi and Village Industries.
 - (e) (i) to manufacture tools and implements required for carrying on Khadi, and Village Industries and to manufacture the product of such industries.
(ii) to arrange for the supply of raw materials and tools and implements required for the said purpose, and
(iii) to sell and to arrange for the sale of the products of the said Industries.
 - (f) to arrange for publicity: and popularizing of the finished products of Khadi" and Village Industries by opening' stores, shops, emporia or exhibitions and, to take similar measures for the purpose.
 - (g) to endeavor to, educate public opinion and to impress upon the public the advantages of patronizing the products of Khadi and Village Industries.
 - (h) to seek and -obtain advice and guidance of experts in Khadi and Village Industries.
 - (i) to undertake and encourage research works in connection with the Khadi and Village Industries and' to

carry on such activities as' are incidental and conducive to the objects of this Act.

- (j) to discharge such other duties and to perform such other functions- as the Government may direct for - the purpose *of*. carrying out the objects of the Act.

15., Subject to the other provisions of this; Act, the, Board shall,. for the purpose of carrying out its functions under this Act, have the following powers namely:

- General powers of the Board.

- (i) to acquire and hold such movable and immovable property it deems. necessary and to .lease, sell or otherwise. transfer any such property:

.Provided that any lease, sale, mortgage, hypothecation or other transfer to any. person or authority other than Khadi and Village Industries Commission of any. Immovable property belonging' to the Board shall be null and void unless it is sanctioned by the Government

- (ii) to incur expenditure and undertake' any work-in any area of Sikkim for the framing and execution Of such schemes as it may consider necessary for the purpose of carrying out the provisions of this Act or such functions as' may be entrusted to it by the Government.

16. (1) The Board may enter into and perform an such contracts as it may consider necessary or expedient for carrying out any of the purposes of this Act.

Power to make contracts.

- (2) Every contract shall be made on behalf of the Board by .its Chairman:

Provided that the Chairman may, by an order in writing, delegate his powers in this behalf to the Vice-Chairman or the Executive Officer.

- (3) Every contract made on behalf of the Board shall, subject to the provisions of this section, be entered into in such manner and forms as may be prescribed.

- (4) A contract not executed in the manner provided in . this section and. the rules made there under, shall not be binding on the Board.

17. In the performance of its functions under this Act, the Board shall be bound by such directions. as the Khadi and

Power to the Khadi & Village Industries

Commission to give directions; Village Industries 'Commission 'may give to' it from time to time.

CHAPTER IV 'PREPARATION AND 'SUBMISSION OF PROGRAMME

Preparation & Submission of programme.

18. (1) In each year, on such date as may be 'fixed' by' the Government, the Board shall prepare and 'forward to the Government a programme of work.

(2) The programme shall contain
(a) particulars of the scheme .which the Board proposes to execute whether in part 'or whole during the next year

(b)particulars of any work or undertaking which the Board proposes to execute for the next year for the purpose of carrying out its functions under the Act ,and

© such other particulars as may be prescribed

Sanction of programme,

"19. The Government' may in consultation with the Khadi and' Village Industries Commission approve and, sanction the programme in whole or with such modifications as it deems *fit*.

.supplementary programme. ,

(20)'The Board' may 'prepare and forward a supplementary programme for the sanction of the Government in such. form, and before such date as the Government may prescribe and .the provisions of section 18 shall apply to such supplementary programme.

Power of Board to alter scheme.

(21) the Board may with the previous approval of the Khadi and Village Industries Commission make an alteration in, any scheme so 'long as .the aggregate amount sanctioned for the, scheme is not exceeded. A report of; the alteration shall be sent to the Government in such form --and within "such time 'as may be 'prescribed.

CHAPTER V FINANCE, ACCOUNTS, AUDIT .AND REPORTS.

Transfer of property.

22. The .Government of Sikkim may transfer to the Board buildings, land or any other property, whether movable, or immovable, for use and management by the Board on such. conditions 'and limitations as the Government for deem fit for the purposes 'of this Act.

23. (1) The Board shall have its own fund and all receipts of the Board shall be credited thereto, and all payments by the Board shall be met therefore.
- (2) The Board may, subject to the provisions of this Act, and the rules made thereunder accept grants, subventions donations and gifts and receive loans from Government, the Khadi and Village Industries Commission of India or a local authority or any body or association, whether incorporation or not, or an individual for all or any of the purpose of this Act. It may also create reserves for irrecoverable losses and losses in direct trading activities.
- (3) All moneys belonging to the Fund of the Board shall be deposited in such Bank as may be approved by the Government on and at places where there is no such Bank, in a Government Treasury or be invested in such securities as may be approved by the Government.
- (4) The accounts of the Board shall be operated upon by such officers jointly or individually as may be authorized - by the Board.

Funds of the Board.

24. All property, fund and other assets of the Board shall be held and applied by it, subject to the provisions and for the purposes of the Act.

Application of fund and Property.

25. (1) The Government may, from time to time, make subventions and grants to the Board for the purposes of this Act on such terms and conditions as the Government may determine in each case. Establishment expenditure of the State Board will be the sole responsibility of the Government. Similarly it may grant subventions compensating irrecoverable debts.
- (2) The Board may, from time to time, with the previous sanction of the Government and subject to the provisions of this Act and such conditions as the Government may determine, borrow any sum required for the purposes of the this Act:

Subventions and loans to the Board.

Provided that the previous sanction of the Government shall -not be necessary to borrow any sum from the Khadi and Village Industries Commission.

Budget.

26(1) The Board shall, by, such date in each year as may be prescribed, prepare and submit to the Government for approval the budget in the prescribed form for the next financial year showing the estimated receipts and expenditure in respect of Khadi and Village Industries Board respectively during that financial year. The Board shall forward a copy of the annual budget to the Khadi and Village Industries Commission for information.

(2)

Subject to the provisions of sub-section (3) and (4) no sum shall be expended by or on behalf of the Board unless such expenditure is covered by specific provision in the budget approved by the Government.

(3) The Board, may, within the respective limits of the budget, sanction any reappropriation from one head of expenditure to another or from a provision made for one scheme to that in respect of another:

Provided that no re-appropriation from the head "Loan" to any other head of expenditure and vice versa in the budget shall be sanctioned by the Board except with previous Industries Commission.

(4) The Board may, within such limits and subject to such conditions may be prescribed, incur expenditure in excess of the limit provided in the budget approved by the Government under any head of expenditure or in connection with any particular scheme so long as the aggregate amount in either budget approved by the Government is not exceeded.

*Supplementary.
Budget.*

27: The Board may submit a supplementary budget for the sanction of the Government in such form and before such date as may be prescribed and the provisions of section 26 shall apply to such supplementary budget.

Annual Report. .

28. (1) The Board shall prepare and forward to the Government in such manner as may be prescribed an annual report within three months from the end of the financial year giving a complete account of its activities during the previous financial year along with a copy of the annual statement of accounts referred to in section 30.

(2) the Board shall prepare and forward to the Khadi

and Village Industries Commission an annual report within three months from the end' of the financial year giving a complete account of the funds received by the Board from the Commission and the activities carried on by the Board from and' out of such fund during the previous financial year.

- (3) The report received by the Government under subsection (1) shall be laid before the Sikkim Legislative Assembly, as soon as may be, after it is received by the Government. '

29. (1) The Board shall furnish to the Government and the Khadi and Village Industries' Commission at such time and in such form and manner as may be prescribed or as the Government or the Khadi and Village Industries Commission may require such returns and statements and such particulars in regard to any proposed or existing programme for the promotion and development of Khadi and Village Industries as the Government may, from time to time require.

Returns and reports.

- (2) Without prejudice to the provisions of sub-section (1) the Board shall, as soon as possible after the end of each financial year, submit to the Government a report. in such form and before such date as may be prescribed, giving a true and full account of its activities,. policy and programme during the previous financial year.
- (3) All returns, statement and particulars furnished by the Board to the Government under sub-section (1) shall, as soon as possible after they are so furnished, be placed on the table of the Sikkim Legislative Assembly.

30. - (1) The Board shall maintain proper accounts and other relevant records and prepare an annual statement of account including the profit and loss accounts and the balance sheets in such form as may be prescribed.

Accounts. .

- (2) 'The accounts of the Board shall be audited by such person as the Government may appoint in this behalf.
- (3) The Auditors appointed by the Khadi and Village Industries Commission - shall have. the right to audit and inspect, the accounts of the Board pertaining to'

the funds advanced by the Khadi and Village Industries Commission.

- (4) The persons appointed under sub-section (2) and (3) shall, in connection with such audit, have such rights, privileges and authority as may be prescribed and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and to inspect any of the offices of the Board.
- (5) The accounts of the Board as certified by such auditor together with the audit report thereon shall be forwarded annually to the Government and the Khadi and Village Industries Commission before such date as the Government may specify in this behalf.
- (6) The Board shall comply with such directions as the Government may, after perusal of the auditor, think fit to issue.

CHAPTER VI MISCELLANEOUS

Member of Board and Officers & servants of Board to be Public servants.

31. Members of the Board and officers and servants of the Board shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code.

Protection of action taken under this Act.

32. No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or purported to be done by or under this Act.

Power to make rule.

33. (1) The Government may, by notification in the Official Gazette, make rules to give effect to the provisions of this Act.
- (2) In particular and without prejudice to generality of the foregoing powers such rules may provide for or any of the following matters, namely:
- (a) the place at which the office of the Board shall be located;
 - (b) the term of office of, and the manner of filling casual vacancies among the members of the Board and the terms and conditions of service of the

Chairman, the Vice-Chairman, the Secretary and the other members of the Board, including the salaries and allowances to be paid to them and traveling and daily allowances to be drawn by them;

- (c) the disqualification for membership of the Board and the procedure to be followed for removing a member who is or becomes subject to any disqualifications;
- (d) powers and duties to be exercised and performed by the Chairman and the Vice-Chairman;
- (e) the conditions subject to which, and the mode in which, contracts may be entered into by or on behalf of the Board;
- (f) constitution of the Standing Finance Committee and other committees;
- (g) the procedure to be followed in the performance of duties by members of the Board;
- (h) the powers and duties to be exercised and discharged by the Secretary, the Financial Adviser, the Executive Officer of the Board;
- i) the date by which and the form in which the budget and the supplementary budget shall be prepared and submitted in each year.
- (j) the procedure to be followed for placing the Board in possession of funds;
- (k) the procedure to be followed and the conditions to be observed in borrowing moneys and in granting loans;
- (l) the form and manner in which the accounts of the Board shall be maintained;
- (m) the form and manner in which the returns, reports or statements shall be submitted; and
- (n) any other matter which is required to be prescribed.

34. (1) The Board, with the previous sanction of the Government, by notification, make regulations not inconsistent with this Act and the rules made there under, for enabling it to perform its functions under this Act.

- (2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-

Power to make regulations.

- (a) the terms and conditions of appointment and service and the scales of pay of officers and servants of the Board other than the Secretary including the payment or traveling and daily allowances in respect of journeys undertaken by such officers and servants for the purposes of this Act.
 - (b) the time and place of meetings of the Board, the procedure to be followed in regard to transaction of business at such meetings and the quorum necessary for the transaction of such business at a meeting;
 - (c) functions of committees and the procedure to be followed by such committees and the discharge of their functions;
 - (d) the delegation of powers and duties to the standing finance committee, Secretary or employees of the Board;
 - (e) the maintenance of minutes of meetings of the Board and the transmission of copies thereof to the Government and the Khadi & Village Industries Commission;
 - (f) the persons by whom and the manner in which payments, deposits and investments may be made on behalf of the Board;
 - (g) the custody of moneys required for the current expenditure of the Board and investment of money not so required;
 - (h) the maintenance of accounts.
- (3) The Government may, by notification, rescind any regulation made under this section and thereupon, the regulation shall cease to have effect.

Dissolution of the Board.

35. (1) If at any time the Government is satisfied that
- (a) the Board has without reasonable cause or excuse, made default in the discharge of its duties or in the performance of its functions imposed or entrusted by or under this Act, or has abused its powers, or
 - (b) circumstances have so arisen that the Board rendered unable, or may be rendered unable to discharge its duties or perform its functions under this Act, or
 - (c) it is otherwise expedient or necessary to dissolve the Board, the Government may, by notification,

supersede the Board for such period as may be specified in the notification and declare that the duties, powers and functions of the Board shall during the period of its supersession, be discharged exercised and performed by such, person or authority as may be specified in the notification:

Provided the Government shall before superseding the Board, give a reasonable opportunity to it to show cause against the proposed action.

- (2) The Government shall before the expiration of the period of supersession, reconstitute the Board in accordance with the provisions of sections 3 and 4.
- (3) The Government may make such incidental and consequential provisions as may appear to them to be necessary for giving effect to the provisions of this section.
- (4) Any notification issued or order made by the Government under this section shall not be questioned in any civil court.
- (5)
 - (i) On the Board being superseded under subsection (1) above, all properties and funds, which immediately before the said date were in the possession of the Board for the purposes of this Act shall vest in the Government;
 - (ii) all members shall vacate office as members of the Board; and
 - (iii) all rights, obligations and liabilities (including any liabilities under any contract) of the Board shall become the rights, obligations and liabilities of the Government.

36 If any amount due to the Board in accordance with terms of the contract or otherwise or any sum payable in connection there with, has not been paid, the Board may without prejudice to any other remedy provided by law, recover such amount or sum in the manner and in accordance with the provisions of the laws in force in Sikkim for recovery of Government dues and Government revenues

Power to write off losses.

37. The Board shall be competent to write off losses up to five hundred rupees in individual cases and not exceeding five thousand rupees in the aggregate in any financial year in cases falling under any or all of the following categories:

- (a) loss of irrecoverable value of stores or of public money due to theft, fraud or such other cause,
- (b) loss of irrecoverable advance other than loans, and
- (c) deficiency and depreciation in the value of stores,

THE SIKKIM CO-OPERATIVE SOCIETIES ACT, 1978.

ARRANGEMENT OF SECTIONS

57

CHAPTER I**Preliminary**

1. Short title, extent and commencement.
2. Definitions.

CHAPTER II**Registration of Societies.**

3. Registrar.
4. Societies which may be registered.
5. Conditions of registration.
6. Application for registration.
7. Power of the registrar to decide certain questions.
8. Registration.
9. Registration Certificate.
10. Registered Societies to be bodies corporate.
11. Amendment of bye-laws of a Society.
12. Registrar's power to direct amendment of bye-laws.
13. When amendments of bye-laws come into force.
14. Change of name.
15. Change of Liability.
16. Amalgamation, transfer of assets and liabilities and division of societies
17. . Power to direct amalgamation and reorganization.
18. Liability of resultant society to be limited.
19. Cancellation of registration certificates of societies in certain cases.

CHAPTER III**Members of societies and their rights and liabilities.**

20. Persons who may become members.
21. Disqualification for membership.
22. Votes of members.
23. Manner of exercising vote.
24. Nominal members.
25. Member not to exercise rights till due payment made.
26. Restrictions on holding of shares.
27. Restriction on transfer of -shares or interest.
28. Transfer of interest on death 'of member.
29. Liability of past members and estate of deceased member.

CHAPTER IV
Management of Societies

30. Final authority of a society.
31. Management of Society.
32. Annual general meeting.
33. Special general meeting.
34. Election of members of committees.
35. Term of office of a Committee.
36. Disqualifications to be an officer of a society.
37. Representation of weaker section on the Committee.
38. Nomination of members to the Committee.
39. Super session of committee.
40. Securing possession of records etc.
41. Acts of societies not to be invalidated by certain defects.

CHAPTER V
Rights and privileges of society.

42. First charge of a society on certain movable assets of member for the amount due by him.
43. Charge on the immovable property of a member for the loans borrowed.
44. Priority of mortgage over certain claims.
45. Registration of charge and mortgage in favor of societies.
46. Noting of charge or mortgage created in the Record of Rights.
- 46A. Registration to constitute notice.
47. Restriction on disposal of property charged or, mortgaged to a society.
48. Charge and set of shares or interest of a member.
49. Shares, interest etc. not liable to attachment.
50. Register of members.
51. Admissibility of copy of entry as evidence.
52. Exemption from compulsory registration of instruments
53. Exemption from certain taxes, fees and duties.
54. Deduction from salary to meet society's claim in certain cases
55. State aid to societies.
56. Registrar's power to determine terms of employment in societies.

Chapter VI

Properties and funds of societies.

- (57) Funds not to be divided by way of profit.
- (58) Contribution to charitable purpose.
- (59) Contribution to Co-operative Education Fund.
- (60) Investment of Funds.
- (61) Restriction on loans.

- Restriction on borrowings.
- 2. Restriction on other transaction with non-members.
- 63.

CHAPTER VII

Audit, Inquiry, Inspection and Surcharge.

- Audit.
- 4. Inspection of societies.
- 65. Inquiry by Registrar.
- 66. Inspection of books of Indebted Societies.
- 67. Costs of inquiry.
- 68. Recovery of costs.
- 69. Surcharge.
- 70. Suspension of officer or employee of society.
- 71.

CHAPTER VIII

Settlement of Disputes.

- Disputes which may be referred to arbitration.
- 2. Reference of dispute to arbitration.
- 73. Power of State Co-operative Bank: to proceed.
- 74.

CHAPTER IX

Winding up of Societies.

- 75. Winding up of Societies.
- 76. Liquidator.
- 77. Powers of Liquidator.
- 78. Priority of contributions assessed by liquidator.
- 79. Powers of Registrar to cancel registration of a Co-operative society

CHAPTER X

Execution of awards, decrees, orders and decisions.

- 80. Enforcement of charge.
- 81. Execution of orders etc.
- 82. Execution of orders of liquidator.
- 83. Attachment before award.
- 84. Registrar or person empowered by him to be civil court
for certain purpose
- 85. Recovery of sums due to Government.

CHAPTER XI

State Co-operative Bank.

- 86. Applicability of Chapter.
- 87. Registration of State Co-operative Bank. Business
- 88. which the State Co-operative Bank Government Share may transact.
- 89. Capital.
- 90. Committee.

Taking over the business of the State Bank of Sikkim.'

1. Issue of bonds.
92. Guarantee by Government of principal of and interest on the bonds
93. . Other Guarantee by Government.
94. Right of primary agricultural credit society or the State Co-operative Bank to pay prior
95. debts to mortgagor.
96. Power of the State Co-operative Bank to supervise.
- 96A. Allotment of shares and voting rights of the members of the State Co-op
erative Bank.

CHAPTER XII

Insured Co-operative Banks

97. Insured Co-operative Banks.

CHAPTER XIII

Appeals and Revision.

98. Appeals.
- , 99. Revision.
- 100 Interlocutory orders.

CHAPTER XIV

Offences and Penalties.

101. Offences.
102. Offences by, companies.
103. Cognizance of Offences.

CHAPTER XV

Miscellaneous.

04. Address of society. .
- Copy of the Act, Rules and bye. Laws to be open to inspection.
105. Orders to be pronounced.
106. Procedure for settlement of disputes and power of the Registrar or any
107. other person to whom a dispute is referred or an appeal is made for
decision.
108. Powers of civil court.
109. Bar of jurisdiction of Courts.
110. Application of Limitation Act.
111. Power to exempt class of societies.
112. Service of notice under the Act.
113. Notice necessary in suits.
114. Indemnity.
115. Companies Act, 1956 not to apply.
116. Saving of existing societies.'
117. Powers to make rules.
118. Repeal.
119. Power to remove difficulties.

ACT NO. 12 OF 1978.

AN

ACT

to consolidate and amend the law relating to co-operative societies in the State 'Of Sikkim.

(5th April, 1978)

WHEREAS it is expedient to further facilitate the formation and working 'Of co-operative societies for the promotion 'Of thrift, *self* help and mutual aid among persons with common economic needs and to bring about improvement in agriculture and industry through better methods 'Of production, better business and better living and for that purpose to amend and consolidate the law relating to co-operative societies in the State 'Of Sikkim.

Be it enacted by the State Legislature in the Twenty ninth Year 'Of the Republic 'Of India as follows ;

CHAPTER I
Preliminary

1 (i) This Act may be called the Sikkim Co-operative societies Act, 1978.

Short title, extent and commencement.

(ii) It extends to the whole 'Of the State 'Of Sikkim.

(iii) It shall come into force on such date as the Government may, by notification in the Official Gazette appoint.

In this act, unless the context 'Otherwise requires.

2. (a) Agricultural Refinance and Development Corporation

Definitions.

10 'Of 1963. Means the Agricultural Refinance and Development Corporation Constituted under the Agricultural Refinance and Development Corporation Act, 1963.

(b) 'Bank' includes.

10 'Of 1949. (i) A banking company as defined in section 5 'Of the Banking Regulation Act, 1949.

23 'Of 1955. (ii) State Bank 'Of India constituted under the State Bank 'Of India Act, 1955.

5 of 1970 (iii) A corresponding new bank constituted under section 3 of the Banking Companies Acquisition and Transfer of Undertakings Act 1970

(iv) Any other banking institution notified by the Central Government under section 51 of the Banking Regulation Act 1949.

10 of 1949,

(c) 'Bye-laws' means the Registered bye-laws for the time registered being in force, and includes amendments *of* such Bye-laws.

(d) 'Committee' means the governing body of a society, by whatever name called, to which the management of the affairs of the society is entrusted.

(e) 'Co-operative year' means the period beginning from 1st July or the date of commencement of business or the date of registration and ending the 30th June for the purpose of drawing up the balance sheets of registered societies.

(f) 'Deposit Insurance Corporation' means the Deposit Insurance Corporation established under section 3 of the Deposit Insurance Corporation Act, 1961.

47 of 1961.

(g) 'Federal society' means a society other than state cooperative bank, (a) not less than five members *of* which are themselves societies; and (b) in which the voting rights are so regulated that the members which are societies have not less than three fourths *of* the total number *of* votes in the general meeting *of* such society.

(h) 'Government' means the State Government *of* Sikkim.

(i) 'Industrial Development Bank' means -the Industrial Development Bank of India constituted under the Industrial Development Bank *of* India Act. 1964.

(j) 'Member' means a person joining in the application *for* registration *of* a society and a person admitted to membership after such registration in accordance with this Act, the rules and the bye-laws, and shall include a nominal member and the Government when it subscribes to the share capital of a society.

18 *of* 1964.

(k) 'Nominal member' means a person admitted to membership as such after registration in accordance with the bye-laws.

(l) 'National Co-operative Development Corporation' means the National Co-operative Development Corporation constituted under the National Co-operative Development Corporation Act 1962.

16 of 1962.

(m) 'Officer' means the president, vice-president, chairman, vice-chairman, managing director, secretary, manager, and member

of committee, treasurer, liquidator, administrator and includes any other person empowered under the rules or the bye-laws, to give directions in regard to the business of society.

(n) 'prescribed' means prescribed in the rules.

(o) 'primary agricultural credit society' shall have the meaning assigned to it in clause c(ii) of section 2 of the

2 of 1934 Reserve Bank of India Act, 1934 and includes a Farmers Service Society or Large-sized Multipurpose Society.

(p) 'Registrar' means a person appointed to perform the functions of the Registrar of Co-operative Societies under this Act and includes any person appointed to assist the Registrar in exercise of all or any of his powers] under this Act.

2 of 1934. (q) 'Reserve Bank' means the Reserve Bank of India constituted under the Reserve Bank of India Act, 1934.

(r) 'Rules' means the rules made under this Act.

(s) 'Society' means a co-operative society registered or deemed to be registered under this Act.

(t) 'Society with limited liability' means a society the liability of whose members is limited by its bye-laws to the amount, ~ if any, unpaid on the shares individually held by them or to such amount as they may individually undertake to contribute to the assets of the society, in the event of its being wound up.

(u) 'Society with unlimited liability' means society the joint or several liability of whose members to meet any deficiency in the assets of the society in the event of its being wound up is unlimited.

(v) 'State Co-operative Bank' means the 'Sikkim State Co-operative Bank Ltd.' registered as a society under this Act.

CHAPTER II Registration of Societies

3. (1) The Government may appoint a person to be the Registrar of Co-operative Societies for the State of Sikkim and may appoint other persons to assist him.

Registrar.

(2) The Government may, by general or special order, confer on any person appointed to assist the Registrar all or tiny of the powers of the Registrar under this Act.

(3) Every person appointed to assist the Registrar shall exercise the powers conferred on him under sub-section (2)

subject to the general guidance, superintendence and control of the Registrar.

(4) The Government may, by notification in the Official Gazette and subject to such conditions as it may think fit to impose, confer all or any of the powers of the Registrar under this Act on the State Co-operative Bank or any federal society or an officer of such bank or federal society and every such bank or federal society or officer on whom the powers of the Registrar are so conferred shall exercise such powers under the general guidance, superintendence and control of the Registrar.

Societies which may be registered.

4. Subject to the provisions hereinafter contained, a society which has as its object the promotion of the economic interests of its members in accordance with co-operative principles, or a society established with the object of facilitating the operations of such a society and the State Co-operative Bank may be registered under this Act:

Provided that the Registrar shall not register any society with unlimited liability.

Conditions of registration.

(5) a)No society other than a federal society shall be registered under this Act unless it consists of at least ten persons not belonging to the same family who are qualified to be members under this Act and who reside in the area of operation of the society

Explanation- For the purpose of this Act 'Family' means the husband, wife, sons and unmarried daughters.

(b) The word "limited" shall be the last word in the name of every society with limited liability registered under this Act.

Application for registration.

6. (1) for the purposes of registration, an application shall be made to the Registrar.

(2) The application shall be signed- (a) in the case of a society of which no member is a society, by at least ten persons qualified in accordance with the requirements of section 5: and (b) in the case of a society of which a member is a co-operative society, by a duly authorized person on behalf of such society and where all the members of the society are not societies, by ten other members or when there are less

than ten. other members qualified to do so under section 5 by all of them.

7. Where any question arises. whether, for the purpose of this Act, a person resides in the area of operation of a society or not, or whether a society is of the same type as another society or of different type, the question shall be decided by the Registrar whose decision shall be final.

Power of the Registrar to decide certain questions.

8. (1) If the Registrar is satisfied- (a) that the application complies with the provisions. of this Act and' the 'rules; (b) that the objects of the proposed society are in accordance with section 4; (c) that the proposed bye-laws are .not contrary to the provisions of this Act and the rules; and (d) that the proposed' society has reasonable chances of success, and that the registration thereof may not have any adverse effect on the development of co-operative movement, the Registrar may register the society and its bye-laws.

Registration.

(2) When the Registrar refuses to register a society, he shall communicate within a period of six months from the date of receipt of application the order of refusal, together with the reasons therefor, to the applicant as may be prescribed.

9. Where a society 'is registered, the Registrar shall issue a certificate of registration signed by him, which shall be conclusive evidence that the society therein mentioned is duly registered under this Act

Registration Certificate.

10. The registration of a society shall render it a body corporate by the name under which it is registered, having perpetual succession and a common seal, and with power to acquire, hold and dispose of property, enter into contracts, institute and defend suits and other legal proceedings and to do all things necessary for the purpose for which it is constituted.

Registered Societies to be bodies corporate.

11. (1) No amendment of any bye-laws of a society shall be valid unless it is registered under this Act.

Amendment of bye-laws of a Society.

(2) Every proposal for such amendment shall be forwarded to the Registrar and if the Registrar is satisfied that the amendment

(a) is not contrary to the provisions of this Act and the rules;

(b) does not conflict with Co-operative principles; and

(c) *will* promote "the economic interests of the members of the society;

he may register the "amendment.

, (3) The Registrar shall forward to the society a copy of the 'registered amendment together with a certificate signed by him and such certificate shall be conclusive evidence that the amendment has been duly registered.

(4) Where the Registrar refuses to register an amendment of the bye-laws of a society, he shall communicate the order of refusal together with the reasons therefor. to the society in the manner prescribed.

Registrar's power to direct amendment of bye-laws.

12. Notwithstanding anything contained in section 11, if in the opinion of the Registrar, an amendment of the bye-laws of a society is necessary or desirable in the interest of such society or of the co-operative movement. he may, in such manner as may be prescribed, call upon the society to make any amendment within such time as he may specify. If the society fails to make such an amendment within the time so specified the Registrar may, after giving the society an opportunity of making its representation, register such amendment and forward to the society by registered post a copy of the amendment together with a certificate signed by him, such a certificate shall be conclusive evidence that the amendment has been duly registered; and such an amendment shall have the same effect as an amendment of any bye-laws duly made by the society.

When amendments of bye-laws come into force,

13. An amendment of the bye-laws of a society shall, unless it is expressed to come into operation on a particular day, come into force on the day on which it is registered.

Change of name.

14. (1) A society may, by an amendment of its bye-laws, in such manner as may be prescribed, change its name; but such change shall not affect any right or obligation of the society or of any of its members, past members or deceased members and any legal proceeding pending may be continued by or against the society under its new name.

(2) Where a society changes its name, the Registrar shall enter the new name on the register of societies in place of the former name and shall amend the certificate of registration accordingly.

15. (1) No society with limited liability shall change itself into a Society with unlimited liability.

(2) Subject to the provision of sub-section (1), a society may change the form and extent of its liability by an amendment of its bye-laws in the manner prescribed.

(3) When a society has amended its bye-laws under subsection (2), it shall give notice thereof in writing to all its members and creditors and notwithstanding any bye-law or contract to the contrary any member or creditor shall, within a period of 30 days from the date of service of the notice upon him, have the option to withdraw his shares or deposits or recall the loans, as the case may be.

(4) Any member or creditor who does not exercise his option within the period specified in sub-section (2) shall be deemed to have assented to the change.

(5) An amendment of the by-laws of a society changing the form or extent of its liability shall not be registered or take effect until either

(a) the assent thereto of all members and creditors has been obtained or is deemed to have been obtained; or

(b) all claims of members and creditors who exercise the option referred to in sub-section (2) within the period specified therein, have been met in full.

16 (1) A society may, with the previous approval of the Registrar and by a resolution passed by at least a two thirds majority of the members present and voting at a general meeting of the society-

- (a) transfer its assets and liabilities in whole or in part to any other society;
- (b) divide itself into two or more societies.

(2) Any two or more societies may, with the previous approval of the Registrar and by a resolution passed by at least a two-thirds majority of the members present and voting at a general meeting of each society amalgamate themselves and form a new society.

(3) The resolution of a society under sub-section (1) or

Sub-section (2) shall contain all particulars of the transfer, division or amalgamation, as the case may be.

(4) When a society has passed any such resolution, it shall

Change of Liability.

*Amalgamation,
transfer of assets and
liabilities and
division of societies.*

give notice thereof, in writing, to all its members and creditors and, notwithstanding any bye-laws or contract to the contrary, any member or creditor shall, within a period of thirty days from the date of service of the notice upon him, exercise the option to withdraw his shares or deposits or recall the loans, as the case may be.

(5) Any member or creditor who does not exercise his option within the period specified in sub-section (4) shall be deemed to have assented to the proposals contained in the resolution.

(6) A resolution passed by a society under this section shall not take effect until

(a) the assent thereto of all the members and creditors has been obtained or is deemed to have been obtained; or

(b) all claims of the members and creditors who have exercised the option referred to in sub-section (4) within the period specified therein have been met in full.

(7) Where a resolution passed by a society under this section involves the transfer of any assets and liabilities, the resolution shall, notwithstanding anything contained in any law for the time being in force, be a sufficient conveyance to vest the assets and liabilities in the transferee without any further assurance

Power to direct amalgamation and reorganization.

17. (1) Notwithstanding anything contained in this Act, if the Registrar is of the opinion that

(a) for the purpose of ensuring economic liability of any society or societies; or

(b) for avoiding overlapping or conflict of jurisdictions of societies in any area; or

(c) in order to secure proper management of any society; or

(d) in the public interest; or

(e) in the interest of the co-operative movement in the State as a whole; or

(f) in the interest of depositors; or

(g) in the interest of the co-operatives credit structure in the State as a whole, it is necessary to amalgamate two or more societies or to reorganize any society, he may by order published in the Official Gazette provide for amalgamation of

two or more such societies into a single society with limited liability or to reorganize the society.

(2) Such order may also provide for

(a) reduction of the interests or the rights which the members, depositors, creditors, employees and other persons may have in or against any society so to be amalgamated or reorganized, to such extent as the Registrar may consider necessary in the interest of such persons or for the maintenance of the business of that society having due regard to the proportion of the assets of such society to its liabilities.

(b) such incidental, consequential and supplemental provisions as may in the opinion of the Registrar be necessary: to give effect to the amalgamation of the societies. -

(3) No order shall be made under sub-section 1 unless

(a) a Copy of the proposed, order has been 'sent in draft to each of the societies, concerned

(b) the Registrar has considered made such modifications in the draft order, as may deem to him desirable in the light of any suggestions or' objections which may be received by him within,' such period (pot being less than fifteen days from, the date on which the copy of the proposed order was received by. the'. societies) as the Registrar may fix in that behalf: either from the societies or any members, depositors, creditors, employees or other persons concerned.

(4) Notwithstanding anything contained in this Act or any other law, or in any contract, award or other instrument for the time being in force, on the issue of an order under sub-section (1), the provisions thereof shall be binding on all societies and their members, past members, depositors, creditors employees and all other persons having dealings with the concerned societies.

(5) On and from the date from which the amalgamation takes effect, the assets and liabilities of the societies referred to therein shall stand amalgamated or merged with the assets and liabilities of the societies formed out of such amalgamation and the members, creditors and debtors of such societies, shall be deemed to be members, creditors and debtors, as the case may be, of the new society or societies as ordered by the Registrar.

16) Notwithstanding anything contained in any law for the time being in force relating to transfer of properties or regis

tration of documents, an order issued under this section shall be sufficient conveyance to transfer the assets and liabilities of the society or societies covered by any order passed under sub-section (1) of this section.

(7) Any order made by the Registrar under this section shall be final and conclusive and shall not be called in question in any Court.

Liability of resultant society to be limited.

18. Where the whole of the assets and liabilities of a society are transferred to another society in accordance with the provisions of section 16 or where a society is directed to be amalgamated under section 17, the liability of the other society, or the new society, as the case may be, shall be limited.

Cancellation of registration certificates of societies in certain cases.

19. (1) Where the whole of the assets and liabilities of a society are transferred to another society in accordance with the provisions of section 16 or section 17, the registration of the society whose assets and liabilities are so transferred, shall stand cancelled and the said society shall be deemed to have been dissolved and shall cease to exist as a corporate body.

(2) Where two or more societies are amalgamated into a new society in accordance with the provisions of section 16 or section 17, the registration of each of the amalgamating societies shall stand cancelled on the registration of the new society, and each society shall be deemed to have been dissolved and shall cease to exist as a corporate body.

(3) Where a society divides itself into two or more societies in accordance with the provisions of section 16, the registration of that society shall stand cancelled on the registration of the new societies and that society shall be deemed to have been dissolved and shall cease to exist as a corporate body.

(4) The amalgamation, division or reorganization of societies shall not in any manner whatsoever affect any right or obligation of the amalgamated, divided or reorganized society or societies or render defective any legal proceedings by or against such society or societies and any legal proceeding that might have been commenced or continued by or against such society or societies, as the case may be, before the amalgamation, division or reorganization, may be continued by or against the resulting or the reorganized society or societies.

(5) Where a society has not commenced business within six months of its registration or such further time as may be

granted by the Registrar after its registration or has ceased to function or if the Registrar is satisfied, after making such inquiry as he thinks fit, that the society no longer has genuinely as its objects one or more of the objects specified in section 4 and that its registration ought in the interests of the general public to be cancelled, he shall make an order canceling the registration of the society. The society shall from the date of such order of cancellation be deemed to be dissolved and shall cease to exist as a corporate body.

CHAPTER III

Members of societies and their rights and liabilities

20. (1) No person shall be admitted as a member of a society except the following, namely;

Persons who may become members.

- (a) an individual competent to contract under section 11 of the Indian Contract Act, 1872;
- (b) any other society;
- (c) the Government;

(d) a firm, a company or any other body corporate constituted under any law for the time being in force or a society registered under any law in force relating to Registration of Societies or a bank as defined in the Act subject to such terms and conditions as may be laid down by the Government by general or special order in this behalf.

(2) Any person who is duly qualified for admission as a member under the provisions of this Act and the bye-laws of a primary agricultural credit society, makes an application for membership of such society, shall be deemed to have been admitted as a member of such society from the date of receipt of the application in the office of the society:

Provided that the Registrar may, either on his own motion at any time or on an application by the primary agricultural credit society or any member thereof made within fifteen days from the date of such admission and after giving reasonable opportunity to the society and the member concerned, by order declare such person as not eligible either to become or to continue as a member of such society for the reasons mentioned therein. Where the order is to be passed on an application of the society or a member thereof it shall

be passed within thirty days from the date of receipt of the application by the Registrar.

(3) Any order made by the Registrar under sub-section (2) of this section shall be final and shall not be called in question in any Court.

(4) An application for membership in a society, other than a primary agricultural credit society shall be disposed of by the Society within one month from the date of receipt thereof, and the decision of the Society on the application shall be communicated to the applicant within fifteen days from the date of the decision:

Provided that if the decision of the society is not communicated to the applicant within a period of forty five days from the date of the receipt of the application by the' society, the society shall be deemed to have decided, on the date of expiry of such period, refusing admission to the applicant.

Disqualification for' membership.

21. (I) No person shall be eligible for admission as a member of a society, if he

(a) has applied to be adjudicated an insolvent or is an undischarged insolvent; or

(b) has been sentenced for any offence, other than an offence of a political character or an offence not involving moral turpitude, such sentence not having been reversed or the offence pardoned and a period of five years has not elapsed from the date of expiry of the sentence.

(2) If a member becomes subject to any of the disqualifications specified in sub-section (I), he shall be deemed to have ceased to be a member from the date when the disqualification was incurred.

(3) Subject to the general or special orders of the Registrar published in the Official Gazette, no individual who is a member of a credit society, shall be eligible for admission as a member of another credit society.

Votes of members.

22. Every member of a society shall have one vote in the affairs of the society:

Provided that

(a) a nominal member shall not have the right to vote;

(b) a member of a primary agricultural credit society shall

have no right to vote in a general meeting if he is in default in payment of any sums due to that society for more than one year; and

(c) where the Government is the member of the society, each person nominated by the Government' on the Committee of the society shall have one vote except when the right to vote is to be exercised for election *of* office bearers of the society.

23. (1) Every member of a society shall exercise his vote in person at a meeting of the society and no member shall be permitted to vote by proxy.

Manner of exercising vote.

(2) Notwithstanding anything contained in sub-section (1), a society or corporation or firm which is a member of another society may, subject to any rules made under this Act, appoint one of its members or partners, as the case may be, to vote on its behalf in the affairs *of* that society.

24. (1) A society may admit any individual or other person or firm as a nominal member in accordance with its bye-laws.

Nominal members.

(2) A nominal member shall not be entitled to any share, in any form whatsoever, in the assets or profits of the society or to become an officer of the society.

(3) A nominal member shall have such privileges and rights of a member and be subject to such liabilities of a member, as may be specified in the. Bye-laws *of* the society.

25. No member *of* a society shall exercise the rights the member unless he has made such payments to in respect of membership or has acquired such interest in the society, as may be specified in the bye-laws.

Member not to exercise rights till due payment made.

26. In any society, no member other than the Government *or* any other society shall hold or have claim to more than such portion of the total share capital *of* the society which exceed one-fifth thereof or Rs. 5,000/- whichever is less:

Restrictions on holding of shares.

Provided that the Government may, by notification in the Official Gazette, specify in respect *of* any class of societies a higher maximum than one-fifth *of* the share capital or a higher amount than Rs. 5,000/- as the case may be.

27. (1) The transfer of a share or interest of a member in the capital *of* a society shall be subject to the restrictions specified in section 26.

Restriction on transfer of shares or interest.

- (2) No transfer by a member of his share or interest in a society shall be valid unless
- (a) the member has held such share or interest for not less than one year;
 - (b) the transfer is made to the society or to a member of the society; and
 - (c) the transfer is approved by the Committee of the society.

*Transfer of interest
on death of a
member.*

28. (1) On the death of a member the society shall transfer the share or interest of the deceased member to the person or persons nominated in accordance with the rules or, if no person has been so nominated, to such person as may appear to the Committee to be the heir or legal representative of the deceased member:

Provided that such nominee, heir or legal representative, as the case may be, is admitted as the member of the society

:

Provided further that nothing in this sub section shall prevent a minor or a Person of unsound mind from acquiring by inheritance the share or interest of a Deceased member in the society

(2) Notwithstanding anything contained in sub-section (1) any such nominee, heir, or a legal representative, as the case may be require the society to pay to him the value of the share or interest of the deceased member ascertained in accordance with the Rules.

(3) The society may pay all other moneys due to the deceased member from the society to such nominee, heir or legal representative, as the case may be.

(4) All transfers and payments made by a society in accordance with the provisions of this section shall be valid and effectual against any demand made upon the society by any other person.

Liability of past members and estate of deceased member.

29. (1) Subject to the provisions of sub-section (2), the liability of a past member or of the deceased member of a society for the debts of the society as they existed shall continue for a period of two years

(a) in the case of a past member, from the date on which he ceased to be a member; and

(b) in the case of a deceased member from the date of his death.

(2) Where a society is ordered to be wound up under section 75, the liability of a past member or of the estate of a deceased member who ceased to be a member or died within two years immediately preceding the date of the order of winding up, shall continue until the entire liquidation proceedings are completed but such liability shall extend only to the debts of a society as they existed on the date of his ceasing to be a member or death, as the case may be.

30. (1) The final authority of every society shall vest in the general body of members in general meeting:

Final authority of a society.

Provided that in such circumstances as may be prescribed the final authority may vest in -the delegates of such members elected in the prescribed manner and assembled in general meeting.

(2) The general meeting shall be summoned and shall exercise its authority in such manner as may be prescribed.

31. (1) The management of every society shall vest in a committee constituted in accordance with the bye-laws.

Management of Society.

(2) No person shall be eligible to be elected as a member of a committee unless he is a member of the society.

(3) No member of a society shall be eligible for being elected as a member of the committee of that society or of any other society to which such society is affiliated, if such member

(a) has been adjudged by a competent court to be insolvent or of unsound mind;

(b) is concerned or participates in the profits of any contract with the society;

(c) has been punished with imprisonment for an offence involving moral turpitude;

(d) has been in default in payment of his dues to the society' for a continuous period of three months from the due date or any extended period thereof;

(e) carries the business of the same kind carried on by the society.

(4) A member of the committee of a society shall cease to be a member of such committee if he becomes subject

to any of the disqualifications mentioned in sub-section (3) and the vacancy so arising in the committee shall be filled in accordance with the bye-laws.

Annual general meeting.

32. (1) The general meeting of every society shall be held within a period of six months after the date fixed for making up its accounts for the co-operative year under the rules for the time being in force, for the purpose of

(a) approving the programme of the activities of the society prepared by the committee for the ensuing co-operative year;

(b) electing the members of the committee other than members nominated under section 38;

(c) considering the audit report and the annual report;

(d) disposing of the net profits; and

(e) considering any other matter which may be brought forward in accordance with the bye-laws:

Provided that the Registrar may, by general or special order extend the period for holding such meeting for a further period not exceeding three months:

Provided further that, if in the opinion of the Registrar no such extension is necessary or such meeting is not called by the society within the extended period, if any, granted by him, the Registrar or any person authorised by him may call such meeting and exercise all powers and functions of an officer of the society authorised to convene such meeting and that meeting shall be deemed to be a general meeting duly called by the society. The Registrar may order that the expenditure incurred in calling such a meeting shall be paid out of the funds of the society or by such person or persons who, in the opinion of the Registrar, were responsible for the refusal or failure to convene the general meeting.

(2) At every annual general meeting of a society, the committee shall lay before the society a statement showing the details of the loans, if any, given to any of the members of the committee during the preceding year.

Special general meeting.

33. (1) The committee of a society may, at any time, call a special general meeting of the society and also shall call such meeting within one month after the receipt of a requisition in writing from the Registrar or from such number

of members or a proportion of the total number of members, as may be provided in the bye-laws.

(2) If a special general meeting of a society is not called in accordance with the requisition referred to in subsection (I), the Registrar or any person authorised by him in this behalf shall call such meeting and exercise all powers and functions of an officer of the society who is authorised to convene such special general meeting and that meeting shall be deemed to be a meeting called by the committee, and the Registrar may order that the expenditure incurred in calling such a meeting shall be paid out of the funds of the society or by any such person or persons who, in the opinion of the Registrar, were responsible for the refusal or failure to convene the special general meeting.

34. (1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, elections of the members of the committees of such societies or class of societies as may be notified by the State Government in the Official Gazette shall be vested in such returning officers not below the rank of Gazetted officers as may be appointed by the Government in this behalf.

*Election of members
of committees.*

(2) The vote at such elections shall be by secret ballot.

35. The term of office of the elected members of the committee shall be such, not exceeding three co-operative years including the co-operative year of their election, as may be specified in the bye-laws of the society:

*Term of office of a
Committee.*

Provided that the elected members shall continue to hold office till their successors are elected or nominated under the provisions of the Act or the rules or bye-law...

36. Notwithstanding anything contained in this Act, a person shall be disqualified for election as, or for being, the president, vice-president, chairman, vice-chairman, secretary, joint secretary or treasurer of a committee,

*Disqualifications to be
an officer of a society,*

(a) if he has held any such office on that committee during the preceding two consecutive terms, whether full or part;

(b) if he holds any such office on a committee of another society of the same type;

(c) if he holds any such office on the committees of three or more societies of different types including the State Co-coordinative Bank or a federal society:

Provided that nothing contained in this sub-section shall be deemed to disqualify any such person for election as, or for being, a delegate of a society or a member of another committee.

Explanation 1. Where any person holding any office as aforesaid at the commencement of this Act is again elected to any such office after such commencement, he shall, for the purpose of this sub-section, be deemed to have held that office for one term before such election.

2. Explanation A person who has ceased to hold any such office as aforesaid continuously for one full term shall again be qualified for election to any of those offices.

Representation of weaker section on the committee.

37. On the committee of a primary agricultural credit society or other societies as may be prescribed, not less than one-third of total seats shall be reserved for economically weaker sections of the members who, as land owners or tenants or as both do not hold more than the prescribed area of agricultural land or who fulfill the prescribed conditions, and if no such persons are elected, the committee shall co-opt the required number of members from amongst the persons entitled to such representation.

Nomination of members to the Committee.

38. (1) Notwithstanding anything contained in this Act, but subject to the provisions of section 36, where the Government has subscribed to the share capital of a society or has assisted directly or indirectly, in the formation or augmentation of the share capital of a society, or has guaranteed the repayment of principal and payment of interest on loans and advances to a society, the government or any other person authorised by it in this behalf shall have the right to nominate members on the committee in the manner prescribed below viz.

- (i) where the Government shareholding is not less than one third and not more than two-thirds of the equity the number of Government nominees shall not exceed a third of the total number of members of the committee or three, whichever is less.
- (ii) where the Government holds more than two-thirds of the total equity, the number of Government nominees shall not exceed one-half of the total number of members of the committee or five whichever is less:

Provided that in the case of societies registered after the commencement of this Act, the Government may have the power to nominate the initial committee for a period of 3 years or such extended period as may be decided by the Government.

(2) A person nominated under sub-section (1) shall hold office during the pleasure of the Government.

39 (1) If, in the opinion of the Registrar, the committee of any society persistently makes default or is negligent in the performance of the duties imposed on it by this Act or the rules or the bye-laws, or commits any act which is prejudicial to the interest of the society, or its members, or the co-operative movement in the state, or willfully disobeys or fails to comply with any lawful order or directions issued under this Act or the rules. the Registrar may, after giving the committee an opportunity to state its objections, if any by order in writing, remove the committee; and

Super session of committee.

(a) order fresh election of the committee, or

(b) appoint one or more administrators who need not be members of the society, to manage the affairs of the society for a period not exceeding one year specified in the order which period may, at the discretion of the Registrar be extended from time to time, so, however, that the aggregate period does not exceed three years.

(2) The Registrar may fix any remuneration for the administrator, as he may think fit. Such remuneration shall be paid out of the funds of the society.

(3) The administrator shall, subject to the control of the Registrar and to such instructions he may from time to time issue, exercise all or any of the powers of the committee or of any officer of the society and take all such actions as may be required in the interest of the society.

(4) The administrator or administrators shall, before the expiry of his or their term of office, take all steps to constitute a new committee in accordance with the bye-laws of the society.

(5) Before taking any action under sub-section (1) in respect of a society, the Registrar shall consult the State Co-operative Bank to which it is indebted.

Securing possession of records etc.

40. (1) (a) If the records, registers, documents or the books of accounts of a society are likely to be tampered with or destroyed and the funds, securities and other properties of a society are likely to be misappropriated or misapplied; or

(b) If the committee of a society is reconstituted at a general meeting of the society or the committee of a society is removed by the Registrar under section 39 or if the society is ordered to be wound up under section 75 and the outgoing members of the committee refused to hand over charge of the records and properties of the society to those having or entitled to receive such charge the Registrar or any other person authorised by him in this behalf may apply to the magistrate within whose jurisdiction the society functions, for securing the records and property of the society.

(2) On receipt of an application under sub-section (1), the magistrate may, by a warrant, authorize any police officer not below the rank of sub-Inspector to enter and search any place where the records and the property are kept or are believed to be kept and to seize such records and properties; and the records and properties so seized shall be handed over to the new committee or administrators of the society or the liquidator, as the case may be.

Acts of societies not to be invalidated by certain defects.

41. No act of a society or of any committee or of any officer shall be deemed to be invalid by reason only of the existence of any defect in procedure followed or in the constitution of the society or of the committee or in the appointment or election of an officer or on the ground that such officer was disqualified for his appointment.

CHAPTER V

Rights and privileges of societies

42. (1) Notwithstanding anything contained in any other law for the time being in force but subject to any claim of the Government in respect of land revenue or any sum recoverable as land revenue or as public demand, any claim, any debt or other amount due to a society by any member including a past or deceased member shall be a first charge upon the crops or other agricultural produce, cattle, fodder for cattle, agricultural or industrial implements or machinery, raw materials for manufacture and any finished products manufactured from such raw materials owned by or belonging to such member, past member or forming part of the estate of the deceased member as the case may be.

First charge of a society on certain movable assets of member for the amount due by him.

(2) Such charge shall be available even as against any amount, recoverable by the Government as if it were an arrear of land revenue subsequent to the incurring of the debt or the liability for the other amount due to the society referred to in sub-section (1).

(3) No person shall transfer any property which is subject to such charge except with the previous, permission in writing of the society which holds the charge and any transfer, without such permission shall, notwithstanding anything contained in any law for the time being in force, be void.

(4) The charge under this section shall not be available against the following articles of such member:

(a) the necessary wearing apparel, cooking vessels, beds and bedding and such personal ornaments of a woman as in accordance with religious usage cannot be parted with by her;

(b) ploughs, implements of husbandry, one pair of ploughing cattle, such manure and seed grains stocked by him, as may be necessary for the due cultivation of his lands in the ensuing year.

43. (i) Notwithstanding anything contained in this Act or in any other law for the time being in force, but subject to any claim of the Government in respect of land revenue, whether prior in time or subsequent, any member of a society, owning

Charge on the immovable property of a member for the loans borrowed.

any land or having interest in any land or other immovable property as a tenant, making an application for financial assistance from the society shall make a declaration in the form prescribed creating a charge in favour of the society on such land or interest or such portion thereof as may be specified in the declaration, as security for the payment of the loan to be granted to him on the application and for all future loans, if any that may be granted to him by the society from time to time subject to such maximum as may be determined by the society together with the interest on such amount of the loans.

(2) Such declaration may be varied or cancelled at any time by the member with the consent of the society in whose favour it is made.

(3) Subject to the provisions of sub-section (1) and to the claim of any person in whose favour a charge has been created before the date of registration of the declaration made under sub-section (1), no land in respect of which such declaration has been made or any part thereof or any interest therein shall be sold or otherwise transferred until the entire amount of the loan or advance taken by the member from the society together with interest thereon is paid to the society; and any transaction in contravention of this sub-section shall be void:

Provided that if a part of the amount borrowed by a member is paid, the society may on application from the member release from the charge such part of the land or interest therein as it may deem proper, having due regard to the security or the balance of the amount remaining outstanding from the member.

Priority of mortgage over certain claims. 44. A mortgage executed in favour of primary agricultural credit society or the State Co-operative Bank shall have priority over any claim of the Government arising from a loan granted subsequent to the execution of the mortgage.

Registration of charge and mortgage in favour of societies. 45. (1) Notwithstanding anything contained in the Indian Registration Act, 1908, a declaration made under sub-section (1) of section 43 or a variation or cancellation made under sub-section (2) of section 43 or a mortgage executed by a member in favour of a primary agricultural credit society or State Co-operative Bank, as the case may be, in respect of financial assistance given by that society shall be deemed to

have been duly registered in accordance with the provisions of that Act with effect from the date of such declaration, variation, cancellation or mortgage, as the case may be, provided that the society sends to the Sub-Registrar within the local limits of whose jurisdiction the whole or any part of the property charged or mortgaged is situated within thirty days from the date of such declaration, variation, cancellation or mortgage, as the case may be, by registered post acknowledgement due, a copy of the document making such declaration, variation, cancellation" or mortgage duly certified to be a true copy by an officer of the society authorised to sign on its behalf.

(2) The Sub-Registrar receiving the declaration in respect of a charge or variation or a mortgage referred to in subsection (1) shall, as immediately as practicable on receipt thereof, record in a register to be maintained in this behalf, the fact of the receipt of such declaration, variation or mortgage for registration.

46. Whenever a charge or a mortgage of land or interest therein is created in favour of a society or is discharged by a society, the society shall give intimation to such revenue official as may be designated in this behalf by the Government, of the particulars of the charge or mortgage in its favour or discharge thereof. The revenue official shall make a note of the particulars of charge or mortgage or discharge thereof in the Record of Rights:

Provided that the absence of an entry in the record of rights on the basis of such declaration or a defective entry passed in the record in respect thereof shall not affect the validity of the charge or mortgage or discharge thereof.

46A. The Registration in the records of the Sub-Registrar or the recording in the record of rights of a change or variation made under section 43 shall constitute sufficient notice of such change or variation to any person dealing with the property subject thereto.

47. (1) Notwithstanding anything in any law for the time being in force, a member who has availed himself of financial assistance from a society by creating a charge or mortgage on land or interest therein, shall not, so long as the financial assistance continues to be outstanding, lease, transfer create any encumbrance on such land or interest therein without prior permission in writing of the society in whose favor such charge or mortgage is created.

Noting of charge or mortgage created in the Record of Rights.

Registration to constitute notice.

Restriction on disposal of property charged or mortgaged to a society.

(2) Any lease or transfer or encumbrance created in contravention of this section shall be void.

(3) Nothing contained in any law relating to ceiling on agricultural holdings shall apply to the acquisition of land by a society charged or mortgaged to it as security by for loan.

Charge and set off of shares or interest of a member.

48. A society shall have a charge upon the share or contribution or interest in the capital and on the deposits of a member or past member, or deceased member and upon any dividend, or profits payable to a member or past member or the estate of a deceased member, in respect of any debt or outstanding demand owing to the society, and may set off any sum credited or payable to a member or past member or the estate of deceased member in or towards payment of any such debt.

Shares, interest etc, not liable to attachments.

49. Subject to the provisions of section 48 the share or contribution or interest of a member to past member or deceased member in the capital of a society shall not be liable to attachment or sale under any decree or order of any court in respect of any debt or liability incurred by such member and any receiver appointed under any law relating to insolvency for the time being in force shall not be entitled to or have any claim on such share or contribution or interest.

Register of members.

50. Every society shall keep and maintain a register or list of members or shares of the society which shall be prima facie evidence of the following particulars entered therein;

(a) the date on which any person entered in such register or list became a member;

(b) the date on which any such person ceased to be a member.

Admissibility of copy of entry as evidence.

51. (I) A copy of any entry in the books of a society which are maintained in the ordinary course of business shall, if certified in the manner as may be prescribed, be received in any suit or legal proceedings as prima facie evidence of the existence of such entry, and shall be admitted as evidence of the matters, transaction and accounts therein recorded in every case to the same extent as the original entry.

(2) No officer of a society and no officer in whose office the books of a society are deposited after liquidation shall, in any legal proceedings to which the society or the liquidator is not a party, be compelled to produce any of the society's books or documents the contents of which can be proved under this section, or to appear as a witness to prove the matters, transactions and accounts therein recorded, except under order of the court, tribunal or the arbitrator made for special cause.

52. No provision relating to registration of documents contained in any law for the time being in force apply to

(1) any instrument relating to shares in a society notwithstanding that the assets of the society consist in whole or in part of immovable property; or

(2) any debenture or bond issued by any such society and not creating, declaring, assigning, limiting or extinguishing any right, title or interest to or in immovable property, except in so far as it entitles the holder thereof to the security afforded by a registered instrument whereby the society has mortgage conveyed, or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures or bonds; or

(3) any endorsement, upon or transfer of any debenture or bond issued by any such society.

53. (1) The Government may, by notification in the Official Gazette, remit in respect of any class of societies

(a) the stamp duty chargeable under any law for the time being in force in respect of any instrument executed by or on behalf of a society or by an officer or member thereof and relating to the business of such society or any class of such instruments or in respect of any award or order made under this Act, in cases, where, but for such remission the society, officer or member as the case may be, would be liable to pay such stamp duty;

(b) any fee payable under any law for the time being in force relating to the registration of documents or court fee.

(2) The Government may, by notification, exempt any class of societies from-

Exemption from compulsory registration of instruments.

Exemption from certain taxes, fees and duties.

- (a) land revenue;
- (b) taxes on agricultural income;
- (c) taxes on sale or purchase of goods; and
- (d) taxes on professions, trades, callings and employments.

Deduction from, salary to meet societies claim in certain cases.

54. (1) Notwithstanding anything contained in any law for the time being in force, a member of a society may execute an agreement in favor of the society providing that his employer shall be competent to deduct- from the salary or wages payable to him by the employer, such amount as may be specified in the agreement and to pay the amount so deducted to the society in satisfaction of any debt or other demand owing by the member to the society.

(2) On the execution of such agreement, the employer shall, if so required by the society by a requisition in writing and so long the society.. does not intimate that the whole of such debt or demand has been paid, made the deduction in accordance with the agreement and pay the amount so deducted to the society within seven days of such deduction. Such payment shall be valid discharge of the employer of his liability to pay the amount so deducted and paid to the society.

(3) If after the receipt of li requisition made under subsection (2), the employer at any time fails to deduct the amount specified in the requisition from the salary or wages payable to the member concerned or makes default in remitting to the society the amount so deducted, the society shall be entitled to recover any such amount from the employer as arrears of land revenue.

(4) Nothing contained in this section shall apply to establishment (under the Railway administration operating any railway as defined in clause (20) of article 366 of the Constitution.

State aid to societies.

55. Notwithstanding anything contained in any law for the time being in force, the Government may

- (a) subscribe to the share capital of a society;
- (b) give loans or make advances to societies;
- (c) guarantee the repayment of principal and payment of interest on debentures or bonds issued by a society;

(d) guarantee the repayment of share capital of a society and dividends thereon at such rates as may be specified by the Government;

(e) guarantee the repayment of principal and payment of interest on loans and advances to a society; and

(f) give financial assistance in any other form, including subsidies, to any society.

56. (1) The Registrar may from time to time frame rules governing the terms of employment and working conditions of officers and employees in a society including the State Co-operative Bank or a class of societies and the society or the class of societies to which such terms of employment and of working conditions are applicable shall comply with the order that may be issued by the Registrar in this behalf:

Registrar's power to determine terms of employment in societies.

Provided that while prescribing the remuneration of the officers and other employees of the State Co-operative Bank, the Registrar shall have due regard to the salary structure of the employees of the Government and the local authorities of comparable level and status in the State.

(2) Where a dispute regarding term of employment, working conditions and disciplinary action taken by a society, arises between a society and its employees, the Registrar or any officer appointed by him shall decide the dispute and his decision shall be binding on the society and its employees:

57. No part of the funds of a society shall be divided by way of bonus or dividend or otherwise among its members:

Funds not to be divided by way of profit.

Provided that after at least one-fourth of the net profit in the year has been transferred to the reserve fund, payments from the remainder of such profits and from any profits of past years, if any, available may be made to the members by way of dividend or bonus to such extent and subject to such conditions as may be prescribed by the rules or bye-laws.

58. A society may, with the sanction of the Registrar and after one-fourth of the net profits of the year has been transferred to the reserve fund, contribute an amount not exceeding five per cent of the remaining net profits to any purpose connected with the development of co-operative movement or charitable purpose as defined in section 20 of the charitable Endowments Act, 1890.

Contribution to charitable purpose.

Contribution to Co-operative Education Fund.

59. A society shall, out of its net profit's in any year, contribute such portion of the profits not exceeding five per cent as may be prescribed to the Co-operative Education Fund constituted under the rules.

Investment of funds.

60. (1) A society may invest or deposit its fund

- (a) in the post office savings bank;
- (b) in any of the securities specified in section 20 of the Indian Trusts Act, 1882;
- (c) in the shares or debentures or securities of any other society; or

- (d) with the financing bank; or
- (e) with any society or bank carrying on the business of banking as may be approved by the Registrar; or
- (f) in the bonds issued by itself; or
- (g) in any other mode permitted by the rules or by the Registrar.

2 of 1882

Restrictions on loans.

61. (1) A society shall not make a loan to any person other than a member:

Provided that with the general or special sanction of the Registrar a society may make loan to another society:

Provided further that a society may make such loans as maybe specified in the bye-laws to any of its paid employees.

(2) Notwithstanding anything contained in sub section 1 a society may make a loan to depositor on the security. of his deposit.

Restrictions on borrowings.

62. A society shall receive deposits and loans only to such extent and under such conditions as may be prescribed or as may be specified in the bye-laws.

Restrictions on other transactions with non-members.

63. Save as provided in sections 61 and 62 the transactions of a society with any person other than a member shall be subject to such prohibitions or restrictions, as may be prescribed.

CHAPTER VII**Audit, Inquiry, Inspection and Surcharge***Audit.*

64. (1) The Registrar shall audit or cause to be audited by a person authorised by him by general or special order in writing in this behalf, the accounts of every society at least once in each co-operative year.

(2) The audit under sub-section (1) shall include an examination of overdue debt, if any, the verification of the cash balance and securities, and a valuation of the assets and liabilities of the society,

(3) The person auditing the accounts of a society shall have free access to the books, accounts, papers, vouchers, stock and other property of such society and shall be allowed to verify its cash balance and securities,

(4) The directors, managers, administrators and other officers of the society shall furnish to the person auditing the accounts of a society all such information as to the society's transactions and working as such person may require.

(5) The Registrar or the person authorised by him under Sub-section (1) to audit the accounts of a society shall have power, where necessary

(a) to summon at the time of his audit any officer, agent, servant or member of the society, past or present, who he has reason to believe can give valuable information in regard to transactions of the society or the management of its affairs; and

(b) to require the production of any book or document relating to the affairs of, or any cash securities belonging to, the society 'by any officer, agent, servant, or member in possession of such books, documents, cash or securities and in the event of serious irregularities discovered during audit, to take them into custody.

(6) If at the time of audit the accounts of a society are not complete, the Registrar or person authorised by him under sub-section (1) to audit may cause the accounts to be written up at the expense of the society.

(7) Audit fee, if any, due from any society shall be recoverable in the same manner as is provided in section 85.

65. The Registrar, or any person authorised by general or special order in this behalf by him, may inspect a society, For the purpose of inspection, the Registrar or the person so authorised by him, shall at all times have access to all books accounts, papers, vouchers, securities, stock and other property of the society and may, in the event of serious irregularities discovered during inspection, take them into custody and shall have power to verify the cash balance of the society and to

Inspection of societies.

call a committee meeting or a general meeting as he may deem necessary in the circumstances. Every officer or a member of the society shall furnish such information with regard to the working of the society as the Registrar or the person making such inspection may require.

Inquiry by Registrar.

66. (1) The Registrar may of his own motion or on application of a majority of the members of the committee or of not less than one-third of the members of the society, hold an inquiry or direct a person authorized by him by order in writing in this behalf to hold an inquiry into the constitution, working and financial condition of a society.

(2) The Registrar or the person authorized by him under sub-section (1) shall have the following powers, namely:

(a) he shall at all time have, for purpose of examination, free access to the books, accounts, cash and other properties belonging to or in the custody of the society and may summon any person in possession or responsible for the custody of any such books, accounts, documents, securities, cash or other properties to produce the same, at any place specified by him.

(b) he may, notwithstanding any rule or bye-laws specifying the period of Notice for a general meeting of the society require the officers of the society to call a general meeting at such time and place at the headquarters of the society to consider such matters, as may be directed by him; and where the officers of the society refuse or fail to call such a meeting he shall have power to call it himself;

(c) he may summon any person who is reasonably believed by him to have any knowledge of the affairs of the society to appear before him at any place at the headquarters of the society or any branch thereof and may examine such person on oath.

(3) Any meeting called under clause (b) of sub-section (2) shall have the powers of a general meeting called under the bye-laws of the society and its proceedings shall be regulated by such bye-laws.

(4) The Registrar shall communicate a brief summary of the report of the inquiry to the society, the State Co-operative Bank or a federal society to which the society is affiliated, and to the person or authority, if any, at whose instance the inquiry is made.

67, (1) The Registrar shall, on the application of a creditor of a society, inspect or direct some person authorised; by, him, by order in writing in this behalf to inspect the books of the society:

*Inspection of books of
Indebted Societies.*

Provided that no such inspection shall be made unless the applicant

(a) satisfies the Registrar that the debt is a sum then due, and that he was demanded payment thereof and has not received satisfaction within a reasonable time; and

(b) deposit with the Registrar such sum as security for the cost of proposed inspection as the Registrar may require.

(2) The Registrar shall communicate the result of any such inspection to the creditor.

68. Where an inquiry is held under section 66, or an inspection is made under section 67, the Registrar may apportion the costs, or such of the costs, as he may think fit, between the society, the members or creditors demanding an inquiry or, inspection, and the officers or former officers and the members or past members of the society as the case may be:

Costs of inquiry.

Provided, however, that

(a) no order of the apportionment of the costs, shall be made under this section unless the society or the person liable to pay the costs there under has had a reasonable opportunity of being heard; and

(b) the Registrar shall state in writing the manner in which the costs are apportioned. '

69. Any sum awarded by way of costs under section 68 may be recovered, on application to, a magistrate having jurisdiction in the place where the person from whom the money is claimable, actually and voluntarily resides or carries on business, and such magistrate shall recover the same as if it were a fine imposed by himself.

Recovery of costs.

70 (1) Where in the course of an audit, inquiry, inspection, or winding up of the society, it is found that any person who is or was entrusted with the organization or management of such society or who is or has at any time been an officer or

Surcharge.

an employee of the society; has made any payment contrary to this Act, the rules or the bye-laws or has caused any deficiency in the assets of the society by breach of trust or willful default or negligence or has misappropriated or fraudulently retained, any money or other property belonging to such society, the Registrar may, of his own motion or on the application of the committee, liquidator or any creditor, inquire himself or cause an inquiry to be made by any person authorised by him, by an order in writing, in this behalf.

(2) Where an inquiry is made under sub-section (1), the Registrar or the person authorised by him *may*, after giving the person concerned an opportunity of being heard, make an order, requiring him to repay or restore the money or property or any part thereof, with interest at such rate, or to pay contribution and costs or compensation to such extent, as the Registrar or the person authorised by him may consider just and proper.

*Suspension of officer
or employee of society.*

71. (1) Where in the course of an audit under section 64 or an inquiry under section 66 or an inspection' under section 65, or section 67, it is brought to the notice of the Registrar that a paid officer or employee of the society has committed or has been otherwise responsible for misappropriation, breach of trust or other offence, in relation to the society, the Registrar may, if he is satisfied that there is *prima facie* evidence against such paid officer or employee and the suspension of such paid officer or employee is necessary in the interest of the society, direct the committee of the society, pending the investigation and disposal of the matter, to place or cause to be placed such paid officer or employee under suspension from such date and for such period as may be specified by him.

(2) On receipt of a direction from the Registrar under subsection (1), the committee of the registered society shall, notwithstanding any provision to the contrary in the bye.-laws, place or cause to be placed such paid officer or employee under suspension forthwith.

(3) The Registrar may direct the committee to extend from time to time, the period of suspension and the paid officer or employee suspended shall not be reinstated except with the previous sanction of the Registrar.

Chapter VIII
Settlement of Disputes

72. (1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management or the business of a society arises:

*Disputes which may
be referred to
arbitration.*

(a) among members, past members and persons claiming through members, past members and deceased members, or

(b) between a member, past member or person claiming through a member, past member or deceased member and the society, its committee or any officer, agent or employee of the society past or present, or

(c) between the society or its committee and any past committee, any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased employee of the society, or

(d) between the society and any other society, between a society and liquidator of another society or between the liquidator of one society and the liquidator of another society, or

(e) between the society and a person other than member of the society who has been granted a loan by the society or with whom the society has or had business transactions or any person claiming through such a person; or

(f) between the society and a creditor of the society, such disputes shall be referred to the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute.

(2) For the purpose of sub-section (1), the following shall be deemed to be disputes touching the constitution, management or the business of a society namely:

(a) a claim by the society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not;

(b) a claim by a surety against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor whether such debt or demand is admitted or not;

(c) any dispute arising in connection with the election of any officer of a society;

(d) a claim by a society against a member, past member or the nominee, heir or legal representative of a deceased member for delivery of possession to the society of land or other immovable property resumed by it for breach of the conditions of assignment or allotment of such land or other immovable property.

(3) If any question arises whether a dispute referred to the Registrar under this section is or is not a dispute touching the constitution, management or the business of a society, the decision thereon of the Registrar shall be final and shall not be called in question in any court.

(4) (11) Notwithstanding anything contained in any law for the time being in force providing for any period of limitation for suits and other proceedings but subject to the specific provisions made in this Act, the period of limitation within which the dispute shall be referred to the Registrar under sub-section (1) shall

(i) when the dispute relates to the recovery of any sum including interest thereon due to a society by a member thereof, be computed from the date on which such member dies or ceases to be a member of the society;

(ii) save as otherwise provided in sub-clause (iii), when the dispute relates to any act or omission on the part of any of the parties referred to in clause (b) or clause (c) of sub-section (I), be six years from the date on which the act or omission with reference to which the dispute arose, took place;

(iii) when the dispute relates to a society which has been ordered to be wound up under section 75 or in respect of which an administrator has been appointed under section 39 be six years from the date of the order issued under section 75 or section 39 as the case may be;

(iv) when the dispute is in respect of an election of an officer of a society other than'. a society referred to in sub-section (1) of section 34, be one month from the date of the declaration of the result of the election.

(b) the period of limitation in the case of any other dispute except those mentioned in the foregoing clause which are required to be referred to the Registrar under the last preceding section shall be regulated by the provisions of the law for the time being in force providing for any period of limitation for suits and other proceedings, as if the dispute was a suit and the Registrar, a civil court.

(c) Notwithstanding anything contained in clauses (a) and (b) the Registrar may admit a dispute after the expiry of the period of limitation, if the applicant satisfies the Registrar that he had sufficient cause for not referring the dispute within such period and the dispute so admitted shall be a dispute which shall not be barred on the ground that the period of limitation has expired.

73. (1) The Registrar may, on receipt of the reference of dispute under section 72

Reference of dispute to arbitration.

(a) decide the dispute himself, or

(b) transfer it for disposal to any person who has been invested by the Government with powers of the Registrar in that behalf, or

(c) refer it for disposal to one or more arbitrators to be appointed by the Registrar.

(2) Where the reference relates to any dispute involving immovable property the Registrar or such person or arbitrator, may order that any person be joined as a party who has acquired any interest in such property subsequent to the acquisition of interest therein by a party to the reference and any decision that may be passed on the reference by the Registrar or the person or the arbitrator aforesaid, shall be binding on the party so joined as if he were an original party to the reference.

(3) The Registrar may withdraw any reference transferred under clause (b) of sub-section (1) or referred under clause (c) of that sub-section and decide it himself or refer the same to another arbitrator or such another person for decision.

- (4) The Registrar or such person or arbitrator to whom a dispute is referred for decision under this section may, pending the - decision of the dispute, make such interlocutory orders he may deem necessary in the interest of justice.

(5) The Registrar or such person shall decide the dispute or the arbitrator shall pass an award, in accordance with the provisions of the Act and the rules and the bye-laws.

Power of State Co-operative Bank to proceed.

74. (1) If a society is unable to pay its debts to the State Co-operative Bank by reason of its members committing default in the payment of the moneys due by them, the State Co-operative Bank may direct the committee of such a society to proceed against such members under section 72 and if the committee fails to do so within a period of ninety days from the date of receipt of such direction, the State Co-operative Bank itself may proceed against such members in which case the provisions of this Act, the rules or the bye-laws shall apply as if all reference to the society or its committee in the said provisions were references to the State Cooperative Bank.

(2) Where the State Co-operative Bank has obtained a decision or award against a society in respect of moneys due to it from the society, the State Co-operative Bank may proceed to recover such moneys firstly from the assets of the society and secondly from the members to the extent of their debts due to the society.

Chapter IX

Winding up of Societies

Winding up of Societies.

75. (1) **If** the Registrar, after an inquiry has been held under section 66 or an inspection has been made under section 67, or on receipt of an application made by not less than three fourths of the members of a society, is of opinion that the society ought to be wound up, he may in consultation with the State Co-operative Bank issue an order directing it to be wound up.

(2) The Registrar, may, of his own motion, make an order directing the winding up of a society

(a) where it is a condition of the registration of the society that the society shall consist of at least ten members and the number of members has become less than ten, or

(b) where the society has not commenced working with in six months of its registration or such further time as may be granted by the Registrar or has ceased to function in accordance with co-operative principles.

(3) The Registrar may cancel an order for the winding up of society, at any time, in any case, where, in his opinion, the society should continue to exist

(4) A copy of such order shall be communicated by registered post to the society and to the State Co-operative Bank of which the society is a member.

76. (1) Where the Registrar has made an order under section 75 for the winding up of a society, the Registrar may appoint a liquidator for the purpose and fix his remuneration and may remove such person and appoint another in his place.:

Liquidator.

Provided that it shall not be necessary to appoint any liquidator for winding up of a society which has not commenced working, or has share capital and members' deposits not exceeding five hundred rupees.

(2) A liquidator shall, on appointment, take into his custody or under his control all the property, effects and actionable claims to which the society is or appears to be entitled and all books, records and other documents pertaining to the business of the society and shall take such steps as he may deem necessary or expedient, to prevent loss or deterioration of, or damage to, such property, effects and claims. He may carry on the business of the society so far as may be necessary with the previous approval of the Registrar.

(3) Where an appeal is preferred under section 98, an order of winding up of a society made under section 75 shall not operate thereafter until the order is confirmed in appeal:

Provided that the liquidator shall continue to have custody or control of the property, effects and actionable claims mentioned in subsection (2) and have authority to take the steps referred to in that subsection.

(4) Where an order of winding up of a society is set aside in appeal, the property, effects and actionable claims of the society shall revert in the society.

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(4) Where an order of winding up of a society is set aside in appeal, the property, effects and actionable claims of the society shall revert in the society.

Powers of Liquidator.

77. (1) Subject to any rules made in this behalf, the whole of the assets of a society, in respect of which an order for winding up has been made, shall vest in the liquidator appointed under section 76 from the date on which the order takes effect and the liquidator shall have power to realize such assets by sale or otherwise.

(2) Such liquidator shall also have power, subject to the control of the Registrar

(a) to institute and defend suits and other legal proceedings on behalf of the society in the name of his office;

(b) to determine from time to time the contribution (including debts due and costs of liquidation) to be made or remaining to be made by the members or past members or by the estates or nominees, heirs or legal representatives of deceased members by or any officers or former officers, to the assets of the society;

(c) to investigate all claims against the society and subject to the provisions of this Act, to decide questions of priority arising between claimants;

(d) to pay claims against the society including interest up to the date of winding up according to their respective priorities, if any, in full or rateably, as the assets of the society may permit; the surplus, if any, remaining after payment of the claims being applied in payment of interest from the date of such order of winding up at a rate fixed by him but not exceeding the contract rate in any case;

(e) to determine by what persons and in what proportions the cost of the liquidation are to be borne;

(f) to determine whether any person is a member, past member or nominee of deceased member;

(g) to give such directions in regard to the collection and distribution of the assets of the society as may appear to him to be necessary for winding up the affairs of the society;

(h) to carry on the business of the society so far as may be necessary for the beneficial winding up of the same;

(i) to make any compromise or arrangement with creditors or - persons claiming to be creditors or having or alleging to have any claim, presently or future, whereby the society rendered liable;

(j) to make any compromise or arrangement with any person between whom and the society there exists any dispute and to refer any such dispute to arbitration;

(k) after consulting the members of the society to dispose of the surplus if any, remaining after paying the claims against the society in the manner prescribed; and

(1) to compromise all calls of liabilities to calls and debts and liabilities capable of resulting in debts, and - all claims, present or future, certain or contingent, subsisting or supposed to subsist between the society and a contributory or alleged contributory or other debtor or person and all questions in any way relating to or affecting the assets or the winding up of the society on such terms as may be agreed and take any security for the discharge of any such call, liability, debt for claim and give a complete discharge in respect thereof.

(3) When the affairs of a society have been wound up, the liquidator shall make a report to the Registrar and deposit the records of the society in such place as the Registrar may direct.

78. Notwithstanding anything contained in any law relating to insolvency as may for the time being in force, the contribution assessed by a liquidator shall rank in order of priority next to debt due to the Government or to any local authority in solvency proceedings.

Priority of contributions assessed by liquidator.

79. (1) The Registrar may, after considering the report of the liquidator made to him under sub-section (3) of section 77 order the registration of the society to be cancelled.

Powers of Registrar to cancel registration of a co-operative society.

(2) An order passed under sub-section (1) shall be communicated by registered post to the president of the society and to the federal society, if any, and to the State Co-operative Bank, of which the society was a member.

CHAPTER X

Execution of awards, decrees, orders and decisions

Enforcement of charge.

80. Notwithstanding anything contained in Chapter VIII or any other law for the time being in force, but without prejudice to any other mode of recovery provided in this Act, the Registrar or any person subordinate to him empowered by the Registrar in this behalf may, on the application of a society, make an order directing the payment of any debt or outstanding demand due to the society by any member or past or deceased member, by sale of the property or any interest therein which is subject to a charge under section 42:

Provided that no order shall be made under this section unless the member, past member or the nominee, heir or legal representative of the deceased member, has been served with a notice in the manner prescribed and has failed to pay the debt or outstanding demand within the time specified in the notice which shall not be less than thirty days.

Execution of orders etc.

81. Every decision, award or order duly passed by the Registrar or arbitrator under section 32, section 33, 70, section 73, section 80 or section 98 shall, if not, carried out

(a) where the decision, award or order provides for the recovery of money, be executed according to the law for the time being in force relating to the recovery of the land revenues:

Provided that an application for the recovery of any sum in the manner aforesaid accompanied by a certificate signed by the Registrar or any person subordinate to him and empowered by the Registrar in this behalf shall be made to the competent revenue authority that may be prescribed within twelve years from the date of the order; and

(b) in any other case be executed by the Registrar or any person subordinate to him and empowered by the Registrar in this behalf by attachment and sale or sale without attachment of any property of the person or society against whom the order, decision or award has been obtained or passed.

82. The orders of the liquidator under section 77 shall be executed in accordance with the Act and rules for the time being in force for the recovery of arrears of land revenue.

Execution of orders of liquidator.

83. Where the Registrar is satisfied that a party to any reference made to him under section 72 with intent to defeat or delay the execution of any decision that may be passed thereon is about to

Attachment before award.

- (a) dispose of the whole or any part of the property; or
- (b) remove the whole or any part of the property from the local limits of the jurisdiction of Registrar, the Registrar may unless adequate security is furnished, direct attachment of the said property or such part thereof as he thinks necessary. Such attachment shall have the same effect as if made by a competent civil court:

Provided that the powers of the Registrar under this section shall not be delegated to any officer below such rank as may be prescribed:

Provided further that immovable property shall not be sold in execution of a decree unless such property has been previously attached:

Provided further that where the decree has been obtained on the basis of a mortgage of such property, it shall not be necessary to attach it.

84. The Registrar or any person empowered by him in this behalf shall be deemed, when exercising any powers under this Act for the recovery of any amount by attachment and sale or by sale without attachment of any property, or when passing any orders on any application made to him for such recovery to be a civil court for the purposes of any law relating to limitation.

Registrar or person empowered by him to be civil court for certain purposes.

85. (1) All sums due from a society, or from an officer or member or past member of a society as such, to Government, including any costs awarded to Government under any provision of this Act, may, on a certificate issued by the Registrar in this behalf, be recovered in the same manner as arrears of land revenue.

Recovery of sums due to Government.

(2) Sums due from a society to Government and recoverable under sub-section (1), may be recovered, firstly from the property of the society; secondly, in the case of a society the liability of the members of which is limited, *from* the members, past members or the estates of deceased members, subject to the limit of their liability and thirdly, in the case of other societies, from the members, past members or the estates of the deceased members:

Provided that the liability of past members and the estates of deceased members shall in all cases be subject to the provisions of section 29

CHAPTER XI

State Co-operative Bank

Applicability of Chapter.

86. Notwithstanding anything contained to the contrary in this Act or rules, the provisions of this Chapter shall apply to the State-Co-operative Bank that may be registered' in the State under' this Act.'

Registration of State Co-operative Bank.

87. Notwithstanding anything contained in this Act, a society shall not be registered as the State Co-operative Bank unless the application for registration thereof is signed by at least 10 persons of whom one shall be the Government and the rest shall consist of not less than 5 societies.

Business which the State Co-operative Bank may transact.

88. It shall be lawful for the State Co-operative Bank to carry on all or any of the following business viz.:

(1) to do banking business as defined in Clause (b) of 'section 5 and section 6 (i) read with section 56 of the Banking Regulation Act, 1949 or any other law for the time being in force and in general to carry on and discharge such functions and business as are usually undertaken by banks or banker's;

(2) to serve as an apex bank for the co-operative societies and 'to provide all types of financial accommodation, including short, medium and long-term loans for all kinds of economic activities, including agriculture and allied activities, industry, trade and commerce, to Co-operative societies as well as to other persons including firms, companies or other corporate bodies;

(3) to act as an agent of the Reserve Bank in the matter of operating currency chests on such terms and conditions as may be mutually agreed upon; and

(4) to open branches, pay offices or regional offices in any part of the State of Sikkim or outside Sikkim with the previous sanction of the Registrar.

89. The Government shall contribute not less than 51 per cent of the total issued capital of the State Co-operative Bank.

Government Share Capital.

90. The Committee of the State Co-operative Bank shall consist of 9 members of whom 3 shall be nominated by the Government, 3 shall be representatives of societies, 2 shall be representative of members other than societies to be elected or nominated as per the bye-laws of the Bank, and one Managing Director to be appointed by the Government in consultation with the Reserve Bank.

Committee.

Provided that the initial committee shall be entirely nominated by the Government for a period of 3 years or such other extended period as may be decided by the Government.

91.: The State Co-'Operative Bank may at any time acquire in whole or in part' the business of the State" Bank of Sikkim established, under the State Bank of Sikkim Proclamation, 1968, as may ,be provided by Central Government by law.

Taking over the business of the State Bank of Sikkim.

92. (1) the' State Co-operative Bank may with the prior approval of the Government, and subject to such terms and conditions as the Government may deem fit to impose, borrow money by issue of bonds.

Issue of bonds.

(2) The bonds shall be in the Form of promissory note and shall not be repayable before the expiry of five years from the date of issue thereof.,

. Provided that the committee "may repay the amount due under the bonds at any time: before the date so .fixed, after issue of notice in such manner as the committee may direct in that behalf to the holders of the bonds.

93. (1) The principal of and interest on. the bonds issued under section 92 shall, subject to such maximum amount as may be fixed by the. Government and subject to such conditions as the Government may think fit to.. impose, carry the guarantee of the Government.

Guarantee by Government of principal of and interest on the bonds.

(2) the Government may, subject to the provisions of any Act in that regard, increase the maximum amount of any guarantee given under sub-section. (1).

(3) The Government may, after consulting the Committee,

(a) by notification in the Official Gazette, and

(b) by notice of not less than fourteen days in such *of the* important news papers in the State and in other States of India, as the Government may select in this behalf, withdraw any guarantee given by them or reduce the maximum amount thereof or modify the conditions, subject to which it was given:

Provided that the withdrawal, reduction or modification of any guarantee under this sub-section shall not in any way affect the guarantee carried by any bonds issued prior to the date on which such withdrawal, reduction or modification takes effect.

Other Guarantee by Government.

94, Where the State Co-operative Bank or the primary agricultural credit society has given a long-term loan to a member for the improvement of any land in excess of the amount of the loan to which such member would be entitled on the basis of the value of the land as determined in accordance with the principles of valuation approved by the committee from time to time with the approval of the Registrar, the Government may guarantee for a specified period the repayment of the loan to the extent of the excess

Right of primary agricultural credit society or the State Co-operative Bank to pay prior debts to mortgagor.

95. (1) Where a mortgage is executed in favor of a primary agricultural credit society or the State Co-operative Bank for payment of prior debts of the mortgagor, the society or the bank may, notwithstanding anything in any law for the time being in force relating to the transfer of properties, by notice in writing, require any person to whom any such debt is due, to receive payment of such debt or part thereof from the bank at its registered office within such period as may be specified in the notice.

(2) Where any' such person fails to receive such notice or such payment, such debt or part thereof, as the case may be, shall cease to carry interest from the expiration of the period specified in the notice:

Provided that where there is a dispute as regards the amount of any such debt, the person to whom such debt is due shall be bound to receive payment of the amount offered by the primary agricultural credit society or the State Co-operative Bank, as the case may be, towards the debt but such receipt shall not prejudice the right, if any, of such person to recover the balance claimed by him.

96. The State Co-operative Bank may maintain general supervision over or inspect societies affiliated to or financed by it and take up the management of the societies on such terms and conditions as may be approved by the Registrar.

Power of the State Co-operative Bank to supervise.

96. A (i) Subject to the provisions of section 89 allotment of shares to members of the State Co-operative Bank shall be governed by the provisions of its bye-law as approved by the Registrar.

Allotment of share and voting rights of the members of the State Co-operative Bank.

(2) The voting rights of members shall be proportionate to the shares held by each member.

CHAPTER X II

Insured Co-operative Banks

97. Notwithstanding anything contained in this Act, in the case of an insured co-operative bank

Insured Co-operative Bank.

(1) an order for the winding up, or an order sanctioning a scheme of compromise or arrangement or of amalgamation or reconstruction (including division or reorganization), of the bank may be made only, with the previous sanction in writing of the Reserve Bank;

(2) an order for the winding up of the bank shall be made by the Registrar if so required by the Reserve Bank in the circumstances referred to in section 13D of the Deposit Insurance Corporation Act, 1961;

47 of 1961

(3) if so required by the Reserve Bank in the public interest or for preventing the affairs of the bank being conducted in a manner detrimental to the interests of the depositors or for securing the proper management of the bank, an order shall be made for the supersession (removal) of the committee or other managing body (by whatever name called) of the bank

and the appointment of an administrator therefor for such period or periods, not exceeding five years in the aggregate, as may from time to time be specified by the Reserve Bank and the administrator so appointed shall, after the expiry of his term of office, continue in office until the day immediately preceding the date of the first meeting of the new committee;

(4) no appeal, revision or review shall lie or be permissible against an order such as is referred to in clauses (1), (2) or (3) made with the previous sanction in writing or on the requisition of the Reserve Bank and such order or sanction shall not be liable to be called in question in any manner;

(5) the liquidator of the insured co-operative bank or transferee bank, as the case may be, shall be under an obligation to repay to the Deposit Insurance Corporation in the circumstances, to the extent and in the manner referred to in section 21 of that Act.

Explanation.

(i) For the purposes of this section "a co-operative bank" means a bank as has been defined in the Deposit Insurance Corporation Act, 1961.

47of1961

(ii) "Insured co-operative bank" means a society which is an insured bank under the provisions of the Deposit Insurance Corporation Act, 1961.

47 of1961

(iii) "Transferee bank" in relation to an insured co-operative bank means a co-operative bank

(a) with which such insured co-operative bank is amalgamated, or

(b) to which the assets and liabilities of such insured co-operative bank are transferred, or

(c) into which such insured co-operative bank is divided or converted under the provisions of this Act.

CHAPTER. XIII
Appeals and Revision

98. An appeal shall lie under this section against

Appeals.

(a) an order of the Registrar made under sub-section (2) of section 8 refusing to register a society;

(b) an order of the Registrar made under sub-section (4) of section 11 refusing to register an amendment of the bye-laws of a co-operative society;

(c) a decision of a society other than a primary agricultural credit society, refusing to admit any person as a member of the society who is otherwise duly qualified for membership under the bye-laws of that society;

(d) a decision of a society expelling any of its members;

(e) an order of the Registrar removing the committee of a society made under section 39;

(f) an order made by the Registrar under section 68 apportioning the cost of an enquiry held or an under section 66 inspection made under section 67;

(g) any order of surcharge under section 70;

(h) any decision or award made under section 73;

(i) an order made by the Registrar under section 75 the winding up directing the winding up of a society;

(j) any order made by the liquidator of a society in exercise of the powers conferred on him by section 77;

(k) any order made under section 13.

(2) (a) An appeal against any decision or order under sub-section (1), excepting those mentioned in clauses (c) and (d), shall be made to the Government within sixty days from the date of the decision or the order; and

(b) the appeal against any decision of a society mentioned in clauses (c) and (d) of sub-section (1) shall be made to the Registrar within sixty days from the date of such decision;

(3) No appeal shall lie under this section from decision or any order made by the Registrar in appeal.

(4) The Government or the Registrar, to whom an appeal is made under sub-section (2) may call for and examine the record relating to the matter appealed, for the purpose of satisfying itself or himself as to the legality or propriety of any decision or order passed and if in any case it appears to the Government or the Registrar, as the case may be, that any such decision or order should be modified, annulled or reversed, the Government or the Registrar, as the case may be, may pass such order thereon as he may deem fit.

Revision.

99. Subject to the provisions of section 97, the Government may on the application of a party to a reference, call for and examine the record of any proceedings in which no appeal lies to the Government under section 98 for the purpose of satisfying itself as to the legality and propriety of any decision or order passed and if in any case it shall appear to it that any such decision or order should be modified, annulled or revised, it may pass such order thereon as it may deem fit.

Interlocutory orders

100. Where an appeal is made under section 98 or where the Government calls for the record of a case under section 99, the appellate authority for the Government as the case may be, may, in order to meet the ends of justice make such interlocutory order, including an order of stay, pending the decision of the appeal or revision as such authority or Government may deem fit.

CHAPTER XIV

Offences and Penalties

Offences.

101. (1) No person, other than a society, shall carry on business under any name or title of which the word "co-operative" or its equivalent in any Indian language, is part, without the sanction of the Government.

(2) Any person carrying on any trade or business in contravention of sub-section (1) shall be punished with a fine which may extend to two hundred rupees and in the case of a continuing offence with a fine of rupees 25 for each day on which the offence is continuing after conviction thereof.

Provided always that nothing in this section shall apply to the use by any person or his successor in interest of any name or title under which he carried on 'his business with the word "co-operative" or its equivalent in any Indian language, at the date on which the Sikkim Co-operative Societies Act, 1955 came into operation.

(3) Any member or past member or the nominee, heir, or legal representative of a deceased member of a society who contravenes the provisions of section 42 by disposing of any property in respect of which the society is entitled to have a first charge under that section or do any other act to the prejudice of such claim, shall be punishable with fine which may extend to two hundred rupees.

(4) The committee of a society or an officer or member thereof willfully making a false return or furnishing false information, or any person willfully or without any reasonable excuse disobeying any summons, requisition or lawful written order issued under the provisions of this Act or willfully does not furnish any information required from him by a person authorized in this behalf under the provisions of this Act, shall be punishable with fine which may extend to two hundred rupees.

(5) Any employer, who, without sufficient cause, fails to deduct or fails to pay to a society the amount deducted by him under sub section (2) of section 54 within a period of seven days from the date on which such deduction is made shall be punishable with fine which may extend to five hundred rupees and in the case of a continuing default with a further fine of Rs. 25 for each day on which the offence continues after conviction thereof.

(6) If default is made in complying with provisions of section 28, sub-section (1) of section 33, section 57, section 60, Section 61, section 62, the society, and every officer or member of committee of the society who is default shall be punishable with fine which may extend to two hundred rupees.

(7) .If any person--:

(i) after ceasing to be a member under sub-section (2) of section 2] acts as a member; or

(ii) exercises the rights of member in contravention of the provisions of section 25 shall be punishable with fine which may extend to two hundred rupees.

(8) If any person collecting the share money for a society in formation does not deposit the same in the State Co-operative- Bank within fourteen days of its receipt, he shall be punishable. with fine which may extend to five hundred rupees.

(9) If any person collecting the share money for a. society in formation makes use of the funds so raised for conducting any trade or business in the name of the society to be registered or otherwise, he shall be punishable with' fine which may extend to five hundred rupees.

(10) If any officer or member of a society misappropriates or unauthorizedly or illegally keeps any money belonging to that society he shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

*Offences by compa-
nies.*

102. Where an offence under sub-section (1) or sub-section (4) of section 101 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 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 provided in the aforesaid sub-section if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence:

Provided further that if it is proved that the offence has been committed by the consent or connivance of or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation - For the purposes of this section

(a) "company" means a body corporate, and includes a firm or other association of individuals; and

(b) director" in relation to firm means a partner of the firm.

103. (1) No court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act.

Cognizance of Offences.

(2) No prosecution shall be instituted under this Act without the previous sanction of the Registrar and such sanction shall not be given

(i) without giving to the person concerned an opportunity to represent his case;

(ii) if the Registrar is satisfied that the person concerned acted in good faith.

CHAPTER XV

Miscellaneous

104. Every society shall have an address registered in accordance with the rules to which all notices and communications may be sent and shall send to the Registrar notice of any change thereof within thirty days of the change.

Address of society.

105. Every society shall keep a copy of this Act, the rules and its bye-laws open to inspection free of charge at all reasonable times at the registered address of the society.

Copy of the Act, Rules and bye-laws to be open to inspection.

106. Every order, decision or award made or given by the Registrar, or any officer or other person or a liquidator, under this Act, shall be pronounced on the day on which the case is finally heard or on some future day of which due notice shall be given to the parties.

Orders to be pronounced.

107. (1) The Registrar or any other person to whom a dispute is referred for decision or an appeal is made against any order or decision made under this Act, shall hear the dispute or the appeal in the manner prescribed, and shall have power to summon and enforce attendance of witnesses including the parties interested or any of them and to com

Procedure for settlement of disputes and power Of the Registrar or any other person to whom a dispute is referred

or an appeal is made for decision. pel them to give evidence on oath, affirmation or affidavit, and to compel the production of documents by the same means and as far as possible in the same manner, as is provided in the case of a civil court by' the Code of Civil Procedure, 1908.

(2) except with the permission of the Registrar or any other person deciding" a dispute, as the case may be, no party shall be represented at the hearing of a' dispute by a legal practitioner.

(3) (a) If the Registrar or any other person to whom a dispute is referred is satisfied that a person, whether he' be a member of the society or not, has acquired any interest in the property of a person who is a party to a dispute he may order that the person who has acquired the interest in the property may join as a party to the dispute; and any decision, order or award that may be passed by the Registrar or his nominee or any other person shall be binding on the party so joined, in the same manner as if he were an original party to the dispute.

(b) Where a dispute has been instituted in the name of a wrong person, or where all the defendants have not been included, the Registrar or any other person to whom a dispute is referred for decision under section 72 may at any stage of the hearing of the dispute, if satisfied that the mistake was bonafide, order substitution of parties upon such terms as he may think just.

(c) The Registrar or any other person, to whom a dispute is referred for decision under section 72, may at any stage of the proceedings, either upon or without the application of any party, and on such terms. as may appear to the Registrar or any other person deciding a dispute, as the: case may be, to be just, order the removal of the name of any party improperly included in the dispute and substitution of the name of any person who ought to have been included in the dispute or whose presence before the Registrar, or any other person deciding the dispute, as the case may be, may be necessary for effectually and completely adjudicating upon and'; settling all the questions involved in the dispute.

(d) Any person who is a party to the dispute and entitled to more than one relief in respect of the same cause of action may claim all or any or any of such relief's; but if he omits to claim for all such relief's. he shall not forward a claim for any relief so omitted, except with the leave of the Registrar or any other person to whom a dispute is referred for decision.

108. (1) In exercising the function conferred by or under this Act, the Government, the Registrar, the arbitrator or other person deciding a dispute and the liquidator or an auditor of a society shall have all the powers of a civil court, while trying a suit, under the Code of Civil Procedure, 1908, in respect of the following matters namely:

Powers of civil court.

5 of 1908

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document

(c) proof of facts by affidavits; and

(d) issuing commissions for examination of witness,

(2) In the case of any affidavit, any officer appointed by the Government, the Registrar, the arbitrator or any other person deciding a dispute or the liquidator, or the auditor as the case may be, may administer the oath to the deponent.

109. (1) Save as provided in this Act, no civil or revenue court shall have - any jurisdiction in respect of

Bar of jurisdiction of courts.

(a) the registration of a society or bye-laws or of an amendment of bye-laws;

(b) the removal of a committee;

(c) any dispute required under section 72 to be referred to the Registrar; or order for payment of moneys under 85,

(2) While a society is being wound up, no suit or other legal proceeding relating to the business of such society shall be proceeded with, or instituted against the liquidator as such or against the society or any member thereof, except by leave of the Registrar and subject to such terms as he may impose.

(3) Save as provided in this Act, no order, decision or award made under this Act shall be questioned in any court or on any ground whatsoever.

Application of limitation Act, 1963. 110. The provisions of sections 4, 5, 12 and 14 of the Limitation Act, 1963 shall be applicable to the filing of any appeal or application for revision under this Act. (36 of 1963)

Power to exempt class of societies. 111. The Government may, by general or special order, published in the Official Gazette, exempt any society or any class of societies from any of the provisions of this Act or may direct that such provisions shall apply to such society or class of societies with such modifications as may be specified in the order.

Service of notice under the Act. 112. Every notice or order issued or made under this Act, may be served on any person, by properly addressing it to the last known place of residence or business of such person prepaying and posting by registered post "a letter containing the notice or order and unless the contrary is proved, such service shall be deemed to have been effected at the time at which the letter would be delivered in the ordinary course.

Notice necessary in suits. 113. No suit shall be instituted against a society or any of its officers in respect of any act touching the constitution, management, or the business of the society until the expiration of two months next after notice in writing has been delivered to the Registrar, or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

Indemnity. 114. No suit, prosecution or other legal proceedings shall lie against the Registrar or any person subordinate to him or acting under his authority in respect of anything in good faith done or purporting to have been done under this Act.

Companies Act, 1956 not to apply 115. The provisions of the Companies Act, 1956 shall not apply to societies.

Saving of existing societies. 116. (1) Any society, which is existing as on the date of coming into force of this Act and which has been registered under the Sikkim Co-operative Societies Act, 1955 or under any other law relating to co-operative Societies in force in (1 of 1965)

the State of Sikkim shall be deemed to have been registered under this Act, and its bye-laws shall, so far as the same are not inconsistent with the express provisions of the Act, continue in force until altered or rescinded.

(2) All appointments, rules and orders made, notifications and notices issued and suits and other proceedings instituted under the Sikkim Co-operative Societies Act, 1955 shall be deemed to have been respectively, made issued or instituted under this Act, unless duly revoked or cancelled.

117. (1) The Government may, for the whole or any part of the State of Sikkim and for any class of societies, after previous publication in the Gazette, make rules to, carry out the purposes of this Act.

Powers to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all, or any of the following matters, namely:

(a) the applicant to whom the order refusing the registration of a society may be sent by the Registrar;

(b) the procedure and conditions for change in the form and extent of the liability of a society;

(c) the matters in respect of which a society shall or may make bye-laws;

(d) the procedure to be followed for amendment of byelaws by a society;

(e) the, qualifications or disqualifications of individuals who may be admitted as members of societies;

(f) the provisions for a, second or casting vote by the chairman of a meeting of a society;

(g) the appointment by a society of one of its members to represent and vote on its behalf at a meeting of another society 'of which it 'is a member;

(h) the maximum number of shares or portion of the share capital of a society which may be held by an individual member;

(i) the procedure for the nomination of a person to whom the share or interest of a member on his death may be transferred or the value thereof may be paid;

(j) the mode in which the value of a deceased member's share shall be ascertained;

(k) the election of members of committee by the general body of a society including the appointment of Returning Officers and the powers and functions of such Returning Officers;

(l) the requisitioning of a general meeting of a society;

(m) the remuneration payable to a new committee or Administrators appointed in place of a committee removed by the Registrar;

(n) the qualifications or disqualifications for membership of committee of a society, the authority competent to decide questions of disqualifications and appeals from such decisions;

(o) the qualifications of employees of societies;

(p) the prohibition against officers of a society being interested in contracts with the society;

(q) the matters connected with the partnership of the Government in societies;

(r) the rate at which dividend may be paid by societies;

(s) the payment to be made to the 'Co-operative Education Fund' by a society out of its net profits and the mode of its investment;

(t) the mode of investment of funds of a society;

(u) the objects of the reserve fund of a society and mode of its investment;

(v) the mode of disposal of reserve fund of a society on its winding up;

(w) the extent and conditions subject to which a society may receive deposits and loans;

(x) the restrictions on transactions by a society with non-members;

(y) the restrictions on grant of loans by a society against its shares;

(z) the form and standards of fluid resources to be maintained by societies accepting deposits and granting cash credits;

(aa) the levy of audit fees on societies;

(bb) the procedure to be followed in proceedings before the Registrar, arbitrator or other person deciding disputes;

(cc) the conditions subject to which assets of a society shall vest in a liquidator and the procedure to be adopted in winding up of a society;

(dd) the procedure for recovery of amounts due or payable to a society;

(ee) the mode of making attachment before judgments;

(ff) the procedure and conditions for the issue, redemption, re-issue, transfer, replacement or conversion of bonds issued by a society;

(gg) the maximum amount of principal, the rate of interest and other conditions for the guarantee of debentures/bonds issued by a society;

(hh) the procedure for the distraint and sale of property, mortgaged to a primary agricultural credit society or to the State Co-operative Bank;

(ii) the immediate sale of perishable articles;

(jj) the manner of registering the address of a society;

(kk) the account books and registers to be kept by a society and power of Registrar to direct the accounts and books to be written up;

(11) the manner of certification of entries in the books of a society and of copies of documents kept by it in the course of its business;

(mm) the statements and returns to be furnished by societies to the Registrar;

(nn) the restrictions on person appearing as legal practitioners;

(00) the inspection of documents and the levy of fees for granting certified copies thereof; and

(pp) the matters expressly required or allowed by the Act to be prescribed.

(3) Every rule made under this section shall immediately after it is made, be laid before the State Legislature if it is in session and if it is not in session, in the session immediately following for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiration of the session in which it is so laid or the session immediately following, the House agrees, in making any modification in the rules or in the annulment of the rules, the rules shall thereafter have effect only in such modified form or shall stand annulled, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Repeal.

118. On the day on which this Act comes into force the Sikkim Co-operative Societies Act, 1955 as in force in the State of Sikkim shall stand repealed:

Provided that the repeal shall not affect

(a) the previous operation of the Act so repealed or anything duly done or suffered there under; or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the Act so repealed; or

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against the Act so repealed; or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if that Act had not been repealed.

119. (1) If any difficulty arises in giving effect to the provisions of this Act in consequence of the transition to the said provisions from the provisions of the Acts in force immediately before the commencement of this Act, the Government may, by notification in the Official Gazette, make such

provisions as appear to it to be necessary or expedient for removing the difficulty. ..

Power to remove difficulties.

(2) If any difficulty arises in giving effect to the provisions of this Act (otherwise than in relation to the transition from the provisions of the Acts in force before the commencement of this Act), the Government may by notification make provisions, not inconsistent with the purpose of this Act, as appear to it to be necessary or expedient for removing the difficulty. .

**THE SIKKIM AGRICULTURAL LAND
CEILING AND REFORMS
ACT, 1977.**

ARRANGEMENT OF SECTIONS

CHAPTER I

1. Short title, extent and commencement
2. Definitions.
3. Act to override other laws.
4. Determination of bustiwalla.

CHAPTER II

Ceiling on Agricultural lands

5. Persons not entitled to hold agricultural land in excess of ceiling limit.
6. Ceiling limit.
7. Transfer of land.
8. Persons holding land in excess of ceiling limit to file statement.
9. Preparation of draft statements as regards lands in excess of ceiling limit.
10. Final statement.
11. Vesting of lands in excess of ceiling limit.
12. Payment of amount for excess land.
13. Constitution of Tribunal and appeals thereto.
14. Second appeal to State Land Tribunal.
15. Mode of payment of amount.
16. Ceiling limit of future acquisition of land.
17. Bar of jurisdiction.
18. Cultivation by cultivators.
18. State Government to be party to all proceedings.
- a.

CHAPTER III

Preparation of record-of-rights

19. Preparation of record-of-rights.
20. Draft and final publication of the record-of-rights.

21. Correction of entry in the record-of-rights.
22. Bar of jurisdiction of civil court in respect of certain matters.

CHAPTER IV
Distribution of vested lands

23. Principles of distribution of lands.

CHAPTER V
Management of lands vested in the State

24. Management of vested land by the State.

CHAPTER VI
Provisions as to revenue

25. Liability to pay Revenue.
26. Determination of Revenue and appeals.

CHAPTER VII
Restrictions on alienation of lands by Scheduled Tribes

27. Commencement and overriding effect.
28. Restrictions on alienation of lands by Scheduled Tribes.
29. Transfer of land by Scheduled Tribes.
30. Bar on registration of documents of transfer..
31. Power of Revenue Officer to set aside improper transfers.
32. Restriction on the sale in execution of decree or order.
33. Appeal.
34. Bar to suits and other proceedings.
35. Certain laws to cease to have effect.

CHAPTER VIII
Miscellaneous

36. Power to make rules.
37. Power to remove difficulties.
38. Sikkim Regulation of Transfer and Use of Lands Act, 1975, not to apply.

**THE SIKKIM AGRICULTURAL
LAND CEILING AND REFORMS ACT, 1977
(ACT NO. 14 OF 1978)
AN
ACT**

to provide for the imposition of a ceiling on agricultural lands, for the vesting of such lands in excess of the Ceiling limit and for matters connected therewith, with a view to preventing the concentration of agricultural lands in the State of Sikkim in the hands of a few persons to the common detriment and with a view to bringing about equitable distribution of agricultural lands in the State of Sikkim to sub serve the common good.

[21.3.1978]

WHEREAS all bustiwallas in respect of agricultural lands in Sikkim hold such lands directly under the State and there is no intermediate or interposing or intervening interest or agency between the State and such bustiwallas.

And

WHEREAS it is expedient to provide for the imposition of a ceiling on agricultural lands held by the bustiwallas and other persons in the State of Sikkim, for the vesting of such land in excess of the ceiling limit and for matters connected therewith, with a view to preventing the concentration of agricultural lands in the hands of a few persons to the common detriment and with a view to bringing about an equitable distribution of the agricultural lands in the State of Sikkim to sub serve the common good.

It is hereby enacted in the Twenty-eighth Year of the Republic of India by the Legislature of Sikkim as follows:

CHAPTER I

Preliminary

*Short title, extent
and commencement.*

1. (1) This Act may be called the Sikkim Agricultural Land Ceiling and Reforms Act, 1977.
- (2) It extends to the whole of Sikkim.
- (3) It shall come into force on such date as the Government may, by notification, appoint.

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

Definitions.

- (a) "adhiadar" means a person who cultivates the land of a bustiwalla on condition of delivering to or receiving from the bustiwalla a share of the produce of such land;
- (b) 'agricultural year' means the Fasli year being the period of twelve calendar months commencing on and from the first of day of February of one English year and ending with the thirty-first day of January of the next English Year immediately following;
- (c) 'agricultural land' means land which is ordinarily used or which is capable of being used for purposes of agriculture or horticulture and includes such land, notwithstanding that it may be lying fallow for the time being but does not include any land used as homestead;
- (d) 'bustiwalla' means a person who holds agricultural lands directly under the State and holds it ordinarily for the purpose of cultivating it by himself or by members of this family or by servants or laborers or by Adhiadar or by Kutiadar or by other cultivators.

Explanation: 'Cultivator' a means person who cultivates the land of another I on condition of payment of any consideration in cash or kind or in both or on condition of delivering or receiving a share or any fixed quantity of the produce and includes a person who cultivates the land of another person on any terms and conditions except as a paid servant or. hired laborer.

- (e) 'ceiling limit' means the ceiling limit as determined in accordance with the provisions of section .6;
- (f) 'charitable purpose' includes relief of the poor, medical relief or the advancement of education or any other object of general public utility;

- (g) 'competent authority' means any person or authority authorized by the State Government by notification to perform the functions of the competent authority under this Act for such area as may be specified in the notification and different persons or authorities. may be authorized to perform different functions;
- (h) 'date of vesting' means the date mentioned in the notification under sub-section (1) of section 11;
- (i) ["Family" in relation to a person means himself or herself and his wife or husband as the case may be (other than judicially separated wife or husband), minor sons and unmarried daughters.]
- (j) 'homestead' means a dwelling house together with any courtyard, compound, out-house, place of worship, family grave yard, library, office, guest house, tanks, wells, privies, latrines, drains and boundary walls, annexed to or appertaining to such dwelling house;
- (k) 'non-agricultural land' means land other than agricultural land or other than land comprised in a forest;
- (l) 'notification' means a notification published in the Official Gazette;
- (m) 'notified' area' means a district or part of a district or in any other area in respect of which a notification has been duly published under section 5;
- (n) 'Person' shall include a monastery or other religious, educational, charitable or other institution, co-operative society, corporation, local authority, company

1. Subs. by sec. 2 of the Sikkim Agricultural Land Ceiling and Reforms (Amd.) Act No.2 of 1978 (w. e. f. 22 6. 78.)

registered under any law for the time being in force and all other concerns, institutions or authorities holding agricultural lands before the notified date;

- (o) 'prescribed' means prescribed by rules made under this Act;
- (p) 'religious purpose' means a purpose connected with religious worship, teaching or service or any performance of religious rites;
- (q) 'Kutiadar' means a person who cultivates a land of a bustiwalla on condition of delivering a fixed quantity of produce of the land or any other fixed amount to the bustiwalla.
3. (1) The provisions of this Act shall have effect notwithstanding anything to the contrary contained in any other law or any contract or any usage or custom; *Act to override other laws.*
- (2) for the removal of doubts it is hereby declared that all bustiwallas and all persons holding agricultural lands hold such lands directly under the State and that there is no intermediate or interposing or intervening agency or interest between the State and the bustiwalla or other persons holding agricultural lands and that all such bustiwallas and other persons are liable to pay revenue to the Government of the State of Sikkim for such lands held by them.
4. -If any question arises as to whether any person is a bustiwalla or not, such question shall be determined by the competent authority in such manner as may be prescribed. *Determination of bustiwalla.*

CHAPTER II

Ceiling or Agricultural lands

5. (1) The State Government may 2[* * *] by notification declare that with effect from the date mentioned in the notification (hereinafter in this Act referred to as the notified date) no person shall be entitled, to hold *Persons not entitled to hold agricultural land in excess of ceiling limit.*
- 2 Omitted by sec. 3 of the S. A. L. C. & R. (Amd.) Act 1978 No.2 of 1978 (w. e. f. 22. 6. 78)

any agricultural land in excess of the ceiling limit in the State of Sikkim and all lands in excess the ceiling limit shall vest in the. State in accordance with and under the provisions of this Act and the rules and notifications made there under.

3[**Explanation 1**- The State Government may notify different dates for different areas of the State.

Explanation 11 The land held by bustiwalla as owner along with land cultivated by him in the capacity of an Adhiadar or a Kutiadar shall, for the purposes of this Act, be deemed to be held by him]
4(****)

Ceiling limit.

5[6. U) The ceiling shall be

- (a) in the case of person having no family or a family consisting of not more than five members, twelve and a half standard acres, and
- (b) in the case of a person having a family consisting more than five members, twelve and a half standards acres increased by two standard acres for each member in excess of five, so however, that the ceiling area shall not exceed twenty and a half standard acres.

Explanation - (i) For the purpose of this sub-section, all lands held by a person individually or jointly with other members of his family shall be deemed to be held by him.

(ii) Where any holding is held by him, jointly with any person or persons other than a member of his family, the share of each person in the joint-holding shall be deemed to held by him.

3. Inst. by sec.3 of the S. A. L. C. & R. (Amd.) Act No.2 of 1978 (w. e, f, 22 6.78.)

4. Omitted by ibid;

5. Subs. by sec 4 of the S. A. L. C. -& R. (Amd.) Act No 2 of 1978 (w. e f. 22. 6. 78)

- (2) Every adult son of a person shall be treated as a separate unit and his share in his father's holding or in ancestral holding shall be aggregated along with other land, if any, held by him for the purposes of determining his ceiling limit.

Explanation I No person who has not completed the age of eighteen years on the date of the notification referred to in sub-section (i) of section 5 or on the date of future acquisition of land under section 16 shall be deemed to be an adult.

Explanation II The expression "adult son" includes an adult son who is dead and has left surviving behind him his widow, minor sons or daughters (other than married daughters) who either do not own any land or hold land less than twelve and a half standard acres.

- Notwithstanding anything in the preceding sub-sections, a
- 3) monastery or other religious institution shall be entitled to hold
- (a) sixty standard acres, if it is listed in Group A of Schedule I, and
- (b) twenty-five standard acres, if it is listed in Group B of Schedule I.
- (4) The provisions of this Act shall not apply to
- (a) Land used for growing tea to the extent notified by the State Government;
- (b) land owned by the State Government or the Union Government or an undertaking or company owned by the State or the Union Government or by a local authority;
- (c) land held by a co-operative society including a co-operative Bank, the State Bank of India, a subsidiary of the State Bank of India as defined in the State

Bank of India (Subsidiary Banks) Act, 1959, a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the Agricultural Refinance Corporation and the Agricultural Finance Corporation:

Provided that in the case of a co-operative society, no member shall be allowed to hold a share of the land which, together with his other land, exceeds the ceiling applicable to him under sub-section (1); and

- (d) land held for industrial purposes to the extent notified by the State Government in each case and for the period the land continues to: be used for such purposes.

Explanation I - Use of the land for a purpose other than that notified by the State Government shall be deemed to be cessation of use for industrial purposes unless such different use is approved by the State Government.

Explanation 11- Use of land for cultivation of crops to be used for industrial purposes shall not amount to use for industrial purposes.

- (5) The "standard acre" for different areas for the State shall be determined in the manner provided in Schedule II.]"

Transfer of land.

7. No person holding agricultural land in excess of the ceiling limit immediately before the notified date shall transfer any such land or part thereof by way of sale, mortgage, gift, lease or otherwise 6[or cause any alteration in the use of such land] until he has furnished a statement under section 8 and a notification regarding the excess land held by him has been published under sub-section (1) of section 11; and any such transfer 7[or change in the use of land] in contravention of this provision shall be deemed to be null and void.

6, Subs. by sec. 6 of the: S A. L. C. & R. (Amd.) Act No.: of 1978 (w. e. f. 22.6. 1978)

7. Ins by ibid

8. (1) Every person holding agricultural land in excess of the ceiling limit on the notified date shall within such period as may be prescribed file a statement before the competent authority having jurisdiction specifying the location, extent or such other particulars as 'may be prescribed of all, agricultural lands held by him and also specify the lands within the ceiling limit which he intends to retain.
- Persons holding land in excess of ceiling limit to file statement.*
- (2) If the competent authority is of opinion that any person holds on the notified date agricultural lands in excess of the ceiling limit then notwithstanding anything contained in sub-section' (1), it may serve a notice upon such person requiring him to file, within such period as may be specified in the notice, the statement referred to in sub section (1).
- (3) The competent authority may, if it is satisfied that it is necessary so to do, extend the date for filing the statement under this section by such further period or periods as it may think fit.
- (4) The statement under this section shall be filed by such person and in such manner as may be prescribed.
9. On the basis of the statement filed by a person under sub-section (1) of section 8 and in cases where a person fails to file a statement in spite of service of a notice under sub-section (2) of the said section, the competent authority may, after such inquiry as he may 'consider necessary either by himself or by any person subordinate to him, cause to be prepared a draft statement in respect of that person.] ,
- Preparation of draft statements as regards lands in excess of ceiling limit.*
- (2) Every such draft statement prepared under subsection (1), shall contain the following particulars, namely:
- 8 . Subs by sec. 6 of 'the S. A. L. C. (Amd.)Act No.-2of 1978(w.eJ.22.6.7S) & R

- (i) the name and address of the person;
 - (ii) the particulars of all agricultural lands held by such person;
 - (iii) the particulars of agricultural lands which such person intends to retain within the ceiling limit;
 - (iv) such other particulars as may be prescribed.
- (3) The draft statement shall be served in such manner as may be prescribed on the person concerned together with a notice stating that any objection to the draft statement shall be preferred within thirty days from the service thereof. ~
- (4) The competent authority shall duly consider any objection received within the period specified in the notice referred to in sub-section (3) or within such further period or periods as may be extended by the competent authority for any good or sufficient reason, from the person on whom a copy of the draft statement has been served under that sub-section and the competent authority shall, after giving the objector a reasonable opportunity of being heard, pass such orders as it deems fit.

Competent Authority to have powers of a Civil Court. g (9A.

The competent authority shall, for the purpose of this Chapter, have the powers of a Civil Court under the law for the time being in force relating to Civil Procedure in respect of the following matters, namely:

- (a) proof of facts by affidavits;
- (b) enforcing attendance of any person and his examination on oath;
- (c) production of documents; and
- (d) issue of commission.]

⁹. Ins by sec7 of the. S. A. L. C. &R (Amd.) Act No.2 of 1978 (w. e. f. 22. 6. 78)

10. After the disposal of the objection, if any, received under sub-section (4) of section 9, or after the disposal of any appeal, if preferred under section 13, the competent authority shall make the necessary alterations in the draft statements in accordance with the orders passed on the objection as aforesaid or in accordance with the orders, if any, passed under section 13

Final statement.

10 [or section 14, as the case may be, and shall determine the land held by the person concerned in excess of the ceiling limit and also the land which such person shall be allowed to retain within the ceiling limit and shall prepare a final statement on the basis of the draft statement as so altered and cause a copy of the final statement as so prepared to be served in the manner referred to in sub-section (3) of section 9 on the person concerned.

- II. (1) As soon as may be after the service of the final statement under section 10 on the person concerned the competent authority may by notification declare that all lands determined as in excess of the ceiling limit under section 10 shall with effect from such date as may be specified in the declaration, be deemed to have been vested in the State and upon the publication of such declaration all such lands shall vest absolutely in the State free from all encumbrances with effect from the date so specified.

Vesting of lands in excess of ceiling limit.

- 11[(2) The encumbrances, if any, on the excess land vested in the State in pursuance of sub-section (1) shall attach to the amount payable under sub-section (1) of section 12.]

- (3) Where any excess land is vested in the State under sub-section (1), the competent authority, may, by notice in writing, order any person who may be in possession of such, land to surrender or deliver possession thereof to the State Government or to any officer duly authorized by the competent authority in this behalf, within thirty days of the service of the notice.

10. Ins. by sec. 80 of the S. A. L. C. Br R (Amd) Act No. 2 of 1978 (w. e. f. 22. 6.78)

11 Subs. by sec. 9 of the S. A. L. C. & R (Amd.) Act No. 2 of 1978 (w. e. f. 22. 6. 78)

- (4) If any person refuses or fails to comply with an order made under sub-section (3), the competent authority may take possession of the excess land or cause it to be given to the State Government or to any person authorized by the State Government in this behalf and may for that purpose use such force as may be necessary.

12 [(5) Without prejudice to the provisions of sub-section (4), a person who does not surrender or deliver possession of the excess land within thirty days of the service of the notice referred to in sub-section (3) shall be liable to pay to the State Government for the period he continues in possession or such amount as may be determined by the competent authority in the prescribed manner and such amount shall be recoverable as an arrear of land revenue".]

Payment of amount for excess land.

12. (1) Where any excess land vests or is deemed to have been vested under sub-section (1) of section 11 the State Government shall pay to the person or persons holding such land immediately before the date of vesting an amount determined by the competent authority according to the following principles:

- 13[(i) for the first twenty standard acres, an amount being two hundred times the land revenue payable for such land;
- (ii) for the next thirty standard acres, an amount being one hundred times the land revenue payable for such land;
- (iii) for the next fifty standard acres, an amount being fifty times the land revenue payable for such land; and
- (iv) for the remaining land, an amount being twenty-five times the land revenue payable for such land.]

12. Ins. by *ibid.*

13. Subs. by sec. 10 of the S. A. L.C. & R. (Amd.) Act No.2 of 1978 (w. e. f. 22. 6. 78)

- (2) Before determining the amount to be paid as aforesaid, every person interested shall be given an opportunity to state his case as to the amount to be paid to him.
- (3) Notwithstanding anything contained in the foregoing provisions, if the State Government is of opinion that as a result of imposition of ceiling limit on the lands held by a monastery or other religious institution and vesting of the excess lands as a result thereof it has become difficult for such monastery or religious institution to carry on proper management and administration, the State Government may in accordance with such rules as may be prescribed, pay to such monastery or religious institution, such annual sum not exceeding the average of the amounts received by such monastery or religious institution from such excess lands during the preceding three years immediately before the date of vesting.
13. (1) If any person is aggrieved by an order of the competent authority under section 4 or sub-section (4) of section 9 or section 12, he may within thirty days from the date of the order prefer an appeal to the Tribunal to be constituted by the State Government. *Constitution of Tribunal and appeals thereto.*
- (2) Such Tribunal shall consist of a sole member who shall be not below the rank of a Deputy Secretary to the State Government.
- (3) The Tribunal may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing appeals, in time.
- (4) In deciding appeals, the Tribunal shall exercise all the powers which a Civil Court has and shall follow as far as possible, the same procedure which a Civil Court follows in deciding appeals against decrees of an original court under the law relating to Civil Procedure.

*Second appeal to
State Land Tribunal.*

14. (1) If any person is aggrieved by any decision of the Tribunal constituted under section 13, he may within 14[sixty] days from the date of the decision prefer an appeal to the State Land Tribunal to be constituted by the State Government.

(2) Such Tribunal shall consist of a member who shall not be below the rank of a District Judge or an Additional District Judge.

(3) The State Land Tribunal may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(4) In deciding appeals under this section, the State Land Tribunal shall exercise all the powers and shall follow the same procedure to be followed by the Tribunal under sub-section (4) of section 13, and may vary, alter, modify or set aside the order of such Tribunal or pass such other orders as it may deem fit.

(5) Save as otherwise provided" no Court or Tribunal except the Supreme Court exercising jurisdiction under Article 136 of the Constitution of India, shall have any jurisdiction with respect to all or any of the matters falling within the jurisdiction of the Tribunal or the State Land Tribunal.

*Made of payment of
amount.*

15

The State Government shall within a period of ten months from the date of the order of the competent authority determining the amount to be paid under section 12, or in a case where an' appeal has been preferred against such order under section 13, or under section 14, within a period of ten months from the date of the final appellate order, pay the amount determined under section 12, or under" section 13, or under section 14, as the case may be, to the person or persons entitled thereto in ten equal install

.14 Subs. by sec. 11 of the S. A. L. C. & R (Amd.) Act No.2 of 1978 (w. e. f. 22. 6. 78)

ments and such amount shall carry interest at the rate of five percent per annum from the date of the order under section 12 until final payment.

15[Provided that where the amount payable to a person does not exceed the sum of rupees one thousand, the entire amount shall be paid in a lump sum.]

16. (1) If on or after the commencement of this Act or on or after the notified date or on or after the date of vesting under section 11, any person acquires by transfer, inheritance, or otherwise any agricultural land the extent of which together with the extent of the agricultural land held by him exceeds in aggregate the ceiling limit, than he shall within three months of the date of such acquisition, file a statement before the competent authority having jurisdiction specifying the extent, location and such other particulars as may be prescribed of the agricultural lands held by him and also specifying the agricultural lands within the ceiling limits which he intends to retain.

Ceiling limit of future acquisition of land.

- (2) The provisions of section 8 to 15 (both inclusive) shall, so far as may be, apply to the statement filed under this section and to the land held by such person in excess of the ceiling limit.

17. Save as otherwise provided in this Act, no Civil Court shall have jurisdiction to decide or deal with any question or to determine any matter which is by or under this Act or any rules made there under required to be decided or dealt with or to be determined by the competent authority of any other authority and no orders passed or proceedings commenced under the provisions of this Chapter shall be called in question in any Civil Court.

Bar of jurisdiction.

Ins; by sec. 12 of the S. A. L. C. & R (Amd) Act No.2 1978 (w. e. f. 22.6.78)

- Cultivation by cultivators.* 18. (1) Where any land vested in the State under section 11 is being cultivated by a cultivator, the right of cultivation of such cultivator in relation to any such vested land which including any other land held or cultivated by him is in excess of three standard acres shall on and from the date of vesting stands terminated. .
- (2) Every cultivator shall in relation to the land which he is authorized by sub-section (1) to retain under his cultivation become on and from the date of vesting a bustiwalla in respect of such land.
- (3) If such cultivator is also a bustiwalla in respect of any other land immediately before the date of vesting in excess of three standard acres he shall not be entitled to retain under his cultivation any land under sub-section (1) and his right of cultivation in respect of all excess lands as referred to in sub-section (1) shall stand terminated. .
- State Government to be party to all proceedings.* 16[18A. The State Government shall be party to all proceedings under the provisions of this Chapter.
- Penalties.* 18B. Whoever contravenes any order passed under this Chapter or obstructs any person from taking possession of any land under section 11 or fails to furnish the statement required under section 16 or makes or submits a statement or furnishes any information which is false or which he has reasons to believe to be false, shall be punishable with fine which may extend to one thousand rupees.
- Recovery of arrears of land revenue and other Government dues.* 18C. All arrears of land revenue and other Government dues in respect of any holding or holdings, part or parts whereof has or have been acquired under this Chapter, may, without prejudice to any other mode of recovery, be recovered by deducting the outstanding amount from the amount payable under section 12.

15.

16. Ins. by sec. 13 of the S. A. L. C. & R. (Amd.) Act No.2 of 1978 (w. e. f. 22.6.78)

- 18D. Where on account of an arithmetical error a person has been paid any amount in excess of what he is entitled to under section 12, the State Government shall be competent to recover the excess amount as an arrear of land revenue:

Recovery of excess amounts paid.

Provided that no order for recovery of any such amount shall be made without giving the person an opportunity of being heard by the Competent Authority.]

CHAPTER III

Preparation of record-of-rights

19. (1) . The State Government may, for the purpose of carrying out the purposes of this Act, make an order directing that a record-of-rights be prepared in respect of all agricultural lands in the State of Sikkim or for such area as may be specified in the notification.
- (2) The State Government may by order declare that the record-of-rights, if any, already in the process of preparation or already made or prepared immediately before the commencement of this 'Act shall be deemed to be the record-of-rights prepared and published under this section and may, if necessary, order such record-of-rights to be revised.
- (3) The preparation of record-of-rights under sub-section (1) or the revision of record-of-rights under sub-section (2) shall be made by such officer appointed by the State Government referred to as the Revenue Officer in this act, in accordance with such rules as may be prescribed and shall contain such particulars as may be prescribed.
20. (1) When a record-of-rights has been revised or prepared the Revenue Officer shall publish a draft of the record so revised or prepared in the prescribed manner and for the prescribed period and shall receive and consider any objection which may be made during such period to any entry therein or to any omission there form.

Preparation of record-of-rights.

Draft and final publication of the record-of-rights.

- .. (2) When all such objections have been considered and disposed of according to such rules as may be prescribed in this behalf, the Revenue Officer shall finally prepare the record and cause such record to be finally published in the prescribed manner and make a certificate stating the fact of such final publication and the date thereof and shall date and subscribe the same under his name and official designation.
- (3) Separate publication of different parts of draft or final records may be made under sub-section (1) or sub-section (2) for different local areas.
- (4) An Officer specially empowered by the State Government may, on application within one year or of his own motion within such period as may be prescribed from the date of final publication of the record-of rights under sub-section (2), revise an entry in the record finally published under the provisions of subsection (2) after giving the persons interested an opportunity of being heard and after according reasons thereof.
- (5) Any person aggrieved by an order passed under sub-section (4) may, within such period as may be prescribed, appeal in the prescribed manner to the Tribunal constituted under section 13.
- (6) The certificate of final publication referred to in sub-section (2), or in the absence of such certificate, a certificate signed by the Revenue Officer of the area where the Lands to which the 'record-of-rights relates is wholly or partly situate, stating that a record-of rights has been finally published on a specified date, shall be conclusive proof of such publication and of the date thereof.
- (7) The State Government may, by notification, declare with regard to any area specified in the notification that the record-of-rights for such area has been finally published and such notification shall be conclusive proof of such publication.

- (8) In any suit or other proceeding in which record-of rights prepared and finally published under this Chapter, or a duly certified copy of the record or an extract there from, is produced, such record-of rights shall be presumed to have been finally published.
- (9) Every entry in the record-of-rights finally published under sub-section (2) including an entry revised under' sub-section (4) subject to any modification by an order on appeal under sub-section (5) or corrected under section 21 shall be presumed to be correct.

17(21. * * * * *)

22. (1) When an order has been made under section 19 directing revision or preparation of a record-of-rights, no Civil Court shall entertain any suit or application for the determination of the revenue or the intendents of any land or the status of any person in relation to any land to which' the record-of-rights relates, and if any suit or application in which any of the aforesaid matters is in issue, is pending before a Civil Court on the date of such order, it shall be stayed and it shall on, the expiry of the period prescribed for an appeal under sub-section (5) of section 20 when such an appeal has been filed under that sub-section, on the disposal of such appeal, abate so far as it relates to any of the aforesaid matters.

*Bar of jurisdiction
of civil court in res
pect of certain
matters.*

Explanation: In this section "suit" includes an appeal.

- (2) No Civil Court shall entertain any suit or application concerning any land if it relates to any alteration of any entry in the record-of-rights finally published, revised, corrected or modified under any of the provisions of this Chapter.

17. Omitted by sec. 14 of the S. A. L. C. & R.. (Amd.) Act No.2 of 1978 (w. e. f. 22. 6. '78)

CHAPTER I V

Distribution of vested lands

Principles of distribution of lands.

23. (1) Subject to the provisions of this Act and the rules made there under, the settlement of lands which vest in the State under section I I shall be made, on such terms and conditions and in such manner as may be prescribed, with persons who reside near the locality where the land is situated and who intend to bring the land under personal cultivation and who owns no land or less than three standard acres of land, preference being given to those among such persons who form themselves into a co-operative farming society:

Provided that settlement of any such lands may be made with other persons where such settlement is in the opinion of the State Government necessary for the public purpose connected with agricultural or otherwise on such terms and conditions as the State Government may think fit.

- (2) Subject to the provisions of sub-section (1), all lands vested in the State under this Act, shall be disposed of or otherwise dealt with to sub serve the common good on such terms and conditions as the State Government may deem fit.
- (3) Notwithstanding anything contained in sub-section (1) and (2), where the State Government is satisfied that it is necessary to retain or reserve any such land vested under this Act for the purpose of the State Government or any other public purpose, it shall be competent for the State Government to retain or reserve such land for the same.

CHAPTER V

Management of lands vested in the State

Management of vested land by the State.

24. All lands and all interests therein vested in the State under this Act shall, unless the State Government otherwise directs by any general or special order and subject to such rules as may be prescribed by the State Government in this behalf, be managed by the Collector of the district in which the lands are situated:

Provided the State Government may entrust the management of such lands in any area to such authority as may be prescribed and such authority shall, thereupon manage the lands subject to the control of the State Government and in accordance with such rules as may be prescribed.

CHAPTER VI
Provisions as to revenue

25. (1) Every person shall be liable to pay revenue to the State Government for the lands allowed to be retained by him within the ceiling limit. *Liability to. pay Revenue.*
- (2) Revenue shall be the first charge on the lands.
26. (1) A person shall pay as revenue for the lands allowed to be retained by him such amount as maybe determined by the Revenue Officer in the prescribed manner having regard to the amount payable by him as khazana for such lands immediately before the notified date. *Determination of Revenue and appeal.*
- (2) Where, immediately before the notified date, no khazana was payable in respect of the lands allowed to be retained by such person or where khazana for such lands was payable wholly in kind or partly in kind and partly in cash, he shall pay as revenue such amount as may be determined by the Revenue Officer in the prescribed manner having regard to the prevailing average rate of cash khazana for lands of similar. description and with similar advantages in the vicinity.
- (3) Until any revenue is determined under sub-section (1) or sub-section (2) every person shall continue to pay as revenue to the State Government for the lands allowed be retained by him within the ceiling limit such proportionate amount as would have been paid by him as khazana for such lands immediately before the notified date.

(4) Any person aggrieved by an order determining the amount of revenue under sub-section (1) or sub-sections (2), may, within thirty days from the date of such order, appeal to the Tribunal constituted under section 13 and such appeal shall be disposed of in the manner provided in section 13.

CHAPTER VII

Restrictions on alienation of lands by Scheduled Tribes

Commencement and overriding effect, 27. (1) The provisions of this Chapter shall come into force on such date as the Government may, by notification, appoint.

(2) The provisions of this Chapter shall have effect notwithstanding anything to the contrary contained elsewhere in this Act.

Restrictions on alienation, of land by Scheduled Tribes. 28. Save as otherwise provided in this - Chapter any transfer by a person belonging to a Scheduled Tribe in respect of any land allowed to be retained by him under this Act or portion thereof shall be void.

Explanation:- (1) The expression "Scheduled Tribes" in this Chapter shall mean such Tribes or Tribal communities as are deemed to be Scheduled Tribes in relation to the State of Sikkim under Article 342 of the Constitution of India.

(2) "Land" for this Chapter shall mean lands allowed to be retained or any portion of such land by member of a Scheduled Tribe under- this Act.

Transfer of land by Scheduled Tribes. 29. (1) A person belonging to a Scheduled Tribe may transfer his land or part thereof by' transfer to on other member of Scheduled Tribe or to the Government or to a Corporation owned or controlled by the Government or to a Scheduled or nationalized bank or to a registered co-operative society.

(2) A person belonging to a Scheduled Tribe may, with the permission in writing of the Revenue Officer, transfer his land to a person not belonging to any Scheduled Tribe.

(3) The Revenue Officer shall not grant permission referred to in sub-section (2) unless he is satisfied that no transferee belonging to a Scheduled Tribe is willing to pay the fair and reasonable consideration for the transfer of the land and that the proposed transfer is intended to be made for one or more of the following purposes, namely:

- (a) to meet the expenses for the maintenance, education, marriage or medical treatment of such person or any member of his family, or
- (b) to make payment of any amount to the Government or other local authorities, or
- (c) for the purpose of making gift of the land to any institution established exclusively for religious or charitable purpose;
- (d) for the purpose of establishing or running any industry; or
- (e) for such other purpose as may be prescribed.

30. No document of transfer made in contravention of the provisions of this Chapter shall be registered by any authority or in any way recognized as valid in any Court exercising civil, criminal or revenue jurisdiction or by any other authority. *Bar on registration of documents of transfer.*
31. (1) If a transfer of any land by a person belonging to a Scheduled Tribe is made in contravention of the provisions of this Chapter, or if the permission for the transfer under sub-section (2) of section 29 is found, after an inquiry in the prescribed manner, to have been obtained by misrepresentation or fraud, the Revenue Officer may, of *Power of Revenue Officer to set aside improper transfers.*

his own motion or on a application made in that behalf and after giving the transferee an opportunity of being heard by an order in writing, annul the transfer where necessary and shall order ejectment of the transferee from such land, unless such transferee has been in continuous possession, for twelve years under the transfer made in contravention of this Chapter.

(2) When the Revenue Officer has passed any order of ejectment under sub-section (1); he shall also order restoration of the transferred land to the transferor or his successors-in-interest.

(3) If an order of ejectment under sub-section (1) or an order of restoration under sub-section (2) is not complied with within thirty days of the passing of such order or within such further period as may be extended by the Revenue Officer for good and sufficient reason, the Collector of the district in which such land is situated, shall on a requisition to that effect from the Revenue Officer, effect such ejectment and restoration and for that purpose use such force as may be necessary.

Restriction on the sale in execution of decree or order.

32. No decree or order shall be passed by any court for the sale of the land of person belonging to a Scheduled Tribe, except for realization of any Government dues or other public demands:

18[Provided that no such sale shall take place in favor of any person not belonging to a Scheduled Tribe except with the permission of the Collector of the district who shall not grant such permission unless he is satisfied that no member of the Scheduled Tribe is willing to buy the land at the minimum amount equivalent to the market price for such land.]

Appeal.

33. Any person aggrieved by an order of the Revenue Officer under section 31 may, within thirty days from the date of such order, appeal to the Tribunal constituted under section 13 and such appeal shall be disposed of in the manner provided in section 13.

18. Ins. by sec. 15 of the S. A. L. C. & R. (Amd.) Act No.2 of 1978. (w. e. f. 22. 6. 78)

34. Save as otherwise provided, no suit or other proceeding shall lie in any Court, Tribunal or before any other authority, to challenge, vary or to set aside any order passed under this Chapter by the Revenue Officer or the Tribunal: *Bar to suits and other proceedings.*
35. On and from the commencement of the provisions of this Chapter, the provisions contained in the Revenue Order No 1, dated the 17th May, 1917 and all other laws relating to matters governed by this Chapter shall cease to have any force and effect. *Certain laws to cease to have effect.*

CHAPTER VIII
Miscellaneous

36. (1) The State Government may, by notification make rules for the purpose of carrying the provision of this Act, *Power to make rules.*
- (2) In particular, and without prejudice to the generality of the provisions, such rules may provide for all or any of the following matters, namely:
- (a) the manner of determination under section 4;
- 19[(b) and (c) * *]
- ** (d) the period within which the statement may be filed under sub-section (1) of section 8 and the particulars which are to be specified in such statement and the person by whom and the manner in which such statement is to be filed;
- (e) the particulars to be mentioned in the draft statement under sub-section (2) of section 9;
- (f) the manner of serving the draft statement under subsection (2) of section 9;
- (g) determination and manner of payment of an annual sum under sub-section (3) of section 12;
19. Omitted by sec. 16 of the S. A.L. ,C.&;, R. (Amd.) Act No.2 of 1978 (w. e. f. 22. 6. 78) .

- (h) the particulars to be mentioned in the statement referred to in sub-section (I) of section 16;
- (i) the preparation and under revision of record-of-rights section 19;
- (j) publication of the draft and final record-of-rights under section 20, the period of such publication, the period within which an application is to be made under sub-section (4) of section 20, and the period within which an appeal is to be preferred under sub-section (5) of section 20;
- (k) the principle and the manner of distribution of lands under section 23;
- (l) management by the Collector or other authority of the vested lands under section and the authority under the proviso to section 24;
- (m) the manner of determination of revenue under subsection (1) and sub-section (2) of section 26;
- (n) the purposes under clause (e) of sub-section (3) of section 29;
- (o) the manner of enquiry under section 31.

Protection for acts done in good faith.

20[36A. No suit or prosecution or other legal proceedings shall lie against any person or the State Government for anything done or purported to have been done in good faith or in pursuance of this Act or any rule framed or order passed under this Act.]

Power to remove difficulties.

37. If any difficulty arises in giving effect to the provisions of this Act or the rules made there under, the State Government, by order, do anything not inconsistent with such provisions which appears to be necessary or expedient for the purpose of removing the difficulty:

21[Provided. that no order under this section shall be made by the State Government after the expiration of a period of two years from the commencement of this Act.]

20. Ins. by sec. 17 of the S. A. L. C. & R (Amd.) Act No.2 of 1978 (w. e. f. 22.6.78)

21. Ins. by sec. 18 of the S. A. L. C. & R. (Amd.) Act No. 2 of 1978 (w. e. f. 22. 6. 78)

38. On and from the date of vesting under section 11 of this Act, the provisions of the Sikkim Regulation of Transfer and Use of Lands Act, 1975 shall cease to have effect in respect of all lands to which provisions of this Act shall apply.

Sikkim Regulation of Transfer and Use of Lands Act, 1975, not to apply.

SCHEDULE 22[1]

[Section 6 (4) (I) and section 6 (4) (ii)]

GROUP 'A'

1. Pemayangtse Gompa Phodong
2. Gompa
3. Phensang Gompa
4. Kalong Gompa
5. Rumtek Gompa
6. Tashiding Ngadak Gompa

GROUP. 'B'

1. Melli Gompa
2. Sangaak Cholling Gompa
3. Honchoed Palri Gompa' Dubdi
4. Gompa
5. Sinon Gompa
6. Tashiding Guru Lhakang
7. Dolling Gompa
8. Rinchenpung Gompa
9. Lhuntse Gompa
10. Namchi Ngadak Gompa
11. Simik Gompa
12. Yangang Gompa
13. Tumin Gompa
14. Kartot Gompa
15. Linkey Gompa
16. Pabyok Gompa
17. Enchey Gompa
18. Labrang Gompa
19. Lingdok Chankar Gompa
20. Ringeon Gompa
21. Hee Gyathang Gompa
22. Lingthem Gompa
23. Tolung Gompa

22. Ins. by sec. 19 of the S. A. L. C. & R. (Amd.) Act No.2 of 1978 (w, e. f.2'.6. 78)

24. Sharchok Bayphuk
25. Labrang Wangditse
26. Chungthang Gompa
27. Chakung Gompa
28. Chawang ani Gompa
29. Bakcham Gompa (Lhakang)
30. Hungri Gompa
31. Ship Knag Choling Gompa
32. Rbenock Gompa
33. Santam Gompa
34. Singchit Ngadak Gompa
35. Likney Pbagyal Gompa
36. Sam dong Gompa
37. Barmiok Gompa
38. Lachen Gompa
39. Lachung Gompa
40. Lachen Mani Lhakang
41. , Lachung Thangmochi
42. Lachung Mani Lhakang
43. Dotsuk Gompa
44. Lachen Tbangu
45. Gying Gompa
46. Chaney Gompa
47. Tendang Tsamkang
48. Tumlang Mani Lhakang
49. Tingbung Gompa
50. Summer Gompa
51. Sang Gompa
52. Parbing Gompa
53. Thakurbari, Gangtok Town
54. Zingling Mandir, Song
55. Durga Mandir, Rumtek,
56. Mahadev Sbivalaya Mandir, Parkha
57. Mahadev Mandir, Sam dong
58. Shivalaya Mandir, Tintek
59. Shivalaya Mandir, Chhujachen
60. Thakurbari, Rangpo Bazar
61. Thakurbari, Singtam Bazar
62. Radha Krisbna Mandir, Rhenock Bazar
63. Mahadev Mandir, Rhenock Bazar
64. Sbivalaya Mandir, Aritar Khamdong
65. Shivalaya Mandir" Chbota Singtam
- 66." Sbivalaya. Mandir, Dikling Pachekhani

67. Shidheshwar Mahadev Mandir, Namchebong
68. Mandir, Tarpin
69. Thakurbari, Rongli Bazar
70. Onkareshwar Mandir, Aho
71. Kali Mandir, Rangpo
72. Krishna Mandir, Duga
73. Thakurbari, Pakyong Bazar
74. Krishna Mandir, Niya Bram
75. Chemchey Mandir, Namchi
76. Thakurbari, Namchi Bazar
77. Thakurbari, Melli Bazar
78. Mahadev Than, Legshep
79. Shri Pashupati Nath Mandir, Dhambudanra
80. Mandir, Timburbung
81. Icha Pura Dasi Ram Dham, Samdong
82. Thakurbari, Soreyong
83. Mandir, Gelling
84. Mandir Sadhungaon, Chakung
85. Durga Bhawani Mandir, Kaluk
86. Paranami Mandir, Tharpu
87. Bhagawati Saraswati Mandir, Dentam
88. Mandir, Hee Gaon
89. Durga Mandir, Burmiok
90. Devi Mandir, Sancharey
91. Thakurbari, Nayabazar
92. Durga Bhawani Devi Mandir. Upper Burmiok
93. Devi Mandir, Tadung
94. Durga Mandir, Dentam
95. Shiva Mandir, Martam
96. Bhagawati Mandir, Kewzing
97. Rameshwar Mandir. Sadam
98. Rameshwar Mandir, Sumbuk
99. Bhagawati Mandir, Sumbuk
100. Shivalaya, Dhargaon
101. Shivalaya, Lingmo
102. Shankar Bhagawan Shivalaya, Majhitar
103. Gangtok Presbyterian Church
104. Namchi Presbyterian Church
105. Chakung Rumbuk Church
106. Wak Presbyterian Church
107. Phambong Presbyterian Church
108. Rhenock Presbyterian Church
109. Mangan Pentecostal Church- --, -
110. Mosque at Gangtok

23["SCHEDULE" II
Section 6 (5)

1. All agricultural lands shall, on the basis of productivity of the soil and access to markets, be classified into Circles. Until a new classification is made, the classification made in Notification No. 615/LR dated the 7th June, 1957, shall be operative in respect of the area referred to therein. For other areas, the classification determined in the course of settlement operations shall be accepted.

2. Each circle shall, on the basis of altitude and type of crops grown, be further divided into classes and sub-classes. The classes and sub-classes recorded in the record-of-rights for the time being in force shall be accepted for the purpose of ascertaining the class or sub-class to which a land belongs.

3. After ascertaining the, appropriate Circle, class and sub-class in the manner aforesaid, the area comprised in the holding shall be converted into standard acres according to the following table of conversion :--'

<u>CIRCLE</u>	<u>CLASS</u>	<u>AREA EQUIVALENT TO</u> <u>A STANDARD</u> <u>ACRE</u>
A	I Paddy/Cardamom II -	1.00 acre
	do- J	1.25 acres
	III~-do	1.50 -do-
	I Dry	2.00 acres
	II -do	2.50 -
	III -do	do3.00 -do-
	Banjo	3.00 -do
	B	Ii-Paddy/Cardamom II
-do-		1.37 -do-
III -do		1.65 -do-
I Dry		2.20 -do
II Dry		2.75 -do-
III -do		3.30 -do-
Banjo		3.30 -do
C		I Paddy/Cardamom II -
	do	1.50 -do-
	III -do	2.00 -do-
	I Dry	2.60 -do-
	II -do	3.00 -do-
	III -de	4.00 -do
	Banjo	4.00 -do-"]

23. Ins by sec 20 of the S. A. L. C. '& R. (Amd.) Act No.2 of 1978 (w. e. f. 22. 6. 78)

THE SIKKIM VIGILANCE POLICE ACT, 1978**ARRANGEMENT OF SECTIONS**

1. Short title, Extent and commencement.
2. Constitution and powers of Sikkim Vigilance Police.
3. Offences to be investigated by the Sikkim Vigilance Police
4. . Superintendence and administration of the Sikkim Vigilance Police.
5. Power to make rules.
6. Application of other laws.

**THE SIKKIM VIGILANCE
POLICE ACT, 1978
ACT NO. 18 OF 1978**

**AN
ACT**

to make provision for the constitution, superintendence and administration of the Sikkim Vigilance Police as a special police force in the State of Sikkim.

[25th September, 1978]

It is hereby enacted in the Twenty-ninth Year of the Republic of India by the Legislature of Sikkim as follows:

- | | | | |
|--|----|-----|--|
| <i>Short title, extent, and commencement.</i> | 1. | (1) | This Act may be called the Sikkim Vigilance Police Act, 1978. |
| ... | | (2) | It extends to the whole of Sikkim. |
| | | (3) | It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint. |
| <i>Constitution and powers of Sikkim Vigilance Police.</i> | 2. | (1) | Notwithstanding anything in the Sikkim Police Act, 1969, or any other law for the time being in force relating to the organization or re-organization of the police, the State Government may constitute a special police force to be called the Sikkim Vigilance. Police for the investigation of offences notified under section 3. |
| | | (2) | Subject to any orders which the State Government may make in this' behalf, members of the said police force shall have, in relation to. the investigation of such offences and arrest of persons concerned in such offences, all the powers, duties, privileges and liabilities which police officers holding corresponding ranks in the ordinary police force of the State have in connection with investigation of offences, and shall for the purpose of conferment of powers under any law for the time being in |

force be deemed to be police officers holding corresponding ranks in the ordinary police force of the state.

- (3) Any member of the said police force of or above' the rank of Sub-Inspector may, subject to any orders which the State Government may make in this behalf, exercise, in discharging his functions under sub-section (2), any of the powers of the Officer-in-Charge of a police station in the area in which he is for the time being posted and when so exercising such powers, shall, subject to any such orders as aforesaid, be deemed to be an Officer-in Charge of a police station discharging the functions' of such an Officer within the limits of his station.

3. The State Government may, by notification in the Official Gazette, specify the offences or classes of offences which are to be investigated by the Sikkim Vigilance Police.

Offences to be investigated by the Sikkim Vigilance Police.

4. (1), The Superintendence of the Sikkim Vigilance Police shall vest in the Home (Vigilance) Department of the State Government.

Superintendence and administration (If the Sikkim Vigilance Police.

(2) The Sikkim Vigilance Police shall also make enquiries into other matters as may be referred to it by the Home (Vigilance) Department and shall submit report.

(3) The administration of the Sikkim Vigilance Police Force shall vest in an Officer appointed in this behalf by the State Government who shall be called Director of Vigilance and who shall exercise, in respect of the said force; such of the powers exercisable by the Inspector General of Police in respect of. the ordinary police force of the State as the State Government may specify in this behalf.

5. The State Government may make rules for 'regulating the functioning of the Sikkim Vigilance Police and generally for carrying out the" purposes of the Act.

Power to make rules.

*Application of
other laws.*

6. Save as otherwise provided in this Act, the provisions of the Sikkim Police Act, 1969, and any other law for the time being in force relating to organization or. Re-organization of police and of the rules and regulations made there under, as they apply. in relation to members of ,the ordinary-police force of the State, shall apply in relation to the members of the said force subject to such adaptation, whether by way of modification, addition or omission, as may be made therein by the State Government consistently with the purposes of this Act.

THE SIKKIM BOARD OF SCHOOL "EDUCATION ACT, 1978

ARRANGEMENT OF SECTIONS

1. Short title and commencement.
2. Definitions.
3. Incorporation of the Board.
4. Constitution of the Board.
5. Publication of the names of members,"
6. Disqualification for membership.
7. Term of office of members.
8. Resignation of members and filling up of vacancies etc.
9. Meetings of the Board.
10. Quorum:
Proceedings not invalidated by reasons of vacancies.
11. Powers and duties of the Board.
12. Powers of the State Government.
13. Officers of the Board
14. Employees of the Board.
15. Powers and duties of the President
16. Powers and duties of the Secretary
17. Subject Committees.
18. Membership, term, Quorum, meeting etc.
19. First set of Regulations.
20. Power to make regulations.
21. Power of the State Government to make regulations, repeal, amend etc,
22. Board Fund.
23. Contribution by the State Government to the Board Fund.
24. Accounts.
25. Audit of accounts.
26. Board to furnish reports, returns etc. to the 'State Government
27. Central Board of secondary Education.
28. Exemption.
29. Power to appoint Sub-Committees.
30. Removal of difficulty.
31. Power to make rules.

THE SIKKIM BOARD OF SCHOOL EDUCATION ACT, 1978

ACT NO. 19 OF 1978

AN

ACT

to provide for the establishment of a Board of School Education to prescribe curricula, textbooks and other instructional materials for schools and to conduct examinations at the school level in the State of Sikkim.

[25th September 1978]

Be it enacted by the Legislature of the State of Sikkim in the Twenty-ninth Year of the Republic of India as follows:

Short title and commencement. 1. (1) This Act may be called the Sikkim Board of School Education Act, 1978.

(2) It shall come into force on such date as the State Government may, by notification, appoint.

Definitions. 2. In this Act and in all Regulations made hereunder, unless there is anything repugnant in the subject or context;

(a) "Board" means the Sikkim Board of School Education established under this Act;

(b) "Fund" means the Sikkim Board of School Education Fund constituted under section 22 of this Act;

(c) "Notification" means a notification under this Act published in the Official Gazette;

(d) "President" means the President of the Board;

(e) "Regulation" means a Regulation made under this Act;

"Secretary" means the Secretary of the Board;

(f)

(g) "State Government" means the Government of the State of Sikkim;

- (h) "prescribed" means. prescribed under the Regulations made under this Act;
- (i) "Head of Institution" means the head of an educational institution of school level in the State by whatever name he be designated;
- (j) "employee" means a full or, part-time. employee engaged permanently or temporarily for the purpose of assisting in the work of the Board,
- (k) "Text-book" means any book prescribed or recommended for an examination by the Board:
- (l) "Registered Teacher" means a teacher who is registered as a teacher in pursuance of a regulation made in that behalf by the Board.

3. (1) The State Government shall, -as soon, as may be, after this Act comes into force, establish a Board' named the Sikkim Board of School Education. "
- (2) "The Board shall be a body corporate, with perpetual succession and a common seal and shall be entitled to acquire, hold and dispose of property, to enter 'into contract and to' do all other things necessary for the purposes of this Act and shall by the said name sue and be sued.

Incorporation of the Board.

4. (I) The Board shall consist of the following;
- (i) The Director (ex- of Education, Sikkim - President exofficio);
 - (i i) The Principal of the Government Degree College, Gangtok-Member (ex-officio);
 - (iii) The Principal, T. N. Academy, Gangtok,-Member (ex-officio);
 - (iv) Seven heads of institutions nominated by Government, at least two of whom shall be women-Members;

Constitution of the Board.

- (v) Two District Education Officers nominated by 'the State Government-Members;
- (vi)' Three persons interested in education nominated by the ' Government;
- (vii) A representative of the Finance Department of the Government not below the rank of a Deputy Secretary nominated by the Government.

Publication of the names of members.

5. The names' of the persons nominated as members of the Board shall be published by notification by the State Government.

Disqualification for membership.

6. (1) A person shall not be eligible for nomination or co-option as it member of the Board or of the Committees formed by it, if he
- (a) has been adjudged by a court of law to be of unsound mind;
 - (b) has been convicted by a court of law 'for an offence which is declared by the State Government to be an offence involving moral turpitude;
 - (c) has directly or indirectly, any interest in publication of text-books intended to be prescribed or recommended by the Board for use in schools recognized by the Board.
- (2) If a nominated or co-opted member of the Board or of any Committee formed. by it becomes subject to any of the disqualifications specified in sub-section (1) his membership shall thereupon cease.
- (3) All disputes relating to the eligibility of any person for nomination or co-option shall be referred to the State Government whose decision on such matters shall be final.

Term of office of members.

7. (1) Nominated members of the Board shall hold office for a term of three years from the date of Notification published under section 5. .

(2). A member nominated in his capacity as holder of particular appointment, shall cease to be a member if he ceases to hold that appointment.

8. 1) A member of the Board, other than an ex officio member may resign his seat by giving notice thereof in writing to the President, and such member shall be deemed to have vacated his seat from the date of acceptance of his resignation by the State Government.

Resignation of members and filling up of vacancies etc.

(2) In the event of a vacancy occurring by resignation, disqualification or death of a member, such vacancy shall be filled up, by nomination, as soon as may be, in the manner provided in section 4.

9. The Board shall meet frequently as would be necessary to transact its business, but the intervening period between any two consecutive meetings shall not ordinarily exceed forty five days.

Meetings of the Board.

10. (1) The quorum for every meeting of the Board shall be five members.
- (2) Subject to the provisions contained in sub-section (1) no act or proceedings of the Board shall be invalid merely by reason of the existence of any vacancy among the members of the Board.

Quorum. Proceedings not invalidated by reasons of vacancies.

II. Subject to any general or special order of the State Government, the provisions of this Act and any regulations made thereunder, the Board shall have the following powers:

Power and duties of the Board.

- (1) to conduct examinations and grant diplomas and certificates to successful candidates;
- (2) to prescribe courses of instruction and text books for examinations conducted by it;
- (3) to prescribe conditions for admission to examinations conducted by it;
- (4) to recognize institutions for purpose of its examinations with the concurrence of the State Government;

- (5-) to demand and receive such fees as may be prescribed;
- (6) to make regulations for prescribing courses of instruction and textbooks for study in institutions of school level in the State;
- (7) to make regulations for imposing penalties for misconduct of examinees, students and teachers and for negligence in work of examiners, paper setters and printing presses in connection with work done relating to examinations;
- (8) to submit to the State Government its views on any matter with which it is concerned or which the State Government may refer to it for advice;
- (9) to appoint part-time employees of the Board as may be necessary from time, to time;
- (10) to institute and award scholarships, medals and prizes under conditions that may be prescribed and to accept endowments for the same, subject to such conditions as the Board may deem fit;
- (II) to organize and provide lecturers, demonstrations, educational exhibitions, educational excursions and to take such other measures as are necessary to promote the standards of school education in the State;
- (12) to appoint subject Committees to advise the Board in framing the courses of studies, prescription of textbooks, appointment of paper-setters, moderators and examiners in different subjects of study. and
- (13) to do such other things as may be necessary to further the objects for which the Board has been constituted.

Powers of the State Government.

12. Notwithstanding anything contained' in this - Act

- (1) The State Government shall have the right to address the Board with reference to anything conducted

or done by the Board and to communicate to the Board its views. on any matter with which the Board is concerned.

- (2) The Board shall report to the State Government such action, if any, as it proposes to. take or has taken upon such communication.
 - (3) If the Board does not, within a reasonable time, take action to the satisfaction of the State Government, it may, after considering any explanation furnished or representation made by the Board, issue, such directions consistent with this. Act, as it may think fit, and the Board shall comply with such direction.
 - (4) In an emergency which, in the opinion, of the State Government requires that immediate action should be taken, the State Government.-may take such action, consistent with this Act.. and the Regulations as it deems necessary without prior consultation with the Board ". and shall forth with inform the Board of the action taken.
 - (5) The State Government. shall have the power to suspend the Board and take over its functions, if in its opinion, the Board has persistently made default in the performance of the duties imposed upon it under this Act.
13. (1) The following shall be the officers of the Board; *Officers of the Board.*
- (i) The President
 - (ii) The Secretary
 - (iii) Such other Officers appointed to assist the Secretary, as may be necessary, from time to time.
- (2) The State Government shall appoint the Secretary of the Board and such other officers. to assist .him as it considers necessary.

Employees of the Board.

14. The full time employees of the Board other than officers shall be appointed by the Board with the prior approval of the State Government.

Powers and duties of the President.

15. (1) The President shall be the Chief Executive Officer of the Board.
- (2) The President shall, when present, preside over all meetings of the Board and the Subject Committee constituted by the Board under this Act.
- (3) In case the President is unable to attend and preside over any meeting of the Board or a meeting of a Subject Committee, he may nominate in advance a member of the Board to preside in his place. In circumstances where such a nomination cannot be made, the members of the Board or Subject Committee present may elect one member from among themselves, to preside at the meeting.
- (4) It shall be the duty of the President to see that the provisions of this Act and the Regulations framed there under, are faithfully observed and he shall have all powers necessary for the purpose. '
- (5) In case any emergency arises out of the administrative business of the Board, which in the opinion of the President requires that immediate action should be taken, he may take any action as he.; deems fit and report his action immediately to the State Government and to the Board at its next meeting.
- (6) The President shall have such powers as may be prescribed.

Powers and duties of the Secretary.

16. The Secretary shall:-
- (1) Subject to the control of the President; act as the Head of the Board office;
- (2) be responsible for seeing that the orders of the Board are carried out;

- (3) be empowered to enter into all contracts on behalf of the Board;
- (4) be the custodian of the common seal and all properties and records of the Board;
- (5) be responsible for preparation of the Annual Report, Annual Statement of Accounts and Budget Estimates of the Board;
- (6) remain in charge of the funds of the Board and shall see that all moneys are expended on the purpose for which they are granted or allotted;
- (7) be the drawing and disbursing officer of the Board;
- (8) be responsible for keeping the minutes of the Board, its Subject Committees and Sub-Committees;
- (9) be responsible for the discipline and conduct of the Board Office;
- (10) conduct all official correspondence of the Board;
- (11) make all arrangements for conducting examinations of the Board;
- (12) deal with the applications and fees received from the candidate for admission to the examinations of the Board in accordance with the Regulations;
- (13) on behalf of the Board, issue under his signature, certificates to successful candidates;
- (14) remain in charge of the Library of the Board;
- (15) issue notice announcing text books prescribed and recommended for examinations of the Board;
- (16) render such assistance to the President as required by him, for performance of his duties;

- (17) perform such other duties as may required by' the Board from time to time,
- (18) delegate, with the permission of the Board, such of his powers and functions to officers junior to him as will be considered by him to be necessary, and
- (19) exercise such other powers and perform such other duties as may be prescribed.

Subject Committee. 17. As soon as may be after the Board is established, it shall appoint, at a meeting of the Board Subject Committees for different subjects taught at the school stage in the State.

- Membership, term. Quorum, meetings etc.* 18. (1) Each Subject Committee shall consist of not less than three and not more than seven members, chosen so as to represent as far as possible, teachers in the subject from different type of institutions spread over the State.
- (2) The President and the Secretary shall be ex-officio members of all Subject Committees. The President shall preside over the meetings of every Subject Committee and the Secretary shall convene the meetings of the Committees.
- (3) The Board may, whenever it considers necessary, co-opt up to a maximum of two expert's to. any Subject Committee: The co-opted'~ members shall have right to vote.
- (4) The term of membership of Subject Committees shall be three years for an ordinary member and one year for a co-opted member.
- (5) The quorum for a meeting of any Subject Committee shall be as near as one-third of the total membership of the Committee including the President, the Secretary and the co-opted members, if any.

- (6) The Subject Committee shall meet as often as it will be necessary to transact their business.

19. The first set of Regulations under this Act shall be made by the State Government to facilitate the initial working of the Board and shall be deemed to have been made by the Board. *First set of Regulations.*

20. Without prejudice to the generality of the foregoing powers, the Board may make regulations for all or any of the following matters, namely: *Power to make regulations.*

- (1) the constitution, powers and duties of committees appointed under section 17;
- (2) marks required for passing in any subject and examination as a whole, and for credit and distinction in any subject,
- (3) disciplinary measures for malpractices in examinations;
- (4) fixing of fees and charges in respect of examinations;
- (5) rate of traveling and daily allowances to the nonofficial members of the Board or Committees;
- (6) laying down procedure to be observed for conduct of meeting of the Board, other than what has been provided in this Act;
- (7) the conduct of examinations, publishing: results including qualifications, appointment of paper setters, moderators, examiners, tabulators and their' duties, powers, remuneration and the rate of traveling and daily allowance;
- (8) the conditions under which candidates shall be "admitted to the, examinations of the Board;
- (9) the conditions under which the Board may recognize institutions for the; purposes of presenting candidates' for its examinations;

(10) the courses of study to be followed in the primary, junior high and higher secondary classes and the courses of study for teachers training and other examinations that may be conducted by the Board;

(11) the conditions for award of certificates and diplomas;

(12) the control, administration, safe custody and management of the finances of the Board; and

(13) all matters which by this Act are to be or may be provided for by the Regulations.

Power of the State Government to make regulation, repeal, amend etc.

21. (1) No regulation of addition or amendment to or repeal of a regulation made by the Board shall be valid without the approval of the State Government

(2) Provided, however, that in case of disapproval by the State Government, they shall refer the matter back to the Board for reconsideration and resubmission. The State Government may, with or without consulting the Board when they deem it necessary and expedient, make, amend or repeal any regulation and such regulation shall be deemed to have been made, amended or repealed by the Board.

Board Fund.

22. (1) The Board shall have a fund called the Sikkim Board of School Education Fund to which shall be credited

(i) all income from fees, endowments, donations and grants for specific purposes, if any;

(ii) annual contributions which may be made by the State Government under such conditions as they may impose; and

(iii) receipt from other sources.

(2) All moneys at the credit of the Board shall be kept in the State Bank of Sikkim or any other Bank approved by the State Government, at Gangtok.

23. (1) The State Government shall make an initial contribution of such amount as it may deem fit to the Board immediately after its establishment. *Contribution by the State Government to the Board Fund.*
- (2) Thereafter, each year, taking into consideration the estimates of receipts and expenditure for the year prepared and presented to the State Government by the Board, the State Government shall make such contribution available to the Board as it may deem necessary,
24. The Board shall keep accounts of its receipts and expenditure in the manner and form prescribed. *Accounts.*
25. The accounts of the Board shall be examined and audited at least once each year by an Auditor appointed by the State Government. Copies of the audited accounts, together with the auditor's report, shall be forwarded to the Board and to State Government for taking such action as may be necessary. *Audit of accounts.*
26. The Board shall furnish to the State Government such reports, and returns and statements and such other information relating to any matter under the control of the Board as the State Government may require. *Board to furnish reports, returns etc. to the State Government.*
27. All regulations, syllabus, courses of studies and text-books prescribed by the Central Board of Secondary Education for the High School and High Secondary School Examinations shall continue to be followed until provisions to replacing them are made by the Board through its own regulations. *Central Board of Secondary Education.*
28. The State Government shall have power to exempt any institution or class of institutions from the operation of this Act in whole or part. *Exemption.*

*Power to appoint
Sub-Committees.*

29. To dispose of business quickly, the Board shall have the power to appoint ad-hoc Sub-Committees for specific purposes. The term of a Sub-Committee shall expire as soon as the report is prepared and submitted by it to the Board. The Board, before taking a decision on the matter for which a Sub-Committee was appointed, shall take into consideration the report of the Sub-Committee.

Removal of difficulty.

30. If any difficulty arises in giving effect to any of the provisions of this Act, the State Government may make such order or do such thing, not inconsistent with this Act as appears to it to be necessary or expedient, to remove the difficulty.

Power to make rules.

31. The State Government may make rules for carrying out the purposes of this Act in respect of matters which , are not. required to be provided for by regulations under this Act.

SIKKIM' CINEMAS (REGULATION) - ACT, 1978**ARRANGEMENT OF SECTIONS**

1. Short title, extent and commencement.
2. Definitions.
3. Cinematograph exhibitions to -be licensed.
4. Licensing Authority.
5. Restrictions -on powers of licensing, authority.,
6. Power of the State Government or District. Magistrate, to--suspend exhibition of films in certain cases.
7. Penalties.
8. Power to revoke or suspend license. Power to
9. make rules.
10. Power to exempt.
11. Protection of State Government and of officers of Government for Acts done in good faith.
12. Validation of fees already realized.
13. Transitional provisions.

**SIKKIM CINEMAS
(REGULATION) ACT 1978**

ACT NO. 20 OF 1978

AN

ACT

to make provisions for regulating exhibitions by means of Cinematographs' in the State of Sikkim.

[25th September, 1978]

WHEREAS it is expedient to make provision for regulating exhibitions by Means,' of Cinematographs in the State of Sikkim:

It is hereby enacted in the Twenty-ninth Year of the Republic of India by the Legislature of Sikkim as follows:

- | | | |
|--|----|--|
| <i>Short title, extent & commencement.</i> | 1 | <ul style="list-style-type: none"> (1) This Act may be called the Sikkim' Cinemas (Regulation) Act, 1978. (2) It extends to the whole of Sikkim. (3) It shall come into force on such date .as the State Government may, by notification in the Official Gazette, appoint. |
| <i>Definitions</i> | 2. | <p>In this Act, unless there is anything repugnant in the subject or context:</p> <ul style="list-style-type: none"> (a) "Cinematograph" includes any apparatus for the representation of moving pictures or series of pictures; (b) "place" includes a house, building, tent, enclosure, open space and any description of transport, whether by land, water or air; (c) . "prescribed" means prescribed by rules made, under this Act; (c) "public exhibition" means an exhibition to which persons are admitted on payment. |

3. (1) Save as otherwise provided in' this. Act no person shall give a public. exhibition by means of a cinematograph elsewhere .than in a. place'. in respect of which a license has been granted under this Act or, otherwise than in compliance with any conditions and, restrictions imposed by such license.

Cinematograph exhibitions to be licensed.

(2) The State Government may, if it considers it necessary to do so, make an order for regulating exhibitions other than public exhibitions and prescribe ,rules and conditions: . .

4. The authority having power to grant licenses (hereinafter referred to as the licensing authority) shall be the District Magistrate within whose jurisdiction the place, where the' exhibitions by means of cinematograph are proposed to be given, is situated:

Licensing Authority.

Provided that the State Government may, by notification in the Official Gazette constitute, for the whole or any part of the State, such other authority, as it may specify in the notification, to .be the licensing authority for the purpose of this Act.

5. (1) The licensing authority. shall not grant licenses under this Act, unless it is satisfied that

Restrictions on powers of licensing authority.

(a) the rules made under this Act have been substantially complied with, and

b) Prescribed precautions, have been 'taken in the place, in respect of which the license is to be given, to provide or the safety of persons attending exhibitions therein:

Provided that the licensing authority shall, before refusing to grant a license under this Act, give the applicant, an opportunity of. showing cause.

- (2)' Subject to the; provisions of .this. Act. and the rules' made, there under, the licensing 'authority may grant licenses under this Act to such persons as that authority thinks fit and: on such terms and conditions and: subject. to such restrictions 'as it may determine:
- (3)' The State Government may, from time' to time, issue directions to licensees generally or, if in the opinion of the State Government circumstances so justify, to .any licensee in particular, for the purpose of regulating the exhibition of any film or class of films and in particular the; exhibition of scientific films, films intended for educational purposes, films dealing with news and current events, documentary films and where any such directions have been issued, those directions shall be deemed to be additional conditions and restrictions subject to which the license has been granted.
- (4) Any person aggrieved by the decision of a licensing authority granting or refusing to grant a license or by any other order of a licensing authority which is declared by rules made under this Act to be appeal able or by the terms and conditions on which or the restrictions subject to which a license is granted" may, within such.. time as may be prescribed, appeal to the State Government or to such officer as the State Government may specify in this behalf, and the State Government or the officer as the ,case may be, may make such order in .the case as it or he thinks fit.

Power of the State Government or District Magistrate to suspend exhibition of films In certain cases.

6. (1) The State Government, in respect of the whole State or any part thereof, and the District Magistrate in respect of the local area within his jurisdiction may, if it or he is of opinion that any film which is being publicly exhibited is likely to cause a breach of the peace, by order, suspend the exhibition of the film and during such suspension the film shall not be exhibited in the State, part, of the" State, ,or: local area,' 'as 'the case may be.

- (2) When an order under sub-section (1) has been issued by a District Magistrate, a copy thereof together with a statement of reasons therefor, shall forthwith be forwarded by the District Magistrate to the State Government, and the State Government may either confirm or annul the order.
- (3) Any order made under sub-section (1) shall, unless it is annulled by the State Government under subsection (2), remain in force for a period of two months, but the State Government may, if it is of opinion that the order should continue in force, direct that the period of suspension shall be extended by such further period as it thinks fit.

If the owner or person in charge of a cinematograph uses the same or allows it to be used, or if the owner or occupier of any place permits that place to be used in contravention of the provisions of this Act or the rules made there under, or of the conditions and restrictions upon or subject to which any license has been granted under this Act, or if any person makes any exhibition of a film contrary to any order under section 6 or to any order or direction under this Act or the rules made there under, he shall be punishable with fine which may extend to one thousand rupees and, in the case of a continuing offence, with a further fine which may extend to one hundred rupees for each day during which the offence continues?

Penalties.

8. (1) If the holder of a license has been convicted of an offence under section 7 of the Cinematograph Act, 1952 (XXXVII of 1952), or of an offence under section 7 of this Act, or has obtained the license by misrepresentation of facts, or acts in contravention of any of the provisions of this Act or of the rules made there under or of the conditions and restrictions upon or subject to which the license has been granted, the licensing authority may revoke the license or suspend it for such period as it may think fit.

Power to revoke or suspend license.

- (2) Any person aggrieved by the order of the licensing authority revoking or suspending a license may, within such time as may be prescribed, appeal to the State Government or such officer as the State Government may specify in this behalf, and the State Government or the officer, as the case may be, may pass such order in the case as it or he thinks fit. The order so passed shall be final

Power to make rules.

9. (1) The State Government may, by notification in the Official Gazette, make rules for the purpose of carrying into effect the provisions of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for
- (a) the procedure in accordance with, which a license may be obtained and the terms, conditions, and restrictions, if any, subject to which licenses may be granted under this Act and the fees payable therefor;
- (b) regulation of cinematograph -exhibitions for securing public safety;
- (c) the time within which and the conditions subject to which an appeal under sub-section (4) of section 5 and under sub-section (2) of section 8 may be made and the procedure for such appeals and the fees payable therefor;
- (d) regulating the means of entrance and exit at places licensed under this Act and providing for the prevention of disturbances thereat;
- (e) regulating prohibiting the sale of any ticket or pass or admission, by whatever name called, to a place licensed under this Act;
- (f) delegation of the power of hearing appeals under sub-section (4) of section 5 and sub-section (2) to any section 8 to any officer subordinate to the State Government.

- (3) All rules made under this Act shall come into force with effect from the date of their publication 'in the Official Gazette, unless a specific date is given in the notification.

10. The State Government may, by order in writing exempt, subject to such conditions and restrictions as it may impose any cinematograph exhibition or class of cinematograph exhibitions from any of the provisions of this Act or any rules made there under.

Power to exempt.

11. No suit or proceeding shall lie against the State Government and no suit, prosecution or proceeding shall lie against any officer of the State Government for anything in good faith done, or intended to be done, under this Act or any rules made there under.

Protection of State Government and of officers of Government for acts done in good faith.

12. Any fees or other amounts realized or purported to have been realized in respect of a license or renewal thereof or in respect of any matter relating to cinemas prior to the coming into force of this Act, shall always be deemed to have been realized validly and under proper legal authority.

Validation of fees already realized.

13. Notwithstanding anything contained in this Act or the rules made there under, a license granted prior to the coming into force of this Act, shall be deemed, for all purpose, to have been granted under this Act and the conditions and restrictions prescribed by the rules under this Act shall, until a new license is granted under this Act and the rules made' there under, be deemed to have been incorporated in such license:

Transitional provisions.

Provided that the licensing authority may grant time, or extend the time. so granted, for compliance with any such condition or restriction.

THE SIKKIM HOUSING AND DEVELOPMENT BOARD ACT, 1979.

ARRANGEMENT OF SECTIONS**CHAPTER I****Preliminary**

1. Short title and commencement.
2. Definitions.

CHAPTER" II**Establishment of the Board**

3. Constitution or the Board.
4. Members of the Board.
5. Proceedings. presumed to be good and valid.
6. Officer and other staff.
7. Powers and duties of the. Secretary and other officers
8. Employment of staff of the State Government.
9. "Meetings of the Board. ~
10. Execution of contracts.
11. Delegation of Board's power to sign contracts.

CHAPTER I I I**Housing Schemes**

12. Powers and duties of Board to undertake housing scheme.
13. Matters to be provided for by housing schemes..
14. Submission of Budget to Board.
15. Board's sanction to Budget.
16. Board's submission of Budget to State Government for approval.
17. Supplementary budget.
18. Publication and execution of housing schemes.
19. Variation of housing schemes.
20. Transfer of open space to local authority.

21. Other duties of the Board.
22. Power to exempt schemes from provisions of this Act.

CHAPTER IV

Acquisition and disposal of land

23. Power to purchase or lease by agreement.

CHAPTER V

Finance, accounts and audit

24. Transfer of assets to. the Board.
25. Board's Fund.
26. Application of the Fund.
27. Expenditure in case of urgency.
28. Subvention and loan to the Board.
29. Power of Board to borrow.
30. Accounts and audit.
31. Concurrent and special audits of accounts.

CHAPTER V I

Miscellaneous

- 32.. Power of entry.
33. Notice of suit against the Board.
34. Power to make rules.
35. Regulations.
36. Power to make bye-laws.
37. Penalty for contravention of bye-laws.
38. Penalty for obstructing etc.
39. Authority for prosecution.
40. Members, officers and employees of the Board to be public servants.
41. Protection of action taken under this Act.
42. Repeal and Savings.

THE SIKKIM, HOUSING AND DEVELOPMENT
- BOARD ACT, 1979
ACT NO. 20 OF 1979
AN
ACT

to provide for the constitution of a housing and Development Board for Sikkim and for matters connected therewith or incidental thereto;

[13th November, 1979]

WHEREAS it is expedient to make provisions for the constitution of a Housing and Development Board for Sikkim and for matters connected therewith or incidental thereto;

It is hereby enacted in the Thirtieth Year of the Republic of India by the Legislature - of Sikkim as follows;

CHAPTER I
Preliminary

- | | | |
|--------------------------------------|----|--|
| <i>Short title and commencement.</i> | 1. | <p>(1) This Act may be called the Sikkim Housing and Development Board, Act, 1979.</p> <p>(2) It shall come into force at once.</p> |
| <i>Definitions.</i> | 2. | <p>In this Act unless there is anything repugnant in the subject or context;</p> <p>(1) "Board" means the Sikkim Housing and Development Board constituted under section 3</p> <p>(2) "Board premises" means any premises belonging to or vested in the Board or taken on lease by the Board or entrusted to the Board, for management and use, for the purpose of this Act;</p> <p>(3) "building materials" means such commodities or articles as are specified by the State Government by notification in the Official Gazette to be building materials for the purposes of this Act;</p> <p>(4) "bye-laws" means bye. laws, made by the Board under section 36;</p> |

- (5) "Chairman" means the Chairman of the Board;
- (6) 'Corporation" means the' Municipal Corporation of Gangtok;
- (7) "housing scheme" means a housing scheme made under this Act;
- (8) "land" includes benefits to arise out of land and things attached to' the earth or permanently fastened to anything attached to the earth;
- (9) "Land Acquisition Act" 'means the Land Acquisition Act, 1894 or the Sikkim Land (Requisition and Acquisition) Act, 1977;
- '(10) "member" means a member of the Board and includes the Chairman;
- (11). Municipality means the Gangtok Municipal Corporation;
- (12) "premises" means any land or building, or part of a building and. includes;
 - (i) gardens, grounds and out-houses, if any, appurtenant to such building or part of a building, and
 - (ii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof;
- (13) "prescribed" .means .prescribed, by rules made under this Act;
- (14) "regulations" means regulations made by the Board under section 35;
- (15) "rules" means rules made by the State Government under section 34;
- (16) "Secretary" means the Secretary. Sikkim Housing and Development Board appointed under section 6
- (7) "year" means the year commencing on the 1st day 'of - 'April and' 'ending on the 31st day of March. -

CHAPTER II
Establishment of the Board

. Constitution of the Board.

3. (1) The State Government shall, by notification in the Official Gazette, constitute for the purposes of this Act a Board by the name of the Sikkim Housing and Development Board.
- (2) The Board shall be a body corporate having perpetual succession and a common seal and may sue and be sued its corporate name and shall be competent to acquire and hold property both movable and immovable, enter into contract and do all things necessary for the purposes of this Act.
- (3) For the purposes of this Act and the Land Acquisition Act the Board shall be deemed to be a local authority.

Members of the Board.

4. (1) The Board shall consist of a Chairman who shall be the Minister-in-Charge of the Local Self Government and Housing Department of the State Government and the following other members, that is to say,
- (i) Secretary, Finance Department.
 - (ii) Secretary, Local Self Government & Housing Department.
 - iii) Secretary, Panchayat & Rural Works Department.
 - (iv) Development Commissioner.
 - (v) Chief Engineer, Sikkim Public Works Department.
 - (VI) Secretary, Sikkim Housing and Development Board.
- (2) Whenever for any reason there is a temporary vacancy in the Office of the Chairman or if the Chairman is, due to infirmity or otherwise, unable to carry out his duties, the State Government may appoint a person to act as Chairman for such period as may be necessary and while so acting the person so appointed shall be deemed to be the Chairman for all purposes of the Act.

- (3) Every member, other than the Chairman, shall receive such allowances, if any, as may be prescribed,

5. No disqualification or defect in the appointment of any person acting as Chairman or any other member shall be deemed to vitiate any act or proceeding of the Board, if such proceeding is otherwise in accordance with the provisions of this Act.

Proceedings presumed to be good and valid.

6. (1) The Board shall have a Secretary, who shall be the Chief Executive Officer and one or more Assistant Secretaries, and such other officers and employees as the Board may consider necessary for the efficient performance of its functions.

Officer and other staff.

(2) The appointment of the Secretary shall be made by the State Government and the appointment of other officers and employees of the Board shall be made by the Board:

Provided that the Board shall not appoint any Officer in a scale of pay the maximum of which exceeds one thousand rupees a month, without obtaining the previous sanction of the State Government?

7. (1) The Secretary and other officers shall perform such duties as may be assigned to them by the Board.

Powers and duties of the Secretary and other officers.

(2) The Board may, from time to time, by order delegate, under such restriction, if any as it may think fit to impose, any of its powers conferred on it by this Act, to the Secretary and to other officers of the Board specified in the order.

8. (1) The Board shall take over and employ such staff of the State Government in the Housing and other Departments as the State Government may make available and every person so taken over and employed shall be subject to the provisions of this Act and the rules and bye-laws made there under:

Employment of staff of the State Government.

Provided that during the period of such employment any matters relating to the pay, allowances, leave, retirement, pensions, provident fund and all other terms and conditions

of service of the members of the said staff shall be regulated by the Sikkim Service Rules or such other rules on the subject as may from time to time be made by the State Government.

(2) All permanent Government servants taken over and employed by the Board under sub-section (1) shall have a lien on their posts in the service of the State Government and the period of their service under the Board, shall on their reversion to the service of the State Government, be counted for their promotion, increments, pension and other matters relating to their service.

Meetings of the Board.

9. The Board shall meet and shall from time to time make such arrangements with respect to the day, time, notice and adjournment of its meetings as it thinks fit, "subject to the following conditions, namely

- (a) an ordinary meeting shall be held at least once in every two months;
- (b) the Chairman, may, whenever he thinks fit, call a special meeting;
- (c) the quorum for every meeting shall be four:
Provided that when a meeting has been adjourned to another date for want of quorum no quorum shall be necessary in the case of the adjourned meeting;
- (d) every meeting shall be presided over by the Chairman and in the absence of the Chairman by any member chosen by the members present;
- (e) all questions at any meeting shall be decided by a majority of the members present and in case of equality of votes, the person presiding shall have and exercise a second or casting vote;
- (f) the minutes of the proceedings of each meeting shall be recorded in a book to be provided for the purpose.

Execution of contracts.

10. (1) Every contract made by the Board shall be entered into in such manner and in such form as may be prescribed and be signed by the Chairman on behalf of the Board:

Provided that

- (a) no contract involving; an expenditure of rupees five lakhs or more shall be made without the previous sanction of the State Government;
 - (b) and contract involving expenditure up to rupees fifty thousand may, in case of urgency, be made by the Chairman without the previous sanction of the Board but shall be referred to the Board at the earliest opportunity.
- (2) Sub-section (1) shall apply to every variation or abandonment of a contract as well as to an original contract.

11. Subject to any rule which the State Government may make in this behalf,' the Board may by order direct that the power to sign a contract shall be exercisable also by the Secretary or any other officer specified by it in the order.

Delegation of Board's power to sign contracts.

CHAPTER III Housing Schemes

12. (I) Subject to the provisions of this Act, the Board may, from time to time, incur expenditure, and undertake works for the framing and execution of such housing schemes in relation to lands and buildings vested in or in the possession of the State Government.

Powers and duties of Board to undertake housing schemes.

(2) The State Government may, on such terms and conditions as it may think fit to. impose, entrust to the Board the framing and execution of any housing scheme and the Board shall thereupon undertake the framing and execution of such scheme.

(3) The Board may, on such terms and conditions as may be agreed upon and with the previous approval of the State Government, take over for execution any housing scheme, on behalf of a local authority or co-operative society, or on behalf of an employer, for building. house property, mainly for the residence of the employees of such local authority, co-operative society or employer or for the residence of the members of such co-operative society, as the case may be.

13. Notwithstanding anything contained in any other law for the time being in force, a housing scheme.. may provide for all or any of the following matters. namely:

Matters to be provided for by housing schemes.

- (a) the acquisition by purchase, exchange or otherwise of any property necessary for the scheme;
- (b) the construction and reconstruction of buildings;
- (c) the sale, letting out or exchange of any" property included in the scheme;
- (d) the roads, drainage, water-supply, lighting, schools, hospitals, dispensaries, market places, parks, play grounds and open spaces within a housing scheme;
- (e) the reclamation or reservation of land for markets, gardens, schools, dispensaries, hospitals, and other amenities in a housing scheme;
- (f) the letting out, management and use, of the Board premises;
- (g) accommodation for any class of inhabitants;
- (h) the advancing of money for the purpose of the scheme;
- (i) the collection of such information and statistics as may be necessary for successful implementation of the scheme, development of any urban or rural area for successful implementation of housing schemes and for purposes ancillary or incidental thereto;
- (j) any other matter for which, in the opinion of the Board or the State Government, it is expedient to make provision with a view to providing housing accommodation and to improving or developing of any area included in a housing scheme.

Submission of Budget to Board.

14. (1) The Chairman shall, at, a special meeting to be held within "the fifteenth day of the month of February in each year, "Jay before the Board, a budget of the Board for the next year.

- (2) Every such budget shall be prepared in such form as may be prescribed and shall make provision for-

- (i) the housing schemes which the Board proposes to execute whether in part or in whole during the next year;
- (ii) the due fulfillment of all the liabilities of the Board; and'
- (Hi) the efficient administration of this Act, and shall contain a statement showing the estimated receipts and expenditure on capital and revenue accounts' for the next year, and such other particulars as) may be prescribed.

15. The Board shall consider the budget laid' before it and sanction it with or without modification.

Board's sanction to Budget.

16. (1) Every budget sanctioned by, the Board shall be submitted to the State Government for approval. Within such time as may be prescribed, the State Government may approve the budget as sanctioned by the Board or return it to the Board. '

Board's submission of Budget to State Government for approval.

(2) Where a budget is returned to the Board by the State Government for making any modifications therein. the Board shall forthwith make such modifications and submit the budget so modified to the State Government, which may then approve the same.

17. The Chairman may, at any time during the year for: which a budget has been approved by the State Government, lay before the Board a supplementary budget and the provisions of section 14, 15 and 16 shall apply to such supplementary budget.

Supplementary budget.

18. After the budget is approved by the State Government, the 'Board shall cause the housing scheme, in respect of which provision is made in the budget, to be published in the Official Gazette in such manner as may be prescribed and proceed to execute such schemes. '

Publication and execution of housing schemes.

19. The Board may at any time vary any housing scheme or any part thereof included in the budget approved by the State Government:

Variation of housing schemes.

Provided that no such variation shall be made except with the "approval of the State Government if it involves an expenditure in excess of ten per cent of the amount as included in the budget approved by the State Government for the execution of any housing scheme.

Transfer of open space to local authority.

20. (1) When any open space for the purpose of ventilation or recreation has been provided by the Board in executing any housing scheme, the Board may, at its option by resolution, transfer such open space to the local authority concerned on completion of the scheme and thereupon such open space shall vest in and be maintained at the expense of the local authority:

Provided that the local authority may -require the Board before any such open space is so transferred to enclose, level, turf, drain and lay-out such space and provide footpaths therein, and if necessary, to provide lamps and other apparatus for lighting .it.

(2) If any difference of opinion arises between the Board and the local authority concerned in respect of any matter referred to in sub-section (1) the matter shall be referred to the State Government whose decision thereon shall be final.

duties of the Board. . *Other*

21. (1) The Board shall take necessary measures to maintain, allot, lease, sell or otherwise use the Board premises in such manner as it may decide and shall collect rent price, compensation and damages in respect thereof.

(2) The Board may

(i) provide technical advice to the State Government and scrutinize projects under housing schemes when required by the State Government to do so;

(ii) undertake research on various problems connected with housing in general and find out in particular the economical methods of constructing houses suited to local conditions;

(iii) undertake comprehensive surveys on problems of housing;

(iv) do all things for

- (a) unification, standardization of simplification, building materials;
- (b) encouraging pre-fabrication and mass production of house components;
- (c) organizing or undertaking the production of building materials for residential or non-residential houses;
- (d) securing a steady and sufficient supply of workmen trained in the work of construction of buildings and for the manufacture of building materials.

(3) Subject to such rules as may be made in this behalf, the Board may, from time to time, appoint one or more Committees or invest any local or other authority for the purpose of discharging or performing such duties or functions of an executive or administrative' nature as it may delegate to such Committee of local or other authority and any such Committee or local or other authority may discharge such duties or may perform such functions accordingly:

22. The state Government may, by general or special order published in the Official. Gazette, exempt, subject to such conditions, if any, as it may impose, any housing scheme undertaken by the Board from all or any of the provisions of this Act or direct that any such provision shall apply to such scheme with such modifications as may be specified in the order.

Power to exempt schemes from provisions of this Act.

CHAPTER IV

Acquisition and disposal of land

23. (1) Where any land is needed for the purpose of a housing scheme or for performing any other duties or functions of the Board, the Board may enter into an agreement with any person for the acquisition by purchase, lease or exchange of his right and interest in such land either wholly or in part, on payment of an amount proportionate to the loss or deprivation caused to the enjoyment of the land:

Power to purchase or lease by agreement.

Provided, that the amount to be paid for the loss or deprivation caused shall not exceed the market value of the land prevailing on the first date of negotiation in respect of the transaction.

(2) The Board may also request the State Government to take steps for the compulsory acquisition under the provisions of the Land Acquisition Act 'of any land or any interest therein required for the execution of a housing scheme or for performing any other duties or functions of the Board and such acquisition of any land or any interest therein shall be deemed to be acquired for a public purpose within the meaning of the Land Acquisition Act.

CHAPTER V

Finance, accounts and audit

Transfer of assets to the Board.

24. (1) Such asset and liabilities of the State Government which the State Government may decide to transfer to the Board on such terms and conditions as may be prescribed shall; with effect from the date of notification published by the State Government in this behalf, stand vested in and transferred to the Board.

(2) All debts and expenditure incurred, all contracts entered into and all matters and things engaged to be done by, with or for the State Government in respect of the assets and liabilities transferred under subsection (1) before and up to the date of transfer, shall be deemed to have been incurred, entered into or engaged to be done with or for the Board and all suits and other legal proceedings instituted or which may be instituted by or against the State Government in respect of such assets shall be continued or instituted by or against the Board, as the case may be.

Board's Fund.

25 (1) The Board shall have a fund to be called the Housing and Development Board Fund.

>

(2) The Board may accept grants, subventions, donations and gifts from the Central Government or the State Government or a local authority or any individual or body, whether incorporated or not for all or any of the purposes of this Act.

(3) The State Government may every year make a grant to the Board of the amount required to meet the administrative expenses of the Board.

(4) All moneys received by or on behalf of the Board, all proceeds of sale of land or any other property, betterment charges and all interest, profits and other moneys securing to the Board shall be deposited in the fund of the Board.

(5) Except as otherwise directed by the State Government, all moneys and receipts specified in the foregoing provisions and forming part of the fund of the Board shall be deposited in the State Bank of Sikkim.

(6) The Bank account or any cash or security of the Board shall be operated or handled by such officers as may be authorized by the Board.'

26. All property, fund and all other assets vested in the Board shall be held and applied by it, subject to the provision and for the purpose of this Act.

Application of the Fund.

27. (1) Where in the opinion of the Board, circumstances of extreme urgency have arisen, it shall be lawful for the Board to make in any year,

Expenditure in case of urgency.

- (a) recurring expenditure not exceeding fifty thousand rupees.
- (b) non-recurring expenditure not exceeding two, lakhs of rupees.

(2) Where any sum is expended under circumstance of extreme urgency as provided in sub-section (1), a report thereof indicating the source from which it is proposed to meet the expenditure shall be made by the Board as soon as practicable to the State Government:

28. (1) The State Government may from time to time make" subventions to the Board for carrying out the purposes of this Act on such terms and conditions as the State Government may determine.

Subvention and loan to the Board.

(2) The State Government may from time to time advance loan to the Board on such terms and conditions not inconsistent with the provisions of this Act as the State Government. may determine.

Power of Board to borrow.

29. (1) The Board may, from time to time, with the previous sanction of the State Government and subject to the provisions of this Act and to such conditions as may be prescribed in this behalf, borrow any sum required for the purposes of the Act,

(2) The rules made by the State Government may empower the Board to; borrow by the issue of debentures and to make arrangements with bankers.

(3) All debentures issued by the Board shall be in such form as the Board, with the sanction of the State Government may; from time to time, determine.

(4) Every debenture shall be signed by the Chairman and one other member of the Board.

(5) Loans borrowed and debentures issued under this section may be guaranteed by the State Government as to the repayment of principal and payment of interest at such rate as may be fixed, by; the State Government.

Accounts and audit.

30. (1) The Board shall cause to be maintained proper books of accounts and such other books as the rules may require and shall prepare in accordance with the rules an annual statement of accounts.

(2) The Board shall cause its accounts to be audited annually by an auditor to be appointed by the State Government. The auditor so appointed shall have the right to demand the production of books, accounts, vouchers, documents and other papers, and to inspect any of the offices of the Board.

(3) As soon as the accounts of the Board have been audited, the Board shall send a copy thereof together with a copy of the report of the auditor thereon to the State Government and shall cause the accounts to be published in the prescribed manner and place copies thereof on sale at a reasonable price.

(4) The Board shall comply with such directions as the State Government may after perusal of the report of the auditor, think fit to issue.

31. (1) notwithstanding anything contained in section 30, the State Government may order that there shall be a concurrent audit of the accounts' of the Board by such person as it thinks fit. The State Government may also direct a special audit to be made by such person as it thinks fit of the accounts of the Board relating to any particular transaction or a class or series of transactions or to a particular period.

Concurrent and special audits of accounts.

(2) When an order is made under sub-section (1), the Board shall present or cause to be presented for audit such accounts and shall furnish to the person appointed under sub-section (1) such information as the said person may require for the purpose of audit and remedy or cause to be remedied the defects pointed out by such person unless they are condoned; by The State Government.

CHAPTER VI

Miscellaneous

32. The Chairman or any person either generally or specially authorized by the Chairman in this behalf may, with or without assistance of workmen, enter into or upon any land in order

Power of entry

- (a) to make any inspection, survey, measurement, valuation or inquiry~
- (b) to take levels;
- (c) to dig or bore into the sub.. soil;
- (d) to set boundaries and intended lines of work:
- (e) to do 'any other things;

when it is necessary to do so for any of the purposes of this Act or any rules made or scheme sanctioned there. under:

Provided that~

(i) no such entry shall be made between sunset and sunrise;

(ii) no dwelling house and no public building which is used as a dwelling place shall be so entered, unless with the consent of the occupier thereof and without giving the said occupier at least twenty-four hours previous written notice of the intention to make such entry;

(iii) sufficient notice shall in every instance be given to enable the female inmates of any apartment to remove themselves to some part of the premises where their privacy will not be disturbed;

(iv) due regard shall always be had, so far as may be, compatible with the exigencies of the purpose for which the entry is made, to the social and religious usages of the occupiers of the premises entered.

Notice of suit against the Board.

33. No person shall commence any suit against the Board or against any officer or employee of the Board, or any, person acting under the orders of the Board, for anything done or purporting to have been' done in pursuance of this Act without giving to the Board, officer or employee or person two months' previous notice in writing of the intended suit and of the cause thereof.

Power to make rules.

34. (1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers such rules may provide for all or any of the following purposes, namely:

- (a) the allowance of members;
- (b) the manner and form in which contract shall be entered into under sub -section (1) of section 10
- (c) the form of the annual budget to be laid, before the Board under section 14 and the other particulars to be contained therein;"

- (d) the time within which the State Government may approve or return the budget to the Board under sub-section (I) of section 16;
- (e) the manner of publication of the housing scheme included in the budget under section 18;
- (f) the terms and conditions on which assets of the State Government may be transferred to the Board under section 24;
- (g) the conditions subject to which the Board may borrow~ any sum under section 29;
- (h) the manner of preparation, maintenance and publication of accounts under section 30;
- (i) any other matter which is to be or may be prescribed under this Act:

35. (1) The Board may, from time to time, with the previous sanction of the - State Government make regulations consistent with this Act and with any rule made under this Act.

Regulations

- (2) Such regulations may provide for
 - (a) the management and use of buildings constructed under any housing scheme;
 - (b) the principles to be followed in allotment of tenements and premises;
 - (c) regulating its procedure and the disposal of its business;
 - (d) the conditions of service of the employees of the Board other than those taken over and employed under sub-section (1) of section 8.

(3) If it appears to the State Government that it is necessary or desirable for carrying out the purposes of this Act to make or amend any regulation made under sub-section

(1), it may call upon the Board to make *or* amend such regulation. within such time as it may specify. If the Board fails to make such regulation *or* amendment within the time specified, the State Government may itself make such regulation *or* amendment and the regulation *or* the amendment so made shall be deemed to have been made by the Board under subsection (1).

Power to make bye laws.

36. (1) The Board may, with the previous sanction of the State Government, make bye laws, not inconsistent with this Act and rules which may be necessary or expedient *for* the purpose of carrying out its duties and functions under this Act.

(2) A bye law made under this section may provide that
a. contravention thereof shall be an offence.

(3) All bye laws made under this section shall be published in the Official Gazette.

Penalty for contravention of bye laws.

37. Whoever contravenes a bye law made under section 36 shall, on conviction, be punished with imprisonment *for* a term which may extend *to* six months *or* with fine which may extend to one thousand rupees or with both.

Penalty for obstructing etc.

38. If any person

(a) obstructs, or molests any person with whom the Board has entered into a contract, in the performance or execution of his duty or of anything which he is empowered *or* required to do under this Act, *or*

(b) removes any mark set up *for* the purpose of indicating any level or direction necessary *to* the execution of works authorized under this Act,

he 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.

Authority for prosecution.

39. Unless otherwise expressly provided, no Court shall take' cognizance of any offence punishable under this Act 'except.

on the complaint, of or upon information received from the Board or some person authorized by the Board by general or special order in this behalf.

40. All members, officers and employees of the Board shall be deemed when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code.

Members, officers and employees of the Board to be public servants.

41. No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or purported to be done under this Act.

Protection of action taken under this Act.

42. (1) The Sikkim Housing and Development Board Ordinance, 1979 (Ordinance No.4 of 1979) is hereby, repealed.

Repeal and Savings

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

THE SIKKIM FISHERIES ACT, 1980.**ARRANGEMENT OF SECTIONS**

1. Short title, extent and commencement.
2. Definitions.
3. Power to make rules.
4. Powers to prohibit sale of fish.
5. Penalties.
6. Destruction of fish by explosive and punishment therefor.
7. Destruction of fish by poisoning and punishment therefor.
8. Offence cognizable.
9. Power to arrest without warrant and investigation of offences under this Act
10. Power of search and investigation.
11. Power to compound certain offences and charge compensation.
12. Persons performing duties under this Act and protection of action taken on good faith.
13. Repeal and Savings.

**THE SIKKIM. FISHERIES
ACT, 1980**

ACT' NO.3 OF. 1980

AN

ACT

to provide for conservation, propagation, development and the modes of disposal. of fisheries. in Sikkim.

[5th April, 1980 j

Be it enacted by the Legislative Assembly of Sikkim in the Thirty-first Year of the Republic of India as follows:

1. (1) This Act may be called the Sikkim Fisheries Act, 1980. *Short title; extent and commencement*
 - (2) It shall extend to the whole of Sikkim.
 - (3) It shall come into force on such date as the State Government may, by notification. in the Official' Gazette; appoint.
2. In this Act and the rules made there under unless. there is anything repugnant in the subject or context *Definition.*
- (i) 'fish' includes shell-fish in all stages of its life including aquatic plants and animals of fisheries value;
 - (ii) 'fishing; gear means.. any net, line. rod and line, fishing tackle or other appliances used for the purpose of, catching fish;
 - (Hi) 'fishing craft' means any boat manually operated or operated by power used for the. purpose of fishing or the transport of fish;
 - (iv) 'fishing offence' means any offence punishable under this Act or any rule made there under;
 - (v) 'fishery officer' means any person whom the State Government. may, from time to time, appoint by name or as holding, an office. to carry out all or

any of the purposes of this Act or to do anything - required by, this Act or any rule made there under:

, Provided that - no police officer below the rank of Sub-Inspector shall be so empowered;

(vi) 'fixed engine' means -any net, cage, trap or other contrivance for taking fish -fixed in the soil or made stationary in the other way;

(vii) 'Notification' means a notification published in the Official Gazette;

(viii) 'private waters' means water which are the exclusive property of any person, or in which any person has for the time being an exclusive right of fishery 'whether as owner, lessee or in any other capacity and includes tanks, ponds, artificial lake etc; excavated' at expenses of the owner which have' no communication at any season with the natural waters of any river, streams, or canals;

Explanation.- Water shall not cease to be private water within the meaning of this definition by reason only that other persons may have by custom a right of fishery therein;

(ix) 'State Government' means the Government of the State of Sikkim;

(x) 'Religious' water' means water belonging to a religious 'body or institution and' which has by reason thereof and on religious grounds never been fished before;

Explanation.-The provisions of this definition shall not however, debar the State Government to develop such water with fisheries which. however, will not be subjected to commercial use without the consent of the religious body or institution or the persons who may have customs attached to such water;

(xi) 'religious, body' means the trustees" or any other person who are in charge of a 'religious institu

tion or in whom the ownership of the religious institution vests for the time being;

- (xii) "'religious institution' means a temple, a mosque, a church, a monastery or any other shrine dedicated to any God or Goddess and such other institutions as the State Government may, by notification, declare in this behalf;
- (xiii) 'section or 'sub-section' means a section or subsection of this Act unless referred to any other Act.

3. (1) The State Government may make rules for the purposes mentioned hereinafter in this section and shall under such rules declare the waters, not being private waters, to which all or any of them shall apply.

Powers to make rules.

(2) The State Government may by notification apply such rules or any of them to any private water with the consent in writing of the owner thereof and of all persons having for the time being any exclusive right of fishery therein.

(3) The State Government may make rules for the propagation and development of fisheries in private waters which may include grant of financial help therefor.

Explanation. Financial help shall include loans, subsidy or grants-in-aid.

- (4) Such rules may,
 - (a) prohibit or regulate all or any of the following matters
 - (i) the erection and use of fixed engines;
 - (ii) the construction of weirs, bunds and diversion of natural waters for killing fish; and
 - (iii) the dimension and kinds of fishing gears and modes of their use.
 - (b) prohibit fishing except under a license and regulate the granting of such licenses, the fees payable therefor and the conditions to be inserted therein;

- (e) prohibit destruction or attempt to. destroy fish by. any gear .which the. State Government may consider harmful or destructive;
- (d) prescribe seasons in which the killing or catching or, sale of any fish of any prescribed species shall 'be prohibited;
- (e) prescribe a minimum size or weight below which no. fish of any prescribed species shall be taught, killed or sold;
- (0) prohibit fishing in any specified water far a specified period;
- (g) prescribe modes, means, agency and procedures of business of fisheries within and out side the State;
- (h) regulate export of fish or specified species of fish outside any area or areas and also. prescribe the.. rate. for sale of fish in any market of the State;
- (i) regulate and prescribe lease Of. mortgage of tank, pond or land for construction of pond intended for stocking in such tank or pond with fish of any class;
- (j) regulate the possession of fishing craft and gear within any specified limits as may appear to. be necessary
- (k) such rules may, among other matters, also. provide for the examination. of fish" in transit within. specified limits.

(5) In making any rules under this section the State Government may provide *for*

- (a) seizure, removal and forfeiture of any apparatus erected or used for .fishing in contravention of the rules;

- (b) forfeiture *of* any fish taken by means *of* any such apparatus;
- (c) confiscation *of* any consignment *of* fish held or transported in contravention *of* the rules.

4. The State Government may by notification prohibit in any specified areas the offering or exposing for sale or barter *of* any fish killed or caught in contravention *of* any rules made under sub-section (4) *of* section 3 *of* this Act.

Powers to prohibit sale of fish.

5. (1) The breach *of* any rule made under section 3 or *of* any prohibition notified under section 4 shall be punishable with imprisonment which may extend to three months or with fine which may extend to five hundred rupees or with both, and when the breach is a continuing one, with a further fine which may extend to ten rupees for each day during which the breach is continued after the first day. .

Penalties.

(2) If any person convicted *of* an offence under this Act, commits a like. offence afterwards then, he shall be punishable with imprisonment which may extend to six months or with fine which may extend to one thousand. rupees or with both for each subsequent offence.

6. If any person uses any dynamite or other explosive substances in any water with intent thereby to catch or destroy fish that may be therein, he shall be punishable with imprisonment for a term which may extend to six months *or* with fine which may extend to one thousand' rupees or with both.

Destruction of fish by explosives and punishment therefore.

7. *If* any person puts any poison, lime or noxious material into any water with intent thereby *to* catch or destroy any fish which may be therein, he shall be punishable with imprisonment for a term which may extend *to* six months or with fine which may extend *to* one thousand rupees or with both.

Destruction of fish by poisoning and punishment there for.

8. Notwithstanding anything contained .in the Law relating to Criminal Procedure in force in Sikkim, the offences under this Act shall be cognizable and any property used for committing fishing offence may be forfeited to the State.

Offence cognizable.

Power to arrest without warrant and investigation of offences under this Act.

9.(1) Any Fishery Officer, Police Officer or any other person specially empowered by the State Government in this behalf, may, without warrant, arrest any person committing or attempting to commit in his view" any offence punishable under this Act and may detain him for investigation including ascertainment of name and residence.

(2) When the investigation is completed or the true name and residence of such person have been ascertained, he shall be released on his executing a bond; with or without sureties, to appear before a Magistrate, if so required.

(3) Should the investigation not be concluded or the name and residence of such person not be, ascertained within twenty four hours from the time of arrest, or should he fail to execute the bond, or, if so required, to furnish sufficient sureties, he shall forthwith be forwarded to the nearest Magistrate along with copies of connected papers.

(4)The, Magistrate, to whom an accused person is forwarded under this section, shall follow the procedure relating to remand as laid down in the Code of Criminal Procedure for the time being in force'

Power of search and investigation.

10. Every Fishery Officer shall, have the same power of search and investigation in respect of offences under this Act as that of a Police Officer under, the provisions of the law relating to Criminal Procedure for the time being in force in Sikkim

Power to compound certain offences and charge compensation.

11. (1) The State Government may, by notification, empower a Fishery Officer by name or as holding an office

- (a) to accept from person concerning whom evidence exists which if unrebutted would prove that he has committed any fishing offence as described in the first column of the Schedule, a sum of money by way of compensation for the offence with regard to which such evidence exists and on payment of such sum to such officer such person" if in custody, shall be discharged and no further proceedings shall be instituted against him;

- '(b) to 'accept compensation as damages for the loss caused to fish life as may be assessed by such officer at the prevalent market rate' which shall be in addition to the compensation specified in the Schedule;

(c) , to release any property that has been seized as liable .to confiscation on payment of the value of such property as estimated by such officer and on payment of such value such property shall be released and no further proceedings shall be taken in respect thereof.

(2) The sum of money accepted as compensation under sub-clause (a) of sub-section (1) shall be in no case exceeds the amount mentioned in the second column of the Schedule for the particular offence detailed in the first column thereof:

Provided that provision of sub-section (2) shall not limit the act of an officer to charge compensation for different offences collectively if such offences are committed at the same time by a person.

12. Person empowered to exercise and execute duties under this Act or rules made there under shall be deemed to be public servant within the meaning of section 21 of the Indian Penal Code, and no suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act.

Persons performing duties under this Act and protection of action taken on good faith.

13. All Acts, Rules, Notifications, Regulations or Orders in force, permanently or temporarily, in Sikkim for the protection, conservation and development of fisheries immediately before the enforcement and commencement of this Act are hereby repealed provided that,

Repeal and Savings.

(a) anything done or action taken or proceedings commenced or continued under the repealed Rules, Notifications, Orders, Regulations or Acts, promulgated, made or issued by the com

petent authority of the time shall be deemed to have been done, taken and commenced or continued under the corresponding provisions of this Act;

- (b) any appointment, order, regulation or notification made or issued under the provisions of the repealed Rules, Orders, Regulations or Notifications shall in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or made and issued under the provisions of this Act unless and until superseded by any appointment, order, regulation or notification made or issued under this Act.

SCHEDULE OF COMPENSATION

(As provided under section 11 of the Sikkim Fisheries Act, 1980.)

Limits of amounts acceptable; as, compensation for certain matters of Fishing offences detailed under section 11 of the Act.

<u>Description of offences</u>	<u>Maximum amount acceptable as compensation.</u>
1. Fishing with a net having smaller mesh than that prescribed under the rule.	Rs. One hundred
2. Fishing without a license.	. Rs. One hundred.
3. Killing, catching or selling or attempting to kill, catch or sell any fish of a size and weight less than the standard prescribed under this Act.	Rs. Twenty-five.
4. Killing, catching or selling or attempting to do so, any fish of a prohibited species during a close season.	Rs. Fifty.
5. Fishing with any gear or method other than that permitted under the Rule.	Rs. Fifty.
6. Using at anyone time more than the number of gears permitted under the rules.	Rs. Fifty.
7 Fishing or attempting to fish in any of the prohibited waters.	Rs. One hundred.
8. License holder employing or engaging non-licensees to help with their gear while fishing.	'Rs. Fifty.
9. Offering or exposing for sale Or barter of any fish, the sale of which is prohibited in any specified area which may be notified under section 4 of this Act.	Rs. Fifty.
10. Exporting or attempting to export fishes or fish of any specified species in contravention of the provision of rules.	Rs. One -hundred..
11 Selling or attempting to sell fish for a price above the prescribed market value	Rs Fifty
12 Possessing tackle or gear unauthorizedly	Rs One hundred

THE SIKKIM. WEIGHTS AND MEASURES ACT, 1980

ARRANGEMENT OF SECTIONS**CHAPTER I****Preliminary**

1. Short title, extent and commencement.
2. Act not to apply to inter-State trade or commerce
3. Definitions.
4. Provisions of this Act to override the provisions of any other law except to the Central Act

CHAPTER II**APPOINTMENT OF CONTROLLERS, INSPECTORS AND OTHER OFFICERS**

5. Appointment of Controllers, Inspectors, other officers and staff.
6. Power to authorize Inspector to adjust weights or measures.
7. Controller and officers appointed under this Act to be public servants.
8. Protection of action taken in good faith.

CHAPTER III**General provisions in relation to Standard Weights and Measures.**

9. Prohibition of use of weights and measures other than standard weights and measures.
10. Use of weights only or measures only in certain cases.
11. Prohibition of quotations, etc. otherwise than in terms of standard unit of weight, measure or numeration.

CHAPTER IV**Custody and verification of standard equipments.**

12. Custody and verification of reference standards.
13. Preparation of secondary and working standards.
14. Verification, Stamping- and Custody of Secondary or working standards
15. Secondary or working standard which may not be stamped.

**CHAPTER V,
Manufacture, repair or sale of weights or measures.**

16. Prohibition on the manufacture, repair or sale of weights or measures without license.
17. Suspension and cancellation of license.
18. Manufacture of weights or measures.
19. Prohibition of sale or use of unstamped weights or measures.
20. Maker, manufacturer etc., to maintain records and registers.

**CHAPTER VI
Verification and stamping of weights or
measures.**

21. Verification and stamping of weights or measures.
22. Display of certificate of verification.
23. Validity of weights or measures duly stamped.

**CHAPTER VII
Inspection, search, seizure and forfeiture.**

24. Power to inspect
25. . Power of Inspector for inspection to require production of weight or measures or .records for inspection
26. Power of Inspector Power to enter premises
27. Power to search
28. . Power of Inspector to Inspector to seize any weight or measure
29. Inspector to reseal or repack where net contents are found to have been correctly stated
30. Forfeiture

**CHAPTER VIII
Provisions with regard to commodities in packaged form sold or distributed
within the State.**

31. Provisions of the Central Act relating to packaged commodities to apply to packaged commodities sold or distributed within the State.

**CHAPTER IX
Provisions with regard to the sale of commodities in any' other form**

32. Sale of commodities by number.
33. Sale of commodities by heaps.

CHAPTER X
Offences and penalties

34. Penalty for manufacturing, etc., of non-standard weights or measures.
35. Penalty for counterfeiting of seals, etc.
36. Penalty for sale or delivery of commodities etc. by non-standard weights or measure.

37. Penalty for keeping non-standard weights or measures for use and for other contraventions.
38. Penalty for contravention of section 10.
39. Penalty for contravention of section 11.
40. Penalty for contravention of section 16.
41. Penalty for contravention of section 17.
42. Penalty for contravention of section 18.
43. Penalty for contravention of section 19.
44. Penalty for contravention of section 20.
45. Penalty for contravention of section 21.
46. Penalty for contravention of section 25.
47. Penalty for contravention of section 26.
48. Penalty for contravention of sections 27 and 28.
49. Penalty for contravention of section 31.
50. Penalty for contravention of section 32.
51. Penalty for contravention of section 33.
52. Penalty for tampering with license.
53. Penalty for selling or delivering rejected weights and measures.
54. Penalty for personating of officials.
55. Penalty for giving false information or maintaining false records or registers
56. Willful verification or disclosure in contravention of law.
57. Vexatious search.
58. Penalty for contravention of provisions not separately provided for.
59. Presumption to be made in certain cases.
60. When employer to be deemed to have abetted an offence.
61. Offences by companies.
62. Cognizance of offences.
63. Compounding of offences
64. Provisions of Indian Penal Code not to apply to any offence under this Act.

CHAPTER 'XI
, Miscellaneous.

- 65. Transfer or transmission of 'business.
- 66. Licenses neither saleable nor transferable.
- 67. Appeals.
- 68. Levy of fees.
- 69. Power to make rules.
Power of State Government to make provisions of Central Act relating to approval of
- 70. models applicable to models of weights or measures intended to be used exclusively within the State.
- 71. Act where not to apply to the Armed Forces of the Union.
- 72. Repeal and Savings.

THE SIKKIM WEIGHTS AND MEASURES ACT 1980

ACT NO.4 OF 1980

AN

ACT

to provide for the enforcement of the standards of weights and measures established by or under the Central Act and for matters connected therewith or incidental thereto.

[5th 'April, 198

Be it enacted by the Legislature of the State of Sikkim in the Thirty first Year of the Republic of India as follows:

CHAPTER I

Preliminary.

Short title, extent and commencement.

1. (1) This Act may be called the Sikkim Weights and Measures Act, 1980.

(2) It extends to the whole of the State of Sikkim.

(3) It shall come into force on such date as the State Government may, by notification, appoint and different dates may be appointed for different~

(a) provisions of this Act,

(b) areas,

(c) classes of undertakings,

(d) classes of goods,

(e) classes of weights and measures, or

(f) classes of users. of weights and measures,

and any reference in any such provision to the commencement of this Act shall be construed as reference to the coming into force of that provision in such areas, or in respect of such classes of undertakings, goods, weights and measures of users of weights and measures in relation to which this Act has been brought into force.

Act not to apply to inter - State trade 'or commerce.

2. Nothing in this Act shall apply to any inter-State trade or commerce in any weight or measure or in any other goods which are sold, delivered or distributed by weight, measure or number.

3.

Definitions.

In this Act, unless the context

(a) "additional controller" includes a Joint Controller, Deputy Controller and an Assistant Controller appointed under section 5;

(b) "authorized seal or stamp" means a seal or stamp made under, and in accordance with, the provisions of this Act;

(c) "Central Act" means the Standards of Weights and Measures Act, 1976;

(d) "controller" means the Controller of Legal Metrology appointed by the State Government under section 5;

(e) "counterfeit", in relation to a seal or stamp, means a seal or stamp which is so made as to resemble an authorized seal or stamp, as the case may be, intending by that resemblance to practice deception, or knowing it to be likely that deception will thereby be practiced.

Explanation 1. - It is not essential that the resemblance of the counterfeit seal or stamp to the authorized seal or stamp should be exact.

Explanation 2. - When a person causes a counterfeit seal or stamp to resemble an authorized seal or stamp and the resemblance is such that if a person relies on such seal or stamp, he might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the seal or stamp to resemble the authorized seal or stamp intended by means of that resemblance to practice deception knew it to be likely that deception would thereby be practiced;

(f) "Heap" means any unit of a commodity for sale where such sale is intended to be made, without any weighing or measurement or, where the sale is made by number, without counting the number;

(g) "inspector" means a person who is appointed as such under section 5, by whatever name called;

- (h) "mint" means a mint of the Central Government;
- (i) "notification" means a notification published in the Official Gazette;
- (j) "prescribed" means prescribed by rules made under this Act;
- (k) "protection" means the utilization of any weight or measure or any reading obtained with the help of any weight or measure, for the purpose of determining whether or not any step is required to be taken to safeguard the well-being of any human being or animal, commodity, vegetation or thing, whether individually or collectively;

(l) "standard weight or measure" means a weight, measure or number which conforms to the standards established in relation thereto by or under Central Act;

(m) words and expressions used in this Act and not defined but defined in the Central Act shall have the meanings respectively assigned to them in that Act.

Provision of this Act to override the provisions of any other law except the Central Act.

4. The provision of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act and the Central Act or in any instrument having effect by virtue of any enactment other than this Act or the Central Act.

CHAPTER II

Appointment of Controllers, Inspectors and other Officers,

Appointment of Controllers, Inspectors, other officers and staff.

S. (1) The State Government may, by notification, appoint a Controller of Legal Metrology for the State and as many Additional, Joint, Deputy or Assistant Controllers, Inspectors and other officers and staff as may be necessary for exercising the powers and efficiently discharging the duties conferred or imposed on them by or under this Act.

(2) Every Additional Controller, appointed under subsection (1), shall exercise such powers, and discharge such functions, of the Controller, as the State Government may, by notification, authorize in this behalf.

(3) The Controller may, by general or special order define the local limits within which each Additional Controller or each Inspector shall exercise the powers and discharge the duties conferred or imposed on him by or under this Act.

(4) Subject to the provisions of this Act, every Additional Controller and every Inspector shall perform his functions and discharge the duties of his office under the general superintendence, directions and control of the Controller and shall exercise those powers and discharge those duties in the same manner and with the same effect as if they had been conferred or imposed on him under this Act and not by way of authorization.

(5) The Controller and every Additional Controller may also

- (a) perform all or any of the functions of; and
- (b) exercise all or any of the powers conferred by this Act or any rule or order made there under, on an Inspector.

6. Where the Controller is of opinion that it is necessary so to do, he may, by an order in writing, authorize an Inspector, or other Officer not below the rank of an Inspector, to adjust any weight or measure in any area within the local limits of his jurisdiction.

*Power to authorize
Inspector to adjust
Weights or measures.*

7. The Controller and every Additional Controller, and every Inspector and every other person authorized to perform any duty by or under this Act, shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

*Controller Gild offic-
ers appointed under
this Act to be public
Servants.*

8. No suit, prosecution or other legal proceedings shall lie against the Controller or any additional Controller, or any Inspector or any other person authorized to perform any duty by or under this Act in respect of anything which is in good faith done or intended to be done under this Act or any rule or order made there under.

*Protection of action
taken in good faith.*

CHAPTER III

General provisions in relation to Standard Weights and Measures.

Prohibition of use of weights and measures other than standard weights and measures.

9. (1) Notwithstanding any custom, usage or method of whatever nature, no weight or measure other than the standard weight or measure shall be used or kept in any premises within the State of Sikkim in such circumstances as to indicate that such weight or measure is intended, or is likely, to be used for any weighing or measurement.

(2) Any custom, usage, practice or method of whatever nature which permits a person to demand, receive, or cause to be demanded or received within the State of Sikkim, any quantity of article, thing or service in excess of, or less than, the quantity specified by weight or measure in the contract or other agreement in relation to the said article, thing or service shall be void.

(3) On and from the commencement of this Act, no weight, measure or number, other than the standard weight, measure or number, shall be used in, or form the basis of, any contract or other agreement in relation to any trade or commerce within the State of Sikkim.

(4) Any contract or other agreement, which contravenes the provisions of sub-section (3), shall be void.

Use of weights only or measures only in certain cases.

10. (1) The State Government may, by rules made in- this behalf, direct that in respect of the class of goods or undertakings or users specified therein

- (a) no transaction, dealing or contract shall be made or had; or
- (b) no industrial production shall be undertaken; or
- (c) no use of protection shall be made, within the State of Sikkim, except by such weight, measure or number as may be specified in the said rules.

(2) Any rule made under sub-section (1) shall take effect in such area, from such future date and subject to such conditions, if any, as may be specified therein.

11. Except where he is permitted under the Central Act so to do, so no person shall, in relation to any goods or things which are sold, transferred, distributed or delivered, or any services rendered within the State of Sikkim,

. Prohibition of quotations, etc. otherwise than in terms of standard units of weight, measure or numeration.

(a) quote, or make announcement of, whether by word of mouth or otherwise, any price or charge; or

(b) issue or exhibit any price list, invoice, cash memo or other document; or

(c) prepare or publish any advertisement, poster or other document; or

(d) indicate the contents of any package either on itself or on any label, carton or other thing; or

(e) indicate the contents on any container; or

(f) express, in relation to any transaction, industrial production or protection, any quantity or dimension, otherwise than in accordance with the standard units of weight, measure or numeration.

CHAPTER IV

Custody and verification of standard equipments.

12. Every reference standard, supplied by the Central Government to the State Government, shall be kept at such place and in such custody as may be prescribed, and no such reference standard shall be deemed to be a reference standard and shall be used as such unless it has been verified and authenticated in accordance with the rules made under the Central Act.

Custody and verification of reference standards.

13. The State Government may cause to be prepared at a Mint as many sets of secondary standard or working standard, verified and authenticated by the Mint in such manner as may be specified under the Central Act, as it may think necessary:

Preparation of secondary and working standards.

Provided that where the Mint intimates the State Government in writing that it is unable to prepare secondary standard or working standard weight or measure, that Govern

ment may cause such secondary standard or working standard' weight or measure to be prepared by such person as it may think fit and such secondary standard or working standard weight or measure shall be verified and authenticated by such authority as may be specified by rules made under this Act and every such verification and authentication shall be made in the manner specified under the Central Act.

*Verification, Stamping
and Custody of
Secondary or working
standards. .*

14. (1) Every secondary standard or working standard shall conform to the standards established by or under the Central Act and shall be verified with the reference standard or secondary standard, as the case may be, in such manner and at such periodical intervals as may be specified by or under that Act and shall, if found on such verification to conform to the standards established by or under that Act, be stamped.

(2) Where any secondary standard or working standard is stamped under sub-section (1), a certificate shall be separately issued showing the date on which such weight or measure was stamped.

(3) Every verification and stamping referred to in subsection (1) shall be made by such person or authority as may be prescribed.

(4) A secondary standard or working standard which is not verified and stamped in accordance with the provisions of sub-section (1) shall not be deemed to be a secondary standard or working standard, as the case may be, and shall not be used for the verification of any working standard or, as the case may be, of any weight or measure, not being a national prototype or a reference standard or secondary standard.

(5) Every secondary standard shall be kept at such place and in such custody as may be prescribed.

*Secondary or working
standard which may
not be stamped.*

15. Where the State Government is of opinion that by reason of the size or nature of any secondary standard or working standard, it is not desirable or practicable to put stamp thereon, it may direct that instead of putting a stamp on such secondary standard or working standard, a certificate may be issued to the effect that such secondary standard or

working standard conforms to the standards established' by or' under the Central Act and every secondary standard or working standard so certified shall be deemed to have been duly stamped under this Act on the date., on which such certificate was issued'.

CHAPTER V".

Manufacture Repair or Sale of Weights. or Measures;

16. (1) No person shall make, manufacture,, repair or sell any weight or measure unless he holds a valid license issued in this behalf by the Controller authorizing such person to do, so:

Prohibition on the manufacture, repair,. or sale of weights, or' measures without. license.

Provided that a person who bonafide repairs in his. premises any weight or measure owned by him shall not be required to take out. a license referred to in this sub-section. if he, in the opinion of the Controller

(a) has the technical competence and the necessary equip-ment to repair such weight or measure; or

(b) having the necessary equipment 'for .the repair of such weight or measure in his possession, has persons in his. employment who have the technical competence to repair such, weight or measure.

(2) Every license issued under this section

(a) hall be in such form as may be prescribed;

(b) shall be issued on payment of such .fees as may be prescribed;

(b) shall be. valid for such period as may be specified, therein;

(c)

(d) may be renewed from. time to time; and.

(e) may contain such conditions and restrictions as, my be prescribed.

(3) Every license issued under any Sikkim Law relating: to weights and measures shall, if in force immediately before the commencement of this Act, continue to be. in force until the, expiry. of the period of its validity or. until the cancella.

tion thereof, whichever is earlier, and may be renewed under this Act if an application for its renewal is made in the prescribed form at least one month before the expiry of the period of its validity.

(4) A person who intends to commence, after the commencement of this Act, business as a maker, manufacturer, repairer or seller of any weight or measure, shall make an application in such form as may be prescribed for the issue of a license and every license so issued may be renewed if an application for its renewal is made in the prescribed form at least one month before the expiry of the period of its validity.

(5) The Controller may, if he is satisfied that the maker, manufacturer, repairer or seller, as the case may be, of any weight or measure was prevented by sufficient cause from making application for the renewal of his license before the expiry of -the period of the validity thereof, permit him to make the application within a further period of one month from the date of expiry of the said period on payment by him of such further fee, not exceeding the fee which is payable for the issue of the licence.

(6) On receipt of an application for the issue of a licence under this section, the Controller may, if he is satisfied, after making such inquiry .as he may think fit, that the applicant fulfils the prescribed conditions, issue such licence:

Provided that no application for the issue of a licence shall be rejected unless the applicant has been given a reasonable opportunity of making representation against the proposed action.

(7) No application for the renewal of a licence issued under this section shall be rejected unless

(a) the holder thereof has been given a reasonable opportunity of showing cause against the proposed action; and

(b) the Controller is satisfied that

(i) the application his not been made within the time specified in this section; or

(ii) the applicant has made any statement in, or in relation to, the application for the issue or

renewal of the licence which is incorrect' or false in any material particular: or

(Hi) the applicant has contravened any provision of Central Act or any rule made there under or of this Act or any rule made there under.

(8) The Controller may require every repairer licensed under this Act to furnish to the State Government security for such sum, not exceeding two thousand rupees, as may be prescribed, to enable that Government to compensate any owner of weight or measure for any loss or damage occasioned by such repairer.

(9) Nothing in this section shall apply to the sale by a user (who is not a maker, manufacturer, dealer or repairer) or any weight or measure of such description, as may be prescribed.

(10) Every licence issued or renewed under this Act shall be displayed in a conspicuous place in the premises where the licensee carries on this business.

17. (1) The Controller may, if he has any reasonable cause to believe that the holder of any licence issued, renewed or continued under this Act has made any statement in, or in relation to, any application for the issue or renewal of the licence which is incorrect or false in any material particular or has contravened any provision of the Central Act or any rule made there under or of this Act or any rule made there under, suspend such licence, pending the completion of any inquiry or trial against the holder of such licence:

Suspension and cancellation of licence.

Provided that no such licence shall be suspended unless the holder thereof has been given a reasonable opportunity of showing cause against the proposed action.

(2) The Controller may, if he is satisfied after making such inquiry as he may think fit that the holder of a licence has made a false or incorrect statement of the nature referred to in sub-section (1), or has contravened any law referred to in that sub-section, cancel such licence;

-Provided. that no such licence shall be cancelled. unless. the holder thereof has been given a reasonable opportunity of showing cause against the proposed action.

(3) Every Person whose licence has been, suspended shall, immediately after. such suspension, stop functioning as such Licensee and shall; not resume business as such licensee until the order of such suspension has been vacated.

(4) Every licensee whose licence has been suspended or. cancelled shall. immediately after such suspension or cancellation, as the case may be, surrender such licence to the. authority by which, such licence was issued.

(5).Every licensee whose license has been cancelled shall, within a period of thirty days from the .date of such cancellation (or within such further' period, not exceeding months from such date, as the Controller may, on sufficient cause being shown,. allow)" dispose of the weights or measures. which were in his possession, custody or control on the date of such cancellation, and in the event of his failure to do so, *the* Controller or any other officer authorized by him, in writing, in this behalf may seize and dispose of the: same and distribute the proceeds thereof in such, manner as may be prescribed.

*Manufacture .of wei
ght or measures.*

18 Save as otherwise provided in the Central Act,
no person shall,-

(a) make, or. manufacture any weight or. measure unless, such weight or measure conforms to the standards” established by or under the Central Act;

(b) make. or. manufacture any weight or measure with indications. thereon of any weight, or. measure other, than the units specified by or under-. the Central Act.

19. No, weight or measure, which is required by or under this Act to be verified and stamped shall be sold, used or. , kept, for use unless it has. been verified and stamped.

20. (1) Every. maker, manufacturer, repairer or dealer and: every. person using any weight or measure in any transaction, or for industrial production or, for, protection shall maintain.

such records and registers as may be prescribed, and, if required to do so by an Inspector, shall produce such records and registers before the Inspector for inspection.

(2) Notwithstanding anything contained in sub-section (1), if the Controller is of opinion that having regard to the nature or volume of the business carried on by any maker, manufacturer, dealer, repairer or user of any weight or measure, it is necessary so to do, he may, by order, exempt such maker, manufacturer, dealer, repairer or user from the operation of that sub-section.

CHAPTER VI

Verification and stamping of weights or measures.

21. (1) Every person having any weight or measure in his possession, custody or control in circumstances indicating that such weight, or measure is being, or is intended to be, used by him in any transaction or for industrial production or for protection, shall before putting such weight or measure into use, have such weight or measure verified at such place, and during such hours as the Controller may, by general or special order, specify in this behalf (hereinafter referred to as the specified place or specified time).

Verification and stamping of weight or measures.

(2) Every weight or measure referred to in sub-section (1) shall be reverified at such periodical intervals as may be prescribed.

(3) Every Inspector shall, for the purpose of verification of any weight or measure, attend the specified place (within the local limits of his jurisdiction) at the specified time and verify every weight or measure which is brought to him at such place and within such time and shall, if he is satisfied that such weight or measure conforms to the standards established by or under the Central Act, put his stamp thereon:

Provided that where any weight or measure is such that it cannot, or should not, be moved from its location, the Inspector shall take such steps for the verification of such weight or measure as may be prescribed.

(4) Where any verification has been made under subsection' (3), the Inspector shall grant to the person 'referred to in sub-section (1) a certificate in 'the prescribed *form* indicating therein the particulars *of* the weight *or* measure verified and stamped by him.

(5) Where the Controller is *of* opinion that by reason of the size or nature of any weight *or* measure, it is net desirable to put a stamp thereon, he may, by an order in writing, direct that instead of putting a stamp on such weight or measure. a certificate may be issued to the effect that such weight *or* measure conforms to the standards established by *or* under the Central Act and every weight *or* measure so certified shall be deemed to have been duly verified and stamped under this Act.

Display of certificate of verification.

22. Every certificate *or* verification granted under this Act shall be displayed in a conspicuous place in the premises where such weight *or* measure is being, *or* is intended to be, used in any transaction or for industrial production or *for* protection.

Validity of weights or measures duly stamped.

23. (1) A weight or .measure which is, or is deemed to be, duly verified and stamped under this Act shall be deemed to conform to the standards established by or under the Central Act at every place within the State of Sikkim unless it is found on inspection or verification, that such weight or measure does not confirm to the standards established by or under that Act.

(2) No weight or measure which is, or is deemed to be, duly verified and stamped under this Act shall require to be re-stamped merely by reason *of* the fact that it is being used at any place within the territory of the State *of* Sikkim other than the place at which it was originally verified and stamped:

Provided that where a verified weight or measure, installed at one place, is dismantled and re-installed at a different place" such weight or measure shall not be put into use unless it has been re-verified and stamped notwithstanding that periodical reverification of such weight or measure: has not become due.

CHAPTER VII

Inspection, search seizure anti forfeiture.

24. (1) An Inspector may, within the local limits of his jurisdiction, inspect and test, at all reasonable times, any weight or measure which

Power to inspect.

- (i) is being, or is intended to be, used or
- (ii) is in the possession, custody or control of any person; or
- (iii) is in or on any premises;

in such circumstances as to indicate that such weight or measure is being, or is intended or likely to be, used in any transaction or for industrial production or protection, and may also verify whether such weight or measure is in conformity with the standards established by or under the Central Act.

(2) For the purpose of ascertaining the correctness of any weight or measure used in any transaction, any Inspector may also test the weight or measure of any article sold or delivered to any person in the course of such transaction.

25. (1) An Inspector may, if he has any reasonable cause to believe that an offence punishable under this Act has been or is likely to be committed in respect of any weight or measure or that any weight or measure does not conform to the standard established by or under the Central Act require, at all reasonable times, the person having the control of such weight or measure 1 [to produce before him for inspection every such weight or measure] which

Power of Inspector to require production of weight Or measure or records for inspection.

- (i) is used by such person or is caused by such person to be used by any other person; or
- (ii) is in the possession, custody or control of such person for use; or
- (iii) is kept in or on any premises for use in any transaction or for industrial production or for protection.

1. Inst. by sec. 2 of the S.W.&M.(Amd.) Act No 11-of 1980 (w.e.f. 1-6-19'81).

(2) The Inspector may also require the production of every document or other record relating to the weight or measure referred to in sub-section (1) and the person first mentioned in that sub-section 'shall comply with such requisition.

(3) On inspection, whether under section 24 or- under this section, the Inspector may obliterate the stamp on any weight or measure

(a) which does not, or cannot be made to, conform to the standards established by or under the Central Act:

Provided that where the Inspector is of opinion that the defect or error in such weight or measure is *not* such as to require immediate obliteration of the stamp, he shall serve a notice on the user of such weight or measure informing him of the defect or error found in the weight or measure and calling upon him to remove the defect *or* error within such time, *not* exceeding eight days, as he may specify and shall

(i) if the user fails to remove the defect or error within that period, obliterate the stamp; or

(ii) if the defect or error is so the weight removed as to make or measure conform to the standards established by or under the Central Act, verify such put his weight or measure and stamp thereon;

(b) which dose not admit of proper adjustment Owing to its being broken, indented or otherwise defective;

(c) which, since the last verification and stamping, has been repaired or re-adjusted *but* does not, after such repair or re-adjustment, conforms to the standards established by or under the Central Act;

(d) which, being due *for* verification, has not been submitted *for* such verification.

*Power of Inspector.
to enter premises.*

26. (1) An Inspector may, if he has any reason to believe, whether from any information should be given to him by any person and taken down by him in writing or from personal knowledge., or otherwise that an offence punishable under this

Act has been or is likely to be committed in relation to any weight, measure or other goods which are sold, delivered or distributed by weight, enter measure Or number, at all reasonable times, into any premises

(i) where such weight or measure is used, or kept or believed to be kept for use in any transaction or for industrial production or for protection;

(ii) where such goods are manufactured, packed, distributed or sold or kept or offered for sale in packaged form and inspect or verify any weight, measure or the net contents, by ,weight, measure or number, of any package, and may also examine any document or other record relating thereto.

(2) An Inspector may at all reasonable times enter into any premises for such purposes other than those specified in sub-section (1), as may be prescribed.

27. (1) Where the Controller has reason to believe that any weight or measure, liable to be seized under this Act. or any document, or thing. in relation to any weight or measure. will be. in his opinion useful for or relevant to, any proceeding under this Act, is secreted in any place, he may search or authorize any officer, not below the rank of an Inspector, to search for such weight or measure. document or thing, and the general provisions relating to search under the Code of Criminal Procedure in force in Sikkim shall apply to every such search.

Power to inspect,

(2) Every authorization made by the Controller under sub-section (1) shall be deemed to be a search warrant referred to in the general provisions relating to searches under the Code of Criminal Procedure in force in Sikkim.

28. (1) An Inspector may seize and detain any weight or measure in relation to which an offence under this Act appears to have been committed or which is likely to be used in the commission of such offence, and may also seize and detain any goods sold or delivered, or caused to be sold or delivered, by such weight or measure:

Power of Inspector to seize any weight or measure.

Provided that where any goods seized under this subsection are subject to speedy or natural decay, the Inspector

may dispose of such good~ in such manner as may be prescribed.

(2) Where any weight or measure seized and or any article is detained under sub-section (1) also seize and the Inspector may a detain any document or record relating to such weight, measure or article.

Inspector to reseal or re-pack where contents are found to have been correctly stated.

2). If, on verification of any commodity in packaged form, the net weight, measure or number of commodity contained in the package or container is found to agree with the net contents thereof, as stated on the label thereon, the Inspector shall, where the person from whom such commodity was obtained for verification is

(a) the manufacturer or packer of such commodity, get the commodity re-sealed or re-packed, as the case may be; or

(b) a person who buys or sells such commodity, in wholesale or retail, acquire such package or container on payment in cash to such wholesaler or retailer the market price of the commodity contained in such package or container.

Forfeiture.

30. Every false or unverified weight or measure seized under the provisions of this Act shall be liable to be forfeited to Government

CHAPTER VIII

Provisions with regard to commodities in packaged form sold or distributed within the State.

Provisions of the Central Act relating to packaged commodities to apply to packaged commodities sold or distributed within the State.

31. (1) The provisions of the Central Act with regard to commodities in packaged form shall, as far as may be, apply to every commodity in packaged form which is distributed, packed, sold, kept, offered or exposed for sale in the State of Sikkim as if those provisions were applicable to trade or commerce within the State subject to the modification that any reference therein to the Central Government and the Central' Act shall be construed as references, respectively to the State Government and this Act.

(2) An Inspector may, from time to time, inspect the weight or measure, or count number, of the commodity contained in any package which is

- (i) kept at any place where the commodity is packed; or kept,
- (ii) offered or exposed for sale; or
- (iii) sold, delivered, held in possession or is in the process of delivery;

within the State of Sikkim with a view to determining whether the package contains the quantity or number of the commodity as specified on it or on the label thereon.

(3) Where the Inspector finds, after weighing, measuring or counting, that any package does not contain the quantity or number of the commodity, as specified on it or on the label thereon, or does not conform to the provisions of the Central Act or any.. rule or order made there under, he may seize such package and may also, by order, prohibit the sale of each package which is similar to the seized package and may so mark or seal each package as to indicate clearly that the sale or delivery of such package has been prohibited, and no such package shall be sold or kept, offered or exposed for sale or delivery or otherwise disposed of unless

(i) the contents of such package have been brought into conformity with the provisions of the Central Act or any rule or order made there under, by the manufacturer, packer or distributor thereof; or

(ii) the disposal thereof has been authorised by the Controller.

(4) No person shall keep in any place, where any transaction is made, any commodity in packaged form which is not for sale, and if any commodity in packaged form is kept in such place in contravention of the provisions of this "Lb-section, such commodity shall be presumed to have been kept in such place for sale.

CHAPTER IX

Provisions with regard to the sale of commodities in any other form.

32. (1) Where the sale of any commodity is made by number and the number of the commodity delivered to the purchaser in pursuance of such sale is lesser than the number paid for. the seller shall be deemed to have used a false measure.

*Sale of commodities
by number.*

(2) Where, in relation to any commodity sold by number, there is a custom or usage of delivering a fixed number or such commodities in addition to the number of commodities paid for, such custom or usage shall, on and from the commencement of this Act, cease, and if the seller delivers to the purchaser the additional.. number of commodities in accordance with such custom or usage, he shall be deemed to have used a false measure and the purchaser shall be deemed to have abetted the use of such false measure.

*Sale of Commodities
by heaps.*

33. (1) Where any commodity is sold by heaps the approximate weight, measure or the number of commodity contained in each heap shall be conspicuously announced by the seller or his agent, if any, either by word of mouth or by a written notice placed on each heap:

Provided that no such announcement shall be necessary in the case of a heap the market price of the contents of which does not exceed one rupee.

(2) Where, on weighment measurement or counting of any commodity sold by heap, it is found that the *weight*, measure or number, determined by such weighment, measurement or counting is less than the approximate weight, measure or number announced by the seller or his agent and the deficiency is more than five per cent of such announced weight, measure or number, the seller shall be deemed to have used a false weight or measure.

CHAPTER X - Offences and penalties.

Penalty for manufacturing. etc., of non-standard weights or measures.

34. Whoever

(a) makes or manufactures, or causes to be made or manufactured (except where he is permitted under the Central Act so to do), any weight or measure in accordance with any standards other than the standards established by or under the Central Act; or

(b) (i) sells or otherwise transfers, or causes to be sold or otherwise transferred; or .

(ii) lets, or causes to be let, on hire, any weight or measure which has been manufactured in accordance with any standards other than the standards established by or under

the Central Act, shall be punished with imprisonment for a term which may extend to one year, and for the second or subsequent offence, with imprisonment for a term which may extend to five years and also with fine.

35. (1) Whoever

(i) counterfeits any seal specified by or under the Central Act; or

(ii) sells or otherwise disposes of any counterfeit seal; or

(iii) possesses any counterfeit seal; or

(iv) counterfeits any stamp whether made under this Act or the Central Act or any rule made under either of those Acts; or

(v) removes any stamp made, whether under this Act or the Central Act or any rule made under either of those Acts, or tampers with any stamp so made; or

(vi) removes any stamp made, whether under this Act or the Central Act or any rule made under either of those Acts, and affixes the stamp so removed on, or inserts the same into, any other weight or measures; or

(vii) wilfully increases or diminishes or alters in any way any weight or measure with a view to deceiving any person or knowing or having reason to believe that any person is likely to be deceived thereby, shall be punished with imprisonment for a term which may extend to two years and, for the second or subsequent offence with imprisonment for a term which may extend to five years and also with fine.

(2) Whoever obtains, by unlawful means, possession of any seal specified by or under this Act or the Central Act and uses, or causes to be used, any such seal for making any stamp on any weight or measure with a view to representing that the stamp made by such seal is authorised by or under this Act or the Central Act shall be punished with imprisonment for a term which may extend to two years, and, for the second or subsequent offence, with imprisonment for a term which may extend to five years and also with fine.

*Penalty for
Counterfeiting of
seals, etc.*

(3) Whoever, being in lawful possession of a seal specified by or under this Act or the Central Act uses, or causes to be used, such seal without any lawful authority *for* such use, shall be punished with imprisonment *for* a term which may extend *to two* years, and *for* the second or subsequent offence, with imprisonment *for* a term which may extend *to five* years and also with fine.

(4) Whoever sells, offers or exposes *for* sale or otherwise disposes of any weight or measure which, he knows or has reason *to* believe, bears thereon a counterfeit stamp, shall be punished with imprisonment *for* a term which may extend *to two* years, and for the second or subsequent offence, imprisonment *for* a term which may extend *to five* years and also with fine.

Penalty for sale or delivery of commodities etc. by non-standard weight or measure.

36. (1) Except where he is permitted under the Central Act *so* to do, whoever sells, or causes *to* be sold, delivers, or causes *to* be delivered, any commodity, article or thing by any weight measure or number *other* than the standard weight, measure or number, shall be punished with fine which - may extend *to two thousand* rupees, and, for the second or subsequent offence, with imprisonment *for* a term which may extend *to one year* and also with fine.

(2) Whoever renders, or causes to be rendered, any service in terms of *any* weight, measure or number other than the standard weight, measure or number, shall be punished with fine which may extend *to two thousand* rupees, and for the second or subsequent offence, with imprisonment *for* a term which may extend *to one year* and also with fine.

Penalty for keeping non-standard weights or measures for use and for other contraventions.

37. (1) Whoever keeps any weight or measure other than the standard weight or measure in any premises in such circumstances as to indicate that such weight or measure is being, or is likely to be, used for any

(a) weighing or measurement; or

(b) transaction or for industrial production or for protection, shall be punished with fine which may extend *to two thousand* rupees, and for the second or subsequent offence with imprisonment *for* a term which may extend *to one year* and also with fine.

(2) Whoever,

(i) in selling any article or thing by weight, measure or number, delivers, or causes to be delivered, to the purchaser any quantity or number of that article or thing less than the quantity or number contracted for or paid for; or

(ii) in rendering any service by weight, measure, or number renders that service less than the service contracted for or paid for; or

(iii) in buying any article or thing by weight, measure or number, receives, or causes to be received, from the vendor any quantity or number of that article or thing in excess of the quantity or number contracted for or paid for; or

(iv) in obtaining any service by weight, measure or number, obtains that service in excess of the service contracted for or paid for, shall be punished with fine which may extend to five thousand rupees, and, for the second or subsequent offence with imprisonment for a term which may extend to five years and also with fine.

(3) Whoever enters, after the commencement of this Act, into any contract or other agreement (not being contract or other agreement for export) in which any weight, or measure or number is expressed in terms of any standard other than the standard weight, measure or number established by or under the Central Act, shall be punished with fine which may extend to two thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.

38. Whoever, in relation to any specified class of goods undertakings or users, of weights or measures, uses in any transaction or for industrial production or for protection, any weight, measure or number, other than the weight, measure or number specified, by rules made under section 10, shall be punished with fine which may extend to two thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine

Penalty for contravention of section 10).
n

Penalty for contravention of Section II 39'. Except where he is permitted under the Central Act so to do, whoever in relation to any goods or things which are sold, transferred, distributed or delivered, or any service rendered,

(a) quotes any price or charge, or makes any announcement with regard to the price or charge; or

(b) issues or exhibits any memo, or price list, invoice, cash other document; or

(c) prepares or either publishes any advertisement, poster or document; or

(d) indicates the weight, measure or number of the net contents of any package on any label, carton or other thing; or

(e) expresses in relation to any transaction, industrial production or protection, any quantity or dimension, otherwise than in accordance with the standard units of weight, measure or numeration, shall be punished with fine which may extend to two thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.

Penalty for contravention of Section 16. 40. Whoever, being required to obtain a license under this Act, makes, manufactures, repairs or sells any weight or measure, without being in possession of a valid licence, shall be punished with imprisonment for a term which may extend to one year or with fine which may extend to two thousand rupees, or with both, and, for the second or subsequent offence, with imprisonment for a term which may extend to three years and also with fine.

Penalty for contravention of Section 17. 41. A licensee who after the suspension or cancellation of the licence issued, renewed or continued under Act, omits or fails, to stop function as a licensee under this Act, shall be punished with imprisonment for a term which may extend to one year.

Penalty for contravention of Section 18. 42. Except where he is permitted under the Central Act so to do, whoever makes or manufactures any weight or measure which,

(a) though ostensibly purports to conform to the standards established by or under that Act does not actually conform to the said standards; or

43. Whoever sells, uses or keeps for use any weight or measure which, being required to be verified and stamped under this Act, has not been so verified and stamped shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both, and, for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.

Penalty for contravention of section 19.

44. Whoever, being required by section 20 to maintain any record or register, omits or fails to do so, or being required by an Inspector to produce any records or registers for his inspection, omits or fails to do so, shall be punished with fine which may extend to one thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.

Penalty for contravention of section 20.

45. Whoever, being required by section 21 to present any weight or measure for verification or reverification omits or fails, without any reasonable cause, to do so, shall be punished with fine which may extend to five hundred rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.

Penalty for contravention of section 21.

46. Whoever, being required by an Inspector, or any person authorised by or under this Act to exercise the powers of an Inspector, to produce before him for inspection any weight or measure, or any document or other record relating thereto, omits or fails, without any reasonable cause, to do so, shall

Penalty for contravention of section 25,

be punished with fine which may extend to one thousand rupees, and for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.

Penalty for contravention of section 26. 47. Whoever obstructs the entry of an Inspector, or any person authorised by or under this Act to exercise the powers of an Inspector, into any premises for the inspection or verification of any weight or measure or any document or other record relating thereto or the net contents of any packaged commodity or for any other prescribed purpose shall be punished with imprisonment for a term which may extend to two years and, for the second or subsequent offence, with imprisonment for a term which may extend to five years,

Penalty for contravention or section 27 and 28. 48. Whoever prevents Controller or any officer authorised by the Controller in this behalf, from searching any premises or from making any seizure of any weight, measure, packaged goods, document, record or label, shall be punished with imprisonment for a term which may extend to two years and, for the second or subsequent offence, with imprisonment for a term which may extend to five' years and also with fine.

Penalty for contravention of section 31. 49. (1) Whoever manufactures, distributes, packs, sells or keeps for sale or offers or exposes for sale, or has in his possession for sale, any commodity in packaged form, shall, unless each such package conforms to the provisions of section 31, be punished with fine which may extend to five thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to five years and also with fine.

(2) Whoever manufactures, packs, distributes or sells, or causes to be manufactured. packed, distributed or sold, any commodity in packaged form knowing or having reason to believe that the commodity contained in such package is lesser in weight, measure or number than the weight, measure or number, as the case may be, stated on the label thereon, or it does not conform to the provisions of the Central Act or any rule or order made thereunder, shall be punished with imprisonment for a term which may extend to two year's or with fine which may extend to three thousand rupees, or with both, and, for the second or subsequent offence, with imprisonment for a term which may extend to five years and also with fine.

50. Whoever is deemed under section 32 to have used, or abetted the use of, any false measure, shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both, and, for the second or subsequent offence, with imprisonment for a term which may extend to five years and also with fine.

Penalty for contravention of section 32.

51. Whoever sells any commodity by heaps without complying with the provisions of section 33, shall be punished with fine which may extend to one thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Penalty for contravention of section 33.

52. Whoever alters or otherwise tampers with any license issued or renewed under this Act or any rule made there under other than in accordance with any authorization made by the Controller in this behalf, shall be punished with fine which may extend to two thousand rupees, or with imprisonment for a term which may extend to one year, or with both.

Penalty for tampering with license.

53. Whoever sells, delivers or disposes of, or causes to be sold, delivered or disposed of, any weight or measure which has been rejected on verification under this Act or the Central Act, or any rule made under either of the said Acts, shall be punished with imprisonment for a term which may extend to one year, and with fine which may extend to two thousand rupees, or with both:

Penalty for selling or delivering rejected weights and measures.

Provided that nothing in this section shall apply to the sale, as scrap, of any rejected weight or measure which has been defaced in the prescribed manner.

54. Whoever personates in any way the Controller or the Inspector or any other officer authorised by the Controller shall be punished with imprisonment for a term which may extend to three years.

Penalty for personating of officials.

55. (1) Whoever gives information to an Inspector which he may require or ask in the course of his duty and which such person either knows or has reason to believe to be false or does not believe to be true shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees or with both.

Penalty for giving false information or maintaining false records or registers.

(2) Whoever, being required by or under this Act so to do maintains any record or register, which is false in any material particular, shall be punished with fine which may extend to two thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to one year and, also with fine.

Willful verification or disclosure in contravention of law.

56.(1) If any Inspector or any other officer exercising powers under this Act or any rule made there under wilfully verifies or stamps any weight or measure in contravention of the provisions of this Act or of any rule made there under, he shall, for every such offence, be punished with imprisonment for a term which may extend to one year, or with fine, which may extend to two thousand rupees, or with both.

(2) If any Inspector or other officer who enters into any premises in the course of his duty wilfully discloses except in the performance of such duty, to any person any information obtained by him from such premises with regard to any trade secret or any secret in relation to any manufacturing process, he shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both.

Vexatious search.

57 An Inspector or any other officer exercising powers under this Act or any rule or order made there under who knows that there are no reasonable grounds for so doing, and yet

- (a) searches, or causes to be searched, any house, conveyance or place; or
- (b) searches any person; or
- (c) seizes any weight, measure or other movable property shall, for every such offence, be punished with imprisonment for a term which may extend to one year or with fine which may extend to two thousand rupees, or with both.

Penalty for contravention of provisions not separately provided for.

58. Whoever contravenes any provision of this Act for the contravention of which no punishment has been separately provided for in this Act, shall be punished with fine which may extend to two thousand rupees.

- 59 (1) If any person
- (a) makes or manufactures, or causes to be made or manufactured, any false weight or measure, or
 - (b) uses, or causes to be used, any false or unverified weight or measure in any transaction or for industrial production or for protection, or
 - (c) sells," distributes, delivers or otherwise transfers, or causes to be sold, distributed, delivered or otherwise transferred, any false or unverified weight or measure ,it shall be presumed, until the contrary is proved, that he had done so with the-knowledge that weight or measure was a false or unverified weight or measure, as the case may be.

Presumption to be made in certain cases.

(2) If any person has in his possession, custody or control any false or unverified weight or measure in such circumstances as to indicate that such weight or measure is likely to be used in any transaction or for industrial production or for protection, it shall be presumed, until the contrary is proved, that such false or unverified weight or measure was possessed, held or controlled by such person with the intention of using the same in any transaction or for. industrial production or for protection.

60. (1) Any employer who knows or has reason to believe that any person employed by him has, in the course of such employment, contravened any provision of this Act or any rule made there under, shall be deemed to have abetted an offence against this Act:

When employer to be deemed to have abetted an offence.

Provided that no such abetment shall be deemed to have taken place if such employer has, before the expiry of seven days from the date

- (a) on which he comes to know of the contravention; or
- (b) has reason to believe that contravention has been made;

intimated writing to the Controller the name of the person by whom such contravention was made and the date and other particulars of such contravention.

(2) Whoever is deemed under sub-section (1) to have abetted an offence against this Act shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both.

Explanation.-Dismissal or Termination of service of an employee after the expiry of the period specified in the proviso to subsection (1) shall not absolve any employer of his liability, under this sub-section.

*Offences by comp-
anies.*

61. (I) If the person committing an offence under this Act is 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 and punished accordingly:

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

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

Explanation.-For the purposes of this section,

- (a) "company" means any body corporate and includes a firm or other association of individuals; and
- (b) "director", in relation to a firm, means a partner in the firm.

*Cognizance of
offences.*

62. Notwithstanding anything contained in the law relating to criminal procedure in force in Sikkim,

- (a) no court shall take cognizance to an offence punishable under this Act except upon a complaint, in writing, made by the Controller or any other officer authorised in this behalf by the controller by general or special order;
- (b) no court inferior to that of a Judicial Magistrate of the First Class shall try any offence under this Act;
- (c) any offence punishable under section 34, 36, 37, 38, 39,40,43,49, 50, 51 or sub-section (3) of section 69, may be tried summarily by a Magistrate and no sentence of imprisonment for a term exceeding one year shall be passed in the case of any conviction for an offence which is tried summarily under this section.

63. (1) Any offence punishable under section 37, 38, 39,40, 42, 43, 44, 45, 46, 49, 51, 53, 58, or sub-section (3) of section 69 may whether before or after the institution of the prosecution, be compounded, by the Controller or such other Officer as may be authorised in this behalf by the Controller, or payment for credit to the State Government of such sum as the Controller or such other officer may specify:

Compounding of offences.

Provided that such sum shall not, in any case, exceed the maximum amount of the fine which may be imposed under this Act for the offence so compounded.

(2) Nothing in sub-section (1) shall apply to a person who commits the same or similar offence within a period of three years from the date on which the first offence, committed by him, was compounded.

(3) Where an offence has been compounded under sub section (I), no proceeding or further proceeding, as the case may be, shall be taken against the offender, in respect of the offence so compounded, and the offender, if in custody, shall be discharged forthwith.

(4) No offence under this Act shall be compounded except as provided by this section.

Provisions of Indian Penal Code; not to apply to any offence under this Act.

64. The provisions of the Indian Penal Code in so far as the such provisions relating to offences with regards to weight and measures shall not apply to any offences which is punishable under the Act

CHAPTER XI Miscellaneous.

Transfer or transmission of business.

65. (1) Where the business of a person licensed under this Act is transmitted by succession, intestate or testamentary, the heir or legatee, as the case may be, shall not carry on the business of such licensee either in his own name or in any other name, unless the heir or legatee has, before the expiry of sixty days after the date of such transmission, made to the Controller an application for the issue of a license in accordance with the provisions of this Act:

Provided that nothing in this section shall be deemed to prohibit the heir or legatee from carrying on business as such licensee for the aforesaid period of sixty days and, if he has applied for such licence, until he is granted the licence, or is, by notice in writing informed by the Controller that such licence cannot be granted to him.

(2) Where the business of any person licensed under this Act is transferred by sale, gift, lease or otherwise, the transferee or lessee, as the case may be, shall not carry on such business either in his own name or in any other name, unless he has obtained a licence to carry on such business.

*Licenses neither saleable nor transferable.
Appeals.*

66-A licence issued or renewed under this Act shall not be saleable or otherwise transferable.

67. (1) Subject to the provisions of sub-section (2), an appeal shall lie

(a) from every decision under Chapter V, VI, VII, VIII or IX of this Act, of

- (i) an Inspector;
- (ii) an additional Controller, to the Controller; and

(b) from every decision of the Controller under Chapter V, VI, VII, VIII or IX of this Act, not being a decision made in appeal under clause (a), to the State Government of any officer specially authorised in this behalf by the Government.

(2) Every such appeal shall be preferred within sixty days from the date of the decision appealed against:

Provided that the appellate authority may if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days permit the appellant to prefer the appeal within a further period of sixty days.

(3) On receipt of any such appeal, the appellate authority shall, after giving the parties to the appeal a reasonable opportunity of being heard and after making such inquiry as it deems proper, make such order, as may think fit, conforming modifying or reversing the decision appealed against, or may send back the case with such direction as it may think fit for fresh decision after taking additional evidence, if necessary.

(4) Every appeal shall be preferred on payment of such fees; not exceeding twenty-five rupees, as may be so prescribed.

(5) The State Government may on its own motion or otherwise call for and examine the record or any proceeding (including a proceeding in appeal) in which any decision or order has been made, for the purpose of satisfying itself as to the correctness, legality or propriety of such decision or order and may pass such orders thereon as it may think fit:

Provided that no decision or order shall be varied under this sub-section so as to prejudicially affect any person unless such person has been given reasonable opportunity of showing cause against the proposed action.

68. The State Government may, by rules made under section 69, levy such fees not exceeding:

Levy of fees.

- (a) one hundred rupees, for the issue or renewal of licence for making, manufacturing, repairing or selling any weight or measure;

- (b) fifty rupees, for the alteration of any. license
- (c) five thousand rupees, for the verification of any weight or measure;
- (d) ten rupees, for the adjustment of any weight Of measure;
- (e) ten rupees, for the issue of a duplicate of a licence or certificate of verification;
- (f) one rupee, for everyone hundred words or less, for the grant of any document, not being a document of a confidential' nature;
- (g) twenty. five rupees. for any appeal preferred under this Act.

Power to make rules.

69. (1) The State Government may, by notification, make rules to give effect to the provision of this Act.

(2) .In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:~

- (a) the class of goods, undertaking or users in relation to which no transaction, dealing or contract shall be made or had except by such weight, measure, or number;
- (b) the place at which, and the custody in which, the following standards shall be kept, namely:
 - (i) reference standards;
 - (ij) secondary standards;
 - (iii) working standards;
- (c) the person by whom or authority by which and the place at which the following standards shall be verified, authenticated and stamped, namely:
 - (i) secondary standards;
 - (ii) working standards;

- (d) the *form* in which and the manner in which an application shall be made for the issue or renewal of a licence to carry on business as a maker, manufacturer, repairer or dealer of any weight or measure;
- (e) the *form* which and the condition, limitations and restrictions subject to which any licence may be issued and the period of validity of such licence;
- (f) the sum to be furnished by a repairer as security of a licensee;
- (g) the description of weight or measure which may be sold by a user.;
- (h) disposal of weights or measures after cancellation of licence and the distribution of the proceeds thereof;
- (i) the records and the registers relating to weights or measures to be maintained by makers, manufacturers, repairers or dealers;
- (j) the period within which weights' or measures shall be verified, or reverified;
- (k) the steps to be taken for verifying any weight or measure which cannot be moved from its location;
- (l) the form in which a certificate of verification of any weight or measure shall be granted;
- (m) subject to the provisions of section 26, the purposes for which an Inspector may enter any premises;
- (n) the manner of disposal of seized articles which are subject to speedy or natural decay;
- (o) manner of defacement of rejected weights or measures;
- (p) the *form* in which appeals may be preferred and the procedure for the hearing or appeals;
- (q) the amounts of fees which may be levied and collected *for* each of the matters specified in section 68;
- (r) any other matter which is required to be, or may, be, prescribed.

(3) in making any rule under this section; the State Government may provide that a breach, thereof shall be punishable with a fine, which may be extend to one thousand rupees.

(4) The power to make rules under this section shall be, subject to the condition, of the rule being made after previous publication in the Official Gazette.

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

Power of State Government to make provisions of Central Act relating to approval of models applicable to models of weights or measures intended to be used exclusively within the State.

70. (1) Where any type of weight or measure-manufactured by a licensed manufacturer is such that all the weights or measure of that type manufactured by him within the State of Sikkim is intended to be sold; distributed or delivered therein, the State Government may, by notification, direct that the model of such type weight or measure

shall be submitted for approval in accordance with the provisions of sections 36, 37 and 38 of the Central Act, and thereupon the provisions of the said "sections 36, 37 and 38 shall become applicable to such model, and references in those sections to the Central Government and the Central Act" shall be construed as references respectively to the State Government" and 'this Act:

(2) Where the State Government makes a direction under sub-section (1) in relation to any type of weight or measure, any contravention of the provisions of sections 36, 37 or 38 of the Central Act in relation to that type of weight or measure shall be an offence punishable under this Act and the punishment provided there for in the Central Act shall be deemed to be the punishment provided there for in this Act as if the said provisions relating to punishments were enacted by this Act.

71) The provisions of the Act, in so far as they relate to the verification and stamping of weights and measures used for industrial production or for protection, shall not apply to any factory exclusively engaged in the manufacture of an arm or ammunition or both for the use of the Armed Forces

72. (1) On and "from the commencement of this Act, the provisions contained in Notification No. 9250-1999/B dated the 8th March, 1966 and all other Sikkim Laws in force in Sikkim relating to matters for which provisions have been made in this Act shall cease to have any force and effect.

Repeal and Savings.

(2) Without prejudice to the provisions contained in the Sikkim Interpretation and General Clauses Act, 1977, with respect to repeals, any appointment, notification, rule, order, registration, licence, certificate, notice, decision, approval, authorization or consent made, issued or given, under any Sikkim law shall, if in force at the commencement of this Act, continue to be in force and have effect as if made, issued or given under the corresponding provisions of this Act.

THE POLICE (SIKKIM AMENDMENT) ACT, 1980.

ARRANGEMENT OF SECTIONS

1. Short title and Commencement.
2. Amendment of Police Act 1861.
3. Insertion of new sections 34A and 34B.
- 34A. Power to prohibit, restrict, regulate or impose conditions on the use of microphones. etc.
- 34B. Power to prohibit sale of tickets for admission to an entertainment except under the orders and at the place provided and price fixed etc.

THE POLICE (SIKKIM AMENDMENT) ACT, 1980
 ACT NO.7 OF 1980
 AN
 ACT

to amend the Police Act, 1861 (No V of 1861) in its application to the State of Sikkim.

{5th April, 1980J

WHEREAS it is expedient to amend the Police Act, 1861 (No V of 1861), in its application to the State of Sikkim for the purposes.. and in the manner hereinafter appearing;

Be it enacted by the Legislature of Sikkim in the Thirty-first Year of the Republic of India as follows:

1. (1) This Act may be called the Police (Sikkim Amendment) Act, 1980. *Short title and Commencement.*
- (2) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

2. The Police Act, 1861 (hereinafter. referred to as the said Act), shall, in its application to the State of Sikkim, be amended in the manner hereinafter provided.

3. After. section 34 of the said Act, the following sections shall be inserted namely: *Insertion of new sections 34A and 34B.*

- "34A (1) - If, in the opinion of the Magistrate of the district or Superintendent of Police of the district or sub-divisional Police officer, it is necessary so to do for the purpose of preventing annoyance to, or injury to the health of, the public or any section thereof, or for the purpose of maintaining public peace any tranquility, he may, by order, prohibit, restrict, regulate or impose conditions on the use or operation, in any area within his jurisdiction or in any vehicle within such area, of microphones, loudspeakers or other apparatus for amplifying human voice or amplifying music or other sounds. *Power to prohibit, restrict, regulate or impose conditions on the use of microphones etc.*

- (2) The State Government may, on its own motion or on the representation of any person or persons aggrieved, modify, alter or cancel any order made under sub-section (1).
- (3) A Police-Officer, not below the rank of sub-Inspector, may take such steps or use such force as may be reasonably necessary for securing compliance with any order made under sub-section (1) or any such order as modified or altered by the State Government under sub-section (2) and may seize any microphone, loudspeaker or other apparatus used or operated in contravention of the order.
- (4) A Police-officer, who seizes any microphone, loudspeaker or other apparatus under sub-section (3), may also at the same time seize any vehicle in which such microphone, loudspeaker or other apparatus is being carried or conveyed or is being kept at that time;

Provided that any Police-officer of the Police-station within the limits of which the vehicle is seized, not below the rank of Sub-Inspector, may release such vehicle on a bond for such sum not exceeding five hundred rupees as he deems reasonable being executed by the owner of the vehicle in favour of the State Government to produce the vehicle at the time of the investigation or the trial, and to surrender the vehicle, if directed to be forfeited under sub-section (5).

- (5) Any person who contravenes any order made by the Magistrate of the district or Superintendent of Police of the district or any sub-divisional Police officer under sub-section (1) or any such order as modified or altered by the State Government under sub-section (2) shall, on conviction before a Magistrate, be liable to a fine which may extend to one hundred rupees and the Court trying an offence under this section may also direct the forfeiture of any microphone, loudspeaker or other appara.

tus seized under sub-section (3) or any vehicle seized under sub-section (4) or released under the proviso to that sub-section.

- (6) The provisions of this section shall be in addition to and not in derogation of the powers- conferred by any other section of this Act.

34B (1) Any person who sells or attempts to sell tickets for admission to a place of entertainment, except under the orders of, and at the place provided for and price fixed in this behalf, by the proprietor of the entertainment shall, on conviction before a Magistrate, be liable to imprisonment for a term which may extend to three months or fine which may extend to one hundred rupees or with both.

Power to prohibit sale of tickets for admission to an entertainment except under the orders and at the place provided and price fixed etc.

- (2) Any Police-officer not below the rank of Head-Constable may take into custody, without warrant, any person who, in his view, commits any offence punishable under sub-section (1) or seize any tickets in respect of which he is satisfied that any such offence has been committed.

- (3) A Court trying any offence punishable under subsection (1) may, without prejudice to any order or further order or orders that may, in its opinion, be passed in the case, direct the forfeiture of any ticket which may have been seized under sub-section (2).

Explanation,- In this Section:

- (a) "entertainment" means any exhibition, performance, amusement, game or sport to which persons are admitted on production of tickets. and
- (b) the expression "proprietor" in relation to any entertainment includes any person responsible for the management of such entertainment."

THE SIKKIM ENTERTAINMENT TAX ACT, 1980.**ARRANGEMENT OF SECTION**

1. Short title, extent and commencement.
2. Definitions.
3. Tax on payment for admission to entertainment.
4. Amount payable on lump sum subscription as contributions or on season tickets
5. Manner of admission and payment.
6. Prohibition against entry and penalty,
7. Exemptions. .
8. Recovery as arrears of land revenue.
9. Entry of authorised persons.
10. Power to make Rules and 'Penalty for their breach.
11. Revocation and suspension of. licence for entertainment. Prohibition
12. against .re-sale of tickets.
13. Repeal and Savings

**THE SIKKIM ENTERTAINMENT
TAX ACT 1980
ACT NO 8 OF 1980
AN ACT**

355

to provide for imposition of a tax on entertainments and other amusements.

[16th September, 1980]

Be it enacted by the Legislative Assembly of Sikkim in the Thirty-first Year of the Republic of India.

1. (1) This Act may be called the Sikkim Entertainment Tax Act, 1980. *Short title; extent and Commencement.*
- (2) It extends to the whole of Sikkim.
- (3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

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

Definitions.

- (a) "admission to an entertainment" includes admission to any place in which the entertainment is held;
- (b) agriculture includes horticulture and livestock breeding;
- (c) "entertainment" includes any exhibition, performance, amusement, game or sport to which persons are admitted on payment;

Explanation.- The exhibition of news reels, documentaries, advertisement, slides and cartoons, whether before or, during the exhibition of a feature film is "entertainment":

- (d) "Government" means the Government of the State of Sikkim;
- (e) "notification" means a notification published in the Official Gazette;

- (f) "payment for , admission' 'includes-
- (i) any payment made by a person who, having been admitted to one part of a place *of* entertainment is subsequently admitted to another part thereof, for admission to which a payment involving tax or more tax is required;
 - (ii) any payment for seats or other accommodation in a place of entertainment;
 - (iii) any payment for a programme or synopsis of an entertainment: and
 - (iv) any payment for any purpose whatsoever connected with an entertainment which a person is required to make as a condition *of* attending or continuing to attend the entertainment in addition to the payment, if any, for admission to the entertainment;
- (g) - "proprietor" in relation to any entertainment includes any person responsible for the management thereof;
- Explanation.- A person charged with the work of admission to an entertainment is for purposes of sections 5 and 6 a person responsible for the management;
- (h) "society" includes a company ,institution, club or other association of persons by whatever name called.

*Tax on payment
for admission to
Entertainment.*

3. (1) There shall be levied and paid on all payments for admission to any entertainment, a tax called -entertainment tax at a rate not exceeding fifty per cent of the payment for admission where such payment does not exceed one rupee and not exceeding - seventy-five per cent thereof in any other case as the ,Government may, from time to time, specify by a notification in this behalf and the tax shall be collected by the proprietor . and, paid, to the Government in the manner prescribed.

(2) If in any entertainment to which admission is generally. On payment, any person is admitted free of charge or on a concessional rate, he would be liable to pay the same amount of entertainment tax as would be payable by him had he been-admitted on full payment. to the class to which he is entitled

4. Where the payment for 'admission to an ,entertainment is made by means of a lump sum paid as a subscription or contribution to any society or for season tickets, the entertainment tax shall, be paid on the amount of the ;lump sum but where the Government is of the opinion that the payment of a lump sum or any payment for a ticket represents payment for other privileges, rights or purposes besides the admission to an entertainment, the tax shall be charged on such amount as appears to the Government to represent the right of admission to entertainments in respect of which the entertainment tax is payable.

*Amount payable on
lump sum
subscription as
contributions or on
.season tickets.*

5. (1) Save as otherwise provided in this Act, no person, other than a person who has some duty to perform in connection with the entertainment' or a duty imposed upon him by law, shall be admitted to any entertainment, 'except with a ticket denoting that the proper entertainment tax payable under section 3 or section 4 has been paid.

*Manner of admission
and payment.*

(2) The Government may, on such conditions as may be prescribed, require the proprietor to pay the amount of the entertainment tax due either

(a) by stamping the tickets with a seal or with an impressed, embossed, engraved or adhesive stamp (not used before) issued by the Government for the purpose of revenue. and denoting that the proper entertainment tax payable under 'section 3 or section 4 has been paid; or"

(b) in accordance with returns' of the payments for admission to the entertainment and on account of the tax; or

(c) by-a consolidated payment of percentage. to be fixed by the Government of the gross sum received by the proprietor on account of payments for admission to the entertainment and on account of the tax; or

(d) in accordance with results recorded by any mechanical contrivance which automatically registers the number of persons admitted.

(3) For the purpose of bringing of uniformity in the realization of entertainment tax the Government shall classify the entertainments in the manner prescribed.

(4) The decision of the Government under sub-section (3) shall be final and shall not be questioned in any Court of law.

Prohibition against entry and penalty.

6. (1) No person liable to pay entertainment tax shall enter or obtain admission to an entertainment without payment of the tax leviable under section 3 or section 4.

(2) Any person who enters or obtains admission to an entertainment in contravention of the provision of sub-section (1), shall on conviction before a Magistrate, be liable to pay a fine not exceeding two hundred rupees and shall in addition be liable to pay the tax which would have been paid by him.

(3) If any person liable to pay entertainment tax is admitted to a place of entertainment without payment of the tax leviable under section 3 or section 4 the proprietor of the entertainment to which such person is admitted shall, on conviction before a Magistrate, be liable in respect of every such contravention to a fine not exceeding rupees five hundred.

Exemptions.

7. (1) The entertainment tax shall not be charged on payment for admission to any entertainment where the Government is satisfied

(a) that the whole of the collections there from are devoted to philanthropic, religious or charitable purposes without any deductions for any expenses of the entertainment; or

(b) that the entertainment is of a wholly educational character, or

Explanation: Any question whether any entertainment is of a wholly educational character shall be decided by the Government whose decision shall be final.

(c) that the entertainment is, provided for partly educational or partly scientific purposes by a society not conducted or established for profit; or

(d) that the entertainment is provided by a society which is established solely for the purpose of promoting the interest of industry or agriculture or the manufacturing industry, or

some branch thereof, or the public health, and which is not conducted for profit, and consists solely of an exhibition of the products of the industry, or branch thereof for" promoting the interest of which the society exists or of materials, machinery, appliances, or food-stuffs, used in the production of those products, or of articles which are of material interest in connection with the question relating to the public health, as the case may be.

(2) The Government may, by general or special order, exempt either partly or wholly any entertainment or class of entertainment or any class of the audience or spectators from liability to the entertainment tax.

8. Any sum due on account of entertainment tax shall be recovered as an arrear of land revenue.

Recovery as arrears of land revenue.

9. (1) Any officer authorised by the Government may enter any place of entertainment while the entertainment is proceeding, and any place ordinarily used as a place of entertainment, at any reasonable time. for the purpose of checking whether provisions of the Act or of any rules made there under are being complied with.

Entry of authorised persons.

(2) If any person. prevents or obstructs the entry of any officer so authorised, he shall in addition to any other punishment to which he is liable under any law for the time being in force, be liable on conviction before a Magistrate to a fine not exceeding two hundred rupees.

(3) Every officer authorised under this section shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

10. (1) The Government may make rules for securing the payment of the entertainment tax and generally *for* carrying into effect the provisions of the Act and in particular

Power 10 make Rules and Penalty for their breach.

(a) for the supply and use of stamps or stamped tickets or *for* the stamping of tickets and for securing the defacement of stamps when used;

(b) for classification of entertainments for the purpose of bringing uniformity in realization of the entertainment tax;

(c) for the use of tickets covering the admission of more than one person and the calculation of the entertainment tax thereon;

(d) for controlling the use of barriers or mechanical contrivance including the prevention of the use of the same barrier or mechanical contrivance for payment of a different amount, and for securing proper records of admission by means of barriers or mechanical contrivance;

(e) for the checking of admission, the keeping of accounts and the furnishing of returns by the proprietors of entertainments to which the provisions of sub-section (2) of section 5 are applied or in respect of which the arrangements approved by the Government for furnishing returns are made under the said provisions;

(f) for the renewal of damaged or spoiled stamps;

(g) for the keeping of accounts of all stamps used under this Act;

(h) for the presentation and disposal of applications for exemption from payment of the entertainment tax, made under the provisions of this Act;

(i) for the exemption from the entertainment tax of any class of the audience or spectators.

"

(2) If any person acts in contravention of, or fails to comply with, any such rules he shall, on conviction before a Magistrate, be liable in respect of each offence to a fine not exceeding two hundred rupees.

Revocation and suspension of licence for entertainment.

11. Notwithstanding anything contained in any other law and without prejudice to the provisions of section 6, the District Magistrate may by order revoke or suspend any licence for an entertainment granted under any law for the time being in force, if the proprietor of such entertainment is convicted under the provisions of this Act. A copy of the order shall be communicated immediately to the proprietor who may appeal to the Government or such officer as the Government may specify in this behalf within one month from the date of which the order is served on him. The order passed in appeal shall be final.

Explanation-- (1) The order of the District Magistrate shall be deemed to be duly served if a copy thereof is delivered to the proprietor in person, or if the District Magistrate is satisfied that such personal service cannot be made, then by affixation of a copy of the order at a prominent place at the site of the said entertainment.

(2) For the purpose of this section the word "licence" shall be deemed to include a licence or permit for any entertainment granted by any authority.

12. (1) Notwithstanding anything contained in any other law for the time being in force a ticket for admission to an entertainment shall not be resold for profit by the purchaser thereof.

Prohibition against re-sale of ticket,

(2) Whosoever re-sells any ticket for admission to an entertainment for profit shall be punishable with a fine not exceeding rupees two hundred.

13. (1) On and from the commencement of this Act, all Sikkim laws, relating to matters for which provisions have been made in this Act and in force immediately before such commencement, shall stand repealed.

Repeal and Savings,

(2) Notwithstanding such repeal, anything done or action taken or proceedings commenced or tax imposed under the repealed Sikkim Laws shall be deemed to have been done, or commenced or imposed under the provisions of this Act as if this Act was in force at the time such thing was done or action taken or proceedings commenced or tax imposed.

**THE SIKKIM PUBLIC PREMISES (EVICTION OF UNAUTHORISED
OCCUPANTS AND RENT RECOVERY) ACT, 1980.**

ARRANGEMENT OF SECTIONS

1. Short title, extent and commencement.
2. Definitions.
3. Unauthorized occupation of public premises.
4. Issue of notice to show cause against eviction.
5. Eviction of unauthorised persons.
6. Disposal of property left on public premises by unauthorised occupants
7. . Power to require payment of rent or damages in respect of public premises.
8. Powers of Collector.
9. Appeals.
10. Finality of order.
11. Offences and penalties.
12. Power to obtain information.
13. Liability of heirs and legal representatives. •
14. Recovery of rent, etc. as arrears of land revenue or public demand
15. Bar of Jurisdiction.
16. Protection of action taken in good faith.
17. Owner to be a party.
18. Power to make rules.
19. Repeal and savings

THE SIKKIM PUBLIC PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS AND RENT RECOVERY) ACT, 1980.
ACT NO.9 OF 1980
AN
ACT

to provide for the speedy eviction of unauthorised occupants *from* the public premises;

[16th October, 1980J

WHEREAS it is expedient to provide *for* speedy eviction *of* unauthorised occupants from public premises;

Be it enacted by the Legislature of Sikkim in the Thirty-first Year of the Republic of India as follows:

1. (1) This Act may be called the Sikkim Public Premises (Eviction of Unauthorised Occupants and Rent Recovery) Act, 1980. *Short title, extent and commencement,*
- (2) It extends to the whole of Sikkim.
- (3) It shall be deemed to have come into force on the 22nd day of August, 1980.
2. In this Act, unless the context otherwise requires, *Definitions.*
 - (a) "Appellate Authority" means an Officer appointed by the State Government under sub-section (1) of section 9 of this Act;
 - (b) "Collector" means the Collector of the district and includes any other officers appointed by the State Government for performing the functions of the Collector under this Act;
 - (c) "notification" means a notification published in the Official Gazette;
 - (d) "owner" means
 - (i) in relation to any premises belonging to, or taken on lease by, or requisitioned by or on behalf of the State Government; that Government; and

- (ii) in relation to any premises belonging to, or ~taken on lease by, a local authority, company or corporation, such local authorities, company or corporation, as the case may be;
- (e) "person concerned" in relation to any public premises, means any person who is in the use or occupation of the public premises;
- (f) "premises" means any land, whether used for agricultural or non-agricultural or any other purposes, or any building or part of a building and includes,
 - (i) the garden, grounds and out-house~, if any, appertaining to such building or part of a building; and
 - (ii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof;
- (g) "public premises" means any premises belonging to, or taken on lease by the State Government, or local authority, or a Government company or a corporation owned or controlled by the State Government and includes any land requisitioned by or on behalf of the State Government;

Explanation.- In this clause "Government company" means any company in which not less than fifty one percent of the paid up share capital is held by the State Government.

- (b) "prescribed" means prescribed by rules made under this, Act;
- (i) "rent" in relation to any public premises, means the consideration payable periodically for the authorised occupation of the premises and includes,
 - (i) any charge for electricity, water or any other services in connection with the occupation of the premises;

(ii) any tax (by whatever, name called) payable in respect of the premises, where such charge or tax is payable by the State Government Or the corporate authority.

3. For the purposes of this Act, a person shall be deemed to be in unauthorised occupation of any public premises

Unauthorised occupation of public premises.

- (a) where he has, whether before or after the commencement of this Act, entered into possession thereof otherwise than under and in pursuance of any allotment, lease or grant; or
- (b) where he being an allottee, lessee or grantee, has, by reason of the determination or cancellation of his allotment, lease or grant, in accordance with the terms in that behalf therein contained, ceased, whether before or after the commencement of this Act, to be entitled to occupy or hold such public premises; or
- (c) where any person authorised to occupy any public premises has, whether before or after the commencement of this Act.
 - (i) sub-let, in contravention of the terms of allotment, lease or grant without the permission of the State Government or of any other Authority competent to permit such subletting, the whole or any part of such public premises; or
 - (ii) otherwise acted in contravention of any of the terms, express or implied, under which he is authorised to occupy such public premises.

Explanation.- For the purpose of clause (a), a person shall not merely by reason of the fact that he has paid any rent be deemed to have entered into possession as allottee, lessee or grantee.

4. (1) If, in respect of any public premises, the Collector is of the opinion that such premises is in the unauthorised occupation of any person or persons, and that such person or persons should be evicted, the Collector shall issue a notice in such form and containing such particulars as may

Issue of notice to show cause against order for eviction.

be prescribed calling upon all persons concerned to show cause before such date, not being less than fifteen days after the date of the notice, as may be specified in the notice, why an order of eviction should not be made and shall cause it to be served in the manner referred to in sub-section (2).

(2) A notice issued under sub-section (1) shall be served personally or by affixing on a conspicuous part of the public premises concerned and in such other manner as may be prescribed.

(3) A notice served in the manner referred to in subsection (2) shall be deemed *to* have been duly served.

Eviction of unauthorised persons~.

5. (1) If, after considering the cause, if any, shown by any person in pursuance of a notice under section 4 and any evidence he may produce in support of the same and after giving him a reasonable opportunity of being heard, the Collector is satisfied that the public premises is in unauthorised occupation. the Collector shall make an order of eviction, for reasons to be recorded therein, directing that the public premises shall be vacated, on such date as may be specified in the order, by persons who may be in unauthorised occupation thereof or any part thereof and shall cause a copy of the order to be affixed on a conspicuous part of the public premises.

(2) If any person refuses or fails to comply with the order of eviction within thirty days of the date of its publication under sub-section 1 the Collector or any other officer duly authorised by the Collector in this behalf may evict that person from and take possession of the public premises and may for that purpose use such force as may be necessary.

Disposal of property left on public premises by unauthorised occupants.

6 , 1) Where any person has been evicted *from* any public premises under section 5, the Collector may, after giving not less than fourteen days notice to persons from whom possession of the public premises has been taken, remove or cause to be removed or dispose of by public auction any property remaining on such public premises including any material of a demolished building *or* ungathered crop or fruit!" or trees.

(2) Where any property is sold under sub-section (1), the sale proceeds thereof shall, after deducting the expenses of the sale and the amount, if any, due to the State Government or the local authority, company or corporation, as the case may be, an account of arrears of rent or damages or costs, be paid to such person or persons as may appear to the Collector to be entitled to the same:

Provided that where the Collector is unable to decide as to the person or persons to whom the balance of the amount is payable or as to the appointment of the same, he may refer such dispute to the Civil Court of competent jurisdiction and the decision of the Court thereon shall be final.

7. (1) Where any person is in arrears of rent payable in respect of any public premises, the Collector may, by order, require that person to pay the same within such time and in such installments as may be specified in the order.

Power to require payment of rent or damages in respect of public premises.

(2) Where any person is, or has at any time been in unauthorised occupation of any public premises, the Collector may, having regard to such principles of assessment of damages as may be prescribed, assess the damage on account of the use and occupation of such premises and may by order require that person to pay the damages within such time and in such instalments as may be specified in the order.

(3) No order under sub-section (1) or sub-section (2) shall be made against any person until after the issue of a notice in writing to the person calling upon him to show cause within such time as may be specified in the notice, why such order should not be made, and until his objections, if any, and any evidence he may produce in support of the same, have been considered by the Collector.

8. The Collector shall for the purpose of any inquiry or hearing under section 5, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (Act V of 1908) when trying a suit, in respect of the following matters namely ~

Powers of collector.

- (a) proofs of facts by affidavits;
- (b) summoning and enforcing the attendance of any person and examining him on oath; .

- (c) . -requiring the discovery and production of documents;
- (d) issue of commission; and
- (e) any other matter which may be prescribed.

Appeals

9. (1) An appeal shall lie from every order of the Collector made in respect of any public premises under section 5 or section 7 of this Act to the Appellate Authority to be appointed by the State Government.

- (2) An appeal under sub-section (1) shall be preferred,
 - (a) in the case of an appeal from an order under section 5, within thirty days from the date of publication of the order under sub-section (1) of that section, and
 - (b) in case of an appeal from an order under section 7, within thirty days from the date on which the order is communicated to the appellant:

Provided that an appeal filed after the expiry of the said period of thirty days may be entertained if the appellant satisfies that he was prevented by sufficient cause from not filing the appeal in time.

(3) Where an appeal is preferred from an order of the Collector, the appellate authority may stay the enforcement of that order for such period and on such conditions as he deems fit.

(4) Every appeal under this section shall be disposed of by the appellate authority as expeditiously as possible.

- (5) The costs of any appeal under this section shall be in the discretion of the appellate authority.

Finality of order,

10. (1) Save as otherwise expressly provided in this Act, every order made by the Collector under section 5 or section 7 or if there is any appeal from any such order, the appellate order under section 9, shall be final and shall not be called in question in any Court.

11, (1) If any person, who has been evicted from any public premises under this Act, again occupies the premises without authority, for such occupation, he shall be punished with imprisonment for a term which may extend to one year or with fine up to five thousand rupees or both.

Offences and penalties.

(2) Any Magistrate convicting a person under sub-section (1) may make an order for evicting that person summarily and such person shall be liable to such eviction without prejudice to any other action that may be taken against him under this Act.

12. If the Collector has reason to believe that any person is in unauthorised occupation of any public premises, the Collector or any other officer authorised by him in this behalf may require such person or any person to furnish, information relating to the names and other particulars of the person in occupation of the public premises and every person so required shall be bound to furnish the information in his possession.

Power to obtain information.

13. (1) Where any person against whom any proceeding for the determination of arrears of rent or for the assessment of damages is to be or has been taken dies before the proceeding is taken during the pendency thereof, legal proceeding may be taken or, as the case may be, continued against the heirs or legal representatives of that person.

Liability of heirs and legal representatives.

(2) Any amount due to the State Government or the corporate authority from any person whether by way of arrears of rent or damages or costs shall after the death of the person, be payable by his heirs or legal representatives but their liability shall be limited to the extent of the assets of the deceased in their hands.

14. If any person refuses or fails to pay the arrears of rent payable under sub-section (1) of section 7 or the damages payable under sub-section (2) of that section or the costs awarded to the State Government or the corporate authority under sub-section (5) of section 9 or any portion of such rent, damages or costs, within the time, if any, specified therefor in the order relating thereto, the Collector shall proceed to recover the amount due as arrears of land revenue or public demand.

Recovery of rent, etc., as arrears of land revenue or public demand.

'Bar of Jurisdiction.

15. No Court shall have jurisdiction to entertain any suit or proceeding in respect of the eviction of any person who is in unauthorised occupation of any public premises or the recovery of the arrears of the rent payable under sub-section (1) of section 7 or the damages payable under sub-section (2) of that section or the costs awarded to the State Government or the corporate authority under sub-section (5) of section 9 or any portion of such rent, damages or costs.

Protection of action taken in good faith.

16. No suit, prosecution or other legal proceeding shall lie against any person or authority for anything which is, in good faith done or intended to be done in pursuance of this Act or any rules or orders made there under.

Owner to be a party.

17. (1) The owners of public premises shall be a party to every proceeding under the provision of this Act.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the owner shall have a right to produce evidence, and cross-examine witnesses and to prefer an appeal under section 9 against any order of the Collector made under the provisions of sections 5 and 6 of this Act.

'owe' to malt: e rules.

18. (1) The State Government may, by notification, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of foregoing power, such rules may provide for all or any of the following matters, namely:

- (a) the form of any notice required or authorised to be given under this Act and the manner in which it may be served;
- (b) the holding of enquiries under this Act;
- (c) the procedure to be followed in of taking possession public premises;
- (d) the manner in which damages for unauthorised occupation, may be assessed and the principles which may be taken into account in assessing such damages;

- (e) the manner in which appeals may be preferred the procedure to be followed in' appeals;
- (f) any other matter which .has ,.to. be may be prescribed.

18. (1) The Sikkim Public Premises (Eviction of Unauthorised Occupants and Rent Recovery) Ordinance. 1980 (Ordinance No.1 of 1980) is hereby repealed.

Repeal and Savings.

(2) Notwithstanding such repeal, anything done **or** any action taken under the Ordinance (including any appointment made, notice issued, order made, Notification published, officer duly authorised, assessment made, penalty or fine imposed, information obtained, cost awarded, proceeding taken) shall be deemed to have been done or taken under the corresponding provisions of this Act.

'ARRANGEMENT OF SECTIONS

1. Short title, extent and commencement
2. Persons who may be allowed to act and plead in courts.
3. Repeal and Saving.
4. Definitions

THE SIKKIM ADVOCATES ACT, 1981
ACT NO.1 OF 1981
AN
ACT

to provide for appearance of Advocates in different courts in Sikkim.

[30 March, 1981

Be in enacted by the Legislature of Sikkim in the Thirty-second Year of the Republic of India ... as follows::

1. (1) This Act may be called the 'Sikkim Advocates Act, 1981. *Short title, extent and commence.. ment.*
- (2) It extends to the whole of Sikkim.
- (3) It shall be deemed to have come into force on the 24th day of November, 1980.

2. In this Act, unless the context otherwise requires, *Definitions.*
 - (a) "Advocate" means an Advocate entered in any roll under the provisions of the Advocates Act, 1961 (No. 25 of 1961);
 - (b) "Court" means the High Court of Sikkim, and a Court of Civil or Criminal jurisdiction in Sikkim and includes any tribunal, authority or person in Sikkim legally authorised to take evidence;
 - (c) "proceeding" includes suit, appeal, revision, review. petition, application before any Court.

3. (1) Notwithstanding anything contained in any other law, but subject to the provisions of this Act. only the following classes of persons, shall be entitled to act and plead before any Court *Persons who may be allowed to act and plead in courts.*
 - (a) parties to the proceeding; or
 - (b) Advocates.

(2) ,an advocate who. is a .full time employee of an Government or person or is actively associated with any trade or business shall not be entitled to act and plead before any Court unless he is a party to the proceedings.

(3) Any. Court may permit any person not enrolled as an Advocate under the provisions of the Advocates Act, 1961, to appear before it in any particular case:

Provided that. no court shall permit any person to appear before it under this sub-section, if there are reasonable. grounds to believe that he is practicing the profession of law.

Explanation.- A person may be deemed to be practicing the profession of law even if he appears without remuneration.

(4) Any person who acts and pleads before any Court in contravention of any provision of this Act shall be punishable. with fine which may extend to one thousand rupees.

Repeal and Saving.

4. (1) The Sikkim Advocates Ordinance, 1980 (Ordinance No.2 of 1980) is hereby repealed.
- (2) Notwithstanding such repeal, anything done or any action taken under the Ordinance so repealed, shall .. be deemed to have been done or taken under the corresponding provisions of this Act.

**THE SIKKIM ARMED POLICE
FORCE' ACT,1981
ARRANGEMENT OF SECTIONS**

1. Short title, extent, commencement and application.
2. Definitions.
3. Constitution of the Force.
4. Superintendence, control and administration of Force.
5. Appointment of Commandant, Assistant Commandant and Adjutant.
6. Conferment of certain powers under the Act to the District Police Force.
7. Appointment.
8. Officer of the Force to have same powers, privileges and liabilities as police officer.
9. Transfer.
10. Certificate of appointment to certain officers of Force, and when such certificate to be surrendered.
11. General powers of Commandant.
12. General duties of officers. of Force.
13. Officer. of Force be deemed to be in charge of police station and stances under circumstances which officer of Force entitled to use force.
14. Punishment for resignation contrary to provisions of sections 7.
15. Punishment for refusal to deliver certificate of appointment, etc.
16. More heinous offences.
17. . Less heinous offences.
18. Officer of Force in command to give information of offence under this Act.
19. Place of imprisonment and liability to be dismissed on imprisonment.
20. Penalty for causing disaffection, etc..
21. Minor ,punishments.
22. Attempts.
23. Abetment.
24. Cognizance of offences..
25. Saving of prosecutions under other laws.
26. Protection for act of officer of Force.
- 27.. Power to make rules.
28. Removal of difficulties.
29. Provisions as to existing Sikkim Armed Police Force.

THE SIKKIM ARMED POLICE FORCE ACT, 1981
ACT NO. OF 1981
AN
ACT

to provide *for* the constitution and regulation of the Sikkim Armed Police Force in the State of Sikkim.

[30th September, 1981

Be it enacted by the Legislature of Sikkim in the Thirty-second Year of the Republic of India as follows:

Short title, extent, commencement, and application.

1. (1) This Act may be called the Sikkim Armed Police Force Act, 1981.
- (2) It extends to the whole of Sikkim.
- (3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.
- (4) It shall apply to the officers of the Force wherever they may be.

Definitions.

2. In this Act, unless the context otherwise requires,
 - (a) "active duty" means
 - (i) the duty to restore, preserve order in any local area in the event of any disturbance therein, to prevent offences involving breach of peace or danger to life or property, and to search *for* and apprehend persons concerned in such offences, or who are so desperate and dangerous as to render their being at large hazardous to the community;
 - (ii) the duty to take all measures *for* extinguishing fires or to prevent damage to person or property on the occasion of such occurrences as fires, floods, earth-quakes, enemy action or riots and to restore peace and preserve order on such occasion;
 - (iii) such other duty as may, be specified to be active duty by the State Government or the Inspector General of Police in a direction issued under section. 12;

- (b) "Commandant", "Assistant Commandant", "Adjutant", "Company Commander" means a person appointed by the State Government to those offices under section 5;
- (c) "follower" means any person appointed to do the work of a cook, mess servant, washer man, cobbler, barber, tailor, sweeper or any other tradesman designated as such in connection with the Force;
- (d) "Force" means the Sikkim Armed Police Force constituted under section 3;
- (e) "Inspector-General" means the Inspector-General of Police;
- (f) "members of the subordinate ranks" means members of the Force below the rank of Adjutant, Assistant Commandant or Company Commander;
- "officer of the Force" means a member of the Force;
- (g)
- (h) "police officers" means every police officer as defined in the Police Act, 1861;
- (i) "prescribed" means prescribed by rule made under this Act;
- (j) "superior officer" in relation to any officer of the Force, means,-
- (a) an officer of the Force of a higher class than, or of a higher grade in the same class as, such officer; or
- (b) an officer of the Force of same grade or class but senior to such officer;
- (k) the words and expressions used herein and not defined, but defined in the Indian Penal Code 1860, the Code of Criminal Procedure 1898, and the Police Act, 1861 shall have the meanings respectively assigned to them in those enactments.

5 of 1861

45 of 1860
5 of 1898
5 of 1861.

Constitution of the Force.

3. (1) In addition to the police force constituted under the Police Act, 1861, the State Government may constitute and maintain a force known as the Sikkim Armed Police Force. 5 of 1861

(2) The Force shall be constituted and maintained in such manner as may be prescribed.

(3) Subject to the provisions of this Act, the pay, pension and other conditions of service of members of the Force shall be such as may be prescribed:

Provided that nothing in this section shall apply to the pay, pension and other conditions of service of the members of the Indian Police Service who may be transferred to the Force.

(4) The State Government or any officer empowered by the State Government in this behalf may

- (a) divide the Force in groups;
- (b) sub-divide each group into battalions and each battalion into companies, and each company into platoon, and platoons into sections or smaller sub-units;
- (c) post any group, battalion, company, platoon, section or smaller sub-unit at such places as the State Government or such officer may deem fit.

Superintendence, control and administration of Force.

4. The superintendence, control and administration of the Force shall, in accordance with the provisions of this Act and the rules made there under, vest in the Inspector General or in such Deputy Inspector-General or Assistant Inspector-General of Police as the State Government may authorize in this behalf.

Appointment of Commandant, assistant Commandant and Adjutant.

5 (1) The State Government, may appoint for each Battalion a Commandant who is a person eligible to hold the post of a Superintendent of Police and one or more Assistant Commandants, Adjutants and Company Commanders who, shall be persons eligible to hold the post of an Assistant or a Deputy Superintendent of Police.

(2) "The Deputy Inspector General of Police, the Assistant Inspector; General of Police, the Commandant, the ,Assistant Commandant, the Company Commander and the Adjutant may exercise' such powers and authority as may be prescribed.

6. The State Government may, by notification in the Official Gazette, empower' a Police officer of the District police force of such rank to exercise such disciplinary powers under this Act over the officers of the Force working under his operational control and in such districts as may be specified in the notification:

Conferment of certain powers under the. Act to the District Police Force.

Provided that such police officer shall be of the rank higher than the rank of the officer of the Force in charge of such Force.

7. (1), Before any person appointed to be an officer of the force joins his appointment, a declaration in the form in Schedule I shall be read out, and if he so desires, explained to him in the presence of a Commandant or an Assistant Commandant, or an Adjutant or a Police officer not below the rank of an Assistant Superintendent or a Deputy Superintendent of Police and shall be signed by him, in token. of having been so read out, and explained to him, and of his having undertaken to abide by the conditions prescribed therein. The declaration shall then be attested by such Commandant, Assistant Commandant, Adjutant or Police officer, as the case may be.

Appointment.

(2) No officer of the Force shall resign' his appointment except in accordance with the terms of the declaration signed by him under sub-section (1).

(3) Where any officer of the Force resigns in contravention of the provisions of this section, he shall, on the order of the Commandant, forfeit all arrears of pay due to him on the date of his resignation.

(4) The forfeiture of arrears of pay under' sub-section. (3), shall be without prejudice to any other penalty, if any, that may be imposed upon such officer under the provisions of this Act or any other law for the time being in force.

Officer of the Force to have same powers privileges and liabilities as police officer

8. p') Subject to the provisions of sections 1'4 to 21, every officer of the Force shall, upon his appointment: and so long as he continues to be an officer thereof, be deemed to be a police officer and, subject. to any terms, conditions and restrictions as may be prescribed, have and be subject to, all the powers, privileges, liabilities, penalties, punishments and protection as a police officer duly enrolled under provisions of the Police Act, 1861, or any other law for the time being in force, or any rules or regulation made there under:

5of 1981

Provided that the provisions of the Police Act, or any other law or rules or regulations made there under are not inconsistent with the provisions of this Act or any rules made there under.

(2) The State Government may designate the ranks of officers of the Force which shall be deemed to be equivalent to various ranks of the police officers for the purposes of this section, and also generally for the purposes of this Act.

Transfer.

9 (I) Notwithstanding anything contained in this Act or Police Act, 1861, it shall be competent for the State Government or the Inspector-General, if so authorised by the State Government in this behalf, to transfer officer of the police force appointed under the Police Act,] 86], to the Force and vice-vena.

5 of 1861

(2) On the transfer of an officer of the police force appointed under the Police Act, 1861, to the Force or vice versa, he shall be deemed to be an officer of the Force or. the police force, as the case may be, to which' he is transferred and in the performance of his functions, he shall, subject to such order as the State Government may make, be deemed to be vested with such powers and privileges, and be subject to the liabilities, of an officer of the grade in the Force or the police force, as the case may be, to which he has been transferred, as may be specified in the order.

5 of 1861

Certificate of appointment to certain officers of

10. (I) Every officer of the Force below such rank as may be specified by the State Government shall, on appointment, receive a certificate of .appointment in the form in Schedule II.

(2) Every person who for any reason, ceases to be an officer of the Force, shall forthwith deliver his certificate of appointment and the arms, accoutrements, clothing and other necessaries which have been furnished to him for the execution of his office, to an officer empowered by the Commandant to receive the same.

Force, and when such certificate to be surrendered.

1.1, The Commandant shall, subject to the orders of the Inspector General, direct and regulate all matters of, arms, drill exercise, discipline, mutual relation, distribution of duties, and, all the matters of executive detail in the fulfillment of their duties by the officers of the Force and members of the subordinate ranks under his charge.

General powers of Commandant.

12. (1) Every officer of the Force shall for the purpose of this Act be deemed to be always on duty -and any officer of the Force and any number or body of the officers of the Force may, if the State Government or the Inspector-General so directs, be employed on active duty for so long as and wherever the service of the same may be required whether in Sikkim or outside.

General duties of Force.

(2) Every direction issued under sub-section (1) shall specify -that the duty on which any officer of the Force or any number or body of such officers is directed to be employed shall be deemed as active duty for the purposes of this Act.

(3) Every direction issued under sub-section (1) shall be final and binding on every officer of the Force,

" (4) An officer of the Force employed on active duty: under sub-section, (1), or when a number or body of, the officers of the Force are so employed, the officer-in-charge of such number or body, shall be responsible for the efficient performance of their duty and all police officers who but for the employment of one or more officers of the Force or body of officers of the Force. would be responsible for performance of that duty, shall, to the best of their ability, assist and co-operate with the said officer of the Force or officer in-charge of a number or body of officers of the Force.

13. (1) When employed on active duty at any place under sub-section (1), of section 12" the senior officer of highest rank not below that of a Head Constable present ; shall be

Officer of the Force be deemed to be in charge of police sta

*lion and circumstance
nces under which
officer of Force entitled
to use
force.*

deemed to be an officer-in-charge of a police station for the purposes, of Chapter IX of the Code of Criminal Procedure, 1898.

5 of
1898

(2) Notwithstanding anything contained in sections 100 and 103 of Indian Penal Code, 1860, an officer of the Force employed as aforesaid may, when there is reasonable apprehension of assault on himself or any officer of the Force or of damage or harm to any property or person which or whom it is his duty to protect, use such force against the wrongdoer or assailant as may be reasonably necessary, even though the use of such force may involve risk of death of the wrong-doer or the assailant or any other person assisting such wrong-doer or assailant.

45 of 1860

*Punishment for resi-
gnation contrary to
provisions of sec
tion 7.*

14. If any officer of the Force resigns his appointment in contravention of section 7 and in pursuance of such resignation remains absent from duty before it is accepted, he shall be punished with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees, or with both.

*Punishment for refusal
to deliver certi-
ficate of appointment
etc.*

15. Any officer of the Force who wilfully neglects or refuses to deliver up his certificate of appointment or any other article in accordance with subsection (2) of section 10 shall be punished with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees, or with both.

*More heinous off-
ences.*

16. Every officer of the Force who

- (a) begins, excites, causes or conspires to cause, or joins any mutiny, or, being present at any mutiny, does not use his utmost endeavors to suppress it, knowing or having reason to believe in the existence of any mutiny, or of any intention or conspiracy to mutiny or any conspiracy against the State, does not, without delay, give information thereof to his superior officer: or
- (b) uses, or attempts to use criminal force against or commits an assault on his superior officer whether on or off duty; or

- (c) shamefully abandons or delivers up any post, guard, buildings, fortification or property which is committed to his charge or which it is his duty to defend; or

- (d) in the presence of any person in arms against whom it is his duty to act, shamefully casts **away** his arms or his ammunition or intentionally uses words or any other means to induce any officer of the Force or any police officer to abstain from acting against any such person in arms, or to discourage such officer from acting against any such person in arms or who is otherwise guilty of cowardice or misbehavior in the presence of any such person in arms; or

- (e) directly or indirectly holds correspondence with, or communicates intelligence to, or assists, or relieves any person in arms against the State Government or public security or any person to be arrested, or omits to disclose immediately to his superior officer present, any such correspondence or communications coming to his knowledge; or

- (f) directly or indirectly sells, gives away, or otherwise disposes of, or agrees to, or assists in, the sale, gift or disposal of any arms, ammunition or equipment to any person referred to in clause (e), or knowingly harbors or protects any such person; or

- (g) while on active duty
 - (i) disobeys the lawful command of his superior officer; or

 - (ii) deserts the Force or his post; or

 - (Hi) being a sentry, or otherwise detailed to remain alert, sleeps at his post or quits it without being regularly relieved or without leave; or

 - (iv) without authority leaves his office for any purpose whatsoever; or

(v) uses criminal force against or commits an assault on, 'any person' whom he has not any reason to believe to be in arms against the, State and against whom it is his duty to act, or without authority breaks into any house or other place for plunder or any illegal purpose or wilfully and unnecessarily plunders, destroys or damages any property of any kind; or

(vi) intentionally causes or spreads a false alarm in camp, garrison or quarters;

(vii) commits extortion or without lawful authority extorts anything from 'any person' carriage, post or provisions; "

shall be punished with rigorous imprisonment for a term which may extend to six years and shall also be liable to fine.

Explanation.- An officer of the Force shall be deemed to desert the Force if he leaves his place of duty or posting without the permission of his superior officer, and he shall be deemed to desert his post if he leaves any sentry, beat, point, building, vehicle, or other place at which or in which he is specifically ordered by his superior officer to perform the duty assigned to him.

Less heinous offences.

17. Every officer of the Force who

(a) assaults or uses or attempts to use criminal force against any sentry; or

(b) being in command of a guard, piquet or patrol" refuses to receive any prisoner or person lawfully made over' to his charge or whether in such command or not, releases any prisoner or person without proper authority or negligently suffers any prisoner or person to escape; or

(c) being in command of a guard, piquet or patrol. permits any person belonging to such guard, piquet or patrol to engage, himself in gambling or other behavior prejudicial to good order and discipline; or

..

- (d) being under arrest or in confinement leaves the place. of his arrest or confinement, before he is set 'at; liberty by lawful authority; or
- (e) is grossly insubordinate or insolent to. his superior officer in the execution of his office; or
- (f) maligns, feigns or produces disease or infirmity in, himself or intentionally delays his cure or aggravates, his disease or infirmity; or
- (g) maligns or disparages a superior officer or refers to, him in derogatory terms either orally or in writing; or
- (h) refuses to. superintend or assist in the making or carrying out of any construction of any description ordered to. be made either in quarters or in the field; or
- (i) assaults or otherwise ill-treats any officer of the Force with reference to. whom he is a superior' officer ;or,
- (j) designedly or through neglect damages or' losses ar fraudulently or without due authority disposes of his arms, clothes, tools, equipment, ammunition, accoutrements or other necessaries furnished to. him far the execution of his officer ar any such article entrusted to. him or to. any other person; or
- (k) with intent to. render himself or any other person unfit far duty voluntarily causes hurt to. himself or any other person,; . or
- (l) wilfully or negligently ill-treats, injures or causes the death of any animal or damages, losses or takes away any animal or vehicle used in the public service .

shall be punishable with rigorous imprisonment for a term which may extend to. six months or with fine, which may extend to. five hundred Rupees or, with both.

Officer of Force in command to give information of offence under this Act.

18. An officer of the Force, who, being in command of any guard; piquet, party, patrol or detachment and knowing of the commission or of a design to commit any offence punishable, under section 16 or 17 by or on the part of any officer of the Force; under his command, intentionally omits or without reasonable excuse (the burden of proving which shall lie on him.) fails to give information of such commission or design to his superior officer, shall be punished with rigorous imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or, with both.

Place of imprisonment and liability to be dismissed on imprisonment.

19. (1) Every person sentenced under this Act to imprisonment may be dismissed from the Force and his pay, allowances and any other money due to him, as well as any medals and decorations received by him shall further be liable to forfeiture.

(2) Every such person shall, if he is so dismissed, be imprisoned in such prison as the State Government may, by notification in the Official Gazette, specify in his behalf, but if he is not so dismissed from the Force, he may, if the Court so directs be confined in the quarter guard or such other place as the Court may consider suitable."

Penalty for causing disaffection etc.

20. (1) Whoever intentionally causes or attempts to cause or does any act which he knows is likely to cause disaffection towards the Government established by law in India, amongst the officers of the Force, or induces or attempts to induce, or does any act which he knows is likely to induce any officer of the Force to withhold his services or to commit a breach of discipline, shall be punished with imprisonment which may extend to six months or with fine which may extend to two hundred rupees or both.

(2) Nothing shall be deemed to be an offence under this section which is done in good faith for the purpose of promoting the welfare or interest of any officer of the Force by inducing him to withhold his services in any manner authorised by law.

Minor punishments.

21i (1) A Commandant, or subject to the control of the Commandant, an Assistant Commandant or such other officers as may be prescribed, may award for good and sufficient

reasons to any member of the subordinate ranks and below the rank of Head Constable who is subject to his authority, any of the following punishments for the commission of any offence against discipline which is not otherwise provided for in this Act or which in the opinion of the Commandant, Assistant Commandant or such other officer, as the case may be, is not of such serious nature as to call for prosecution before a criminal court, that is to say

- (a) confinement in the quarter guard, or such other place as may be considered suitable, for a term which may extend to fifteen days when the order is passed by a Commandant, or to seven days when it is passed by any other officer. Such confinement shall involve the forfeiture of pay and allowance for the period of confinement if an order to this effect is passed by the officer awarding the punishment:

Provided that no officer below the rank of Commandant shall pass orders toward forfeiture of pay and allowances;

- (b) punishment drill, extra guard, fatigue or any other duty for a term which may extend, when the order is passed by the Commandant, to fifteen days and when the order is passed by any other officer to seven days.

(2) Any of the punishments specified in sub-section (1) may be awarded separately or jointly with anyone" or more of the other punishments:

Provided always that confinement to the quarter guard shall not exceed, fifteen consecutive days.

(3) When a Commandant or an Assistant Commandant or other officer passes an order under sub-section (1), he shall enter in a book to be kept for the purpose, a brief description of the defaults together with the names of witnesses, explanation- of the defaulter and the order of punishment and shall sign and date each such order.

Attempts.

22. Any officer of the Force who attempts to commit an offence punishable under this Act, or causes such an offence to, be committed and in such attempt does any act towards the commission of the offense, may be punished with the punishment provided in this Act for such offence.

Abetment.

23. Any officer of the Force who abets an offence punishable under this Act may be punished with the punishment provided in this Act for such offence.

Cognizance of offences.

24. (1) No Court shall take cognizance of an offence under this Act except with the previous sanction or on the complaint of the Inspector-General or any other police officer (not below the rank of Commandant) authorised by him in this behalf.

(2) No Court inferior to the Court of the Magistrate of the first class shall try any offence under this Act.

Saving of prosecutions under other laws.

25. Nothing in this Act shall prevent any person from being prosecuted under any other enactment, order or rule made under any other enactment, for any act or omission punishable there under or from being liable, if so prosecuted, to any other or higher penalty than is provided for in that Act or omission by this Act:

Provided that no person shall be punished twice for the same offence.

26. (1) In any suit or proceedings against any officer of the Force for any act done by him in pursuance of a warrant or order of a superior officer, it shall be lawful for him to plead that such act was done by him under the authority of such warrant or order.

(2) Any such plea may be proved by the production of the warrant or order directing the act, and if it is so proved, the officer of the Force shall thereupon be discharged from liability in respect of the act so done by him, notwithstanding any defect in the jurisdiction of the authority, which issued such warrant or order.

(3) Notwithstanding anything contained in any other law, for the time being in force, any legal proceeding, whether civil or criminal, which may, lawfully be brought against

any, officer of the Force for anything done, or intended to be done, under, the powers conferred by, or in pursuance of, any provision of this Act, or the rules made, there under, shall be commenced within two months after the act complained of was committed and not otherwise, and notice in writing of such proceedings and of the cause thereof, shall be given to the defendant or his superior officer at least one month before, the commencement of such, proceedings

Provided that such proceedings may, with the sanction of the, State Government, be commenced at any time after the, act, complained, of was committed.

27. (1) The State Government may, by notification in the Official Gazette, makes rules consistent with this Act for carrying, out; the, purpose of this Act,.

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing provisions such rules may provide for all or any of; the following matters, namely

- (a) the constitution, and administration of the Force the
- (b) number, classes and grades of, the Force;
- (c) recruitment, organization, classification and discipline of members of the subordinate ranks;
- (d) Inspection of the Force;
- (e) powers to be exercised by the Deputy Inspector General, Assistant Inspector General, Company Commander and Adjutant under the Act;
- (f) description and quantity of arms, accoutrements, clothing and other necessaries to be furnished to the officers of the Force;
- (g) pay, pension and other conditions of service of the members of the Force;
- (h) officers who may award minor punishments under section 21;
- (i) any other matter which is to be or may be prescribed.

Removal of difficulties.

28. if any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order, do any- 0 thing not . inconsistent; with the provisions of this Act which appears to it to be necessary *or* expedient for the purpose *of* removing the difficulty:'

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

Provisions as to existing Sikkim Armed Police Force'

29. (1) The Sikkim Armed Police Force in existence- at \the commencement *of* this Act, shall be deemed to be the Force constituted under this Act.

(2) Officers *of* the Sikkim Armed Police Force in existence at the commencement *of* this Act shall be deemed to have been appointed under this Act.

(3) . Anything done or any action taken before the: commencement *of* this Act in relation to the constitution *of* the Sikkim Armed Police Force referred to in sub-section (I), in relation to any person' appointed thereto, shall be as. valid and effective in .law as if such thing *or* action was done *or* taken under this Act. . . ,

. SCHEDULE '1
see Section 7

Form of declaration to be signed before joining appointment in the Force.

I, (Name in full).....

designation in the case of an officer of a police force/address 'in the case of a direct recruit..... : .declare' that"

- (1) I am willing to serve, wherever posted, in the Force.
- (2) I shall not be entitled to resign my appointment in the Force or to apply for a transfer to' any other police, force until I have completed the prescribed period of service in the Force; and
- (3) I shall not be entitled to resign my appointment or to apply for the transfer in the manner specified in (2) above even after the completion of the prescribed period of service, if on the relevant date I am on active duty or if my resignation or transfer as the case may ,be, would cause the vacancies in my Group to exceed such percentage at the sanctioned strength of the Group as may for the time being have been prescribed by the State Government.
- (4) In the event of my ,resignation ,from the appointment, I shall not remain absent from duty till the date with effect from which the-resignation is accepted. -

Signature in token of the above
declaration having, been, read ,out ,
and explained to the declarant and on his
haying understood. and accepted it.

Date =

Place :

Signed in ,my presence after I had satisfied my self that (name in full).....

designation in the the case of an officer. of a police. force/full address in the case of
a direct recruit.....
has understood and accepted the declaration and signed it in my presence.

Signature.

Designation of the officer before whom
the declaration is signed.

- Commandant/Assistant Commandant.

Adjutant or police officer,

Date : "

Place:-.....

SCHEDULE II

(* See section, 10)

Form of Certificate

SEAL

A. B..... has- been-appointed to the Force in the State of
Sikkim and is vested with the powers, functions and privileges of an officer of the Force under the
Sikkim Armed Police Force. Act. 1981.

Signature

Appointing Authority.

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THE SIKKIM FIRE SERVICES ACT, 1981

ARRANGEMENT OF SECTIONS

CHAPTER I

Preliminary

1. Short title, extent, commencement and withdrawal.
2. Definitions.

CHAPTER II

Fire brigade

3. Maintenance, constitution, etc. of fire brigade.
4. Auxiliary fire brigade.
5. Power of State Government to make orders with respect to fire brigade.
6. Fees payable for extinguishing fire in areas where the Act is not in force.
7. Duties of members of fire brigade.
8. Prohibition on resignation or withdrawal from duties without permission or notice.
9. Powers exercisable on occasions of fire.
10. Power to enter into agreement with the authority in charge of water supply.
11. Power to enter into arrangement for assistance.
12. All vehicles to give way to fire brigade vehicles.
13. Police officers to aid the fire brigade.
14. Non-liability to damages.
15. Enquiry into origin of fire and report.

CHAPTER III

Fire works, letting off rockets, etc.

16. Licence for fire works and for letting off rockets, etc.
17. Authority to grant licence and fee for licence.
18. Withdrawal or suspension of licence.
19. Validity of licence.

CHAPTER IV**Licence for warehouse or workshop**

20. Licence for warehouse or' workshop.
21. Certificate from Director to accompany application for licence.
22. Licence for building or place already used as warehouse or workshop.
23. Application for licence.
24. Conditions subject to which licence may be granted.
25. Annual fee.
26. Change in occupation.
27. Procedure for cancellation or suspension of licence.
28. Delegation of powers.

CHAPTER V**Temporary structure and Pandal.**

29. Erection of temporary structure or panda!.

CHAPTER VI**Penalties.**

Liability of property owner to pay compensation.

Penalty for contravening provisions of section 7 or 8.

Penalty for not giving way to fire brigade vehicles.

Penalty for letting off rockets. etc.

Penalty on householders for allowing letting off rockets, etc. without licence.

Penalty for not taking out a licence for warehouse or workshop

. Penalty for using warehouse or workshop after refusal of licence.

Penalty for breach of conditions.

Penalty for failing to notify change in occupation of warehouse or work
shop.

Penalty for giving false information.

Penalty for using warehouse as residence.

Penalty for bringing match boxes, etc. in warehouse.

Penalty for smoking within warehouse.

- 43. Penalty for erecting structure, etc. in contravention of section 29.
- 44. Penalty for obstructing persons exercising power under section 49.
- 45. Offences bail able and cognizable.

CHAPTE R VII
General and Miscellaneous.

- 46. Police officer may arrest offenders under section 33.
- 47. Form of licence under Chapter IV.
- 48. Act net to apply where small quantities of inflammable articles are deposited.
- 49. Power of entry.
- 50. Training Centre.
- 51. Bar to other employment.
- 52. Consumption of water by the fire brigade.
- 53. No compensations for interruption of water supply.
- 54. Information on outbreak of fire.
- 55. Indemnity.
- 56. Power to make rules.
- 57. Provisions as to existing Sikkim Fire Service.

THE SIKKIM FIRE SERVICES ACT, 1981
ACT NO.9 OF 1981
AN
ACT

to provide for the constitution and maintenance of a fire brigade for the State of Sikkim; for licensing of warehouses and for matters connected therewith or incidental thereto.

[30th September, 1981]

Be it enacted by the Legislature of the State of Sikkim in the Thirty-second Year of the Republic of India as follows:

CHAPTER I
Preliminary

Short title, extent, commencement and withdrawal.

- 1(1) This Act may be called the Sikkim Fire Services Act, 1981.
- (2) It extends to the whole of Sikkim.
- (3) It shall come into force in any area on such date as the State Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different areas and for different provisions of this Act; and the State Government may by like notification withdraw this Act or the provisions thereof from any such area:

Provided that when the fire brigade is sent to any place outside any such area this Act shall be deemed to be in force in such place for all purposes connected with service therein.

Definitions.

2. In this Act, unless the context otherwise requires,
- (a) "Director" means the Director of Fire Services appointed by the State Government under sub-section (3) of section 3;
- (b) "fire brigade" means the fire brigade maintained by the State Government under section 3 and includes an Auxiliary fire brigade raised under section 4;

- (c) Fire fighting property" includes
 - (i) lands and buildings used as fire stations;
 - (ii) fire engines, equipment, tools, implements and things whatsoever used for fire-fighting;
 - (iii) motor vehicles and other means of transport used in connection with fire-fighting;
 - (iv) uniforms and badges of rank;
- (d) "fire station" means any post or place declared, generally or specially by the State Government to be a fire station;
- (e) "members of the fire brigade" include persons employed in the Sikkim Fire Services and also volunteers and other persons enrolled in an Auxiliary fire brigade;
- (f) "officer-in-charge" of a fire station includes, when the officer-in-charge of the fire station is absent from the station or unable from illness or other cause ,to perform his duties, the member of the fire brigade present at the station who is next in rank to such officer;
- (g) "prescribed" means prescribed by rules made under this Act;
- (h) "warehouse" means any building or place used whether temporarily or permanently for the storing or processing or keeping of jute, gunny bags, cotton, hemp, resin, shellac, varnish, bitumen, pitch, tar, tallow, celluloid, wood, (excluding furniture kept in the building or place for ordinary use), charcoal, coal, straw, hay, grass, raw rattan canes, coconut fiber, waste paper, packing boxes or any other inflammable articles or chemicals and also any other article which is likely to increase the risk of fire and which is specified by the State Government, by notification in the Official, Gazette, for the purpose of this clause;

- (i) "workshop" means any building or place where processing of any article is carried on for purposes of trade or business, if processing of such article is declared by the State Government, by notification in the Official Gazette in this behalf, to be attended with the risk of fire.

Explanation. The expression "processing" means making, altering, repairing, treating or otherwise dealing with any article by means of steam, electricity or other mechanical power.

CHAPTER II

Fire brigade

*Maintenance,
constitution, etc.
of fire brigade.*

- 3. (1) The State Government shall maintain a fire brigade for services in areas in which this Act is in force and may, if it thinks fit, send the fire brigade to any place outside any such area for service therein.
- (2) The fire brigade shall consist of such number of members and shall be otherwise constituted in such manner as the State Government may think fit.
- (3) The State Government shall appoint a person to be the Director of the Fire Services under this Act; and he shall remain under the control of the Inspector General of Police.
- (4) The fire brigade shall be under the direction and control of the Director who may, with the previous sanction of the State Government and subject to the orders or rules, if any, made by the State Government under the provisions of this Act, frame such regulations as it thinks fit relating to
 - (a) the general administration and control of the fire brigade including terms and conditions of service of members thereof;
 - (b) the equipments, clothing and accoutrement of the members of the fire brigade, their classification and duties and distribution of work among them;

- (c) the place at which or the limits of the areas within which the members or any class of members of the fire brigade shall ordinarily reside for ensuring that services of the members or such class of members of the fire brigade may be readily available.
- (d) all other matters which he considers necessary for rendering the fire brigade an efficient fire-fighting force.

4. The State Government may raise an Auxiliary fire brigade in any area in which this Act is in force and enroll volunteers or other persons as members of such brigade on such terms and conditions as it may think fit.

Auxiliary fire brigade.

5. The State Government may, from time to time, make such general or special orders as it thinks fit

Power of State Government to make orders with respect to fire brigade.

- (1) for furnishing and providing the fire brigade with such fire-fighting properties as it deems proper;
- (2) for providing adequate supply of water and for ensuring that it is available for use;
- (3) for constructing or providing stations or hiring places for accommodating the members of the fire brigade and its fire-fighting properties;
- (4) for giving rewards to persons who have given notice of fires and to those who have rendered effective service to fire brigade on the occasion of fire;
- (5) for the training, discipline and good conduct of the members of the fire brigade;
- (6) for the speedy attendance of the members of the fire brigade with necessary fire fighting properties or equipments on the occasion of any alarm of fire;
- (7) for sending the members of the fire brigade with necessary fire-fighting properties and equipments to any place beyond the limits of any area in which

this Act is in force for the purpose of extinguishing fire, in such terms and conditions as it deems proper;

- (8) for the employment of the members of the fire, brigade on such terms and conditions as it deems proper in any rescue, salvage or other works not ,connected with extinguishment of fire *for* which the fire brigade may' in its opinion, be usefully and appropriately employed;
- (9) *for* enforcing discipline and imposing punishment on any member of the fire brigade who infringes any order;
- (10) for regulating and controlling the powers, duties and functions of the Director and other members of the fire brigade:
- (11) generally for the maintenance of the fire_ brigade in due state of efficiency.

Fees payable for extinguishing fire in areas where the Act is not in force.

- 6. (1) Where the fire brigade is sent to a place beyond limits of any areas in which this Act is in force in order to extinguish fire in a warehouse or a workshop at' such place, the occupier of the warehouse or workshop shall be liable to pay such fee as may be determined by the State Government in this behalf.
- (2) The fee referred to in sub-section (1) shall be payable within one month of the service of a notice of demand by the Director on the occupier and if it is not paid within such period it shall be recoverable as a public demand.

Duties of members of fire brigade.

- 7. It shall be the duty of every member of the fire brigade to give effect promptly to the lawful commands of the Director or the officer-in-charge of a fire station or the officer in immediate charge of the fire brigade on the occasion and at the site of a fire and generally to discharge the duties imposed upon him by this Act or any orders, rules or regulations made there under.

8. No member of the fire brigade shall resign his office or withdraw himself from the duties thereof unless expressly permitted in writing by the Director:

Prohibition on resignation or withdrawal from duties without permission or notice.

Provided that a member of the fire brigade may resign his office or withdraw himself from the duties as such member on giving one month's notice of his intention to do so.

9. (1) On the occasion of a fire or alarm of fire, the Director or the officer-in-charge of a fire station or the officer-in-charge of the members of the fire brigade on the spot may

Power exercisable on occasion of fire.

- (a) remove or order any member of the fire brigade to remove any such persons who by his presence interferes with or impedes the due operation of the fire brigade
- (b) close any street or passage in or near which a fire has taken or is likely to take place;
- (c) by himself or by any member of the fire brigade enter, break into or through or pull down any premises for the purpose of extinguishing fire or for the passage of hose or other fire-fighting appliances, doing as little damage as possible;
- (d) require the authority in charge of water supply in the area to regulate the water mains and pipes or cause the mains and pipes to be shut off so as to provide water at a specified pressure at the place where the fire has broken out and utilize the water of any stream, cistern, well or tank or of any available source of water, public or private, for the purpose of extinguishing or limiting the spread of such fire;
- (e) exercise the same powers for dispersing any assembly or persons likely to obstruct the operation of the fire brigade, as if he were an officer-in-charge of a police-station and as if such an assembly were an unlawful assembly and shall be entitled to the same immunities and protection as such an officer. in respect of the exercise of such powers;

- (f) generally take such measures as may appear necessary for the preservation of life and property.
- (2) The Director or the officer-in-charge of a fire station or the officer-in charge of the members of the fire brigade on the spot may verbally nominate and depute one or more members of the fire brigade to act at a distance, and such member or members shall have for the time being the like powers as, the Director or such officer himself possesses under this section.

Power to enter into agreement with the authority in charge of water, supply.

10. The Director may, with the previous sanction of the State Government, enter into an agreement with any person or authority in any area for securing an adequate supply of water in case of fire on such terms as may be specified in the agreement. •

Power to enter into arrangement for assistance.

11. The Director may, with the previous sanction of the State Government, enter into an agreement with any person or authority maintaining fire-fighting properties for securing, on such terms as may be specified in the agreement, the assistance of such person or authority for the purpose of extinguishing fires.

All vehicles to give way to fire brigade vehicles.

12. Whenever any vehicle of the fire brigade is proceeding to extinguish fire using fire alarm all vehicles other than police vehicles or ambulances shall give way to such vehicle of the fire brigade.

Police officers to aid the fire brigade.

13. Police officers of all grades shall be authorised and bound to aid the fire brigade in the execution of its duties and may, close any street in or near which a fire has taken place, and also on their own motion or on the request of the Director or any member of the fire brigade, remove any person who by his presence interferes with or impedes the due operation of the fire brigade.

Non-liability to damages.

14. No member of the fire brigade and no officer of the police shall be liable to damages or otherwise on account of any act done by him in the bonafide belief that such act was required for the proper execution of its duties under this Act or any rules, regulations or orders made there under.

15. (1) In the case of any fire occurring within any area in which this Act is in force, the senior most officer in rank among the members of the fire brigade in that area or where members of the fire brigade are sent to any place beyond the limits of any area in which this Act is in force to extinguish fire in such place, the senior most officer in rank among the members so sent shall ascertain the facts as to the origin and cause of such fire and shall make a report thereon to a Magistrate having jurisdiction in the place in which such fire has occurred; and the said Magistrate may, in any case where he thinks fit, summon witnesses and take evidence in order to further ascertain such facts.

Enquiry into origin of fire and report.

(2) Copies of all reports and of all evidence recorded under this section shall be furnished on application to any person interested on payment of such fees. as may be prescribed.

CHAPTER III

Fire works, letting off rockets, etc.

16. No person shall let off rockets or send up fire balloons or sell or store for sale any fire-works within any area in which this Act is in force except under and in accordance with the terms and conditions of a licence as may be prescribed.

Licence for fire work' and for letting off rockets, etc.

17. (1) Subject to the provisions of sub-section (2), the application for licence under section 16 for sale or storing shall be made to the Superintendent of Police or such other authority as may be appointed by the State Government and shall be accompanied by

Authority to grant licence and fee for licence.

- (i) annual fee not exceeding rupees three hundred as may be prescribed; and
- (ii) a certificate from the Director that the place where the fire works are sold or stored for sale is fit for the purpose of such sale or storage and has adequate arrangements for fire fighting.

(2) The fee for licence to let off rockets or to send up fire balloons for any particular occasion may not

exceed rupees five as may be determined by the State Government by a notification in the Official Gazette.

Withdrawal or suspension of licence. 18. A licence granted under section 16 may, without prejudice to any other action that may be taken against the licensee, be suspended or withdrawn by the Superintendent of Police or other authority after giving the licensee an opportunity of being heard if in the opinion of the Superintendent of Police or other authority it is necessary to do so in the public interest or, in the case of a licence to sell fire-works, if there has been a breach of any prescribed terms and conditions.

Validity of licence. 19. Unless withdrawn earlier, a licence granted under section 16 shall remain valid for a period of one year from the date of issue and may be renewed on payment of such fees not exceeding rupees fifty as may be prescribed.

CHAPTER IV

Licence for warehouse or workshop

Licence for warehouse or workshop. 20. No building or place shall be used as a warehouse or workshop unless the owner or occupier thereof shall have previously obtained under this Act a licence for such use

- (i) from the Gangtok Municipal Corporation when such warehouse or workshop is situated within the area of that Corporation, and
- (ii) from the Local Self Government Department of the State of Sikkim in other cases.

Certificate from Director to accompany application for licence. 21. No licence to use any building or place as a warehouse or workshop shall be granted unless the application for such licence under section 23 is accompanied by a certificate from the Director that the building or place is fit for use as such warehouse or workshop and adequate fire-fighting arrangements have been provided therein.

Licence for building or place already used as warehouse or workshop. 22. The owner or occupier of any building or place which was being used, immediately before the date on which this Act comes into force in the local area within which such building or place is situated, as

(a) warehouse; or

(b) workshop immediately before the date of publication of the notification under clause (i) of section 2. by which such building or place comes under the definition of workshop in the said clause;

shall, upon application made in writing to the Gangtok Municipal Corporation or the Local Self Government Department, as the case may be, within one month from the date on which this Act comes into force in the said local area or within one month from the date of publication of the said notification, be entitled to obtain a licence to use such building or place as a warehouse or workshop under this Act, subject to the payment of annual fee as specified in section 25.

23. (1) Every application for licence shall be made in such form as may be prescribed and shall be disposed of within thirty days from the date of its receipt by the Gangtok Municipal Corporation or, as the case may be, by the Local Self Government Department, and if it is not disposed of within that period, the applicant - shall not be liable to any penalties under this Act for the use of a building or place as a warehouse or workshop in respect of which the application was made, after the said period of thirty days, so long as such application is not refused by the Gangtok Municipal Corporation' or, as the case may be, by the Local Self Government Department.
- Application for licence.*
- (2) On receipt of any such application for the grant of a licence, the Gangtok Municipal Corporation or, as the case may be, the Local Self Government Department, may grant or refuse the licence.
- (3) A licence granted under this section shall be valid for the period of one year (specified therein) and may be renewed from time to time for such period and on payment of such fees not exceeding rupees fifty and on such conditions as may be prescribed.
- (4) Where a grant of a licence or renewal of a licence is refused, to Gangtok Municipal Corporation or,

as the case may be, the Local Self Government Department, shall record in writing the reasons for such refusal.

- (5) Any person aggrieved by a decision of the Gangtok Municipal Corporation or, as the case may be, the Local Self Government Department, under this section may within thirty days from the date on which the decision is communicated to him, prefer an appeal to an appellate officer who shall be a person nominated in this behalf by the State Government:

Provided that the appellate officer may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

- (6) On receipt of an appeal under sub-section (5), the appellate officer shall after giving the appellant an opportunity of being heard, dispose of the appeal as expeditiously as possible.

Conditions subject to which licence may be granted.

24. A licence for a warehouse or workshop shall be subject to the following conditions add such other conditions as may be prescribed in this behalf, namely:-

- (a) that the warehouse or workshop shall at all times be open to inspection by such officer or officers, being member or members of a fire brigade, as may be appointed by the Director;
- (b) that no article referred to in clause (h) of section 2 shall be made, prepared, dried or treated in any manner on the top or roof of any building constituting or forming part of a warehouse or workshop;
- (c) that no part of a warehouse, shall be used as a residence and that no person shall be allowed
- (i) to bring into such warehouse any match boxes or match sticks or any artificial light not duly and thoroughly protected; or

- (ii) to smoke within such warehouse, while inflammable article is stored therein.

25. (1) The annual fee' in respect of a licence under this Chapter shall be payable in advance.

*Annual
fee.*

(2) The annual fee shall be calculated at such rate as may be prescribed, being not less than ten-per cent and not more than twenty five per cent 'of the' annual value of the building or place used as a warehouse or workshop and different rates may be prescribed for different classes. of warehouse according to the nature and quantity of the articles stored, processed, or kept therein and for different classes of workshops according to the nature of the processing carried or the quantity or nature of the articles processed therein:

Provided that the. annual fee for warehouse or workshop shall not be less than ten rupees or more than such amount as may be prescribed, and different' amounts' may *be* prescribed in this behalf for different classes of warehouse or workshops:

Provided further that if the owner or occupier of a warehouse or workshop maintains, within the warehouse or at a place within such distance there from as the Director may consider reasonable for use in the warehouse or workshop in case of necessity, any :fire fighting appliances of such types as may be prescribed, then a rebate calculated at such rate as may *be* prescribed in respect of such type of fire fighting appliances or different combination thereof shall *be* allowed 'to such owner or occupier.

(3) For purpose of sub-section (2) the annual value of a building or place used as a warehouse or workshop shall be deemed

- (a) if it is situated within a municipality. to be the annual value at which it is assessed for the payment of municipal taxes:

Provided that if such building or place forms part of any holding assessed as a whole for the payment of municipal taxes, the annual value of such building or place shall *be* such as may be deter

mined in this behalf by the Gangtok Municipal Corporation in such proportion which such building or place bears to the entire holding;

- (b) if it is situated outside municipality, to be seven and half per cent of the current market value of the building or place as may be determined by the Local Self Government Department.

Change in occupation.

26. Whenever a change in the occupation of any warehouse or workshop occurs, the person entering into occupation of the same shall, within, two weeks of his entering into occupation, give notice in writing to the Gangtok Municipal Corporation, or as the case may be, the Local Self Government Department of such change of occupation, and shall pay a fee of ten rupees and his name shall thereupon be substituted in the licence in respect of the warehouse, or workshop for the name of the last occupier.

Procedure for cancellation or suspension of licence.

27. (1) Whenever the Gangtok Municipal Corporation, or as the case may be, the Local Self Government Department receives credible information that any conditions to which the licence of any warehouse or workshop is subject, has been broken by the holder thereof, it shall file in writing the substance of such information in the Court of a Magistrate having jurisdiction and the Magistrate may issue summons upon the holder of the licence to show cause why the licence should not be cancelled or suspended and may suspend such licence pending hearing of the case.'

(2) The Magistrate shall not make the order suspending such licence unless he is satisfied that it is necessary to prevent or obviate immediate danger or injury of a serious kind.

(3) The summons issued under this section shall be served upon the said holder of the licence named therein in the manner provided' in the Code of Criminal Procedure, 1898 for the service of summons.

5 of 1898.

(4) The Magistrate before whom the case is filed under sub-section (1) may, if he is satisfied after taking the evidence that there exists reasonable and proper ground for canceling or suspending the licence, cancel such 'licence or suspend' the

same for such time as he may think fit and may impose such conditions as to the reversal of such order of cancellation or suspension as may be consistent with the provisions of this Act for the grant of a licence for warehouse or workshop.

28. The State Government may, by general or special order published in the Official Gazette, direct that such of the powers, duties and functions of the Director under this Act shall also be exercised and performed by such other officers as the State Government may specify in the order.

Delegation of powers.

CHAPTER V

Temporary structure and Pandal

29. A person who intends to erect a temporary structure or pandal with roof or walls made of straw, hay, mat, canvas or other like material, for use as a place where members of the public may assemble, shall apply to the Superintendent of Police of the area for permission to erect such structure or pandal and such permission shall not be refused if the structure or pandal conforms to the conditions that may be prescribed in this behalf:

Erection of temporary structure or pandal.

Provided that no such permission shall be necessary where a temporary structure or pandal is erected for the purpose of poojas, marriages or other religious functions of a private character:

Provided further that where no order granting or refusing the permission is made within such period as may be prescribed in this behalf; the structure or pandal may be erected if it conforms to the prescribed conditions.

CHAPTER VI

Penalties

30. (1) Any person whose property catches fire on account of any action of his own or of his agent done deliberately or negligently shall be liable to pay compensation to any

Liability of property owner to pay compensation.

other person suffering damage to his property on account of any action taken under section 9 of this Act by any officer mentioned therein or any person acting under the authority of such officer.

(2) All claims under sub-section (1) shall be preferred to the District Collector of the area within thirty days from the date when the damage was caused.

(3) The District Collector shall, after giving the parties an opportunity of being heard, determine the amount of compensation due and pass an order stating such amount and the person liable for the same, and the order so passed shall have the force of a decree of a civil court.

Penalty for contravening provisions of section 7 or 8

31. Any member of -the fire brigade who contravenes any provision of section 7 or section 8 shall be punishable, on conviction before a Magistrate, with fine which may extend to one hundred rupees.

Penalty for not giving way to fire brigade vehicles.

32. Any person who, being in charge of a vehicle, contravenes the provisions of section 12 shall be punishable, on conviction before a Magistrate, with fine which may extend to one hundred rupees.

Penalty for letting off rockets, etc.

33. Any person who, within any area in which this Act is in force,

- (a) lets off rockets; or
- (b) sends up fire-balloons; or
- (c) sells fire-works, without obtaining a licence; or
- (d) where a licence to sell fire-works has been granted, violates any of the prescribed conditions specified therein.

shall be punishable, on conviction before a Magistrate, with fine which may extend to one hundred rupees for every such offence.

Penalty on householders for allowing letting off rocket etc. without licence.

34. If any rockets are let off or fire-balloons sent up from within the precincts of any private premises or compound without a licence, the owner or occupier or person under whose immediate control the premises or compound is, shall, unless he can prove that the offence was committed

without his knowledge, be punishable, on conviction before a Magistrate, with fine which may extend to one hundred rupees.

35. Any person who without a licence uses any building or place as a warehouse or workshop shall be punishable, on conviction before a Magistrate, with fine which may extend to five hundred rupees or with imprisonment for a term which may extend to two months or with both, and with further fine not exceeding one hundred rupees for each day during which he may continue so to use such warehouse or workshop.

Penalty for not taking out a licence for warehouse or workshop.

36. Any person who uses any warehouse or workshop in respect of which a licence has been refused, or after the licence in respect thereof has been cancelled or during the time for which such licence has been suspended, shall be punishable on conviction before a Magistrate, with fine which may extend to five hundred rupees or with imprisonment for a term which may extend to two months or with both, and with further fine not exceeding one hundred rupees for each day during which he may continue so to use such warehouse or workshop.

Penalty for using warehouse or workshop after refusal of licence.

37. Any holder of a licence who violates any of the conditions under which a licence is held in respect of any warehouse or workshop shall be punishable, on conviction before a Magistrate, with fine which may extend to one hundred rupees or with imprisonment for a term which may extend to one month or with both.

Penalty for breach of conditions.

38. If there is a change in the occupation of any warehouse or workshop and the person entering into occupation fails to give a notice and pay the fees required by section 26, such person shall be punishable, on conviction before a Magistrate, with fine which may extend to twenty rupees for each day during which he may so use or continue to use such warehouse or workshop.

Penalty for failing to notify change in occupation of warehouse or workshop.

39. Any person who gives false information to the Gangtok Municipal Corporation, or as the case may be, the Local Self Government Department under section 27 with the object of inducing it to take action under that section shall be punishable, on conviction before a Magistrate, with fine which may extend to one hundred rupees or with imprisonment for a term which may extend to one month or with both.

Penalty for giving false information.

penalty for using warehouse as residence.

40. Any person who uses as a residence any portion of a warehouse shall be punishable on conviction before a Magistrate, with fine which may extend to one hundred rupees and with further fine not exceeding twenty rupees for each day during which he may so continue to use' it.

Penalty for bringing match boxes, etc. in warehouse.

41. Any person who brings into a warehouse any match-boxes, match sticks or any artificial light not duly and thoroughly protected, shall be punishable, on conviction before a Magistrate, with fine which may extend to one hundred rupees.

Penalty for smoking within warehouse.

42. Any person who smokes within a warehouse shall be punishable, on conviction before a Magistrate, with fine which may extend to one hundred rupees.

Penalty for erecting structure, etc. in contravention of section 29.

43. Any person who erects any structure or pandal in contravention of the provisions of section 29 shall be punishable, on conviction before a Magistrate, with fine which may extend to one hundred rupees or with imprisonment for a term which may extend to one month or with both, and with further fine not exceeding ten rupees for each day during which such contravention continues.

Penalty for obstructing persons exercising power under section 49.

44. Any person who wilfully obstructs, or offers any resistance to, or impedes or otherwise interferes with the Director or any officer exercising powers under section 49 or any assistant accompanying the Director or such officer while exercising such powers shall be punishable, on conviction before a Magistrate, with fine which may extend to one hundred rupees.

Offences bail able and cognizable.

45. All offences punishable under this Chapter shall be bail able and shall, except where punishable under section 31, be cognizable.

CHAPTER VII

General and Miscellaneous.

Police officer may arrest offenders under section 33.

46. (1) Any person committing' an offence under section 33 may, if his name and address be unknown, be arrested by any officer of police and forthwith produced before a Magistrate having jurisdiction in the place in which such offence has been committed, or shall be taken to the nearest police-station

within the said jurisdiction, in order that such person may be detained until he can be produced before a Magistrate or unless he executes a bond with or without sureties for his appearance before a Magistrate.

(2) Whenever such person is taken to a police station, the officer-in-charge of such police station shall as soon as possible, but in every case within twenty four hours, cause him to be produced before a Magistrate having jurisdiction.

47. Every licence granted under Chapter IV of this Act shall, as far as possible, be in the form in the Schedule appended to this Act.

*Form of licence
under Chapter IV.*

48. (1) Nothing in this Act shall be deemed to apply to buildings or places where small quantities of any of the articles referred to in clause (h) of section 2 are deposited.

*Act not to apply
where small quantities
of inflammable
articles are deposited.*

(2) The State Government may, from time to time, declare by notification in the Official Gazette, quantities of articles referred to in clause (h) of section (2) which shall be deemed to be small quantities within the meaning of this section.

49. (1) The Director, or any officer-in-charge of a fire station authorised by the Director in this behalf, may enter into or upon any building or place, with or without assistants, in order to make any inspection, test, examination, survey, measurement, weighment, valuation or enquiry for the purpose of carrying into effect the provisions of this Act or of any rule made there under or to obtain information for fire-fighting purposes with respect to the character of the buildings and other property within the local jurisdiction, the available water supplies and the means of access thereto and other relevant local circumstances, which in his opinion, 'it is necessary to obtain for any of the purposes or in pursuance of any of the provisions of this Act or any such rule:

Power of entry.

Provided that

- (a) no such entry shall be made after sunset and before sunrise;

- (b) no dwelling-house and no public building or hut which is used as a dwelling place, shall be' so entered except with the consent of the occupier thereof, without giving the said occupier at least twenty four hours' previous written notice of the, intention to make entry;
- (c) notwithstanding any power to enter any building or place hereby conferred, sufficient notice of such entry shall in every instance be given to unable the inmates of any apartment appropriated to females to withdraw to some part of the premises where their privacy may not be disturbed;
- (d) due regard shall always be had, so far as may be compatible with the exigencies of the purpose for which the entry is made, to the social and religious usages of the occupants of the building or place entered.

(2) The Director or any officer referred to in sub-section (1) shall not use any force for the purpose of effecting any entry under sub-section (1) unless

- (i) such entry cannot otherwise be effected; and
- (ii) there is reason to believe that an offence is' being, or has been, committed against any provision of this Act or any rule made there under.

(3) Except when it is in this Act or in any rule made there under otherwise expressly provided, no claim shall lie against any person for compensation for any damage necessarily caused by any entry made under sub-section (1) or by the use of any necessary force under sub-section (2).

Training Centre.

50. The State Government may establish and maintain one or more training centers in the State for providing courses of instructions in the prevention and extinguishment of fire and may close down or re-establish any such centre.

Bar to other employment.

51. N? member of the fire service shall engage in any employment. or office whatsoever other than his own duties under this Act unless expressly permitted to do so by the Director.

52. No charge shall be made by any local authority for water consumed by the fire service in fighting fires, training, filling static water tanks, or other similar or allied purposes.

Consumption of water by the fire brigade.

53. No authority in charge of water supply in an area shall be liable to pay claim for compensation for damages by reason of any interruption of supply of water occasioned only by compliance by such authority with the requirements specified in clause (d) of section 9.

No compensation for interruption of watersupply.

54. Any person who possesses any information regarding an outbreak of fire shall communicate the same without delay to the nearest fire station.

information on outbreak of fire.

55. No suit, prosecution, or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rules or orders made thereunder.

Indemnity.

56. (1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

Power to make rules.

(2) In particular; and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :

- (a) the determination of the fees referred to in section 6;
- (b) the determination of the fees referred to in section 15; the
- (c) form of licence referred to in section 16 ;
- (d) the fees for renewal of license under section 19 ;
- (e) the form of application for licence under section 23;
- (f) period, fee and conditions for renewal of licence under section 23 ;
- (g) conditions of licence under section 24 ;
- (h) the rate of the annual value of a building or place for using such building or place as a warehouse or workshop is to be calculated under section 25;

- (i) the types of fire-fighting appliances and the rates at which rebate rereferred to in section 25 shall be calculated;
- (j) the conditions and the period of time referred to in section 29 within which licence is to be granted or refused;
- (k) any other matter for which provision has to be or may be made by rules.

*Provisions as to
existing Sikkim Fire
Service.*

57. (1) The Sikkim Fire Service in existence at the commencement of this Act shall be deemed to be the Sikkim Fire Service constituted under this Act.

(2) Members of the Sikkim Fire Service in existence at the commencement of this Act shall be deemed to have been appointed under this Act.

(3) Any thing done or any action taken before the commencement of this Act in relation to the constitution of the Sikkim Fire Service referred to in sub-section (1), in relation to any person appointed thereto, shall be as valid and effective in law as if such thing or action was done or taken under this Act.

SCHEDULE

(See section 47)

Licence under the Sikkim Fire Services Act, 1981.

Noof 1981.

Licence is here by granted to under the Sikkim Fire Services Act 1981.

to use the building or place being No. (a) as a warehouse for storing or processing or keeping

(b)
.....
.....

to' use the building or place being No. (a)as a work shop, subject to the conditions noted on the back and such other conditions as may be prescribed.

It is hereby acknowledged that a sum of rupees being the licence fee due by the said for the period from to in respect of the aforesaid licence at the rate of Rs. per annum has been received.

Name of owner

.....

Name of occupier.

Licensing Authority.

The day

- (a) Here insert the location.
- (b) Here insert the name of the article. (On the back of the licence).

CONDITIONS

- (1) The warehouse/the workshop shall at all times be open to inspection by such officer or officers, being member or members of the fire brigade, as may be a appointed by the Director of Fire Services.
- (2) The warehouse/workshop shall conform to the conditions prescribed under section 23 of the Sikkim Fire Services Act, 1981.

- (3) No article referred to in clause (h) of section 2 of the Sikkim Fire Services Act, 1981 shall be made, prepared, dried or treated in any manner on the top or roof of any building constituting or forming part of a warehouse.
- (4) No person shall be allowed to use as residence any part of the warehouse or to bring into the warehouse any match-boxes or match-sticks or any artificial light not duly and thoroughly protected or to smoke within the warehouse while any inflammable article is stored therein.

**THE SIKKIM NATIONALISED TRANSPORT' (PREVENTION
OF TICKETLESS TRAVEL AND MISCELLANEOUS
PROVISIONS) ACT 1981**

419

- 1) Short title, extent and commencement.
- 2) Definitions.
- 3) Prohibition against traveling without ticket.
- 4) Prohibition against carrying of goods without payment of carriage charges.
- 5) Duty of conductor or employee of Sikkim Transport to issue ticket, etc.
- 6) Duty of passengers to obtain tickets.
- 7) Prohibition against boarding of transport vehicle en-route.
- 8) Exhibition of ticket and carriage receipt.
- 9) Penalty for carrying goods without carriage receipt.
- 10) Penalty for ticket less travel.
- 11) Penalty for dereliction of duty.
- 12) Power to remove persons from transport vehicles.
- 13) Obstructing employees of the Sikkim Transport or other authorised person in his duties.
- 14) Limits of personal luggage, etc.
- 15) Fares payable by passenger.
- 16) Exemptions and concessional rate of fares.
- 17) Penalty for drunkenness.'
- 18) Penalty for false returns.
- 19) Entering transport vehicle without reservation or refusal to vacate the seat.
- 20) Entering transport vehicle in motion or otherwise improperly travelling.
- 21) Travelling on roof or steps.
- 22) Altering or defacing of ticket.
- 23) Fraudulent travelling or attempt to travel on a used ticket.
- 24) Penalty for transfer of ticket.
- 25) Smoking.
- 26) Drunkenness or nuisance in transport vehicle or at Bus Stop.
- 27) Disobedience by bus driver or conductor of direction of an employee
- 28) Carriage of goods.
- 29) Maintenance of rates, etc. for carriage of goods.

ARRANGEMENT OF SECTIONS

30. Power to impose condition.
31. Forwarding Note.
32. Prohibition against carriage of offensive or dangerous goods.
33. Power of employee to weigh the goods.
34. Power to realize demurrage charge, etc.
35. Power of disposal of goods which remain undelivered.
36. Payment of carriage charges.
37. Deviation of route.
38. Surrender of carriage receipt.
39. Maximum carrying capacity of transport vehicle.
40. Carrying passengers in vehicle for carriage of goods.
41. Magistrate having jurisdiction under the Act.
42. Cases to be tried summarily.
43. Excess charge to be paid the Sikkim Transport.
44. Overriding effect of the Act.
45. Power to make rules.

**THE SIKKIM NATIONALISED TRANSPORT (PREVENTION OF
TICKETLESS TRAVEL AND MISCELLANEOUS PROVISIONS) ACT
1981
ACT NO. 10 OF 1981
AN
ACT**

to provide for prevention of ticketless travel in, and carriage of goods by, the Sikkim Nationalised Transport and for matters connected therewith or incidental thereto.

{30th September, 1981}

Be it enacted by the Legislature of Sikkim in the Thirty-second Year of the Republic of India as follows:

1. (1) This Act may be called the Sikkim Nationalised Transport (Prevention of Ticketless travel and Miscellaneous Provisions) Act, 1981. *Short title, extent and commencement.*
- (2) It extends to the whole of Sikkim.
- (3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires,- *Definitions.*
 - (1) "carriage charges" means charges payable for carrying of goods by transport vehicle as may be determined by the Government from time to time;
 - (2) "carriage receipt" means the document issued by the Sikkim Transport acknowledging the receipt of goods for carriage by it;
 - (3) "consignee" in relation to goods carried by the Sikkim Transport means the person named in the carriage receipt as being the consignee of the goods covered by the receipt and includes the consignor where the goods are consigned in the name of the consignor or to self;
 - (4) "consignment" means the 'goods entrusted' to the Sikkim Transport for carriage by it and includes part of a consignment;

(5) "consignor" means the person named in the carriage receipt :as being the consignor by whom and on whose behalf goods covered by carriage receipt are entrusted to Sikkim Transport for carriage;

(6) "demurrage" means the charge levied for detention of any consignment after the expiry of the free time allowed for such. detention;

(1) "endorsee" means the person in whose favour the consignment is made and in the case of successive endorsements, means the person in whose favour the last endorsement is made;

(8) "endorsement" in relation to a carriage receipt means signing of such receipt on the back or face thereof by the consignee or endorsee so as to entitle any other person to the possession thereof and to receive the goods covered by such receipt

(9) "employee" means an employee of the Sikkim Transport and includes an officer;

(10) "fare" means the amount determined by the Government for transporting a person from one place to another place;

(II) "forwarding note" means the document executed by a consignor or his agent;

(12) "goods" includes materials, commodities, articles and animals;

(13) "Government" means the State Government of Sikkim;

(14) "luggage" means the goods of a passenger either carried by him in his charge or entrusted by him to the Sikkim Transport for carriage by the later;

(15) "passenger" means the person who enters or remains in a transport vehicle with the intention of travelling from one place to another place;

(16) "prescribed" means prescribed by rules made .under this Act;

(17) "transport vehicle" means the public service vehicle owned by or operated under the supervision of the Sikkim Transport for carriage or transportation of goods and passengers;

(18) "travel without ticket" means travelling without a proper ticket or with defaced ticket or with a -ticket which has already been used;

(19) "Sikkim Transport" means the Sikkim Nationalised Transport and may include any transport undertaking owned and controlled by the Government;

(20) "wharf age" means the charge levied on goods for not removing from the premises of the Sikkim Transport after expiry of the free time allowed for such removal.

3. No person shall enter or remain in any transport vehicle of the Sikkim Transport for the purpose of travelling therein as a passenger or travel in such transport vehicle as a passenger

Prohibition against travelling without ticket.

- (a) without a proper ticket, or
- (b) with a defaced ticket, or
- (c) with a ticket which has been used earlier.

4. No person shall carry in or upon any transport vehicle any goods without obtaining therefor proper carriage receipt from any employee, conductor or driver of the Sikkim Transport.

Prohibition against carrying of goods without payment of carriage charges.

5. (1) At any place where the Sikkim Transport has booking counter for issue of passenger ticket or carriage receipt, it shall be the duty of an employee of the Sikkim Transport to issue such passenger ticket or carriage receipt.

Duty of conductor or employee of Sikkim Transport to issue tickets. etc.

(2) At places where there is no booking counter referred to in subsection (1), it shall be the duty of the driver or conductor to issue passenger ticket or the carriage receipt as the case may be.

6. It shall be the duty of a person to obtain ticket or carriage receipt from the booking counter of the Sikkim Transport before boarding a transport vehicle.

Duty of passengers to obtain tickets.

*Prohibition against
boarding of transport
vehicle enroute.
Exhibition of ticket
and carriage receipt.*

7. No person shall board a transport vehicle after it has left the place declared as a Bus Stand or Bus 'Stop by the Government by a notification in the Official Gazette.

8. Any person who travels in a transport vehicle shall, whenever required by an employee of the Sikkim Transport not below the rank of a conductor or any other person not below the rank of a Sub-inspector of police specially authorised by the State Government in this behalf, present his ticket or the carriage receipt to such employee or other person for examination.

*Penalty for carrying
goods without carr...
riage receipt.*

9. 0) Any person who carries or causes to be carried goods by a transport vehicle of the Sikkim Transport without payment of carriage charges or makes a false declaration in relation to the weight of the goods shall be punishable with imprisonment for; a term which may extend to one month or with fine which may extend to two hundred and fifty rupees or with both and shall also be liable to pay the excess charge specified in sub-section (2) in addition to the actual carriage charges.

(2) The excess charge referred to in sub-section (1) shall be such not exceeding rupees two per kilograms of the goods carried as may be prescribed or rupees one hundred, whichever is more.

*Penalty for ticketless
travel.*

10. (1) Any person who travels in a transport vehicle without having a proper ticket or having alighted there from fails or refuses to present his ticket for examination on requisition shall be punishable with imprisonment for a term which may extend to one month or with fine which may extend to two hundred and fifty rupees or with both and shall also be liable to pay the excess charge specified in sub-section (2), in addition to the actual fare, for the distance which he has traveled, or where there is any doubt as to the stage from which the transport vehicle originally started, or from the place, if any, where the tickets were last examined, to the place where he was detected to be travelling without ticket.

(2) The excess charge referred to in sub-section (1) shall be the actual fare for the distance - referred to in that subsection or a sum of rupees twenty, whichever is more.

11. If an employee of the Sikkim Transport whose duty is (1) to supply a ticket to a person travelling in a transport vehicle on payment of fare by such person, either wilfully or negligently,
- a) omits or refuses to accept the fare when tendered
 - b) omits or refuses to supply a ticket
 - c) supplies an invalid ticket
 - d) supplies a ticket of lesser value
 - e) supplies a ticket for a shorter distance

Penalty for dereliction of duty.

(2) to check any ticket, either wilfully or negligently omits or refuses to do so, he shall be punishable with imprisonment for a term which may extend to one month or with fine which may extend to two hundred and fifty rupees or with both.

12 Any person, who travels or attempts to travel in a transport vehicle without having proper ticket with him or beyond the place authorised by his ticket or who, being inside a transport vehicle, fails or refuses to present his ticket for examination when required to do so, may be removed from such vehicle by an employee of the Sikkim Transport or any other person whom such employee or other person may call to his aid unless he then and there pays the fare.

Power to remove persons from transport vehicles.

13. If any person wilfully obstructs an employee of the Sikkim transport or any other person authorised under this Act, in the discharge of his duty, he shall be punishable with imprisonment for a term which may extend to one month or with fine which may extend to two hundred and fifty rupees or with both.

Obstructing employees of the Sikkim Transport or other authorised person in his duty.

14. (1) A passenger may carry with him in the transport vehicle without payment of any carriage charges a suitcase, trunk or bedding or bed-roll and such other articles as may be prescribed and up to such weight as may be prescribed.

Limits of personal luggage, etc.

(2) A passenger who carries with him any articles not specified in sub-section (1) or in excess of the prescribed weight shall book the same and obtain a carriage receipt therefor.

(3) Any passenger who contravenes the provisions of sub-section (1) or sub-section (2) shall be liable to punishment which may extend to twice the amount of carriage charges from the place from which the luggage, goods or other articles are being carried to the place where those are intended to be carried or rupees one hundred whichever is more.

(4) The conductor and driver of the transport vehicle in which personal luggage, goods or other articles are being carried in contravention of sub-section (1) or sub-section (2) shall be liable to be punished with fine which may extend to rupees five hundred.

Fares payable by passenger.

15. (1) A passenger who has attained the age of twelve years shall pay the full fare as may be determined by the Government from time to time.

(2) No fare shall be charged from a passenger who is a child below the age of five years and is carried in the lap of the parent or other passenger.

(3) Fare at the rate of half of the fare determined under sub-section (1) may be charged in respect of children above the age of five but below the age of twelve years.

Exemptions and concessional rate of fares.

16. The Government may, by notification in the Official Gazette, declare any class or category of persons who may travel in a transport vehicle without payment of the fare or at such concessional fare as may be declared in that notification on such occasions as may be so declared.

Penalty for drunkenness

17. If any employee is in a state of intoxication while on duty, he shall be punished with fine which may extend to two hundred and fifty rupees and when the performance of any duty in such state is likely to endanger the safety of any person travelling in the transport vehicle, such employee shall be punished with imprisonment for a term which may extend to one year or with fine or with both.

Penalty for false returns.

18. If any employee, required to furnish a return by or under this Act, signs and furnishes a return which is false in any material particular, he shall be punished with imprisonment which may extend to one year or with fine which may extend to five hundred rupees or with both.

19. If any passenger

- (a) having entered a transport vehicle wherein no seat has been reserved for his use, or .
- (b) having unauthorizably ,occupied a seat reserved- for the use of another passenger,

Entering transport vehicle without reservation or refusal to vacate the seat.

refuses to leave it when required to do so by any employee, any employee authorised by the Sikkim Transport in this behalf, may remove him or cause him to be removed with the aid of any other person from the transport vehicle or seat, and shall also be punished with fine - which may extend to one hundred rupees.

20. If any passenger enters or leaves, or attempts to enter or leave

- (a) any transport vehicle while it is in motion; or
- (b) at a place other than it place declared by the Government as a Bus Stand or Bus Stop; or

Entering transport vehicle in motion or otherwise improperly travelling.

(c) - opens the door of any transport vehicle while it is in motion, he shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees or with both.

21, If any passenger

- (a) travels on the roof of a transport vehicle;
- (b) or persists .in, travelling
 - (i) on the steps or foot-board of any transport vehicle; or
 - (ii) in any part of the transport vehicle not, intended for the use by passengers,

Travelling on roof or steps.

even after being warned by an employee -not so to travel, he shall be punished with imprisonment for a term which may extend to three months or with fine which may extend to one hundred and fifty rupees or with both and may be removed from the transport vehicle by any employee of the Sikkim transport.

22. If any passenger wilfully alters or defaces his ticket or pass so as to render the date, number or any material portion thereof illegible, he shall be punished with imprison

Altering or defacing of ticket.

ment for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both and shall also forfeit the ticket or pass as altered or defaced.

Fraudulent travelling or attempt to travel on a used ticket.

23. (1) If any person with intent to defraud the Sikkim Transport uses or attempts to use a ticket which has already been used on a previous journey, he shall be punished with imprisonment for a term which may extend to six month or with fine which may extend to five hundred rupees.

(2) The person referred to in sub-section (1) shall, in addition to the payment of excess mentioned in sub-section (3) be liable to pay

- (a) the ordinary single fare for the distance which he has travelled; or
- (b) where there is any doubt as to the station from which he started, the ordinary single fare from the station from which the bus originally started; or
- (c) if the tickets of passengers travelling in the transport vehicle have been examined since the original starting of the vehicle, the ordinary single fare from the place where the tickets were last examined; or
- (d) in case of their having been examined more than once, the ordinary single fare from the place where the tickets were last examined.

(3) The excess charge referred to in sub-section (2) shall be a sum equal to the ordinary single fare payable under that sub-section or rupees twenty whichever is more

(4) Where Sikkim Transport fails to prove any fraudulent intention under sub-section (1), it shall not preclude the Magistrate from passing an order that the person shall be liable to pay the ordinary single fare and the excess charge.

(5) Where a person fails or refuses to pay the excess charge and the ordinary single fare, the sum shall be recoverable as if it were a fine imposed by a Magistrate.

(6) Notwithstanding anything contained in section 75 of the Indian Penal Code, the Court imposing any fine of any sum recoverable as fine, may direct that the person in default of payment shall suffer imprisonment for a term which may extend to three months.

(7) Out" of any amount recovered under this section, the excess charge and the ordinary single fare shall be paid to the Sikkim Transport before any portion of that amount is credited as" fine to the Government.

24. (j) If any person not being an employee or an agent authorised by the Sikkim Transport in this behalf

Penalty for transfer of ticket.

- (a) sells or attempts to sell any ticket; or
- (b) parts or attempts to part with the possession of a ticket against which reservation of a seat has been made,

in order to enable any other person to travel therewith, he shall 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 and shall also forfeit the fare and the" ticket which he may have sold or attempted to sell.

(2) If any person purchases any ticket referred to in clause (a) Of sub-section (1) or obtains the possession of any - ticket referred to in clause (b) of that sub-section from any person not being an employee or agent authorised by the Sikkim Transport in this behalf, he shall be punished with imprisonment for a term which may extend to three months or with fine which may extend to two hundred and fifty rupees or with both and if a purchaser or holder" of any" ticket aforesaid travels or attempts to travel therewith, he shall forfeit the ticket which he may have purchased or obtained and shall be deemed to be travelling without having a proper ticket with him and shall be liable to be dealt with under section 10.

(3) Out of any amount recovered under this section," the sum representing the single fare therein, shall be paid to the Sikkim Transport before any portion of that amount is credited as fine to the Government.

Smoking. 25. (1) No person shall smoke in any transport vehicle if objected to by any passenger in that transport vehicle.

I

(2) Whoever contravenes the provisions of sub-section (1) shall be punished with fine which; may extend - to one hundred rupees.

Drunkness or nuisance in transport vehicle or at Bus Stop. 26. If any person in any transport vehicle, or within the premises of any Bus Stop

- (a) is in state of intoxication; or
- (b) commits any nuisance or act of indecency or uses abusive or obscene language; or
- (c) wilfully or without excuse interferes with any amenity provided by the Sikkim Transport so as to affect the comfortable travel of any passenger,

he may be removed from such transport vehicle or Bus Stop by any employee and shall, in addition to the forfeiture of any fare which he may have paid and of any ticket which he may have purchased, be punished with fine which may extend to two hundred and fifty rupees.

Disobedience by bus driver or conductor of direction of an employee. 27. If any driver or conductor of any transport vehicle disobeys the reasonable directions of any employee or Police officer, he shall be punished with imprisonment for a term which may extend to one month.

Carriage of goods. 28. The Sikkim Transport shall ensure that the goods entrusted to it for carriage are carried safely and within a reasonable time:

Provided that the Sikkim Transport shall not be liable to pay any compensation for any delay in transit.

maintenance of rates, etc. for carriage of goods. 29. The Sikkim Transport shall maintain at each place where goods, other passengers and their luggage, is received for carriage, the tariffs, distance tables, rate tables and a list of station to station rates for carriage of goods from such place and shall, during all reasonable hours, make them available for reference of any person without payment of any fee.

30. The Sikkim Transport may impose conditions, not inconsistent with this Act or any rule made thereunder, with respect to the receiving, accepting, booking, loading, forwarding, carrying or delivery of any goods. *Power to impose condition.*
31. Every consignor or his agent entrusting any goods to the Sikkim Transport for carriage by it shall execute a forwarding note in such form as may be prescribed and different forms of forwarding notes may be prescribed for carriage of different categories of goods. *Forwarding Note.*
32. No person shall consign or carry such offensive or dangerous goods as may be prescribed in or upon a transport vehicle of the Sikkim Transport. *Prohibition against carriage of offensive or dangerous goods.*
33. (1) Every employee of the Sikkim Transport shall weigh or cause to be weighed the goods consigned for carriage or to be, carried in or upon a transport vehicle of the Sikkim Transport, before issuing carriage receipt and shall enter the weight of the goods in such receipt. *Power of employee to weigh the goods.*
- (2) Any employee who suspects that the weight of the goods has not been correctly entered in the carriage receipt, may have the goods re-weighed.
34. The Sikkim Transport may keep the goods at destination station for such time as may be prescribed and may charge such demurrage or wharf age charges as may be prescribed. *Power to realize demurrage charge, etc.*
35. Where the consignor, consignee or endorsee fails to take delivery of the goods within the prescribed time, the Sikkim Transport may dispose of the goods by public auction in such manner as may be prescribed. *Power of disposal of goods which remain undelivered.*
36. Except in case of goods for which the carriage charges are required to be paid at the time of booking, such carriage charges may be paid either at the time of booking of the goods or at the time of taking delivery of such goods. *Payment of carriage charges.*
37. Where due to any cause beyond the control of the Sikkim Transport or due to other operational reasons, goods are carried over a route other than the route by which they *Deviation of route.*

are ordinarily carried, the Sikkim Transport shall not be deemed to have committed a breach of the contract of carriage by reason only of such deviation of route.

Surrender of carriage receipt.

38. The Sikkim Transport shall deliver the goods' at destination only on the surrender of the original receipt issued to the consignor or his agent at the place where the goods were booked.

Maximum carrying capacity for transport vehicle.

39. (1) The Government may by general or special order, specify the maximum weight of the goods and the maximum number of passengers that may be carried in a transport vehicle and different weights and number of passengers may be specified for different types of transport vehicles and for different routes.

(2) The weight of goods and number of passengers to be carried by a transport vehicle specified under sub-section (1) shall be displayed at a conspicuous place in or outside' the vehicle.

(3) Any employee who takes or allows to be taken *in* a transport vehicle goods or passengers in excess of the weight or number specified under sub-section (1) shall be punishable with fine which may extend to one hundred rupees.

Carrying passengers in vehicle for carriage of goods.

40. (1) No employee shall carry or caused to be carried passengers in a transport vehicle intended for carrying or 'the goods in excess of the number declared by the State Government from time to time.

(2) Any person who contravenes the provisions of subsection (1) shall be punishable with fine which may extend to one hundred rupees.

Magistrate having jurisdiction under the Act

41. No Magistrate other than a Judicial Magistrate of the first class shall try an offence punishable under this Act.

Cases to be tried summarily.

42. In the trial of offences punishable under this Act, the Magistrate shall follow the procedure laid down in the Code of Criminal Procedure, 1898, for trial of offences in a summary way.

43. Any amount recovered by way of excess charge under this Act shall be paid to the Sikkim Transport.

Excess charge to be paid to the Sikkim Transport.

44. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law.

Overriding effect of the Act.

45. (1) The State Government may, by notification in the Official Gazette, make rules for giving effect to the provisions of this Act.

Power to make rules.

(2) Without prejudice to the generality of the foregoing sub-section, such rules may provide for all or any of the following matters, namely:

- (a) the excess charge under section 9 (2);
- (b) the articles that a passenger may carry without payment of carriage charges and the weight of such articles;
- (c) the form of the forwarding note under section 31 ;
- (d) the offensive or dangerous goods which may not be carried in or upon a transport vehicle;
- (e) the free time for which the goods may be kept at the destination stations and the demurrage and wharf age charges;
- (f) the manner of disposal of goods by public auction under section 35 ;
- (g) any other matter which is required to be or may be prescribed.

THE SIKKIM SHOW HOUSES AND PUBLIC HALLS
(PROHIBITION OF SMOKING) ACT 1981

ARRANGEMENT OF SECTIONS

1. Short title, extent, commencement and withdrawal.
2. Definitions.
3. Prohibition of smoking in show houses and public halls.
4. Management to post notices or exhibit slides.
5. Penalty for smoking in show houses and public halls
6. . Power to arrest without warrant.
7. Offences to be cognizable and bail able
8. . Power to exclude from the operation of Act.
9. Power to make rules.

THE SIKKIM SHOW HOUSES AND PUBLIC HALLS
(PROHIBITION OF SMOKING) ACT, 1981. ACT NO 12 OF
1981
AN
ACT

to prohibit smoking in show houses and "public" halls in Sikkim.

[30th September 1981)

Be it enacted by the Legislature of Sikkim in the Thirty-second Year of the Republic of India as follows:

1. (1) This Act may be called the Sikkim Show Houses and Public Halls (Prohibition of Smoking) Act, 1981. *Short title, extent, commencement and withdrawal.*
 - (2) It extends to the whole of Sikkim.
 - (3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different areas or places in Sikkim.
 - (4) The State Government may, by notification in the Official Gazette, declare that with effect from such date as may be specified in the notification, this Act shall cease to be in operation in any or all such areas and places in which it has been enforced under sub-section (3) and the provisions of section 20 of the Sikkim Interpretation and General Clauses Act, 1977, shall have effect as if the Act had then been repealed in that area or place by a Sikkim Act.
 - (5) The powers conferred on the State Government under sub-section (3) may be exercised in respect of the same or different areas or places as often as occasion requires.
- 6 of 1977.
2. In this Act, unless the context otherwise requires, *Definitions.*
 - (a) 'show house' means any building, or any roofed and enclosed structure, used ordinarily or occasionally for the demonstration or exhibition to the public, whether on payment or otherwise, of cinematographic

films, dramatical pantomime, or musical performances, dances, physical feats of human beings or animals, conjuring tricks or sleights of hand, boxing, wrestling, skating, billiards or table-tennis competitions or any other indoor amusement or diversion whatsoever;

(b) 'public hall' means a chamber or hall used ordinarily or occasionally as a place of public assembly or meeting.

Prohibition of smoking in show houses and public hall

3. No person shall smoke during a demonstration, exhibition or meeting, in any part of a show house or public hall reserved for the audience or the spectators.

Management to post notices or exhibit slides.

4. (1) Every person responsible for the management of demonstration or exhibition in a show house and every person who controls the deliberations of a public assembly or meeting in a public hall, shall bring to the notice of the audience or the spectators, by posting notices prominently or by exhibiting slides in the case of any cinematographic exhibition, that any person smoking during a demonstration, exhibition or meeting, in the show house or public hall shall be liable to prosecution.

(2) Whoever contravenes the provisions of sub-section (1) shall be punishable with fine which may extend for a first offence to fifty rupees. and for a second or subsequent offence to two hundred rupees.

Penalty for smoking in show houses and public hall

5. (1) Any police officer or any other person specially authorised in this behalf by the State Government by notification in the Official Gazette, may direct any person found smoking in contravention of the provisions of section 3 to desist from smoking and if such person does not desist, he shall be punishable with fine which may extend to rupees fifty.

(2) Any police officer or the person authorised may require a person who does not desist from smoking as directed under sub-section (1), to declare to him immediately his name and address and, if that person

refuses or fails so to declare his name and address or if the police officer or the person authorised reasonably suspects him of giving a false name or address, the police officer or the person authorised may arrest him without a warrant.

6. Any police officer may arrest without warrant any person committing in his presence an offence under section 3.

Power to arrest without warrant.

7. All offences under this Act shall be cognizable and bail able.

Offences to be cognizable and bail able.

8. The State Government or any officer of the State Government authorised in this behalf may, by general or special order in writing, direct that the provisions of this Act shall not apply in respect of any show house or public hall or any demonstration, exhibition or public meeting therein.

Power to exclude from the operation of Act.

9. The State Government may, by notification in the Official Gazette, make rules for giving effect to the provisions of this Act.

Power to make rules.

"THE SIKKIM PANCHAYAT ACT 1982

ARRANGEMENT OF SECTIONS

CHAPTER I

Preliminary

1. Short title, extent and commencement.
2. Definitions,

CHAPTER II

Constitution of Gram

3. Constitution of Gram, its name and jurisdiction.
4. Effect of alteration of the area of a Gram.
5. Effect of inclusion of a Gram or part thereof in Municipal Corporation, etc.
6. Constitution of Gram Panchayat.
7. Incorporation of Gram Panchayat.
8. Term of members of Gram Panchayat.
9. Disqualifications of members of Gram Panchayat.
10. Sabhapati and Up-Sabhapati.
11. Notification of election of nomination etc.
12. First meeting of Gram Panchayat.
13. Meeting of Gram Panchayat.
14. Consideration of question disposed of by Gram Panchayat.
15. List of business to be transacted at a meeting.
16. Powers and duties of Sabhapati.
17. Powers and duties of Up-Sabhapati.
18. Right of individual member.
19. Resignation of Sabhapati, or Up-Sabhapati or member.
20. Removal of Sabhapati and Up-Sabhapati.
21. Filling of casual vacancy in the office of Sabhapati or Up-Sabhapati.
22. Removal of member of Gram Panchayat.

23. Filling of casual vacancy in place of member of Gram Panchayat.
24. Sachiva of Gram Panchayat.
25. Resignation of Sachiva.
26. Removal of Sachiva.

CHAPTER III

Duties of Gram Panchayat

27. Obligatory duties of Gram Panchayat.
28. Other duties of _Gram Panchayat.

CHAPTER IV

Property and Fund

29. Property and Fund of Gram Panchayat.
30. Allocation of properties to Gram Panchayat.
31. Acquisition of land for Gram Panchayat.
32. Gram Panchayat Fund.
33. Levy of taxes, rates and fees.
34. Power of State Government to regulate taxes, rates and fees.
35. Appeal against taxation, fees and rates.
36. Recovery of arrears.
37. Action by District Collector.
38. Power of State Government in regard to relief in taxes, rates or fees. Budget of Gram
39. Panchayat.
40. Supplementary Budget.
41. Accounts.

CHAPTER V

Constitution of Zilla Panchayat

42. Zilla Panchayat and its constitution.
43. Term of members of Zilla Panchayat.
44. Incorporation of Zilla Panchayat.
45. Adhakshya and Upadhakshya.

46. Notification of election, nomination etc.
47. First meeting of the Zilla Panchayat.
48. Meetings of Zilla Panchayat.
49. Reconsideration of questions disposed of by Zilla Panchayat.
50. List of business to be transacted at a meeting.
51. Powers and duties of Adhakshya.
52. Powers and duties of Upadhakshya.
53. Right of individual members.
54. Resignation of Adhakshya and Upadhakshya or a member.
55. Removal of Adhakshya and Upadhakshya.
56. Filling of casual vacancy in the office of Adhakshya or Upadhakshya.
57. Removal of member of Zilla Panchayat.
58. Filling of casual vacancy in office of a member of Zilla Panchayat.
59. Sachiva of Zilla Panchayat.

CHAPTER IV

Powers and Duties of Zilla Panchayat

60. Obligatory duties of Zilla Panchayat.
61. Other duties of Zilla Panchayat.
62. Vesting of Zilla Panchayat with certain powers.
63. Joint execution of schemes by two or more Zilla Panchayats.
64. Power of supervision by Zilla Panchayat over Gram Panchayat.

CHAPTER VII

Property and Fund

65. Works constructed by a Zilla Panchayat to vest in it.
66. Allocation of properties to Zilla Panchayat.
67. Acquisition of land for Zilla Panchayat.
68. Zilla Panchayat Fund.
69. Imposition of taxes, rates and fees.
70. Power of State Government to regulate taxes.
71. Appeal against taxation, rate or fee.
72. Recovery of arrears.

73. Action by District Collector.
74. Power of State Government in regard to relief in taxes.
75. Budget of Zilla Panchayat.
76. Supplementary Budget.
77. Accounts.

CHAPTER VIII

Audit

78. Audit of accounts of fund.
79. Submission of accounts to audit.
80. Powers of Auditors.
81. Penalty.
82. Audit report.
83. Action on audit report.
84. Power of auditor to surcharge etc.
85. Appeal.
86. Payment of certified sums.
87. Certain costs and expenses payable out of funds.

CHAPTER IX

Miscellaneous

88. Oath of affirmation.
89. Validation.
90. Members and Officers and employees to be public servants.
91. Indemnity.
92. Reference of dispute.
93. Inspection.
94. Power of State Government to rescind or suspend resolution of a Gram Panchayat or Zilla Panchayat.
95. Power of State Government officers to attend meetings.
96. Directions by State Government.
97. Power to remove Sabbapati, Up-Sabhapati, Sachiva, Adhakshya and Upadhaksya.
98. Power of State Government to supersede a Gram Panchayat or Zilla Panchayat.

99. Consequences of super session.
 100. Election of Sabhapati or Up-Sabhapati or Sachiva or member of Gram Panchayat or Adhakshya or Upadhakshya or member or Zilla Panchayat.
 101. Superintendence of election.
 - 101A. Electoral offences.
 - 101B. Requisition of premises, vehicles etc. for election purpose.
 102. Application for questioning the election.
 103. Decision on question as to disqualification.
 104. - Improvement of sanitation.
 105. Power of Gram Panchayat or Zilla Panchayat over village roads, waterways and other matters.
 106. Power of Gram Panchayat or Zilla Panchayat in respect of polluted water supply.
 107. Emergent power on outbreak of epidemic.
 - 10,8. Nomination of members by State Government.
 - 10,9. Report on the work of Gram Panchayat or Zilla Panchayat.
 - 110., Placing of services of Government employees at the disposal of a Gram. Panchayat or a Zilla Panchayat.
- III. Power to settle disputes.
112. Delegation. .
 113. Allowance to members.
 114. Election not to be contested with the support of Political party.
 - 115 Penalty.
 116. Repeal and Savings.
 117. Power to remove difficulties.
 118. Power to make rules.

SCHEDULE

THE SIKKIM PANCHAYAT ACT 1982 ACT

NO.3 OF 1982

AN

ACT.

to provide for the reorganization of Panchayats with a view to ensuring efficient Panchayat administration in the State and to provide for matters connected therewith and incidental thereto.

[7th April, 1982)

Be it enacted by the Legislature of Sikkim in the Thirty-third Year of the Republic of India as follows:

CHAPTER I

Preliminary

1. (1) This Act may be called the Sikkim Panchayat Act, 1982. *Short title, extent and commencement.*
- (2) It extends to the whole of Sikkim except the areas which have been or may hereafter be declared as, or included in, the Municipal Corporation under the provisions of the Gangtok Municipal Corporation Act, 1975 or as a cantonment under the provisions of the Cantonment Act, 1924 or as a Bazar Area under the provisions of the Sikkim Bazar Committees Act, 1969.
- (3) It shall come into force on such date as the State Government may, by notification, appoint and different dates may be appointed for different areas or different provisions of the Act and any reference to the commencement of any provision of this Act shall be construed as reference to the date on which such provision is brought into force in such areas:
2. In this Act, unless the context otherwise requires, *Definitions.*
- (a) "Adhakshya" means an Adhakshya of a Zilla Panchayat elected under sub-section (1) of section 45;

4 of 1975.

2 of 1924.

- (b) "auditor" means an auditor appointed under section 78 and includes any officer authorised by him to perform all or any of the functions of an auditor.
- (c) "District Collector" means the Collector of the district;
- (d) "Deputy Development Officer-cum -Planning Officer" means the Deputy Development Officer-cum-Planning Officer of the district appointed by the State Government;
- (e) "Gram" means any village or part of a village or group of adjoining villages or parts thereof declared by the State Government to be a Gram under subsection (1) of section 3;
- (f) "Gram Panchayat" means a Gram Panchayat constituted under sub-section (I) of section 6;
- (g) "notification" means a notification published in the Official Gazette;
- (h) "prescribed authority" means an authority appointed by the State Government by notification, for all or any of the purposes of this Act;
- (i) "Sabhapati" means a Sabhapati of a Gram Panchayat elected under sub-section (I) of section 10;
- (j) "Secretary" means the Secretary of the Rural Development Department and includes an Additional Secretary, Joint Secretary, Deputy Secretary and Under Secretary of that Department;
- (k) "Upadhakshya" means an Upadhakshya of a Zilla Panchayat elected under sub-section (1) of section 45;
- (l) "Up-Sabhapati" means an Up-Sabhapati of a Gram Panchayat elected under sub-section (I) of section 10;
- {m) "Zilla Panchayat" means a Zilla Panchayat of a district constituted under subsection. (1) of section 42.

CHAPTER II
Constitution of a Gram

3. (1) Subject to the consideration of local conditions, the State Government may, by notification, declare for the purposes of this Act any village or part of a village or a group of adjoining villages or parts thereof to be a Gram. *Constitution of Gram, its name and jurisdiction.*
- (2) As soon as may be after the constitution of a Gram under sub-section (1), the State Government may, by notification, divide each Gram into wards and each ward shall, as far as possible, comprise of a Revenue Block.
- (3) The State Government may, by notification, specify the number of members to be elected from each Revenue Block having regard to the number of voters in such Revenue Block and such other facts as the State Government may consider fit.
- (4) The notification under sub-section (1) shall specify the name of the Gram by which the Panchayat shall be known and shall specify the local limits of such Panchayat.
- (5) The State Government may, after making such enquiry as it may think fit and after obtaining the views of the Gram 'Panchayat' or Panchayats concerned by notification
- (a) exclude from any Gram any area comprised therein, or
- (b) include in any Gram any area adjoining to such Gram
- (c) divide the area of a Gram so as to constitute two or more Grams; or
- (d) unite the areas of two or more Grams so as to constitute a new Gram.

Effect of alteration of the area of Gram.

4. (1) When an area is excluded from a Gram under clause (a) of sub-section (3) of section 3, such area shall, as from the date of the notification referred to in that sub-section, cease to be subject to the jurisdiction of the Gram Panchayat of that Gram and, unless the State Government otherwise directs, all rules, orders, directions and notifications in force in that Gram shall also cease to apply to the area so excluded.
- (2) When an area is included in a Gram under clause (b) of sub-section (3) of section 3, the Gram Panchayat for that Gram shall, as from the date of the notification referred to in that sub-section have jurisdiction over such area and, unless the State Government otherwise directs, all rules, orders, directions and notifications in force in that Gram shall apply to the area so included.
- (3) When the area of any Gram is divided under clause (c) of sub-section (3) of section 3 so as to constitute two or more Grams the Gram Panchayat of that Gram shall, as from the date of ,the notification referred to in that sub-section, cease to exist and there shall be reconstitution of the Gram Panchayats for the newly constituted Grams in accordance with the provisions of this Act.
- (4) When the areas of two or more Grams are united under clause (d) of sub-section (3) of section 3 so as to constitute a new Gram, the Gram Panchayats of the said Grams shall, as from the date of the notification referred to in that sub-section, cease to exist and a separate Gram Panchayat shall be constituted for the new Grams in accordance with the provisions of this Act,
- (5) When under sub-section (3) of section 3 any area is excluded from, or included in, a Gram or a Gram is divided so as to constitute two or more Grams, or two or more Grams are united to constitute a new Gram, the properties, funds and

liabilities of the Gram Panchayat or Panchayats affected by such reconstitution shall vest in such Gram Panchayat or Panchayats in accordance with such allocation as may be determined by order in writing by the prescribed authority, and such determination shall be final.

- (6) An order made under sub-section (5) may contain such supplemental, incidental and consequential provisions as may be necessary to give effect to such reconstitution.

- 4 of 1975. 5. (1) If, at any time, the whole of the area of a Gram is included within the Municipal Corporation under the provisions of the Gangtok Municipal Corporation Act, 1975 or in a Bazar Area under the Bazar Committees Act, 1969; or a Cantonment Area, the Gram Panchayat concerned shall cease to *exist* and the properties, funds and other assets vested in such Gram Panchayat and all the rights and liabilities of such Gram Panchayat shall vest in, and devolve on, the Municipal Corporation or on the Bazar Committee or on the Cantonment Authority or Board, as the case may be.

Effect of inclusion of a Gram or part thereof in Municipal Corporation, etc.

- 4 of 1975. (2) If, at any time, a part of the area of a Gram is included in a Municipal Corporation under the provisions of the Gangtok Municipal Corporation Act, 1975 or in a Bazar Area under the Bazar Committees Act, 1969; or a Cantonment Area, the area of the Gram shall be deemed to have been reduced to the extent of the part so included within the Municipal Corporation or in a Bazar Area or Cantonment Area, and the properties, funds, rights and liabilities of the Gram Panchayat concerned in respect of the part so included shall vest in, and devolve on, the Municipal Corporation or on the Bazar Committee or on the Cantonment Authority or Board, as the case may be, in such manner as may be determined by the prescribed authority and such determination shall be final, and unless the State Government otherwise directs all rules, orders,

directions and notifications in force in the areas comprised in the Municipal Corporation, Bazar Area or Cantonment Area, as the case may be, shall apply to the part of the area of the area of the Gram so included.

*Constitution of
Gram Panchayat.*

6. (1) As soon as may be after the constitution of the Gram, the State Government may, by notification, constitute for every Gram a Panchayat bearing the name of the Gram.
- (2) Persons whose names are included in the electoral roll of the Sikkim Legislative Assembly for the time being in force pertaining to the area comprised in the Gram shall elect by secret ballot at such time and in such manner as may be notified by the State Government from among themselves such number of members not being less than five and not more than nine as may be determined by the State Government:

Provided that the total number of members of the Gram Panchayat including nominated members shall not exceed nine.

- 1 [(3) (* * * * *)
- (4) Where a Gram has failed to elect the full number of members as determined under sub-section (2) , it shall be called upon to elect the remaining member but if it again fails to elect. the full number, it shall be lawful for the State Government to fill up any seat remaining vacant by nomination from amongst the members of the Gram, and any person, so nominated shall, for the purposes of this Act, be deemed to have been duly elected.
- (5) The term of office of the members of -Gram Panchayat shall, subject to the provisions of section 22, be co-terminus with the term of the Gram Panchayat

1. Omitted by sec. 2 of the S. P. (' Amd). Act No.5 of 1983. (w. e. f. 18 12. 1982).

7. (1) Every Gram Panchayat shall be a body corporate having perpetual succession and a common seal and shall, by its corporate name, sue and be sued. *Incorporation of Gram Panchayat.*

- (2) A Gram Panchayat shall have power to acquire, hold and dispose of property and to enter into contract:

Provided that in all cases of acquisition or disposal of immovable property, the Gram Panchayat shall obtain the previous approval of the State Government.

8. (1) The term of a Gram Panchayat, unless sooner dissolved, shall be five years from the date of its constitution as specified in the Official Gazette: *Term of Gram Panchayat.*

Provided that the term of a Gram panchayat which is constituted after the constitution of other Gram panchayats in a regular election, shall expire with the expiration of five year term of other Gram Panchayats:

Provided further that the State Government may, where it is not possible to hold elections for the constitution of new Gram panchayat immediately after the expiry of the term, by notification, extend the term for a period not exceeding six months at a time subject to a maximum period of one year or appoint any authority, person or persons to exercise and perform, subject to such conditions as may be specified in the order, the powers and functions of the Gram panchayat, under this Act until the constitution of new Gram panchayat.

- (2) When a new Gram panchayat is thus duly constituted the old Gram panchayat shall stand dissolved.

9. (1) A person shall not be qualified to be a member of a Gram panchayat, if *Disqualification of members of Gram Panchayat.*

- (a) he is a member of a municipal corporation under the provisions of the Gangtok Municipal

Corporation Act, 1975, or of a Bazar Committee constituted under the Sikkim Bazar Committees Act, 1969;

- (b) holds any office of profit under the State Government or the Central Government or a local authority or a co-operative society or a Government, company or corporation owned or controlled by the Central or a State Government; or
- (c) has been dismissed from the service of a State Government or the Central Government or a local authority or a co-operative society or a Government Company or Corporation owned or controlled by the Central or a State Government for misconduct: or
- (d) is of unsound mind and stands so declared by a competent Court; or
- (e) is an undischarged insolvent; or
- (f) has been convicted by a Court of an offence involving
 - moral turpitude and sentenced to imprisonment for a term exceeding six months; or
- (g) is convicted of an election offence; or
- (h) is suffering from a variety of leprosy which is infectious; or
- (i) has not paid any arrears in respect of any tax or rate or fee payable to a Gram Panchayat or Zilla Panchayat or the State Government:
 Provided that the disqualification under this clause shall cease upon payment of the tax or rate or fee; or
- (j) has directly or indirectly by himself or by his partner or employer or an employee, any share or interest in any contract with, by or on behalf of Zilla Panchayat or a Gram Panchayat within the district:

Provided that a person shall not be deemed to have incurred disqualification by reason of his having a share or interest in any public company or registered co-operative society which contracts with or is employed by a Gram Panchayat or the Zilla Panchayat of the District.

- (2) Any disqualification under clauses (c), (e), (f) or (g) may be removed by the State Government by order in writing.

- to. (1) Every Gram Panchayat shall, at its first meeting at which a quorum is present, elect in the prescribed manner, one of its members to be the Sabhapati and another member to be the Up-Sabhapati of the Gram Panchayat.

Sabhapati and Up-Sabhapati.

- (2) The Sabhapati and Up-Sabhapati shall, subject to the provisions of section 20 and to their continuing as members, hold office for a period of five years:

Provided that a Sabhapati or an Up-Sabhapati shall continue to hold office after the expiry of the said period until a new Sabhapati or Up-Sabhapati is elected and assumes office or until an authority, or a person or persons is or are appointed under the second proviso to sub-section (I) of section 8 .

- (3) When

(a) the office of the Sabhapati falls vacant by reason of death, resignation, removal or otherwise; or

(b) the Sabhapati is, by reason of leave, illness or other cause, temporarily unable to act,

the Up-Sabhapati shall exercise the powers, perform the functions and discharge the duties of the Sabhapati until a new Sabhapati is elected and assumes office or until the Sabhapati resumes his duties, as the case may be.

- (4') When...
- (a) the office of the Up-Sabhapati falls vacant by reason of death, resignation, removal or otherwise or
- (b) the Up-Sabhapati is, by reason of leave, illness or other cause, temporarily unable to act, the Sabhapati shall exercise the powers, perform the functions and discharge the duties of the Up-Sabhapati until a new Up-Sabhapati is elected and assumes office or until the Up-Sabhapati resumes his duties, as the case may be.
- (5) When the office of the Sabhapati and the Up-Sabhapati are both vacant, or the Sabhapati and the Up-Sabhapati are temporarily unable to act, the prescribed authority, may appoint a Sabhapati and an Up-Sabhapati from among the members of the Gram Panchayat to act as such until a Sabhapati and an Up..Sabhapati are elected and assume office.

Publication of notification of election or nomination etc.

11. Every election or nomination of a Sabhapati, Up-Sabhapati, Sachiva and members of Gram Panchayat, as the case may be, shall be published by the State Government in the Official Gazette and such persons shall enter upon their respective offices from the date of such publication:

Provided that if no such publication has been made the Sabhapati, Up-Sabhapati, Sachiva and members shall be deemed to have entered upon their respective offices from the date of declaration of result of their election or nomination, as the case may be.

First meeting of Gram Panchayat.

12. (1) Notwithstanding of any vacancy in the membership of the Gram Panchayat, the prescribed authority shall, immediately after but before the expiration of thirty days from the date of publication of the notification under section 11, call a meeting of the Gram Panchayat members (which meeting shall be called the first meeting of the Gram Panchayat) for electing the Sabhapati, Up-Sabhapati and the Sachiva of the Gram Panchayat from amongst themselves

- (2) The meeting to be held under sub-section (1) shall be convened by the prescribed authority in the prescribed manner.

13. (1) Every Gram Panchayat shall hold a meeting for transaction of its business at least once in every month at the office of the Gram Panchayat or at such place within the local limits of the Gram Panchayat concerned and at such time as the Sabhapati of the Gram Panchayat may decide.

Meeting of Gram Panchayats.

- (2) The Sabhapati may, whenever, he thinks fit, in the public interest or shall upon receipt of a written requisition of not less than one half of the total number of members of the Gram Panchayat or if directed by the Secretary of the Rural Development Department or the Deputy Development Officer-cum-Planning Officer or the District Collector of the concerned district, call a special meeting of the Gram Panchayat within a period of ten days from the date of receipt of the requisition or direction, as the case may be:

Provided that if the Sabhapati fails to call such special meeting within the specified period from the date of receipt of the requisition or direction, as the case may be, the Secretary of the Rural Development Department or Deputy Development Officer cum-Planning Officer or the District Collector of the concerned district may direct the Sachiva or any member of the Gram Panchayat to call such meeting at such time and at such place within the local limits of the Gram Panchayat concerned as the Sachiva or the member directed to call the meeting may decide.

- (3) Two-third of the total number of members constituting the Gram Panchayat shall form a quorum for a meeting of the Gram Panchayat:

Provided that no quorum shall be necessary for an adjourned meeting.

- (4) The Sabhapati or in his absence, the Up-Sabhapati shall preside at the meeting of the Gram Panchayat and in the absence of both, the members present shall elect one from amongst themselves to preside at the meeting.
- (5) All questions coming before a Gram Panchayat shall, unless otherwise specifically provided under this Act be decided by a majority of votes of the members present and voting:

Provided that in case of equality of votes the person presiding shall have a second or a casting vote.

- (6) No member shall vote on, and take part in the discussions of, and question coming up for consideration at a meeting of a Gram Panchayat if the question is one in which he has any direct or indirect pecuniary interest other than an interest as a member of public.
- (7) If it appears to any member present at a meeting that the person presiding at the meeting has any such pecuniary interest in any matter before the meeting for discussion or any Question coming up for consideration as if referred to in sub-section (6) and a motion brought by him to that effect is carried, such a person shall not preside at such meeting and shall not take part therein, and for the purpose of sub-section (4) such person shall be deemed to be absent during the discussions or consideration of the particular matter.

Consideration of question disposed of by Gram Panchayat.

14. No matter once finally disposed of by the Gram Panchayat shall be reconsidered by it within the period of six months unless the recorded consent of not less than one-half of its total number of members has been obtained thereto.

List of business to be transacted at a meeting.

15. (1) A list of the business to be transacted at every meeting of a Gram Panchayat except at an adjourned meeting, shall be sent to each member of

the Gram Panchayat at least seven days before the time fixed for such meeting and no business shall be brought before or transacted at any meeting, other than the business for which notice has been so given except with the approval of the majority of the members present at such meeting:

Provided that non receipt of a notice by a member shall not vitiate the proceedings of the meeting:

Provided further that if the Sabhapati thinks that a situation has arisen for which an emergent meeting of the Gram Panchayat should be called, he may call such meeting at such time and at such place within the local limits of the Gram Panchayat concerned after giving three days' notice to the members:

Provided also that not more than one matter shall be included in the list of business to be transacted at such meeting.

- (2) The business of the Gram Panchayat shall be transacted in the language commonly spoken and understood by the members.
- (3) Minutes of the proceedings at each meeting of the Gram Panchayat shall be recorded in a book to be kept for this purpose and shall be read and signed by the Sabhapati of the meeting before the meeting disperses.
- (4) The Sachiva of the Gram Panchayat shall, within a week after a meeting of the Gram Panchayat is held, send copies of minutes of every such meeting to the Secretary of the Rural Development Department and the Deputy Development Officer-cum-Planning Officer of the concerned district.

16. The Sabhapati shall
 - (a) regulate the meetings of the Gram Panchayat;

*Powers and duties
of Sabhapati.*

- (b) be responsible for the maintenance of records and registers of the Gram Panchayat;
- (c) exercise supervision and control over the acts done and action taken by the members of the Gram Panchayat and such officers and other employees whose services may be placed at the disposal of the Gram Panchayat by the State Government;
- (d) operate jointly with the Sachiva of the Gram Panchayat the fund of the Gram Panchayat including authorization of payment, issue of cheques and refunds;
- (e) issue receipts under his signature for money received by him on behalf of the Gram Panchayat;
- (f) cause preparation of all statements and reports required by or under this act;
- (g) exercise such other powers, perform such other functions and discharge such other duties as the Gram Panchayat may, by general or special resolution, direct or as the State Government may, by rules made in this behalf, prescribe.

*Powers and duties of
Up-Sabhapati.*

17.

- The Up-Sabhapati shall
- (a) in the absence of the Sabhapati regulate the meetings of the Gram Panchayat;
 - (b) exercise such of the powers and perform such other functions and discharge such of the duties of the Sabhapati as the Sabhapati may, from time to time, delegate to him by order in writing:

Provided that the Sabhapati may at any time withdraw all or any of the powers, functions and duties so delegated to the Up-Sabhapati;
 - (c) during the absence of the Sabhapati, exercise all the powers, perform all the functions and discharge all the duties of the Sabhapati.

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18. The member of a Gram Panchayat at any of the meeting may move resolution and put questions to the Sabhapati or Up-Sabhapati or the Sachiva, as the case may be, on matters connected with the administration of the Gram Panchayat or execution of any work or scheme undertaken by or entrusted to such Gram Panchayat.
- Right of individual member.*

19. (I) A Sabhapati or an Up-Sabhapati or a member of a Gram Panchayat may resign his office notifying in writing his intention to do so to the prescribed authority and on such resignation being accepted the Sabhapati or the Up-Sabhapati or the member shall vacate his office and the casual vacancy shall be deemed to have occurred in such office:
- Resignation of Sabhapati or Up-Sabhapati or member.*

Provided that a person tendering resignation may withdraw his resignation before it is accepted by the prescribed authority.

- (2) When the resignation is accepted under sub-section (I), the prescribed authority shall communicate it to the members of the Gram Panchayat within a period of thirty days of such acceptance.

20. A Sabhapati or an Up-Sabhapati of a Gram Panchayat may, at any time, be removed from office by a resolution of the Gram Panchayat carried by the majority of the members of the Gram Panchayat present at a meeting specially convened for the purpose. Notice of such meeting shall be given to the prescribed authority:
- Removal of Sabhapati and UpSabhapati.*

Provided that at any such meeting while any resolution for the removal of

(I) the Sabhapati from his office is under consideration; or:

(ii) the Up-Sabhapati from his office is under consideration,

he shall not, though present, preside at such meeting and the provisions of sub-section (4) of section 13 shall apply in relation to any such meeting as they apply in relation

to a meeting from which the Sabhapati or, as the case may be, the Up-Sabhapati, is absent.

Filling of casual vacancy in the office of Sabhapati or Up-Sabhapati.

21. (1) In the event of removal of a Sabhapati or an Up-Sabhapati under section 20 or when a vacancy occurs in the office of a Sabhapati or an Up-Sabhapati by resignation, death or otherwise, the Gram Panchayat shall elect another Sabhapati or Up-Sabhapati. The person so elected shall take office forthwith and, shall hold such office for the unexpired term of office of his predecessor.
- (2) No person who has been removed from office under section 20 shall be eligible for re-election to the vacancy so caused.

Removal of member of Gram Panchayat.

22. (1) The prescribed authority may, after giving an opportunity, to a member of a Gram Panchayat to show cause against the action proposed to be taken against him, by order remove him from office if
- (a) after his election he is convicted by a criminal court of an offence involving moral turpitude and punishable with imprisonment for a period of more than six months; or
 - (b) he was disqualified to be a member of the Gram Panchayat at the time of his election; or
 - (c) he incurs, any of the disqualifications mentioned in clauses (b), (c), (d), (e), (f), (g), (h), (i) or (j) of section 9, after his election as a member of the Gram Panchayat; or
 - (d) he is absent from three consecutive meetings of the Gram Panchayat without the leave of the Gram Panchayat.
- (2) Any member of a Gram Panchayat who is removed from his office by the prescribed authority under sub-section (1) may, within a period of thirty days from the date of the order, appeal to such authority as the State Government may appoint in this behalf,

and, thereupon, the authority so appointed may stay the operation of the order till the disposal of the appeal and may, after giving notice of the appeal to the prescribed authority, and after giving the appellant an opportunity of being heard, modify, set aside or confirm the order.

- (3) The order passed by such authority on such appeal shall be final.

23. (1) If the office of a member of a Gram Panchayat becomes vacant by reason of his death, resignation removal or otherwise, such vacancy shall be filled in by election, of another person under: this Act. The person elected shall take office forthwith and, shall hold such office for the un-expired term of office of his predecessor:

*Filling of casual
vacancy in place of
member of Gram
Panchayat.*

Provided that no election for filling in of a casual vacancy shall, be held if the vacancy occurs within a period of three months preceding the date on which the term of office of the' person concerned expires.

- (2) No person who has been removed from his office under section 22, shall be eligible for re-election to the vacancy so caused.

24. (1) Every Gram Panchayat shall, at its first meeting . at which a quorum is present, elect one of its members to be Sachiva or the Gram Panchayat:

*Sachiva of Gram
Panchayat.*

Provided that no member who is not able to read or write any of the official languages of the State shall be qualified to be elected as a Sachiva:

Provided further that where no such person as referred to in the first proviso is available, the Gram Panchayat may appoint any person including persons in Government service with prior approval of the State Government and such person may be paid such honorarium as the State Government may determine.

- (2) The Sachiva of the Gram Panchayat so elected shall assist the Sabhapati or the Up-Sabhapati, as the case may be, of the Gram Panchayat in due maintenance of the Gram Panchayat office and for proper organization and execution of rural development schemes and shall be directly answerable to the members of the Gram Panchayat.
- (3) The Sachiva shall be in charge of office of the Gram Panchayat and shall exercise such powers and perform such other functions and discharge such other duties as the Gram Panchayat may, by general or special resolution, direct or the State Government may, by rules made in this behalf, prescribe.
- (4) The term of office of the Sachiva shall, subject to the provisions of section 26, be co-terminus with the term of the Gram Panchayat.

Resignation of Sachiva.

25. A Sachiva of a Gram Panchayat may resign his office by notifying in writing his intention to do so to the prescribed authority and on such resignation being accepted the Sachiva shall vacate his office and the casual vacancy shall be deemed to have occurred in such office:

Provided that a person tendering resignation may withdraw his resignation before it is accepted.

- (2) When the resignation is accepted under sub-section (1), the prescribed authority shall communicate it to the members of the Gram Panchayat within a period of thirty days of such acceptance.

Removal of Sachiva.

26. (1) A Sachiva may, at any time, be removed from office by a resolution of the Gram Panchayat carried by the majority of the members of the Gram Panchayat present at a meeting specially convened for the purpose. Notice of such meeting shall be given to *the* prescribed authority.
- (2) In the event of removal of a Sachiva under sub-section (1) or when a vacancy occurs in the office of a Sachiva

by resignation, death or otherwise, the Gram Panchayat shall elect one of its members to be the Sachiva. The person so elected shall take office forthwith and shall hold such office for the un-expired term of office of his predecessor.

- (3) No person who has been removed from his office under subsection (-1) shall be eligible for re-election to the vacancy so caused.

CHAPTER III Duties of Gram Panchayat

27. Subject to any general or special direction of the State Government the duties of a Gram Panchayat shall be to provide within the area under its jurisdiction for~ *Obligatory duties of Gram Panchayat.*
- (a) sanitation, conservancy and drainage and the prevention of public nuisance;
 - (b) curative and preventive measures in respect of any infectious disease;
 - (c) supply of drinking water and the cleaning and disinfecting the sources of supply and storage of water;
 - (d) maintenance, repair and construction of village roads and protection thereof;
 - (e) the removal of encroachments of village roads or public places;
 - (f) the management of common grazing grounds, burning places and public graveyards;
 - (g) the supply of any local information which the District Collector or Deputy Development Officer-cum-Planning Officer or the Zilla Panchayat, within the local limits of whose jurisdiction the Gram Panchayat is situate, may require;

- (h) organizing voluntary Labour for community work and works for the upliftment of its areas;
- (i) control and administration of the Gram Panchayat Fund established under this Act;
- (j) the imposition, assessment and collection of taxes, fees or rates leviable under this Act;
- (k) construction and maintenance of dharmasalas;
- (l) regulating places for the disposal of dead bodies and carcasses and other offensive matters;
- (m) assisting the development of agriculture, forestry, animal husbandry, poultry, fisheries, village and cottage' industries and co-operative;
 - (n) registering births, deaths and marriages and annually submitting such records to the Zilla Panchayat;
- (o) maintenance of such records relating to cattle census, population census, crop census and census of unemployed persons and such other statistics as may be required and annually submitting such records to the Zilla Panchayat;
- (p) regulating inflow of animals within the area and their transfer;
- (q) destruction and disposal of ownerless and rabid dogs and disposal of unclaimed animals;
- (r) maintenance, upkeep and supervision of any building or other property which may be entrusted to it by the State Government for management;
- (s) assisting the Zilla Panchayat in preparing development plan of its area;
- (t) rendering assistance in extinguishing fire and protecting life and property when fire occurs;

- (u) any other local work or service of public utility which is likely to promote the health, comfort, convenience or material prosperity of the public not otherwise provided for in this Act;
- (v) such other duties as may be entrusted to it by the State Government from time to time.

28. (1) A Gram Panchayat shall also perform such other functions as the State Government may assign to it in respect of:

Other duties of Gram Panchayat.

- (a) primary, social, technical or vocational education;
- (b) rural dispensaries, health centers, and maternity child welfare centers;
- (c) minor irrigation;
- (d) grow more food campaign;
- (e) care of the infirm and destitute;
- (f) rehabilitation of displaced persons;
- (g) improved breeding of cattle; medical treatment of cattle and prevention of cattle disease;
- (h) its acting, as a channel through which Government assistance should reach the residents of the Gram;
- (i) bringing private waste land under cultivation;
- (j) promotion of plantations in the gram; arranging for
- (k) cultivation of land lying fallow;
- (l) arranging for co-operative management of resources of the Gram;
- (m) implementation of such schemes as may be formulated or performance of such acts as may be entrusted to it by the State Government;
- (n) field publicity of matters connected with development works and other welfare measures undertaken by the State Government;

- (o) regulation of fairs, melas, hats and exhibition of local produce and products of local handicrafts and home industries;
 - (p) assisting and advising the residents of the Gram in the matter of obtaining state loan and its distribution and repayment;
 - (q) assisting in the implementation of land reform . measure in its area;
 - (r) the promotion and encouragement of education including adult education;
 - (s) such other functions which the State Government may, from time to time, by order in writing entrust to such Gram Panchayat which in its opinion to promote directly or indirectly the welfare of the public.
- (2) If the State Government is of opinion that a Gram Panchayat has persistently made default in the performances of any of the functions assigned to it under sub-section (1), the State Government may, after recording its reasons, withdraw such functions from such Gram Panchayat.
- (3) Where the State Government assigns any functions to a Gram Panchayat under sub. section (I), it shall place such funds at the disposal of the Gram Panchayat as may be required for the due performance of such function.

CHAPTER IV

Property and Fund

Property and Fund of 29.
Gram Panchayat.

All property within the local limits of the jurisdiction of a Gram Panchayat other than property maintained by the Central or the State Government or a local authority or any other Gram Panchayat shall vest in and belong to the Gram Panchayat and shall with all other property of whatsoever nature or kind which may become vested in the Gram Panchayat, be under its direction, management and control.

30. (1) the State Government may allocate to a Gram Panchayat any public property situated within its local jurisdiction, and thereupon such property shall vest in and come under the control of the Gram Panchayat. *Allocation of properties to Gram Panchayat.*
- (2) No property vested in or belonging to a Gram Panchayat shall be transferred by way of sale, gift, mortgage, exchange or lease except with the previous sanction of the State Government.
- (3) Where the State Government is of opinion that any property vested in or belonging to a Gram Panchayat is required for the purpose of any national or State development plan or for any other public purpose, the State Government may resume such property, and upon such resumption, the property shall cease to vest in the Gram Panchayat and shall re-vest in the State Government.
- (4) No compensation other than the amount paid by the Gram Panchayat for such transfer and the market value of any building or works erected or executed on such property by the Gram Panchayat at the time of resumption shall be payable. Any sum so received shall be credited to the Gram Panchayat Fund.
31. (1) Where a Gram Panchayat requires land for carrying out any of the purposes of this Act, it may negotiate with the person or persons having interest in the said land, and if it fails to reach an agreement, it may make an application to the District Collector for the acquisition of the land, who may, if he is satisfied that the land is required for a public purpose, take steps to acquire the land under the provisions of the Sikkim land (Requisition and Acquisition) Act, 1977 and such Land shall, on acquisition, vest in the Gram Panchayat. *Acquisition of land for Gram Panchayat.*
- 1 of 1978.
32. (1) For every Gram Panchayat there shall be constituted a Gram Panchayat Fund bearing the name of Gram Panchayat and there shall be placed to the credit thereof *Gram Panchayat Fund.*

- (a) contributions and grants, if any, made by the Central or the State Government;
- (b) contributions and grants, if any, made by a Zilla Panchayat or any other local authority;
- (c) loans, if any, granted by the Central Government or the State Government;
- (d) all receipts on accounts of taxes, rates and fees levied by the Gram Panchayat;
- (e) all sums received by way of gift or contribution;
- (f) all other sums received by or on behalf of the Gram Panchayat;
- (g) such percentage of the land revenue collected by it as may be determined by the State Government.

- (2) Every Gram Panchayat shall set apart and apply annually such sum as may be required to meet the cost of its administration including allowances payable to the members.
- (3) Every Gram Panchayat shall have the power to spend such sums as the State Government may, by order, specify, for carrying out the purposes of this Act.
- (4) The Gram Panchayat Fund shall be vested in the Gram Panchayat and the balance to the credit of the Fund shall be kept in such custody as the State Government may direct.
- (5) Subject to such general control as the Gram Panchayat may exercise from time to time, all orders and cheques for payment from the Gram Panchayat Fund shall be signed by the Sabhapati or in his absence by the Up-Sabhapati.

Levy of taxes, rates and fees,

- 33. (1) Subject to the rates which may be fixed by the State Government a Gram Panchayat, may levy the following taxes, rates, and fees namely

- (a) a tax on fairs, melas, hats and other entertainments;
 - (b) a general sanitary tax for the construction or maintenance or both the construction and maintenance of public latrines and for the removal and disposal of refuse;
 - (c) a water rate where arrangements for the supply of water for drinking, irrigation or any other purpose are made;
 - (d) a fee for temporary erection on, or putting up projections over, or temporary occupation of, any village road or place;
 - (e) a fee on private latrines, premises or compounds cleaned by the Gram Panchayat agency;
 - (f) a fee for grazing cattle on grazing lands vesting in a Gram Panchayat;
 - (g) a fee on the registration of animals sold in any market or place belonging to or under the control of the Gram Panchayat;
 - (h) a market fee on persons exposing goods for sale in any market or on any place or any building or structure therein belonging to or under the control of the Gram Panchayat;
 - (i) a fee for the use of dharmasalas and encamping grounds;
 - (j) a fee for drainage where system of drainage has been introduced by the Gram Panchayat;
 - (k) a temporary tax for special works of public utility;
 - (l) a tax on houses.
- (2) The Gram Panchayat shall not levy taxes, rates or fees referred to in sub-section (1) if such taxes, rates or fees have already been levied by any other authority under any law for the time being in force or by any other local authority.

- Power of State Government to regulate taxes, rates, and fees.*
34. (1) The State Government may, in the manner specified in the notification regulate the imposition, assessment and collection of taxes, rates and fees under section 33.
- (2) Subject to the provisions of this Act or rules -made thereunder, no person shall object in respect of his liability to any assessment made or tax imposed under this Act.
- Appeal against taxation, fees and rates.*
35. An appeal against the levy of. any tax, rate or fee under section 33 may be preferred to the prescribed authority in such manner and within such time as may be prescribed and the decision of such authority shall be final.
- Recovery of arrears.*
36. Any arrear of tax, rate or fee levied under section 33 shall be recoverable as arrears of land revenue or public demand. or if the Gram Panchayat passes a resolution to that effect and communicates it to the District Collector.
- Action by District Collector.*
37. (1) The District Collector, on receipt of such communication of the sum recoverable under section 36 and on being satisfied with the demand, shall proceed to recover it.
- (2) Any sum so recovered shall be sent to the gram Panchayat and shall be credited to the Gram Panchayat Fund.
- Power of State Government in regard to relief in taxes, rates or fees.*
38. (1) If on a complaint made to it or otherwise it appears to the State Government that any tax, rate or fee levied by a Gram Panchayat is excessive, it may, after calling for a report from the Gram Panchayat in this regard, abolish, suspend or reduce the amount of any such tax, rate or fee.
- (2) The State Government may, on its own motion or otherwise after giving the gram Panchayat an opportunity of expressing its view in the matter, by order, exempt from the payment of any tax in whole or in part

(a) any person or class of persons; or

(b) any property or description of properties,
subject to such conditions as may be specified in such order.

39. (1) Every Gram Panchayat shall, at such time and in such manner as may be prescribed, prepare each year a budget of its estimated receipts and disbursements for the following year and shall submit the budget to the State Government for approval through the Zilla Panchayat of the district concerned.

Budget of Gram Panchayat.

(2) No expenditure shall be incurred unless the budget is approved by the State Government.

40. A Gram Panchayat may prepare in each year supplementary estimate providing for any modification of its budget and submit it to the State Government for approval through the Zilla Panchayat of the district concerned within such time and in such manner as may be prescribed.

Supplementary Budget.

41. A gram Panchayat shall keep such accounts in such manner as may be prescribed.

Accounts.

CHAPTER V
Constitution of Zilla
Panchayat

42. (1) For every district the State Government shall, by notification in the Official Gazette, constitute a Zilla Panchayat bearing the name of the district.

Zilla Panchayat and its constitution.

(2) A Zilla Panchayat shall consist of the following members, namely:

(a) Sabhapati of the Gram Panchayat within the district, ex-officio;

(b) Chairmen of the Municipal Corporations;

(c) Members of the Legislative Assembly of the State elected from a constituency comprising the district or any part thereof, ex-officio;

- (d) A member elected by each Bazaar Committee declared as such under the provisions of the Bazar Committees Act, 1969.

Term of members of Zilla Panchayat.

43. (1) The term of Zilla Panchayat, unless sooner dissolved, shall be five: years from the date of its constitution:

Provided that the term of a Zilla Panchayat which is constituted after the constitution of other Zilla Panchayat in a regular election, shall expire with the expiration of five year term of other Zilla Panchayats:

Provided further that the State Government may, where it is not possible to hold elections for the constitution of new Zilla Panchayats immediately after the expiry of the term, by notification, extend the said term for a period not exceeding six months at a time subject to a maximum period of one year or appoint any authority, person or persons to exercise and perform, subject to such conditions as may be specified in the order, the powers and functions of the Zilla Panchayats under this Act until the constitution of new Zilla Panchayats.

- (2) When a new Zilla Panchayat is thus duly constituted the old Zilla Panchayat shall stand dissolved.

Incorporation of Zilla Panchayat.

44. (1) Every Zilla Panchayat shall be a body corporate having perpetual succession and a common seal and shall by its corporate name sue and be sued.

- (2) A Zilla Panchayat shall have power to acquire, hold and dispose of property and to enter into contract:

Provided that in all cases of acquisition or disposal of immovable property, the Zilla Panchayat shall obtain the previous approval of the State Government.

45. (1) Every Zilla Panchayat, shall, at its first meeting at which a quorum is present, elect in such manner as the State Government may, by notification, specify, one of its members to be the Adhakshya and another member to be the Upadhakshya of the Zilla Panchayat:

*Adhakshya and
Upadhakshya.*

Provided that the members referred to in clauses (b) and (c) of sub-section (2) of section 42 shall not be eligible for such election.

- (2) The Adhakshya and Upadhakshya shall, subject to the provisions of section 55 and to their continuing as members, hold office for a period of five years:

Provided that an Adhakshya or an Upadhakshya shall continue in office after the expiry of the said period until a new Adhakshya or Upadhakshya is elected and assumes office or until an authority or a person or persons is or are appointed under the second proviso to sub-section (1) of section 43.

- (3) When
- (a) the office of the Adhakshya falls vacant by reason of death, resignation, removal or otherwise; or
- (b) the Adhakshya is, by reason of leave, illness or other cause, temporarily unable to act,

the Upadhakshya shall exercise the powers, perform the functions and discharge the duties of the Adhakshya until a new Adhakshya is elected and assumes office or until the Adhakshya resumes his duties, as the case may be.

- (4) When
- (a) the office of the Upadhakshya falls vacant by reason of death, resignation, removal or otherwise; or

- (b) the Upadhakshya is, by reason of leave, illness or other cause, temporarily unable to act,

the Adhakshya shall exercise the powers, perform the functions and discharge the duties of the Upadhakshya until a new Upadhakshya is elected and assumes office or until the Upadhakshya resumes his duties, as the case may be.

- (5) When the offices of the Adhakshya and the Upadhakshya are both vacant or, the Adhakshya and the Upadhakshya are temporarily unable to act, the prescribed authority may appoint an Adhakshya and an Upadhakshya from among the members of the Zilla Panchayat to act as such until an Adhakshya or an Upadhakshya are elected and assume office or resume his duties, as the case may be.

Notification of election, nomination etc.

- 46. Every election or nomination of an Adhakshya or an Upadhakshya and members of a Zilla Panchayat, as the case may be, shall be published by the State Government in the Official Gazette and such persons shall enter upon their respective offices from the date of such publication.

First meeting of the Zilla Panchayat.

- 47. (1) Notwithstanding any vacancy in the membership of the Zilla Panchayat, the prescribed authority shall as soon as may be (but before the expiration of thirty days from the date of publication of the notification under section 46) call a meeting of the members of a Zilla Panchayat at such place and at such time as he may fix for electing an Adhakshya and Upadhakshya.
- (2) The meeting to be held under sub-section (1) shall be called the first meeting of the Zilla Panchayat and may be convened by the prescribed authority in such manner as it may determine.

Meetings of Zilla Panchayat.

- 48. (1) Every Zilla Panchayat shall hold a meeting for transaction of its business at least once in every two months at the office of the Zilla Panchayat or at

such place within the local limits of the district concerned and at such time as the Adhakshya of the Zilla Panchayat may fix.

- (2) The Adhakshya may, whenever he thinks fit in the public interest or shall upon a written requisition of not less than one half of the total number of members of the Zilla Panchayat or if directed by the Secretary of the Rural Development Department or the Deputy Development Officer-cum-Planning Officer of the concerned district, call a special meeting of the Zilla Panchayat within a period of ten days from the date of receipt of the requisition or direction, as the case may be:

Provided that if the Adhakshya fails to call such special meeting within the specified period from the date of receipt of requisition or direction, as the case may be, the Secretary of the Rural Development Department or the Deputy Development Officer-cum-Planning Officer of the concerned district may direct any member of the Zilla Panchayat to call such meeting which shall be held at such time and in such place within the local limits of the district concerned as the member of the Zilla Panchayat directed to call the meeting may fix.

- (3) Two-third of the total number of members shall form a quorum for a meeting of the Zilla Panchayat:

Provided that no quorum shall be necessary for an adjourned meeting.

- (4) The Adhakshya or in his absence, the Upadhakshya shall preside at the meeting of the Zilla Panchayat; and in the absence of both, the members present shall elect one member from amongst themselves to preside at the meeting.
- (5) All questions coming before a Zilla Panchayat shall, unless otherwise specifically provided under this Act, be decided by a majority of votes of the members present and voting:

Provided that in case of equality of votes the person presiding shall have a second or casting vote.

- (6) No member shall vote on and take part in the discussion of any question coming up for consideration at a meeting of a Zilla Panchayat if the question is one in which he has any direct or indirect pecuniary interest other than an interest as a member of the public.
- (7) If it appears to any member present at a meeting that the person presiding at the meeting has any such pecuniary interest in any matter before the meeting for discussion or any question coming up for consideration as referred to in sub-section (6) and a motion brought by him to that effect is carried, such a person shall not preside at such meeting and shall not take part therein, and for the purposes of sub-section (4) such person shall be deemed to be absent during the discussion or consideration of the particular matter.

Reconsideration of questions disposed of by Zilla Panchayat.

49. No subject once finally disposed of by the Zilla Panchayat shall be reconsidered by it within six months unless the recorded consent of not less than one half of members has been obtained there for.

List of business to be transacted at a meeting.

50. (1) A list of the business to be transacted, at every meeting of a Zilla Panchayat except at an adjourned meeting, shall be sent to each (member of the Zilla Panchayat at least seven days before the time fixed for such meeting and no business shall be brought before or transacted at any meeting, other than the business of which notice has been so given, except with the approval of the majority of the members present at such meeting:

Provided that non-receipt of a notice by a member shall not vitiate the proceedings of a meeting:

Provided further that if the ,Adhakshya thinks that a situation has arisen for which an emergent

meeting of the Zilla Panchayat should be called, he may call such meeting after giving three days notice to then members:

Provided also that not more than one matter shall be included in the list of business to be transacted at the meeting called under the second proviso.

- (2) The business of the Zilla Panchayat shall be transacted in the language spoken and understood by the members.
- (3) Minutes of the proceedings of each meeting of the Zilla Panchayat shall be recorded in a book to be kept for this purpose and shall be read out and signed by the Adhakshya of the meeting before the meeting disperses.
- (4) The Sachiva of a Zilla Panchayat shall, within a week after a meeting of the Zilla Panchayat send copies of minutes of every such meeting to the Deputy Development Officer-cum-Planning Officer and the Secretary.

51. The Adhakshya shall:

- (a) regulate the meetings of the Zilla Panchayat;
- (b) be responsible for the maintenance of record and registers of the Zilla Panchayat;
- (c) exercise supervision and control over the act done and action taken by the members of the Zilla Panchayat and such officers and such other employees whose services may be placed at the disposal of the Zilla Panchayat by the State Government;
- (d) operate jointly with the Sachiva of the Zilla Panchayat the Fund of the Zilla Panchayat including authorization of payment, issue of cheques and refunds;

*Powers and duties
of Adhakshya.*

- (e) issue receipts under his signature for sums of money received by him for and on behalf of the Zilla Panchayat;
- (f) cause preparation of all statements and reports required by or under this Act;
- (g) exercise such other powers, perform such other functions and discharge such other duties as the Zilla Panchayat may, by general or special resolution, direct or as the State Government may, by order specify:

Provided that the Adhakshya shall not exercise such powers, perform such functions or discharge such duties as may be required by the rules made under this Act to be exercised, performed or discharged by the Zilla Panchayat at a meeting.

Powers and duties of Upadhakshya.

52.

The Upadhakshya shall

- (a) in the absence of the Adhakshya, preside over and regulate the meetings of the Zilla Panchayat;
- (b) exercise such of the powers, perform such of the functions and discharge such of the duties of the Adhakshya as the Adhakshya may, from time to time, delegate to him by order in writing:
 Provided that the Adhakshya may at any time withdraw all or any of the powers, functions and duties so delegated to the Upadhakshya;
- (c) during the absence of the Adhakshya, exercise all the powers, perform all the functions and discharge all the duties of the Adhakshya.

Right of individual members.

53.

At a meeting of a Zilla Panchayat, a member may move any resolution and put questions to the Adhakshya or Upadhakshya, as the case may be, on matters connected with the administration of Zilla Panchayat or execution of rural works or schemes entrusted to or undertaken by such Zilla Panchayat.

54. (1) An Adhakshya, or an Upadhakshya or a member of a Zilla Panchayat may resign his office by notifying in writing his intention to do so to the prescribed authority and on such resignation being accepted the Adhakshya or the Upadhakshya or the member shall vacate his office and casual vacancy shall be deemed to have occurred, in such office:

Resignation of Adhakshya and Upadhakshya or a member.

Provided that a person tendering resignation may withdraw his resignation before it is accepted.

- (2) When the resignation is accepted under sub-section (1), the prescribed authority shall communicate it to the members of the Zilla Panchayat within thirty days of such acceptance.

55. (1) An Adhakshya or an Upadhakshya may, at any time, be removed from office by a resolution of the Zilla Panchayat passed by the majority of the members of the Zilla Panchayat present and voting at a meeting specially convened for the purpose. Notice of such meeting shall be given to the prescribed authority:

Removal of Adhakshya and Upadhakshya.

Provided that at any such meeting while passing any resolution for the removal of

- (i) the Adhakshya from his office is under consideration; or
(ii) the Upadhakshya from his office is under consideration,

he shall not, though he is present, preside at such meeting and the provisions of sub-section (4) of section 48 shall apply' in relation to every such meeting as they apply in relation to a meeting from which the Adhakshya or, as the case may be, the Upadhakshya is absent.

- (2) No person who has been removed from his office under sub-section (1) shall be eligible for re-election to the vacancy so caused.

*Filling of casual
vacancy in the office
of Adhakshya or
Upadhakshya.*

56. In the event of removal of an Adhashya or an Upadhakshya under section 55 or when a vacancy occurs in the office of the Adhakshya or Upadhakshya by resignation, death or otherwise the Zilla Panchayat shall elect another Adhakshya or Upadhakshya, as the case may be. The person so elected shall take office forthwith and shall hold office for the an expired term of office of his predecessor.

*Removal of member of
Zilla Panchayat.*

57. (1) The prescribed authority may, after giving opportunity to a member of a Zilla Panchayat other than an ex-officio member to show cause against the action proposed to be taken against him, by order" remove him from office if
- (a) after his election he is convicted by a criminal court of an offence involving moral turpitude and punishable with imprisonment for a period of more than six months; or
 - (b) he was disqualified to be a member of the Zilla Panchayat at the time of his election; or
 - (c) he incurs any of the disqualifications mentioned in clauses (b), (c), (d), (e), (g), (h), or (j) of section 9 after his election as a member of the Zilla Panchayat; or
 - (d) he is absent from three consecutive meetings of the Zilla Panchayat without the leave of the Zilla Panchayat provided he is not an ex-officio member of the Zilla Panchayat.
- (2) Any member of a Zilla Panchayat who ,is removed from his office by the prescribed authority under sub-section (1) may, within thirty days from the date of the order, appeal to such authority as the State Government may appoint in this behalf, and, thereupon, the authority so appointed may stay the operation of the order till the disposal of the appeal and may, after giving notice of the appeal to the prescribed authority and after giving the appellant an opportunity of being heard, modify, set aside or confirm the order.

- (3) The order passed by such authority on such appeal shall be final.
- (4) If a member of a Zilla Panchayat referred to in clause (c) of sub-section (2) of section 42 ceases to be the member of the Legislative Assembly of the State he shall cease to be the member of the Zilla Panchayat and the newly elected person shall become the member of the Zilla Panchayat.

58. If the office of a member of a Zilla Panchayat becomes vacant by reason of his death, resignation, removal or otherwise, such vacancy shall be filled in by election of another person under this Act. The person so elected shall take office forthwith and shall hold such office for the unexpired term of office of his predecessor:

*Filling of casual vacancy
in office of a member of
Zilla Panchayat.*

Provided that no election for filling in of a casual vacancy shall be held if the vacancy occurs within a period of three months preceding the date on which the term of office of the person concerned expires.

59. (1) There shall be a Sachiva for a Zilla Panchayat appointed by the State Government on such terms and conditions as may be prescribed:

*Sachiva of Zilla Pa-
nchayat.*

Provided that any person so appointed shall be recalled by the State Government if a resolution to that effect is passed by the Zilla Panchayat, at a meeting specially convened for the purpose, by a majority of the total number of members holding office for the time being.

- (2) The Sachiva shall also supervise all records of every Gram Panchayat falling under the jurisdiction of a Zilla Panchayat of a concerned district.
- (3) The Sachiva shall be in charge of the office of the Zilla Panchayat and shall discharge such duties and perform such functions as may be prescribed.

CHAPTER VI

Powers and Duties of Zilla Panchayat

- Obligatory duties of Zilla Panchayat.* 60. (1) Subject to any general or special directions of the State Government, a Zilla Panchayat shall have power in respect of
- (a) regulating melas or :haats within its local limits;
 - (b) construction and maintenance of Panchayat Ghars, Dharamsalas and rest houses;
 - (c) construction, repair and maintenance of such small irrigation projects of such class or types thereof, as may be specified by the State Government by general or special order in this behalf, and regulating of supply of water there from for irrigation purposes;
 - (d) regulating supply by water for irrigation or drinking water supply schemes constructed by the Government and - entrusted to it for maintenance and repair;
 - (e) regulating, maintaining and developing of lands vested in it by the Government;
 - (f) organizing plantation programme in the public land, road sides and such other places as may be specified for promotion of social forestry and environmental conservation and maintaining and regulating of such forests;
 - (g) establishing and maintaining primary schools and organizing adult education centers;
 - (h) establishing health centres and maternity and child welfare centres;
 - (i) managing or maintaining any works of public utility and adopting measures for the relief of distress;

- (J) preparing plans for all round development of the district ;after obtaining .previous approval of the .Government. and with such technical assistance as .may be made available by the Government;
 - (k) coordinating and integrating development plans and schemes prepared by Gram Panchayat within its jurisdiction
 - (l) fulfilling any other obligation imposed by or under this Act .or by any, other law for .the time being in force or by general or special order of ,the .Government in this behalf.
61. (1) ,Subject to such conditions as may be imposed by the State Government, Zilla Panchayat , may if the State government so directs, make provisions for
- Other duties of Zilla Panchayat.*
- (a) the promotion of opportunity of employment through community farming by organizing model agriculture or dairy farms and, small scale village industries;
 - (b) the organization and maintenance of clubs and .other ,places for recreation or games;
 - (c) establishment and maintenance of library or reading rooms and public radio listening centres;
 - (d) construction and ,maintenance of .destitute homes, slaughter houses and encamping grounds;
 - (e) rendering assistance in extinguishing fire and protecting life and property when fire occurs;
 - (f) .assisting in -the prevention of burglary and dacoity;
 - (g) the promotion of socio cultural and communal harmony
 - (h) the promotion of agriculture and allied activities connected with it;

- (i) any other local work or service of public utility which is likely to promote the health, comfort, convenience or material prosperity of the public not otherwise provided for in this Act.
- (2) Where the State Government directs a Zilla Panchayat to make provision for any of the, items enumerated in sub-section (1), it shall place such funds at the disposal of the Zilla Panchayat as may be required for making such provision.
- (3) A Zilla Panchayat shall have the power to advise the State Government on all matters relating to the development works in the Gram Panchayats.
- (4) Notwithstanding anything in sub-section (1), a Zilla Panchayat shall not undertake or execute any scheme confined to a Gram unless the implementation of such a scheme is beyond the competence of the Gram Panchayat concerned financially or otherwise. In the latter case the Zilla Panchayat may execute the scheme itself or entrust its execution to the Gram Panchayat and give such assistance as may be required:

Provided that a Zilla Panchayat shall undertake or execute any scheme if it extends to more than one Gram.

Vesting of Zilla Panchayat with certain powers.

62. (1) A Zilla Panchayat may be vested by the State Government with such powers' under any local or special Act as the State Government may think fit.
- (2) A Zilla Panchayat shall exercise such other powers, perform such other functions or discharge such other duties as the State Government may, by general or special, order, direct.

Joint execution of schemes by two or more Zilla Panchayat.

63. The Zilla Panchayats of two or more adjacent districts may jointly undertake and execute at common cost any development scheme or project on such terms and conditions' as may be agreed upon,

and in case of any difference as to the interpretation of such terms and conditions the matter shall be referred to the State Government whose decision shall be final.

64. A Zilla Panchayat shall exercise general powers of supervision over Gram Panchayats in the district and it shall be the duty of Gram Panchayat to give effect to any direction of the Zilla Panchayat on matters of policy or planning for development.

Power of supervision by Zilla Panchayat over Gram Panchayats.

CHAPTER VII

Property and Fund

65. All roads, buildings or other works constructed by a Zilla Panchayat with its own funds shall vest in it.

Works constructed by a Zilla Panchayat to vest in it.

66. (1) The State Government may allocate to a Zilla Panchayat any public property of whatsoever nature or kind situated within its local limits. and thereupon, such property shall vest in and come under the control of the Zilla Panchayat.

Allocation of properties to Zilla Panchayat.

- (2) No property vested in or belonging to a Zilla Panchayat shall be transferred by way of sale, gift, mortgage, exchange or lease without the previous sanction of the State Government.

- (3) Where the State Government is of opinion that any. property vested in or belonging to a Zilla Panchayat is required for the purpose of any National or State Development plan or for any other public purpose, the State Government may resume such property and upon such resumption the property shall cease to vest In the Zilla Panchayat and: shall re-vest in the State Government.

- (4) No compensation other than the amount paid by the Zilla Panchayat for such transfer and the market value of any building or works erected or executed

'on such property by ,the Zilla Panchayat at the time of such resumption ,shall be ,payable. Any sum so received,shall,be: credited to the Zilla'Panchayat-Fund.

Acquisition of land for ,Zilla Panchayat.

67. Where a Zilla Panchayat requires land for carrying out any ,of the purpose of the Act . :it may negotiate with the person or persons ..having .interest in the said land, and if it fails to reach an agreement it may 'take an application to .the District Collector for the acquisition of the land, who may, if, he is satisfied that the land is required for a public purpose, take steps to acquire the land under the provisions of the ,Sikkim Land (Requisition and Acquisition) Act. 1977.

1 of 1971

Zilla Panchayat Fund.

68. (1) For every Zilla Panchayat there shall be constituted a Zilla Panchayat Fund bearing the name of the Zilla ,Panchayat there shall be placed to the credit thereof
- (a) contributions and grants, if any, made by the Central OF the State Government including such portion' of land revenue collected within it jurisdiction as may be determined by the State Government;
 - (b) contributions and grants, if any, made by any other. local authority;
 - (c) loans, if any, granted by the Central or State Government;
 - (d) proceeds of collection of revenues in respect of schemes, projects and other properties undertaken or vested in the Zilla Panchayat by the Government at such rates as may be determined by the State Government;
 - (e) such 'rates, fees, taxes, as may be imposed and realized under the provisions of this Act;
 - (f) such sums received from the Government for fulfilling duties and obligations entrusted to the Zilla Panchayat 'by the State Government;

- (g) all other sums received by or on behalf of the Zilla Panchayat.
- (2) Every Zilla Panchayat shall set apart and apply annually such sum as may be required to meet the cost of its administration including allowances payable to the members.
- (3) Every -Zilla Panchayat shall have the power to spend such sums as the State Government may, by order, specify for carrying out the purposes of this Act.
- (4) The Zilla Panchayat Fund shall be vested in the Zilla Panchayat and the amount standing to the credit of the Fund shall be kept in such custody or invested in such manner as the State Government may, from time to time, direct.
- (5) Subject to such general control as the Zilla Panchayat may exercise, from time to time, orders and cheques for payment from the Zilla Panchayat Fund shall be signed by the Adhakshya.
69. Subject to the maximum rates which may be fixed by the State Government, a Zilla Panchayat may levy following taxes, rates and fees, namely:
- Imposition of taxes, rates and fees.*
- (a) a tax on fairs, melas and other entertainments;
- (b) a general sanitary tax for the construction, maintenance, or both the construction and maintenance of public latrines and for the removal and disposal of refuse;
- (c) a water rate where arrangement for the supply of water for drinking, irrigation or any other purpose is made by the Zilla Panchayat within its jurisdiction;
- (d) a fee for temporary erection on, or putting up projections over, or temporary occupation of any village road or place;
- (e) a fee on private latrines, premises or compounds cleaned by the Zilla Panchayat agency;
- (f) a fee for grazing cattle on the grazing lands vested in a Zilla Panchayat;

- (g) a fee on the registration of animals sold in any market or place belonging to or under the control of the Zilla Panchayat;
- (h) a market fee on persons exposing goods for sale in any market or at any place or in any building or structure therein belonging to or under the control of the Zilla Panchayat;
- (i) a fee for the use of dharmasalas, rest houses, slaughter houses and encamping grounds;
- (j) a fee for drainage where system of drainage has been introduced by the Zilla Panchayat;
- (k) a temporary tax for special works of public utility.

- (2) The Zilla Panchayat shall not levy taxes, rates or fees referred to in sub-section (I) if such taxes, rates or fees are already been levied by any other authority under any law for the time being in force or by any other local authority.

Power of State Government to regulate taxes.

- 70. (1) The State Government may make rules to regulate the imposition, assessment to, and collection of taxes, rates and fees under section 69.
- (2) Subject to the provisions of this Act or rules made thereunder, no person shall object in respect of his liability to any assessment made or tax imposed under this Act.

Appeal against taxation, rate or fee.

- 71. An appeal against any tax, rate or fee under section 69 may be preferred to the prescribed authority in such manner and within such time as may be prescribed and the decision of such authority shall be final. Any arrear of tax, rate or fee imposed under section 69 shall be recoverable as . arrears of

Recovery of arrears.

- 72. land revenue or public demand if the Zilla Panchayat passes a resolution to that effect and communicates it to the District Collector.

73. (1) The District Collector on receipt of communication under section 72 and on being satisfied with the demand shall proceed to recover it. *Action by District Collector.*
- (2) Any sum's so recovered shall be sent to the Zilla Panchayat and shall be credited to the Zilla Panchayat Fund.
74. (1) If on a complaint made to it or otherwise, it appears to the State Government that any tax, rate or fee imposed by a Zilla Panchayat, is excessive, it may, after calling a report from the Zilla Panchayat in this regard, abolish or suspend or reduce the amount of any tax, rate or fee, as the case may be. *Power of State Government in regard to relief in taxes.*
- (2) The State Government may, on its own motion or otherwise after giving the Zilla Panchayat an opportunity of expressing its view in the matter, by order, exempt
- (a) any person or class of persons; or
- (b) any property or description of properties, from the payment of whole or part of any tax, rate or fees subject to such conditions as may be specified in such order.
75. (1) Every Zilla Panchayat shall at such time and in such manner as may be prescribed, prepare in each year a budget of its estimated receipts and expenditure for the next financial year and submit it to the State Government for approval. *Budget of Zilla Panchayat.*
- (2) No expenditure shall be incurred unless the budget is approved by the State Government.
76. A Zilla Panchayat may prepare in each year supplementary estimates providing for any modification of its budget and submit it to the State Government for approval within such time and in such manner as may be prescribed. *Supplementary Budget.*
77. A Zilla Panchayat shall keep such accounts in such manner as may be prescribed. *Accounts.*

CHAPTER VIII

Audit

- Audit of accounts of fund* 78. The accounts of the Fund of a Gram, Panchayat or 'Zilla Panchayat shall be examined and audited by an auditor appointed in that behalf by the State Government at such time and place and in such manner as the State Government may prescribe.
- Submission of accounts to audit.* 79. The Sabhapati or, as the case may be, the Adhakshya shall produce, or cause to be produced, to the auditor all such accounts of the Fund of the Gram Panchayat or the Zilla Panchayat concerned as may be required by the auditor.
- Powers of Auditors.* 80. For the purposes of an audit under this Act an auditor may
- (i) require in writing the production before him of any document or the supply of any information which he considers to be necessary for the proper conduct of the audit;
 - (ii) require in writing the personal appearance before him of any person accountable for, or having the custody or control of, any such document, or having, directly or indirectly, whether by himself or his partner, any share or interest in any contract made with, by or on behalf of, the members of the Gram Panchayat Or the Zilla Panchayat concerned;
 - (iii) require any person so appearing before him to make and sign a declaration in respect of any such document or to answer any question or prepare and submit any statement.
- Penalty.* 81. Any person who neglects or refuses to comply with the requisition made by the auditor under section 80 within such time as may be specified, shall, on conviction by a Court, be punishable with a fine which may extend to fifty rupees in respect of each item included in the requisition.

82. (1) Within two months from the date on which an audit under this Act is completed, the auditor shall prepare a report and send a copy of the report to the Sabhapati, or Adhakshya, as the case may be, of the Gram Panchayat or the Zilla Panchayat and to the State Government. *Audit report.*
- (2) The auditor shall append to his report a statement showing:
- (a) the grants-in-aid received by the Gram Panchayat or the Zilla Panchayat and the expenditure incurred there from ;
 - (b) any material impropriety or irregularity which he may observe in the expenditure or in the recovery of money due to the Gram Panchayat or the Zilla Panchayat or in the accounts of the Gram Panchayat or the Zilla Panchayat Fund;
 - (c) any loss or wastage of money or other property owned by or vested in the Gram Panchayat or the Zilla Panchayat.
83. (1) Within two months from the date of receipt of the report referred to in section 82, the Gram Panchayat or the Zilla Panchayat concerned shall, at a meeting, remove or cause to be removed any defect or irregularity pointed out in the report and shall also inform the auditor of the action taken by it. The Gram Panchayat or the Zilla Panchayat concerned shall give reasons or explanations if any defect or irregularity is not removed. *Action on audit report.*
- (2) If, within the period referred to in sub-section (1), no information is received by the auditor from the Gram Panchayat or the Zilla Panchayat concerned or if the reasons or explanations given by it for not removing any defect or irregularity pointed out in the report is not considered sufficient by the auditor, the auditor shall if he' has not already

exercised or does not propose to exercise the powers conferred upon him by section 84 refer the matter to the State Government within such time and in such manner as the State Government may prescribe.

- (3) On receipt of the report under sub-section (2), it shall be competent for the State Government to pass such orders thereon as it may think fit. The orders of the State Government shall, save as provided in sections 84 and 85, be final and the Gram Panchayat or the Zilla Panchayat concerned shall take action in accordance with such orders.
- (4) If the Gram Panchayat or the Zilla Panchayat concerned fails to comply with the order within the period specified therein, the State Government may empower any officer of the State Government to carry out the order.
- (5) Officer empowered under sub-section (4) shall, for the purpose of carrying out the order, exercise any of the powers which might have been exercised by the Gram Panchayat or Zilla Panchayat concerned.

Power of auditor to surcharge etc. 84. (1)

The auditor, after giving the person concerned an opportunity to submit an explanation within a time to be specified by him and after considering such explanation, shall disallow every item of account contrary to law and surcharge' the same on the person making or authorizing the making of the illegal payments, and shall charge against any person responsible for the amount of any, loss incurred by the negligence or misconduct of that person, and shall, in every such case, certify the amounts due from such person:

Provided that the auditor may in his discretion waive the surcharge or charge in cases where the amount involved does not exceed 20 rupees.

- (2) For the purposes of this section any member of Gram Panchayat or Zilla Panchayat, as the case may be, who is present at a meeting at which a motion

or resolution is passed authorizing any expenditure which is subsequently disallowed under sub-section

(1) or authorizing any action which results in any such expenditure, shall be deemed to be a person authorizing such expenditure if dissent is not recorded in the proceedings. All such persons shall be held jointly and severally liable for such expenditure.

(3) The auditor shall record in writing his reasons for every disallowance, surcharge and charge made under sub-section (1) and shall, in such manner as may be prescribed, send a certificate of the amount due and a copy of the reasons for his decision to the person in respect of whom the certificate is made, and shall also furnish copies thereof to the Sabhapati or Adhakshya, as the case may be, and the State Government.

(4) The State Government may, of its own motion and within one year from the receipt by it of the copy of the certificate, set aside or modify any disallowance, surcharge or charge and any certificate in respect thereof made by the auditor.

85. (1) Any person from whom any sum has been certified by the auditor to be due under section 84 may, within thirty days of the receipt by him of the certificate, appeal to the State Government to set aside or modify the disallowance, surcharge or charge in respect of which the certificate was made and the State Government may pass thereon such orders as it thinks fit, and such orders shall be final.

Appeal.

(2) Where a person referred to in sub-section (2) of section 84, who has been surcharged as authorizing an illegal expenditure, appeals to the State Government under this section, the State Government shall set aside such surcharge if it is proved to its satisfaction that such person voted for the resolution or motion in good faith.

- Payment of certified sums.*
86. (1) The sum certified by the auditor to be due from any person under section 84 or when an appeal is made under sub-section (1) of section 85, such sum as may be ordered by the State Government to be due from such person shall, within two months of the date of certification, or order, as the case may be, be paid by such person to the Gram Panchayat or the Zilla Panchayat concerned which shall credit the sum to the Fund of the Gram Panchayat or the Zilla Panchayat concerned.
- (2) Any sum not paid in accordance with the provision of sub-section (1) shall be recoverable as arrears of land revenue if the Gram Panchayat or the Zilla Panchayat, as the case may be, passes a resolution to that effect and communicates it to the District Collector.
- (3) The District Collector on receipt of such communication under sub-section (2) and on being satisfied with the demand, shall proceed to recover it as soon as may be and the sum so recovered by him shall be sent to the Gram Panchayat or Zilla Panchayat concerned and the same shall be credited to the Fund of the Gram Panchayat or Zilla Panchayat concerned.
- Certain costs and expenses payable out of Funds.*
87. (1) All expenses incurred by the Gram Panchayat or the Zilla Panchayat concerned in complying with any requisition of the auditor under section 80 and in prosecuting an offender under section 81 shall be paid from the Fund of the Gram Panchayat or the Zilla Panchayat concerned.
- (2) All expenses incurred by the District Collector in connection with the proceedings for recovery of any sum under sub-section (3) of section 86 from a person, if not recovered from the person, shall be paid from the Fund of the Gram Panchayat or the Zilla Panchayat concerned.

CHAPTER IX

Miscellaneous

88. Every member of a Gram Panchayat or Zilla Panchayat other than a member referred to in clause (c) of sub-section (2) of section 42 shall before taking his office make and subscribe before such authority as may be specified by the State Government in this behalf an oath or affirmation according to the Form set out for the purpose in the Schedule. *Oath of affirmation.*
89. No act or proceeding of a Gram Panchayat or Zilla Panchayat shall be deemed to be invalid merely by reason of the existence of any vacancy in the Gram Panchayat or Zilla Panchayat, as the case may be, or any defect or irregularity in the constitution thereof. *Validation.*
90. All members, officers and employees of the Gram Panchayat and Zilla Panchayat shall be deemed when acting or purporting to act in pursuance of the discharge of their duties, or in the exercise of their powers under this Act or under the rules made thereunder, to be public servants within the meaning of section 21 of the Indian Penal Code. *Members and officers and employees to be public servants.*
91. No suit or other legal proceedings shall lie against a Gram Panchayat or Zilla Panchayat or against any member thereof or any officer or any employee for anything in good faith done or intended to be done in pursuance of this Act or any rules made thereunder. *Indemnity.*
92. (1) If any dispute arises between two or more Gram Panchayats, within the jurisdiction of the same Zilla Panchayat, it shall be referred to the Zilla Panchayat concerned by any party to the dispute and the decision of the Zilla Panchayat thereon shall be final. *Reference of dispute.*
- (2) If any dispute arises
 (a) between a Gram Panchayat within a district on the one side and the Zilla Panchayat of the same district on the other; or

- (b) between two or more Zilla Panchayats; or
- (c) between one or more Gram Panchayats in one district on the one side and one or more Gram Panchayats in another district on the other; or
- (d) between one or more Gram Panchayats in one district on the one side and the Zilla Panchayat of another district on the other;

such dispute shall be referred to the State Government by any party to the dispute and the decision of the State Government thereon shall be final.

Inspection.

93. (1) The State Government shall empower the Secretary and such other officers as it may consider necessary for the purpose of inspecting or superintending the works of all, or any class of, Gram Panchayats or Zilla Panchayats.
- (2) An officer so empowered to inspect or superintend the works of a Gram Panchayat or Zilla Panchayat may at any time
- (a) inspect or cause to be inspected any immovable property used or occupied by the Gram Panchayat or Zilla Panchayat or any work in progress under the direction of Gram Panchayat or Zilla Panchayat;
 - (b) inspect or examine any work or thing under the control of the Gram Panchayat or Zilla Panchayat~
 - (e) require, for the purposes of inspection or examination, the Gram Panchayat~
 - (i) to produce any book, record, correspondence, plan or other document; or
 - (ii) to furnish any return, plan, estimate, statement, accounts or statistics; or
 - (iii) to furnish or obtain any report or information.

- (3) When an inspection of a Gram Panchayat or Zilla Panchayat is undertaken by any officer referred to in sub-section (1), a report of such inspection shall be submitted by such officer to the State Government as soon as possible but not beyond a period of thirty days after the date of completion of inspection.

94. (1) The State Government may, by order in writing, rescind any resolution passed by a Gram Panchayat or Zilla Panchayat, it in its opinion such resolution
- (a) has not been legally passed; or
- (b) is in excess or abuse of the powers conferred by or under this Act or any rules made thereunder; or
- (c) is likely to cause, if executed, danger to human life, health, or safety or is likely to lead to breach of the peace.
- (2) The State Government shall, before taking any action under sub-section (1) give the Gram Panchayat or Zilla Panchayat concerned an opportunity of making any representation against the proposed order.

Power of State Government to rescind or suspend resolution of a Gram Panchayat or Zilla Panchayat.

95. Any officer of the State Government authorised by the State Government in this behalf, shall be entitled to attend meetings of the Gram Panchayat or the Zilla Panchayat as the case may be, for the purpose of furnishing facts, information and technical advice but shall not be entitled to vote at any such meeting.

Power of State Government officers to attend meetings.

96. In the discharge of their functions the Gram Panchayat and the Zilla Panchayat shall be guided by such instructions or directions as may be given to them by the State Government from time to time in conformity with the provisions of this Act.

Directions by State Government.

- fJ7. The State Government may, notwithstanding anything contained in sub-section (2) of section 10, subsection (4) of section 24 and sub-section (2) of section 45, by an order in writing, remove with effect

Power to remove Sabhapati, Up-Sabhapati, Sachiva of Gram Panchayat.

Adhakshya Upadhakshya of Zilla Panchayat.

from a date to be specified in the order any Sabhapati or Up-Sabhapati or any Sachiva of Gram Panchayat, any Adhakshya, or Updhakshya of Zilla Panchayat from his office, if in its opinion, he wilfully omits or refuses to carry out the provisions of this Act or of any rules or orders made thereunder or abuses the powers vested in him under this Act.

- (2) The State Government shall, before making any order under sub-section (1), give to the person concerned an opportunity of making a representation against the proposed order.

Powers of State Government to supersede a Gram Panchayat or Zilla Panchayat.

98. If, in the opinion of the State Government, any Gram Panchayat or Zilla Panchayat

- (a) has shown its incompetence to perform or has persistently made default in the performance of the duties imposed on it by or under this Act or any other law; or
- (b) has exceeded or abused its powers, the State Government may, by order, to be published in the Official Gazette stating the reasons therefore, supersede the Gram Panchayat or Zilla Panchayat, as the case may be, and direct that it be reconstituted within such period not exceeding the maximum period of one year as may be specified in the order:

Provided that the State Government shall, before making any order under sub-section (1), give the Gram Panchayat or the Zillah Panchayat, as the case may be, an opportunity of making a representation against the proposed order.

Consequences of super session.

99. (1) When an order of super session has been passed under section 98 then with effect from the date of the order

- (a) all the members of the Gram Panchayat or the Zilla Panchayat, as the case may be, shall vacate their offices;

(b) all the powers, duties and functions which, under the provisions of this Act or any rule made thereunder or any law for the time being in force may be exercised, discharged or performed by the Gram Panchayat or Zilla Panchayat, as the case may be, shall be exercised, discharged or performed by such authority, person or persons as may be appointed by the State Government in this behalf;

(c) all properties vested in the Gram Panchayat or Zilla Panchayat, as the case may be, shall remain vested in the State Government until the reconstitution of the such Gram Panchayat or Zilla Panchayat.

(2) On the reconstitution of the Gram Panchayat, or Zilla Panchayat, as the case may be, the authority, person or persons appointed under clause (b) of sub-section (1) shall cease to exercise his functions.

100. If a Sabhapati or an Up-Sabhapati, or Sachiva or a member of a Gram Panchayat or an Adhakshya or an Upadhakshya or member of a Zilla Panchayat becomes a member of either house of Parliament or a member of Legislative Assembly, he shall be deemed to have vacated his office as Sabhapati or Up-Sabhapati or Sachiva or member of a Gram Panchayat or Adhakshya or Upadhakshya or member of a Zilla Panchayat, as the case may be, with effect from the date of his becoming such member and a casual vacancy shall be deemed to have occurred in such office.

Election of Sabhapati or Up-Sabhapati for Sachiva or member of Gram Panchayat or Adhakshya or Upadhakshya or member of Zilla Panchayat.

101. (1) Subject to the provisions of this Act and rules made thereunder, the superintendence, direction and control and the conduct of election of members of a Gram Panchayat shall be vested in such authority as may be prescribed.

Superintendence of election.

(2) For the performance of his duties and functions such authority shall be assisted by such other officers and staff as may be appointed by the State Government in this behalf.

- Electoral Offences.* 2 [101 A. Any act of commission or omission which is an electoral offence in relation to elections to the Legislative Assembly of Sikkim under Chapter VII of the Representation of the People Act, 1951 or under any law for the time being in force shall be deemed to be an electoral offence in relation to the elections to the Gram Panchayats under this Act. 43 of 1951
- Requisition of premises, vehicles etc., for election purpose.* 101B. The State Government shall have the same powers in the matter of requisition of premises, vehicles and animals for the purpose of the conduct of elections to the Gram Panchayats as in the case of elections to the Sikkim Legislative Assembly".]
- Application for questioning the election.* 102. (1) The election of a person as a member of a Gram Panchayat or Zilla Panchayat shall not be called in question except by an application presented to such authority within such time and in such manner as may be prescribed on the ground that
- (a) the election has not been a free election by reason that the corrupt practice of bribery or undue influence has extensively prevailed at the election; or
 - (b) that the result of the election has been materially affected
 - (i) by the improper acceptance or rejection of any nomination; .
 - (ii) by gross failure to comply with the provisions of this Act or the rules framed thereunder.
- (2) The following shall be deemed to be corrupt practices of bribery or undue influence for the purposes of this Act.
- (1) Bribery, that is to say
 - (A) any gift, offer or promise by a candidate or by any other person with he conniva

nee of a candidate of any gratification to any person whomsoever, with the object, directly or indirectly, of inducing

(a) a person to stand or not to stand as, or to withdraw from being a candidate at any election; or

(b) an elector to vote or refrain from voting at an election; or as a reward to

(i) a person for having stood or not stood or having withdrawn his candidature; or

(ii) an elector for having voted or refrained from voting.

(B) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of a candidate or of any other person with the connivance of the candidate with the free exercise of any electoral right:

Provided that without prejudice to the generality of the provisions of this clause any such person as is referred to therein who

(i) threatens any candidate, or any elector, or any person in whom a candidate or any elector is interested, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community; or

(ii) induces or attempts to induce a candidate or an elector to believe that he or any person in whom he is interested will become or will be rendered object of divine displeasure or spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause.

(3) The application under sub-section (1) may be presented by any candidate at the election or any elector and shall contain such particulars as may be prescribed.

Explanation-Any person who filed a nomination paper at the election whether such nomination paper was accepted or rejected, shall be deemed to be a candidate at the election.

- (4) The authority to whom the application under subsection (1) is made shall, in the matter of
- (a) hearing of the application and the procedure to be followed at such hearing;
 - (b) setting aside the election or declaring the election to be void or declaring applicant to be duly elected or any other relief that may be granted to the petitioner, have such powers and authority may be prescribed.
- (5) The order passed by the prescribed authority upon an application under sub-section (1), shall be final and conclusive and shall not be questioned in any civil court.

Decision on question as to disqualification.

103. If any question arises as to whether a person has become subject to any disqualification under subsection (1) of section 9, the question shall be referred to the prescribed authority *for* his decision and his decision shall, subject to the result of any appeal as may be prescribed, be final:

Provided that no order shall be passed under this section unless the person so disqualified is given an opportunity of being heard.

Improvement of sanitation.

104. For the improvement of sanitation a Gram Panchayat or Zilla Panchayat may, by order, require the owner or occupier of any land or building, within such reasonable period as *may* be specified in the notice served *upon* him and after taking into consideration his financial position.
- (a) to close, remove, alter, repair, cleanse, disinfect or put in *good* order any latrine, urinal, water closet, drain, cesspool, or other receptacle for filth,

rubbish or refuse pertaining to such land or building, or to remove or alter any door or trap or construct any drain for any such latrine, urinal or water closet which opens on to a street or drain or to shut off such latrine, urinal or water closet by a sufficient roof or wall or fence from the view of persons passing by or dwelling in the neighborhood;

- (b) to cleanse, repair, cover, fill up, drain off or remove water from, a private well, tank, reservoir, pool, pit, depression or excavation therein which may be injurious to health or offensive to the neighborhood;
- (c) to clear off any vegetation, undergrowth, prickly pear or scrub jungle there from;
- (d) to remove any dirt, dung, night soil, manure or any obnoxious or offensive matter there from and to cleanse the land or building.

105. (1) A Gram Panchayat or Zilla Panchayat shall have control over all village roads and waterways within its local limits and may do all things necessary for the maintenance and repair thereof, and may

Power of Gram Panchayat or Zilla Panchayat over village roads, water ways and other matters.

- (a) construct new bridges and culverts;
- (b) direct or close any such village road, bridge or culvert;
- (c) widen, open, enlarge or otherwise improve any such village road, bridge or culvert and with minimum damage to the neighboring fields, plant and preserve trees on the sides of such road;
- (d) deepen or otherwise improve such waterways;
- (e) trim hedges and branches of trees projecting on roads;
- (f) set a partly public notice any public source of water supply for drinking or culinary purpose and likewise prohibit all bathing, washing or other acts likely to pollute the source so set apart.

- (2) A Gram Panchayat or Zilla Panchayat, as the case may be, by a notice in writing, require any person who has caused obstruction or encroachment on or damage to any village road or drain or other property under the control and management of the said Gram Panchayat or Zilla Panchayat, to remove such obstruction or encroachment or repair such damage, as the case may be, within the time specified in the notice.
- (3) If the obstruction or encroachment is not removed or damage is not repaired within the time so specified, the Gram Panchayat or the Zilla Panchayat concerned may cause such obstruction or encroachment to be removed or such damage to be repaired and the expenses of such removal or repair shall be recoverable from such person as arrears of land revenue or public demand.
- (4) For the purpose of removal of obstruction or encroachment under sub-section (3), the Gram Panchayat or the Zilla Panchayat concerned may apply to the District Collector and the District Collector shall, on such application, provide such help as may be necessary for the removal of such, obstruction or encroachment.

Power of Gram Panchayat or Zilla Panchayat in respect of polluted water supply.

106. A Gram Panchayat or a Zilla Panchayat may, by written notice, require the owner of or the person having control over, a private water source, spring, well, or other place, the water of which is used for drinking or culinary purposes, after taking into consideration his financial position, to take all or any of the following steps within a reasonable period to be specified in such notice, namely
- (a) to keep and maintain the same in good repair;
 - (b) to clean the same, from time to time by removing any silt, refuse or decaying vegetation;
 - (c) to protect it from pollution;
 - (d) to prevent its use, if it has become so polluted as to be prejudicial to public health.

107. In the event of an outbreak of cholera or any other water borne infectious disease in any locality situated within the local] Limits of the jurisdiction of a Gram Panchayat or a Zilla Panchayat, the Sabhapati or Up-Sabhapati of a Gram Panchayat or Adhakshya or Upadhakshya of a Zilla Panchayat may, during the continuance of the outbreak, without notice and at any time, inspect and disinfect any well or other place from which water is, or is Likely to be, taken for the purpose of drinking and may further take such steps as he deems fit to prevent the drawing of water there from.

Emergent power on outbreak of epid.emic.

108. (1) The State Government may nominate one member of the Scheduled Castes or Scheduled Tribes and one woman to be members of any Gram Panchayat:

Nomination of members by State Government.

Provided that no such nomination shall be made if one or more members of the Scheduled Castes or Scheduled Tribes or one woman has been elected to such Gram Panchayat, as the case may be, under the provisions of this Act.

- (2) Where no member of a minority community having a population of ten per cent or more of the total population within an area comprised in a Gram is elected to the Gram Panchayat, the State Government shall have the power to nominate one member for a population up to twenty per cent and two members for a population up to forty per cent to such Gram Panchayat:

Provided that no such nomination shall be made if the population of such minority community exceeds forty per cent of the total population within an area comprised in a Gram'

Provided further that no such nomination shall be made if one or more member or such minority community has been elected to such Gram Panchayat.

- (3) Every member nominated under sub-section (1) or sub-section (2) shall exercise the same powers and functions and perform the same duties as are conferred upon the elected members under this Act.

Report on the work of Gram Panchayat or Zilla Panchayat.

109. The Gram Panchayat or Zilla Panchayat concerned shall prepare and submit annually a report on work done during the previous year and the work proposed to be done during the following year to the prescribed authority within such period as may be specified by the State Government.

Placing of services of Government employees at the disposal of a Gram Panchayat or a Zilla Panchayat.

110. The State Government may, by notification place at the disposal of a Gram Panchayat or Zilla Panchayat services of such officers or other employees serving under it on such terms and condition as may be fixed by the State Government:

Provided that the State Government shall have disciplinary control over such officers and employees.

Power to settle disputes

111. Where parties to a dispute approach the Gram Panchayat or as the case may be, the Zilla Panchayat for settlement of dispute, then, the Gram Panchayat or the Zilla Panchayat may settle such dispute if any law in force permits such settlement outside courts.

Delegation.

112. The State Government may, by notification, delegate, subject to such conditions as it may specify, all or any of its powers under this Act except the Power to make rules mentioned in section 118 to any person or authority subordinate to it.

Allowance to members.

113. The members of the Gram Panchayat or the Zilla Panchayat shall be entitled to such sitting allowances for attending meetings of the Gram Panchayat or the Zilla Panchayat and travelling allowances that may from time to time, be fixed by the State Government:

Provided that such sitting allowances and travelling allowances are paid from the Gram Panchayat Fund or Zilla Panchayat Fund.

114. No person shall contest the election to any Panchayat with the support, direct or indirect, of any political party. *Election not to be contested with the support of political party.*
- 115.. (1) Any person who soon after the expiry of his term or resigning from the office or removal from the office of Sabhapati or Up-Sabhapati or Sachiva of Gram Panchayat or Adhakshya or Upadhakshya of Zilla Panchayat, as the case may be, fails to hand over any document of, or any money or other properties vested in or belonging to, the Gram Panchayat or Zilla Panchayat, as the case may be, which are in his possession or control, to his successor-in-office, shall, on conviction, be punished with a fine which may extend to fifty rupees and in the case of a continuing failure or contravention with an additional fine which may extend to twenty rupees for every day after the first conviction during which he has persisted in the failure or contravention. *Penalty.*
- (2) Any person who wilfully obstructs any member or office bearer or servant of a Gram panchayat or a Zilla Panchayat, as the case may be, in the discharge of his duties or any thing which he is empowered to do shall, on conviction, be punished with a fine which may extend to **one** hundred rupees.
- (3) Any person required by this Act or rules made thereunder to furnish any information fails to furnish such information or knowingly furnishes wrong information shall, on conviction, be punished with a fine which may extend to one hundred rupees.
- 3 ["(4) Any person who contravenes the provisions of this Act or rules made thereunder for which no penalty is provided for under this Ac~ shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to two hundred rupees, or with both"].

*Repeal and
Savings.*

116. On and from the date of commencement of this Act, the Sikkim Panchayat Act, 1965 shall stand repealed and all assets and liabilities of the Block Panchayats constituted under the repealed Act (including the unspent amounts in the Block Panchayat Fund) shall stand transferred to and vest in the State Government:

Provided that such repeal shall not affect

- (a) the previous operation of the repealed Act or anything duly done or suffered thereunder;
- (b) any right, privilege, obligation or liability acquired, accrued or incurred under the repealed Act; or
- (c) any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed Act; or
- (d) any investigation, legal proceeding or remedy in respect of any such right, privilege obligation, liability, penalty forfeiture or punishment as "aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty forfeiture or punishment may be imposed as if this Act had not been passed:

Provided further that subject to the preceding provision anything done or any action taken (including any appointment or delegation made, notification, notice, order, instructions or direction issued, rule, regulation, form or scheme framed, certificate obtained, permit or licence granted, tax imposed or fee or rates levied) under the repealed Act shall, in so far as it is in force immediately before commencement of this Act and is not inconsistent with the provisions of this Act be deemed to have been done or taken under the corresponding provisions of this Act and shall continue to be in force accordingly, unless and until they are repealed or amended or suspended.

117. If any difficulty arises in giving effect to the provisions of this Act, the State Government may take such steps or issue such orders not inconsistent with the provisions of this Act as may appear to it to be necessary or expedient for the purpose of removing such difficulty:
- Power to remove difficulties.*

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

118. (1) The State Government may by notification, make rules for carrying out the purposes of this Act.
- Power to make rules.*

- (2) In particular and without prejudice to the generality of the foregoing power such rules may provide for all or any of the following matters, namely:

- (i) manner of election of Sabhapati and Up-Sabhapati of Gram Panchayat under sub-section (1) of section 10;
- (ii) manner in which meeting of Gram Panchayat shall be convened under sub-section (2) of section 12;
- (iii) powers, functions and duties of Sabhapati of Gram Panchayat;
- (iv) power, functions and duties of Sachiva of Gram Panchayat;
- (v) manner in which and time within which an appeal may be made under section 35;
- (vi) manner in which and time within which the Budget shall be prepared by Gram Panchayat under sub-section (1) of section 39;
- (vii) manner in which and time within which the supplementary Budget shall be submitted under section 40;
- (viii) manner in which accounts shall be kept by Gram. Panchayat;

- (xi) terms' and conditions of appointment of Sachiva of Zilla Panchayat;
- (x) duties and functions of Sachiva of Zilla Panchayat;
- (xi) manner in which and time within which appeal may be made under section 71;
- (xii) manner in which and time within which the Budget shall be prepared by Zilla Panchayat under sub-section (1) of section 75;
 - (xiii) manner in which and time within which supplementary Budget shall be submitted under section 76;
 - (xiv) manner in which accounts shall be kept by Zilla Panchayat,;
- (xv) manner in which, time within which place whereon and the extent to which accounts of the Gram Panchayat and Zilla Panchayat shall be: examined and audited;
- (xvi) manner in which and time within which the matter shall be referred to the State Government under sub-section (2) of section 83;
- (xvii) manner in which a certificate of the amount due and a copy of reasons thereof shall be sent under sub-section (3) of section 84;
- (xviii) manner of superintendence, direction and control and the conduct of election of members of Gram Panchayat;
- (xix) manner in which, time within which and the authority to whom the application for questioning the election shall be presented under sub-section (1) of section 102;
- (YX) particulars to, be furnished under sub-section (3) of section 102;
- (xxi) powers and authority that shall be exercised by the authority under sub-section (4) of section 102,;
 - matters which are to be and may be prescribed,
- (x-ii)

SCHEDULE

Form of oath or affirmation to be made by a member of a Gram Panchayat or a Zilla Panchayat.

(See section 88)

I, A. B. , having been elected a member of..... ,.....
Gram Panchayat Zilla Panchayat do swear in the name of God or solemnly affirm that I will bear true faith and allegiance to the constitution of India as by law established, and that I shall faithfully discharge the duties upon which I am about to enter.

THE SIKKIM CHILDREN ACT, 1982.

AR.RANGEMENT OF SECTION

CHAPTER I

Preliminary

1. Short title, extent and commencement.
2. Definition's.
3. Continuation of inquiry in respect of child who has ceased to be child.

CHAPTER II

Competent authorities and institutions for children

4. Children's- courts.
5. Procedure, etc. in relation to children's courts.
6. Powers of children's court.
7. Procedure to be followed by a magistrate not empowered under the Act.
8. Children's homes.
9. Special schools.
10. Observation homes.
11. Aftercare organizations.
12. Board of Visitors.
13. Sikkim State Children Welfare Advisory Board.
14. Inspection of children's homes, special school, etc.
15. Medical examination of inmates of schools.

CHAPTER III

Neglected children

16. Production of neglected children before children's court.
17. Special Procedure to be followed when neglected child has parents
18. Inquiry by children's court regarding neglected children
19. . Power to commit neglected child to suitable custody.
20. Uncontrollable children.

CHAPTER IV
Delinquent children

21. Bail and custody of children.
22. Information to parent or guardian or probation officer.
23. Inquiry by children's court regarding delinquent children.
24. Orders that may be passed regarding delinquent children.
25. Orders that may not be passed against delinquent children.
26. Proceeding under Chapter VIII of the Criminal Procedure Code not competent against children.
27. No joint trial of child and person not a child.
28. Power of police officers to administer warning.
29. Removal of disqualification attaching to conviction.
30. Special provision in respect of pending cases.

CHAPTER V
Procedure of competent authorities generally and appeals and revision from orders of such authorities

31. Sitting etc., of children's courts.
32. Persons who may be present before competent authority.
33. Attendance of parent or guardian of child.
34. Dispensing with attendance of child.
35. Committal to approved place of child suffering from dangerous disease and its future disposal.
36. Presumption and determination of age.
37. Circumstances to be taken into consideration in making orders under the Act.
38. Sending a child outside jurisdiction.
39. Reports to be treated as confidential.
40. Prohibition of publication of names, etc., of children involved in any proceeding under the Act.
41. Appeals.
42. Revision.
43. Procedure in inquiries, appeals and revision proceedings.
44. Power to amend orders.

CHAPTER VI
Special offences in respect of children

45. Punishment for cruelty to child.
46. Employment of children for begging.
47. Penalty for giving intoxicating liquor or dangerous drug to a child
48. . Exploitation of child employees.
49. Power of the Government to discharge and transfer children.
50. Transfers between children's homes, etc., under the Act and children's homes, etc., of like nature in different parts of India.
51. Transfer of children suffering from leprosy or tuberculosis or of unsound mind.

52. Placing out on licence.
53. Provision in respect of escaped children.
54. Child not to be handcuffed or fettered.
55. Contribution by parents.
56. Control of custodian over child.
57. Delinquent child under going sentence at the commencement of this Act.
58. Appointment of officers.
59. Officers appointed under the Act to be public servants.
60. Procedure in respect of bonds.
61. Delegation of powers.
62. Protection of action taken in good faith.
63. Certain provision of Central Act 5 of 1898 not to apply.
64. Power to make rules.

THE SIKKIM CHILDREN ACT, 1982.
ACT NO.4 OF 1982.
AN
ACT

to provide for the care, protection, maintenance, welfare, training, education and' rehabilitation of neglected or delinquent children and for the trial of delinquent children in the State of Sikkim.(7th april1982)

Be it enacted in the

Thirty-third Year of the Republic of India as follows:

CHAPTER I
Preliminary.

1. (1) This Act may be called the Sikkim Children Act, 1982.

Short title, extent and commencement.

(2) It extends to the whole of the State of Sikkim.

(3) It shall come into force on such date as the Government may, by notification, appoint; and different dates may be appointed for different provisions of this Act or for different areas of the State.

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

Definitions.

(a) "authorised person" means a person authorised by the Government under sub-section (1) of section 16;

(b) "begging" means

- (i) soliciting or receiving alms in a public place or entering on any private premises for the purpose of soliciting or receiving alms, whether under the pretence of singing, dancing, fortune telling, performing tricks or selling articles or otherwise; or
- (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; or

(iii) allowing oneself to be used as an exhibit for the purpose of soliciting or receiving alms;

(c) "brothel", "prostitute", "prostitution" and "public place" shall have the meanings respectively assigned to them in the Suppression of Immoral Traffic in Women and Girls Act, 1956;

(d) "child" means a person who has not attained the age of eighteen years and when used with reference to a child sent to a children's home or special school applies to that child during the whole period of the stay, notwithstanding that during the period of such stay, the child may have attained the above age limit;

(e) "children's court" means a court constituted under section 4;

(f) "children's home" means an institution established or certified by the Government under section 8 as a children's home;

(g) "competent authority" means a children's court and includes in respect of any area for which no children's court has been constituted any magistrate empowered under subsection (2) of section 6 to exercise the powers conferred on a children's court by or under this Act;

(h) "dangerous drug" shall have the meaning assigned to it in the Dangerous Drugs Act, 1930;

2
of 1930

(i) "delinquent child" means a child who has been found to have committed an offence;

(j) "fit person" or "fit institution" means any person or institution (not being a police station or jail) found fit by the competent authority to receive and take care of a child entrusted to his or its care and protection on the terms and conditions specified by the competent authority;

(k) "Government" means the State Government of Sikkim;

(1) "guardian", in relation to a child, includes any person who, in the opinion of the competent authority having cognizance of any proceeding in relation to a child, has, for the time being, the actual charge of, or control over, that child;

- (m) "neglected child" means a child who
- (i) is found begging; Or
 - (ii) is found without any home or settled place of abode or any ostensible means of subsistence or is found destitute, whether he is an orphan or not; or
 - (iii) has a parent or guardian who is unfit or unable to exercise or does not exercise proper care and control over the child; or
 - (iv) lives in a brothel or with a prostitute or frequently goes to any place used for the purpose of prostitution, or is found to associate with any prostitute or any other person who leads an immoral, drunken or depraved life;

(n) "observation home" means any institution or place established or recognized by the Government under section 10 as an observation home;

(o) "offence" means an offence punishable under any law for the time being in force;

(p) "place of safety" means any place or institution (not being a police station or jail), the person in charge of which is willing temporarily to receive and take care of a child and which in the opinion of the competent authority may be a place of safety for the child;

(q) "prescribed" means prescribed by rules made under this Act;

(r) "probation officer" means an officer appointed as a probation officer under this Act or under the Probation of Offenders Act, 1958;

20 of 1958.

(s) "special school" means an institution established or certified by the Government under section 9;

(t) "supervision", in relation to a child placed under the care of any parent, guardian or other fit person under this Act, means the supervision of that child by a probation officer

for the purpose of ensuring that the child is' properly looked after and that the conditions imposed by the competent authority are complied with;

(u) all words and expressions used but not defined in this Act and defined in the Code of Criminal Procedure, 1898, shall have the meanings assigned to them in that Code.

Continuation of inquiry in respect of child who has ceased to be child.

3. Where an inquiry has been initiated against a child and during the course of such inquiry the child ceases to be such, then, notwithstanding anything contained in this Act or in any other law for the time being in force, the inquiry may be continued and orders may be made in respect of such person as if such person had continued to be a child..

CHAPTER II

Competent authorities and institutions for children

Children's courts.

4. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, the Government may, by notification constitute for any area specified in the notification, one or more children's courts for exercising the powers and discharging the duties conferred or imposed on such court under this Act. 5 of 1898

(2) A children's court shall consist of such number of magistrates forming a Bench as the Government may think fit to appoint, of whom one shall be designated as the senior magistrate and not less than one shall be a woman; and every such Bench shall have the powers conferred by the Code of Criminal Procedure, 1898, on a magistrate of the first class. 5 of 1898

Procedure, etc., in relation to children's courts.

5. (1) In the event of any difference of opinion among the magistrates of a children's court the opinion of the majority shall prevail, but where there is no such majority, the opinion of the senior magistrate shall prevail.

(2) A children's court may act notwithstanding the absence of any magistrate and no orders made by the children's court shall be invalid by reason only of the absence of any magistrate, during any stage of the proceeding.

(3) No person shall be appointed as a magistrate of a children's court unless he has, in the opinion of the Government, special knowledge of child psychology and child welfare.

6. (1) Where a children's court has been constituted for any area, such court shall, notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, have power to deal exclusively with all proceedings under this Act relating to neglected children and delinquent children.

Powers of children's court.

(2) Where no children's court has been constituted for any area, the powers conferred on the children's court by or under this Act shall be exercised in that area, only by the following, namely:

(a) the district magistrate; or.

(b) any magistrate of the first class.

(3) The powers conferred on the children's court by or under this Act may also be exercised by the High Court and the Court of Session, when the proceeding comes before them in appeal, revision or otherwise.

7. (1) When any magistrate not empowered to exercise the powers of a children's court under this Act is of opinion that a person brought before him under any of the provisions of this Act (otherwise than for the purpose of giving evidence) is a child, he shall record such opinion and forward the child and the record of the proceeding to the competent authority having jurisdiction over the proceeding.

Procedure to be followed by a magistrate not empowered under the Act.

(2) The competent authority to which the proceeding is forwarded under sub-section (1) shall hold the inquiry as if the child had originally been brought before it.

8. (1) The Government may establish and maintain as many children's homes as may be necessary, for the reception of neglected children under this Act.

Children's homes.

(2) Where the Government is of opinion that any institution other than an institution established under sub-section (1) is fit for the reception of the neglected children to be sent there under this Act, they may certify such institution as a children's home for the purposes of this Act.

•

(3) Every children's home to which a neglected child is sent under this Act shall not only provide the child with accommodation, maintenance and facilities for education, but also provide him with facilities for the development of his character and abilities and give him necessary training for protecting himself against moral dangers or exploitation and shall also perform such other functions as may be prescribed.

(4) The Government may, by rules made under this Act, provide for the management of children's homes and the circumstances under which, and the manner in which, the certificate of a children's home may be granted or withdrawn.

Special schools.

9. (1) The Government may establish and maintain as many special schools as may be necessary for the reception of delinquent children under this Act.

(2) Where the Government is of opinion that any institution other than an institution established under sub-section (1) is fit for the reception of the delinquent children to be sent there under this Act, it may certify such institution as a special school for the purposes of this Act.

(3) Every special school to which a delinquent child is sent under this Act shall not only provide the child with accommodation, maintenance and facilities for education but also provide him with facilities for development of his character and abilities and give him necessary training for his reformation and shall also perform such other functions as may be prescribed.

(4) The Government may, by rules made under this Act, provide for the management of special schools and the circumstances under which, and the manner in which, the certificate of a special school may be granted or withdrawn.

Observation homes.

10. (1) The Government may establish and maintain as many observation homes as may be necessary for the temporary reception of children during the pendency of any inquiry regarding them under, this Act.

(2) Where the Government is of opinion that any institution other than an institution established under subsection (1) is fit for the temporary reception of children during the pendency of any inquiry regarding them under this Act, it may recognize such institution as an observation home for the purposes of this Act.

(3) Every observation home, to which a child is sent under this Act shall *not* only provide the child with accommodation, maintenance and facilities for medical examination and treatment, but also provide him with facilities for useful occupation.

(4) The Government may, by rules made under this Act, provide for the management of observation homes and the circumstances under which, and the manner in which, an institution may be recognized as an observation home or the recognition may be withdrawn.

11. (1) The Government, may, by rules made under this Act, provide for the establishment or recognition of aftercare organizations and may vest them with such powers as may be necessary for effectively carrying out their functions under this Act.

*Aftercare
organizations.*

(2) Every such organization shall take care of the children when they leave children's homes and shall, for the purpose of enabling them to lead an honest, industrious and useful life, take all such measures as it may deem necessary or as may be prescribed.

12. (1) For securing effective supervision of children's home, special schools, observation homes and aftercare organizations established or certified or recognized under the provisions of sections 8,9,10, and 11, the Government shall constitute a Board of Visitors consisting of such number of members as the Government may deem necessary.

Board of Visitors.

(2) The Board of Visitors constituted under sub-section (1) shall have the right to visit any children's home, observation home, special school or aftercare organization and to record their comments on any matter it may think fit.

. (3) Copies of comments of the Board of Visitors referred to in sub-section (2) shall as soon as may be after they are recorded, be forwarded by the managers of the children's home, observation home, special school and aftercare organization to the Sikkim State Children Welfare Advisory Board.

Sikkim State Children Welfare Advisory Board.

13. (1) The Government shall appoint a board to be called the Sikkim State Children Welfare Advisory Board.

(2) Such Board shall consist of such number of members as the Government may consider necessary and shall advise the Government generally in regard to the administration of this Act and more particularly in regard to the control and management of the children's homes; observation homes, special schools and aftercare organizations established, certified or recognized under sections 8,9,10 and 11 after considering the comments of the Board of Visitors.

Inspection of children's homes, special schools etc.

14.(1)The Government may appoint a Chief Child Welfare Inspector and as many Inspectors and Assistant Inspectors as it thinks fit to assist the Chief Child Welfare Inspector:

Provided that one of such Inspectors and Assistant Inspectors shall be a woman.

(2) Every children's home, observation home, special school and aftercare organization shall be inspected at least once in every three months by the Chief Child Welfare Inspector or by an Inspector or Assistant Inspector:

Provided that when children's home or school or other organization referred to in sub-section (2) is exclusively used for the reception of girls. only, such inspection shall be conducted either by the Chief Child Welfare Inspector or by a woman Inspector or Assistant Inspector.

medical examination of inmates of schools.

.15. Every inmate of children's home, observation home special school or aftercare organization established, certified or recognised under section 8,9,10 and 11 I may, as soon as practicable after his admission to such home, school or organisation and at such intervals thereafter as may be specified

by the Government by a notification, and also whenever so required by the managers of such homes or schools, be examined by a Medical Officer authorised in this behalf by the Government and a report of such medical examination shall forthwith be sent by the Medical Officer to the manager of the homes or schools and to the Chief Child Welfare Inspector:

Provided that in the case of homes or schools used and for the reception of girls only, such medical officer, shall, whenever practicable; be a woman.

CHAPTER III

Neglected children

16. (1) If any police officer or any other person authorised by the Government in this behalf by general or special order, is of opinion that a person is apparently a neglected child, such police officer or other person may take charge of that person for bringing him before the children's court.

Production of neglected children before children's court.

(2) When information is given to an officer-in-charge of a police station about any neglected child found within the limits of such station, he shall enter in a book to be kept for the purpose, the substance of such information and take such action thereon as he deems fit and if such officer does not propose to take charge of the child, he shall forward a copy of the entry made to the children's court.

(3) Every child taken charge of under sub. section (1) shall be brought before the children's court within a period of twenty four hours of taking such charge excluding the time necessary for the journey from the place where the child had been taken charge of, to the children's court.

(4) Every child taken charge of under sub-section (1) shall unless he is kept with his parent or guardian. be sent to an observation home (but not to a police station or jail) until he can be brought before a children's court.

17. (1) If a person, who in the opinion of the police officer or the authorised person is a neglected child, has a parent or guardian who has the actual charge of, or control, over, the

Special procedure to be followed when neglected child has

parent.

child, the police officer or the authorised person may, instead of taking charge of the child, make a report to the children's court for initiating an inquiry regarding that child.

(2) On receipt of a report under sub-section (1), the children's court may call upon the parent or guardian to produce the child *before* it and to show cause *why* the child should not be dealt with as a neglected child under the provisions of this Act and if it appears to the children's court that the child is likely to be removed from its jurisdiction or to be concealed, it may immediately order his removal (if necessary by issuing a search warrant for the immediate production of the child) to an observation home.

Inquiry by children's court regarding neglected children.

18. (1) When a person alleged to be a neglected child is produced before a children's court, it shall examine the police officer or the authorised person who brought the child or made the report and record the substance of such examination and hold the inquiry in the prescribed manner and *may* make such orders in relation to the child as it may deem fit:

Provided that before holding such inquiry the children's court shall direct the probation officer to furnish it with a report regarding the antecedents and family history of the child and other material circumstances likely to be of assistance to the court in holding the inquiry.

(2) Where a children's court is satisfied on inquiry that a child is a neglected child and that it is expedient so to deal with him, the children's court may make an order directing the child to be sent to a children's home for the period until he ceases to be a child:

Provided that the children's court may, for reasons to be recorded, extend the period of such stay, but in no case the period of stay shall extend beyond the time when the child attains the age of eighteen years in the case of a boy and twenty years in the case of a girl:

Provided further that the children's court may, if it is satisfied that having regard to the circumstances of the case it is expedient so to do, for reasons to be recorded reduce the period or stay by such period not exceeding two years as it thinks fit.

(3) During the pendency of any inquiry regarding a child, the child shall, unless he is kept with his parent or guardian, be sent to an observation home for such period as may be specified in the order of the children's court:

Provided that no child shall be kept with his parent or guardian if, in the opinion of the children's court, such parent or guardian is unfit to exercise or does not exercise proper care and control over the child.

19. (1) If the children's court so thinks fit, it may, instead of making an order under sub-section (2) of section 18 for sending the child to a children's home, make an order placing the child under the care of a parent, guardian or other fit person, or such parent, guardian or fit person executing a bond with or without surety to be responsible for the good behavior and well being of the child and for the observance of such conditions as the children's court may think fit to impose.

Power to commit neglected child to suitable custody.

(2) At the time of making an order under sub-section (1) or at any time subsequently, the children's court may, in addition, make an order that the child be placed under supervision for any period not exceeding three years in the first instance.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), if at any time it appears to the children's court on receiving a report from the probation officer or otherwise, that there has been a breach of any of the conditions imposed by it in respect of the child, it may, after making such inquiry as it deems fit, order the child to be sent to a children's home.

20. Where a parent or guardian of a child complains to the children's court that he is not able to exercise proper care and control over the child and the children's court is satisfied on inquiry that proceedings under this Act should be initiated regarding' the child, it may send the child to an observation home and make such further inquiry as it may deem fit, and the provisions of section 18 and section 19 shall. as far as may be, apply to such proceedings.

Uncontrollable children.

CHAPTER IV
Delinquent children

Bail and custody of children.

21. (1) When any person accused of a bail able or non-bail able offence and apparently a child is arrested or detained or appears or is brought before a children's court, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1898 or in any other law for the time being in force, be released on bail with or without surety, but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any reputed criminal or expose him to moral danger or that his release would defeat the ends of justice.

(2) When such person having been arrested is not released on bail under sub-section (1) by the officer-in-charge of the police station, such officer shall cause him to be kept in an observation home in the prescribed manner (but not in a police station or jail) until he can be brought before a children's court.

(3) When such person is not released on bail under sub-section (1) by the children's court, it shall, instead of committing him to prison, make an order sending him to an observation home for such period during the pendency of the inquiry regarding him as may be specified in the order.

Information to parent or guardian or probation officer.

22. Where a child is arrested, the officer-in-charge of the police station to which the child is brought shall, as soon as may be after the arrest, inform

- (a) the parent or guardian of the child if he can be found, of such arrest and direct him to be present at the children's court before which the child will appear; and
- (b) the probation officer, Of such arrest in order to enable him to obtain information regarding the antecedents and family history of the child and other material circumstances likely to be of assistance to the children's court for making the inquiry.

23. Where a child having been charged with an offence appears or is produced before a children's court, the children's court shall hold the inquiry in accordance with the provisions of section 39 and may, subject to the provisions of this Act, make such order in relation to the child as it deems fit.

Inquiry by children's Court regarding delinquent children.

24. (1) Where a children's court is satisfied on inquiry that a child has committed an offence, then, notwithstanding anything to the contrary contained in any other law for the time being in force, the children's court may, if it so thinks fit.

Orders that may be passed regarding delinquent children.

- (a) allow the child to go home after advice or admonition;
- (b) direct the child to be released on probation of good conduct or placed under the care of any parent, guardian or other fit person, on such parent, guardian or fit person executing a bond, with or without surety, that court may require, for the good behavior and well. being of the child for any period not exceeding three years;
- (c) make an order directing the child to be sent to a special school for the period until he ceases to be a child:

Provided that the children's court may, for reasons to be recorded, extend the period of such stay, but in no case the period, of stay shall extend beyond the time when the child attains the age of eighteen years in the case of a boy or twenty years in the case of a girl:

Provided further that the children's court may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit;

- (d) order the child to pay a fine if he is over fourteen years of age and earns money.

(2) Where an order under clause (b) or clause (d) of subsection (1) is made, the children's court may, if it is of opinion that in the interest of the child and of the public it is expedient so to do, in addition make an order that the delinquent child shall remain under the supervision of a probation officer named in the order during such period, not exceeding three years, as may be specified therein and may in such supervision order or impose such conditions as it deems necessary for the due supervision of the delinquent child:

Provided that if at any time afterwards it appears to the children's court on receiving a report from the probation officer or otherwise, that the delinquent child has not been of good behaviour during the period of supervision, it may, after making such inquiry as it deems fit, order the delinquent child to be sent to a special school.

(3) The children's court making a supervision order under subsection (2) shall explain to the child and the parent, guardian or other fit person, as the case may be, under whose care the child has been placed, the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to the child, the parent, guardian or other fit person, as the case may be, the sureties, if any, and the probation officer.

(4) In determining the special school or any person to whose custody a child is to be committed or entrusted under this Act, the court shall pay due regard to the religious denomination of the child to ensure that religious instruction contrary to the religious persuasion of the child is not imparted to him.

Orders that may not be passed against delinquent children.

25. (1) Notwithstanding anything to the contrary contained in any other law for the time being in force: no delinquent child shall be sentenced to death or imprisonment, or committed to prison in default of payment of fine or in default, of furnishing security:

Provided that where a child who has attained the age of fourteen years has committed an offence and the children's court is satisfied that the offence committed is of so

serious a nature or that his conduct and behaviour have been such that it would not be in his interest or in the interest of other children in a special school to send him to such special school and that none of the other measures provided under this Act is suitable or sufficient, the children's court may order the delinquent child to be kept in safe custody in such place and manner as it thinks fit and shall report the case for the orders of the Government.

(2) On receipt of a report from a children's court under sub-section (1), the Government may make such arrangement in respect of the child as it deems proper and may order such delinquent child to be detained at such place and on such conditions as it thinks fit:

Provided that the period of detention so ordered shall not exceed the maximum period of imprisonment to which the child could have been sentenced for the offence committed.

5 of 1898. 26. Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1898, no proceeding shall be instituted and no order shall be passed against a child under Chapter VIII of the said Code.

Proceeding under Chapter VIII of the Criminal Procedure Code not competent against- child.

5 of 1898. 27. (1) Notwithstanding anything contained in section 239 of the Code of Criminal Procedure, 1898 or in any other law for the time being in force, no child shall be charged with or tried for any offence together with a person who is not a child.

No joint trial of child and person not a child.

5 of 1898. (2) If a child is accused of an offence for which, under section 239 of the Code of Criminal Procedure, 1898 or any other law for the time being in force, such child and any person who is not a child would, but for the prohibition contained in sub. section (1), have been charged and tried together, the court taking cognizance of that offence shall direct separate trials of the child and the other person.

28. Any Police Officer not below the rank of a Sub Inspector, if he is of opinion that any offence reported or suspected to have been committed by a child is not of a serious nature or that it is not a repetition of a previous

Power of police officers to administer warning

offence already committed by the child, may, notwithstanding anything contained in any other provision of this Act or in any other law for the time being in force and subject to such restrictions and limitations as may be prescribed, Jet such child off after administering suitable warning to such child:

Provided that every case in which a child is so let off 'shall forthwith be reported by such police officer to the children's court stating the reasons for not investigating the case or not proceeding with the investigation of the case, as the case may be.

Removal of disqualification attaching to conviction.

29. Notwithstanding anything contained in any other law, a child who has committed an offence and has been dealt with under the provisions of this Act shall not suffer disqualification, if any, attaching to a conviction of an offence under such other, law.

Special provision in respect of pending cases.

30. Notwithstanding anything contained in this Act, all proceedings in respect of a child pending in any court in any area on the date on which this Act comes into force in that area, shall be continued in that court as if this Act, had not been passed and if the court finds that the child has committed an offence, it shall record such finding, and instead of passing any sentence in respect of the child, forward the child to the children's court which shall pass orders in respect of that child in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that the child has committed the offence.

CHAPTER V

Procedure of competent authorities generally and appeals and revision from orders of such authorities.

Sitting etc., of children's courts.

31. (1) A children's court shall hold its sittings at such place, on such day and in such manner, as may be prescribed.

(2) A Magistrate empowered to exercise the powers of a children' court under sub-section (2) of section 6 shall, while holding any inquiry regarding a child under this Act, as far as practicable, sit in a building

or room different from that in which the ordinary sittings of civil and criminal courts are held, or on different days or at times different from those at which the ordinary sittings of such court are held..

32. (1) Save" as provided in -this- Act, no ' . person shall be present .. at' any sitting 'of a competent authority, except

Persons who may be ,resent before competent authority.

(a) any officer of the competent authority; or

(b) the parties to the 'inquiry before the competent authority, the parent or guardian of the child and .other persons directly concerned in the inquiry including police officers; or

(c)'such' as persons as 'the 'competent authority may permit to be present

- (2) . Notwithstanding anything contained in sub-section (1), if, at 'any stage' during 'an inquiry, a' competent authority considers it to be expedient in the interest of the child or on grounds of decency or morality that any person including the police officers, legal practitioners, the parent, guardian *or* the child himself should withdraw, the competent authority may give such direction and if any person refuses to comply with such direction, the competent authority may have him removed and may, for this purpose, cause to be used such force as .may be necessary.

33. Any competent authority before which a child is brought under any. of the provisions of this Act may, whenever it so thinks fit, require any parent or guardian having the actual charge of, or control over, the child to be present at any' proceeding' in respect of the child.

Attendance of parent or guardian of child.

34. If, at any stage during the course of an inquiry, a competent authority is satisfied that the attendance of the child is not essential for the purpose of the inquiry, the competent authority may dispense with his attendance and proceed with the inquiry in the absence of the child.

Dispensing with attendance of child.

Committal to approved place of child suffering from dangerous disease and its future disposal.

- ~5. (1) When a child who has been 'brought' before a competent authority under this Act is found to be suffering from a disease requiring prolonged medical treatment or physical or mental complaint that will respond to treatment, the competent authority may send the child to any place recognised to be an approved place in accordance with the rules made under this Act for such period as it may think necessary for the required treatment.
- (2) Where a child is found to be suffering from leprosy or is of unsound mind he shall be dealt with under the provisions of the Lepers Act, 1898 or the Indian Lunacy Act, 1912, as the case may be. 3 of 1898
4 of 1912
- (3) Where a competent authority has taken action under subsection (1) in the case of a child suffering from an infectious or contagious disease, the competent authority before restoring the said child to his partner in marriage, if there has been such, or to the guardian, as the case may be shall, where it is satisfied that such action will be in the interest of the said child call upon his partner in marriage or the guardian, as the case may be, to satisfy the competent authority by submitting to medical examination that such partner or guardian will not re-infect the child in respect of whom' the order has been passed.

Presumption and determination of age.'

36. (1) Where it appears to a competent authority that a person brought before it under any of the provisions' of this Act (otherwise than for the purpose of giving evidence) is a child; the competent authority shall make due inquiry as to the age of that person and for that purpose shall take such evidence as may be necessary and shall record a finding whether the person is a child or not. stating his age as nearly as may be,
- (2) No order of a competent authority shall be deemed to have become invalid merely by any subsequent proof that the person in respect of whom the order has been made is not a child, and the

age recorded by the competent authority to be 'the age of the person so brought before it shall, for the purposes of this Act, be deemed to be the true age of that person.

37. In making any order in respect of a child under this Act, a competent authority shall take into consideration the following circumstances namely:

- (a) the age of the child;
- (b) the circumstances in which the child is living; the reports
- (c) made by the probation officer;
- (d) the religious persuasion of the child;
- (e) such other circumstances as may, in the opinion of the competent authority, require to be taken into consideration in the interests of the child:

Provided that in the case of a delinquent child, the above Circumstances shall be taken into consideration after the competent authority has recorded a finding against the child that he has committed the offence:

Provided further that if no report of the probation officer is received within ten weeks of his being directed under section 18 or of his being informed under section 22 it shall be open to the competent authority to proceed without the report of the probation officer.

38. In the case of a neglected or delinquent child whose ordinary place of residence lies outside the jurisdiction of the competent authority before which he is brought, the 'Competent authority may, if satisfied after due inquiry that it is expedient so to do, send the child back to a relative or; other person who is fit and willing to receive him at his ordinary place of residence and exercise proper care and control over him,' notwithstanding that such place of residence is outside the jurisdiction of the competent authority, and the competent authority exercising jurisdiction over the place to which the child is sent shall in respect of any matter arising subsequently have the same powers in relation to the child as if the original order had been passed by itself.

Circumstances to be taken into consideration in making orders under the Act.

Sending a child outside jurisdiction.

Reports to be treated as confidential.

39. The report of the probation officer or any circumstances, considered by the competent authority under section 33 shall be treated as confidential:

Provided that the competent authority may, if it so thinks fit, communicate the substance thereof to the child or his parent or guardian and may give such child, parent or guardian an opportunity of producing such evidence as may be relevant to the matter stated in Report.

Prohibition of publication of names etc., of children involved in any proceeding under the Act.

40. (1) No report in any newspaper, magazine for news sheets of any inquiry regarding a child under this Act shall disclose the name, address or school or any other particulars calculated to lead to the identification of the child, nor shall any picture of any such child be published:

Provided that for reasons to be recorded in writing the authority holding the inquiry may permit such disclosure if in its opinion such disclosure is in the interest of the child.

- (2). Any person contravening the provisions of sub-section (1) shall be punishable with fine which may extend to one thousand rupees.

Appeals.

41. (1) Subject to the provisions of this section, any person aggrieved by an order made by a competent authority under this Act may, within thirty days from the date of such order, prefer an appeal to the court of session:

Provided that the court of session may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

- (2) No appeal shall lie from
(a) any order of acquittal made by the children's court in respect of a child alleged to have committed an offence; or

(b) any order made by the children's court in respect to of a finding, that a person is not a neglected child.

(3) No second appeal shall lie from any order of the court of session passed in 'appeal 'under' this 'section.

42. The High 'Court may, 'at 'anytime, either of its own motion or on "an application received in this behalf, call for the 'record of any proceeding in 'which--any competent ;authority or court 'of' session "has passed an order, for the 'purpose of' satisfying itself as 'to the legality or propriety of any such order 'and 'may pass 'such order in relation thereto as it thinks fit:

Revision.

Provided that the "High Court shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard.

43. (1) Save as otherwise expressly provided by this Act, a 'competent authority while holding any inquiry under 'any 'of 'the provisions of 'this Act, shall 'follow such pr6cedure as 'may 'be 'prescribed and 'subject thereto, 'shall follow, 'as far as may be, the procedure laid down in the Code of Criminal Procedure, 1898 for 'trials in summons cases.

Procedure in inquiry. ties, appeals' and revision proceedings.

5 of 1898.

(2) Save as otherwise -expressly provided by or under this Act, .the 'procedure to be followed in hearing appeals or revision proceedings under this Act shall be, as far as practicable, in accordance with the provisions of 'the, Code of Criminal Procedure, 1898.

44. (1) Without prejudice to the provisions for appeal and revision under this Act, any competent authority may, either on its own 'motion 'or on an application received in this behalf. amend any order as to the institution to which a child is to be sent or as to the 'person under whose 'care or supervision a child is to be placed under this Act.

Power to amend orders.

(2) Clerical mistakes in orders passed by a competent authority or errors arising therein from any accidental slip or omission may, at any time, be corrected by the competent authority either on its own motion or on an :application received in this behalf.

CHAPTER VI

Special offences in respect of children

- Punishment for cruelty to child.* 5. (1) Whoever, having the actual charge of, or control over a child, assaults, abandons, exposes or wilfully neglects the child or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such child unnecessary mental and physical suffering, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.
- (2) No Court shall take cognizance of an offence punishable under sub-section (1) unless the complaint is filed with the previous sanction of the Government or an officer authorised by it in this behalf.
- Employment of children for begging.* 46. (1) Whoever employs or uses any child, for the purposes of begging or causes any child to beg shall be punishable with imprisonment for a term which may extend to one year, or with fine. or with both.
- (2) Whoever, having the actual charge of, or control over, a child, abets the commission of the offence punishable under sub-section (1) shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.
- (3) The offence punishable under this section shall be cognizable.
- Penalty for giving intoxicating liquor or dangerous drug to a child.* 47. Whoever gives or causes to be given, to any child any intoxicating liquor in a public place or any dangerous drug, except upon the order of a duly qualified medical practitioner or in case of sickness or other urgent cause, shall be punishable with fine which may extend to two hundred rupees.
- Exploitation of child employees* 48. Whoever ostensibly procures a child for the purpose of any employment and withholds the earning of the child or uses such earning for his own purposes shall be punishable with fine which may extend to one thousand rupees.

49. (1) The Government may, notwithstanding anything contained in this Act, at any time, order a neglected or delinquent child to be discharged from the children's home or special school, either absolutely or on such conditions as the Government may think fit to impose.

Power of the Government to discharge and transfer children.

(2) The Government may, notwithstanding anything contained in this Act, order:-

(a) a neglected child to be transferred from one children's home to another;

(b) a delinquent child to be transferred from one special school to another or from a special school to a hostel school or from a special school to a children's home;

(c) a child who has been released on licence which has been revoked or forfeited, to be sent to the special school or children's home from which he was released or to any other special school or children's home hostel school:

Provided that the total period of the stay of the child in a special school or children's home shall not be increased by such transfer.

(3) The Government may, notwithstanding anything contained in this Act, at any time, discharge a child from the care of any person under whom he was placed under this Act, either absolutely or on such conditions as the Government may think fit to impose.

50. (1) The Government may direct any neglected child or delinquent child to be transferred from any children's home or special school within the State of Sikkim to any other children's home, special school or institution of a like nature in any other State with the consent of the Government of that State.

Transfers between children's home etc. under the Act and children's homes etc., of like nature in different parts of India.

- (2) The Government may, by general or special order, provide for the reception in a children's home or special school of neglected child or delinquent child detained in a children's home or special school or institution of a like nature in any other State, where the Government of that State makes an order for such transfer and upon such transfer the provisions of this Act shall apply to such child if he had been originally ordered to be sent to such children's home or special school under this Act.

Transfer of children suffering from leprosy or tuberculosis or of unsound mind.

51. (1) Where it appears to the Government that any child kept in a children's home or special school in pursuance of this Act is suffering from leprosy or tuberculosis or is of unsound mind, the Government may order his removal to a leper asylum or T. B. Sanatorium or mental hospital or other place of safe custody for being kept there for the remainder of the term for which he has to be kept in custody under the orders of the competent authority or for such further period as may be certified by a medical officer to be necessary for the proper treatment of the child.

- (2) Where it appears to the Government that the child is cured of leprosy or tuberculosis or of unsoundness of mind, the Government may, if the child is still liable to be kept in custody, order the person having charge of the child to send him to the special school or children's home from which he was removed, or, if the child is no longer liable to be kept in custody, order him to be discharged.

Placing out on licence.

52. (1) When a child is kept in a children's home or special school, the Government may, if it thinks fit, release the child from the children's home or special school and grant him a written licence for such period and on such conditions as may be specified in the licence permitting him to live with, or under the supervision of any responsible person named in the licence, willing to receive and take charge of him with a view to educate him and train him for some useful trade or calling.

- (2) Any licence so granted under sub-section (1) shall be in force for the period specified in the licence or until revoked or forfeited by the breach of any of the conditions on which it was granted.
- (3) The Government may, at any time, by order in writing revoke any such licence and order the child to return to the children's home or special school from which he was released or to any other children's home or special school and shall do so at the desire of the person with whom or under whose supervision the child has been permitted to live in accordance with a licence granted under sub-section (1).
- (4) When a licence has been revoked or forfeited and the child refuses or fails to return to the children's home or special school to which he was directed so to return, the Government may, if necessary, cause him to be taken charge of and to be taken back to the children's home.
- (5) The time during which a child is absent from a children's home or special school in pursuance of a licence granted under this section shall be deemed to be part of the time for which he is liable to be kept in custody in the children's home or special school:

Provided that when a child has failed to return to the children's home or, special school on the licence being revoked or forfeited, the time which elapses after his failure so to return shall be excluded in computing the time during which he is liable to be kept in custody.

53. Notwithstanding anything to the contrary contained in any other law for the time being in force, any police officer may take charge without warrant of a child who has escaped from a children's home or special school or from the care of a person under whom he was placed under this Act and shall send the child back to the children's home or special school or that person, as the case may be, and no proceeding shall be instituted in respect of

Provision in respect of escaped children.

the child by reason of such escape, but the children's home, special school or the person may, after giving the information to the competent authority which passed the order in respect of the child, take such steps against the child as may be, deemed necessary.

Child not to be hand cuffed or fettered.

' 54. No child either neglected or delinquent shall be hand cuffed or fettered. '

Contribution by parents.

55. (1) The competent authority which makes an order for sending a neglected child or a delinquent child to a children's home or special school or placing the child under the care of a fit person may make an order requiring the parent or other person liable to maintain the child to contribute to his maintenance, if able to do so, in the prescribed manner.

(2) The competent authority before making any order under sub-section (1) shall inquire into the circumstances of the parent or other person liable' to maintain the child and shall record evidence, if any, in the presence of the parent or such other person, as the case may be.

(3) The person liable to maintain a child, shall for the purposes of sub-section (1), include, in the case of illegitimacy, his putative father:

Provided that where the child is illegitimate and an order for his maintenance has been made under section 488 of the Code of Criminal Procedure, 1898 the competent authority. shall not ordinarily make an order for contribution against the putative father, but may order the whole or any part of the sums accruing due under the said order for maintenance to be paid to such person as may be named by the competent authority and such sum shall be paid by him towards the maintenance of the child.

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1898

(4) Any order made under this section may be enforced in the same manner as an order under section 488 of the Code of Criminal Procedure, 1898.

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56. Any person in whose custody a child is placed in pursuance of this Act shall, while the order is in force have the like control over the child as he would have if he were his parent, and shall be responsible for his maintenance and the child shall continue in his custody for the period stated by the competent authority notwithstanding that he is claimed by his parent or any other person:

Control of custodian over child.

Provided that no child while in such custody shall be married except with the permission of the competent authority.

57. In any area in which this Act is brought into force; the Government may direct that a delinquent child who is undergoing any sentence of imprisonment on the commencement of this Act shall, in lieu of undergoing such sentence, be sent to a special school or be kept in safe custody in such place and manner as the Government thinks fit, for the remainder of the period of the sentence, and the provisions of this Act shall apply to the child as if he had been ordered by a children's court to be sent to such special school or, as the case may be, ordered to be detained under sub-section (1) of section 24.

Delinquent child undergoing sentence at the commencement of this Act.

58, (1) The Government may appoint as many probation officers, officers for special school observation, homes or aftercare organizations and such other officers as it may deem necessary for carrying out the purposes of this Act.

Appointment of officers.

(2) It shall be the duty of the probation officer

(a) to inquire, in accordance with the direction of a competent authority, into the antecedents and family history of any neglected child or of any child accused of an offence, with a view to assist the authority in making the inquiry;

(b) to visit neglected and such delinquent children at intervals as the think fit; as the probation officer may

- (c) to report to the competent authority as to the behaviour of any neglected or delinquent child;
- (d) to advise and assist neglected or delinquent children and, if necessary, endeavor to find them suitable employment;
- (e) where a neglected or delinquent child 'is- placed under the care of any person on certain conditions, to see whether such conditions -are being complied with; and
- (f) to perform such other duties as may be prescribed.

- (3) Any officer empowered in this behalf by the Government may enter any children's home, special school, observation home or aftercare organisation, and make a complete inspection thereof in all its departments and of all 'papers, registers 'and accounts relating thereto and shall submit the report of such inspection to the Government.

Officers appointed under the Act to be public servants.

59. Probation officers and other officers appointed in pursuance of this Act shall be deemed to be public servants within the meaning of section 21 of the -Indian Penal Code.

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Procedure in respect of bonds.

60. The provisions of Chapter XLII of the Code of Criminal Procedure, 1898, shall, as far as may be, apply to bonds taken under this Act.

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1898

Delegation of powers.

61. The Government may, by general or special order, direct, that any power exercisable by them under this Act shall in such circumstances and under such conditions, if any, as may be specified in the order, be exercisable also by an officer subordinate to the Government.

Protection of action taken in good faith.

62. No suit or other legal proceeding shall lie against the Government or any probation officer or other officer appointed under this Act in respect of anything which is .in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder.

- 5 of 1898.
63. 'Section 29B and section 399 of the Code of Criminal procedure, 1898, shall cease to apply to, any area in which this Act has been brought into force.
64. (1) The State Government may make rules for giving effect to the provisions of this Act.
- (2) In particular and without prejudice to the generality of the foregoing power such rules may provide for all or any of the following matters, namely:
- (a) facilities for education etc. that may be provided in children's homes under sub-section (3) of section 8;
 - (b) the circumstances and the manner in which certificates of a children's home, special schools, observation homes may be granted or withdrawn;
 - (c) manner in which aftercare organizations may be recognised;
 - (d) measures to be taken by aftercare organisations to enable the child to live an honest and useful life;
 - (e) the manner in which a Police Officer may deal with a delinquent child not released on bail until its production in a children's court;
 - (f) restrictions and limitations under which a Police Officer may let off a delinquent child after a warning;
 - (g) the places at which the children's court. may hold its sittings;
 - (h) the procedure that may be followed by the competent authority while holding inquiries under this Act;
 - (i) the manner in which the parents of a child are to contribute towards the maintenance of the child;
 - (j) such other duties that may be performed by the probation officers;
 - (k) any other matter which has to be, or may be, prescribed.
- Certain provisions of Central Act 5 of 1898 not to apply.*
- Power to make rules.*

THE SIKKIM MOTOR VEHICLES TAXATION ACT, 1982.**ARRANGEMENT OF SECTIONS.**

1. Short title, extent and Commencement.
2. Definitions.
3. Appointment of Taxation Officer.
4. Imposition of tax.
5. Report of registered- motor vehicles brought into Sikkim from outside.
6. Manner of claiming refund or remission.
7. Declaration by person keeping or using a motor vehicle.
8. Payment of additional tax.
9. Receipt for tax.
10. Token to be exhibited on motor vehicles.
11. Appeal.
12. Power to check and seize motor vehicles.
13. Penalties for certain offences.
14. Suspension of the certificate of registration.
15. Other penalties.
16. Trial of offences.
17. Power of State Government to exempt certain motor vehicles from the tax.
18. Power to make rules.
19. Repeal and Saving.

THE SIKKIM MOTOR VEHICLES TAXATION ACT, 1982.

ACT NO.5 OF 1982.

**AN
ACT**

to provide for the imposition and levy of a tax on motor vehicles in Sikkim.

[7th April, 1982]

Be it enacted by the Legislature of Sikkim in the Thirty-third Year of the Republic of India as follows:

1. (1) This Act may be called the Sikkim Motor Vehicles Taxation Act, 1982. *Short title, extent and commencement.*
- (2) It extends to the whole of Sikkim.
- (3) It shall come into force on such date as the State Government may, by notification, appoint.
2. In this Act, unless the context otherwise requires' *Definitions .*
 - (a) "motor vehicle" includes a vehicle, carriage or other means of conveyance propelled or which may be propelled, on a road by electrical or mechanical power either entirely or partially;
 - (b) "notification" means a notification published in the Official Gazette;
 - (c) "prescribed" means prescribed by rules made under this Act;
 - (d) "tax" means the tax imposed under this Act;
 - (e) "Taxation Officer" means an Officer authorised by the State Government to perform the duties and exercise the powers conferred upon such officer by this Act;
 - (f) "tractor" means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion), and includes a motor vehicle used for towing disabled vehicles but does not include a road roller;

(g) Words and expressions used herein and not defined but defined in the Sikkim Motor Vehicles Act, 1957 shall have the meanings respectively assigned to them in that Act.

Appointment of Taxation Officer.

3. The State Government may, by notification, appoint such persons' as it may think fit to be Taxation Officers and may in such notification specify the areas within which such officers shall exercise the powers conferred and perform the duties imposed on them by or under this 'Act.

Imposition of tax.

4. (1). A tax at the rate specified in the Schedule shall be imposed and levied on all motor vehicles used or kept for use in Sikkim.

Explanation.-For the purposes of this Act,

(i) a person who keeps a motor vehicle of which the certificate of registration is current shall be deemed to keep such vehicle for use; and

(ii) "use" included letting on hire otherwise than on a hire purchase.

(2) The tax imposed under sub-section (1) shall be payable for the year in advance by the person by whom a motor vehicle is used or kept for use:

Provided that Taxation Officer may allow payment of the tax for one or more quarterly periods; at the rate, for each such quarterly periods, of one quarter of the tax payable for the year:

Provided further that in the case of a motor vehicle registered outside Sikkim whether temporarily under section 25 of the Motor Vehicles Act, 1939 or otherwise, which is used or kept for use in Sikkim temporarily, the tax shall be payable for every week or part thereof, for which the motor vehicle is so used or kept for use in Sikkim, at the rate of one-fifty second part of the tax payable for the year, per week.

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- (3) If the Taxation Officer is satisfied that the certificate of registration and the token delivered under section 10 on payment of the tax for the year in respect of a motor vehicle has been surrendered or that a motor vehicle has not been used or kept for use for any complete calendar month in the year, he shall, on application made under section 6 refund or remit in respect of the said vehicle one-twelfth of the tax payable for the year for every complete calendar month for which the said vehicle has not been used or kept for use:

Provided that where a motor vehicle, other than a motor vehicle for the transport of goods or plying for hire for the carriage of passengers has not been used for any period in Sikkim by reason of its being removed and kept outside Sikkim during such period, the Taxation Officer shall not refund or remit in respect of the said vehicle any portion of the tax for the quarterly period during which the said vehicle is so removed.

- (4) If any person fails to deliver a declaration or additional declaration in accordance with the provisions of section 7. the Taxation Officer may after making such inquiry as he thinks fit and after giving an opportunity to such person to be heard, require him to pay any tax or additional tax which the Taxation Officer may find such person liable to pay under the provisions of this Act and may also impose on him a penalty which may extend to half the amount of the tax to which he is found liable.

5. Every person who brings into Sikkim any motor vehicle registered outside Sikkim whether temporarily under section 25 of the Motor Vehicles Act, 1939 or otherwise, and uses or keeps for use such vehicle in Sikkim shall submit to the Taxation Officer a report thereof within such time, in such form and containing such particulars as may be specified by the State Government by a notification.

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1939.

*Report of registered
motor vehicles bro-
ught into Sikkim
from outside:.*

*Manner of claiming
refund or remission.*

6. A person claiming refund or remission of tax under subsection (3) of section 4 shall, within such time as may be specified by the State Government by a notification, make to the Taxation Officer an application in this behalf in writing which shall be accompanied by such documents as may be specified in such notification

*Declaration by person
keeping or using
a motor vehicle.*

7. (1) Every person by whom a motor vehicle is used or kept for use shall fill up and sign a declaration in such form stating truly therein such particulars and shall deliver the declaration, as so filled up and signed, to the Taxation Officer within such time as may be specified by the State Government by a notification and shall pay to the Taxation Officer the tax which he appears by such declaration to be liable to pay in respect of which vehicle.
- (2) Where a motor vehicle is altered so as to render the person by whom such vehicle is used or kept for use liable to the payment of an additional tax under section 8, such person shall fill up and sign an additional declaration in such form showing the nature of the alteration made and containing such particulars and shall deliver such additional declaration, as so filled up and signed, to the Taxation Officer within such time as may be specified by the State Government by a notification and shall pay to the Taxation Officer the additional tax payable under section 8 which he appears by such additional declaration to be liable to pay in respect of such vehicle.
- (3) Every person who owns any motor vehicle which is let for hire otherwise than on a hire-purchase agreement shall, for the purposes of this Act, be deemed to be the person who keeps such vehicle for use.

*Payment of
additional tax.*

8. Where any motor vehicle in respect of which the tax has been paid is altered in such a manner as to cause the vehicle to become a vehicle in respect of which a higher rate of tax is payable, the

person by whom such vehicle is used or kept for use shall be liable to pay an additional tax of a sum which is equal to the difference between the tax already paid in respect of such vehicle and the tax which is payable in respect of such vehicle after its being so altered, and the registering authority shall not grant a fresh certificate of registration or renew any certificate of registration in respect of such vehicle as so altered until such amount of tax has been paid.

9. The Taxation Officer shall grant and deliver to every person, who pays to him the tax or additional tax in respect of any motor vehicle a receipt in which shall be specified the particulars of the tax paid and such other particulars as may be prescribed. *Receipt for tax.*
10. (1) The Taxation Officer shall, at the time of granting a receipt for the tax, deliver to the person paying the tax a token in such form and containing such particulars as may be prescribed. *Token to be exhibited on motor vehicles.*
- (2) Every person to whom such token is delivered shall cause it to be exhibited in the prescribed manner on the vehicle in respect of which the tax is paid.
11. (1) Any person aggrieved by any order made by a Taxation Officer under this Act may prefer appeal against that order to such appellate authority appointed by the State Government in this behalf in such manner, within such time and on payment of such fees as may be prescribed: *Appeal.*

Provided that an appeal may be admitted after the expiry of the period prescribed therefor if the appellant satisfies the appellate authority that he had sufficient cause for not preferring the appeal within that period.

- (2) Any such appeal shall be heard and decided by the appellate authority in such manner as may be prescribed and the decision of the appellate authority on such appeal shall be final:

Provided that no appeal shall be decided without giving~
the appellant an opportunity of being heard.

*Power to check and
seize motor vehicles.*

12. (1) Any Police Officer in uniform or other officer of the State Government not below such rank as may be specified by the State Government by a notification, may

(a) check any motor vehicle either in any garage after the sunset or before the sun-rise or stop and check any motor vehicle plying on the road for the purpose of satisfying himself that the tax payable under this Act in respect of such vehicle has been paid; and

(b) seize and detain the vehicle if he is authorised by the State Government in this behalf and if he has reasons to believe that any motor vehicle has been or is being used or kept for use in contravention of the provisions of sections 5, 7 and 8 may take or cause to be taken such steps as he may consider necessary for the temporary safe custody of the vehicle so seized and detained unless the owner or the person in charge of the vehicle executes a bond for the production thereof before a court when so required.

(2) Any motor vehicle seized and detained under clause (b) of sub-section (1) shall be produced before the court within twenty-four hours of such seizure and the court shall thereupon pass such orders as it may think fit for the disposal of the vehicle.

(3) Where any bond is executed under clause (b) of sub-section (1) for the production of any motor vehicle before the court, the provisions of section 514 of the Code of Criminal Procedure, 1898 shall, as far as may be, apply to such bond.

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*Penalties for certain
offences.*

13. Whoever

(a) uses or keeps for use a motor vehicle without having paid the tax or additional tax in respect of such vehicle;
or

- (b) delivers a declaration or additional declaration wherein the particulars required by or under this Act are not fully and truly stated; or
- (c) obstructs any officer referred to in section 12 in the exercise of his powers under that section,

shall be punishable with fine which may extend to one and half times, and, in the event of such person having been previously convicted of an offence under this Act or any rule made thereunder, with fine which may extend to twice the amount of the tax payable for the year for the motor vehicle in respect of which the offence is committed and the amount of any tax due shall also be recovered as if it were a fine.

14. If the Taxation Officer is satisfied that in respect of any motor vehicle
- (a) a declaration or additional declaration has not been delivered in accordance with the provisions of section 7 within such time as specified in the notification as referred to in that section; or
 - (b) any tax or additional tax payable under this Act has not been paid within one month of the date on which such tax was payable; or
 - (c) any penalty imposed under sub-section (4) of section 4 has not been paid within one month of the date on which such penalty was imposed,

Suspension of the certificate of registration.

he may, notwithstanding anything contained in the Sikkim Motor Vehicles Act, 1957 or any rules made thereunder, declare the certificate of registration of such motor vehicle to be suspended and such certificate shall thereupon be deemed to be suspended until the whole amount of tax and penalty, if any, due in respect of such motor vehicle has been paid.

Other penalties.

15. Whoever contravenes any of the provisions of this Act or of any rule made thereunder shall, if no other penalty is elsewhere provided in this Act for such contravention, be punishable with fine which may extend to two hundred rupees, and, in the event of such person having been previously convicted of an offence under this Act or any rule made thereunder, with fine which may extend to three hundred rupees.

Trial of offences.

16. No Court inferior to that of a Magistrate of the first class shall try any offence punishable under this Act.

Power of State Government to exempt certain motor vehicles from the tax.

17. The State Government if it thinks fit so to do in the public interest, may, by notification, exempt either totally or partially any motor vehicle from or class of motor vehicles from any tax leviable under this Act.

Power to make rules.

18. (1) The State Government may, by notification, make rules for carrying out the purposes of this Act.
- (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:
- (a) Such other particulars as may be prescribed under section 9;
 - (b) form of token of receipt of any tax and the particulars to be stated therein under subsection (1) of section 10;
 - (c) the manner in which token shall be exhibited on motor vehicle under sub-section (2) of section 10;
 - (d) the manner in which, time within which and fees payment of which the appeal shall be made to the appellate authority under subsection (1) of section 11;

(e) the manner in which the appeal shall be heard and decided under sub-section (2) of section 11 ;

(l) any other matter which is to be or may be prescribed.

19. (1) On and from the commencement of this Act, the provisions contained in . notification No. I/STA dated the 16th August, 1973 and all other orders on the subject which are inconsistent with the provisions of this Act, shall stand repealed. *Repeal and saving.*
- (2) Notwithstanding such repeal, anything done or any action taken under the notification so repealed shall be deemed to have been done or taken under the corresponding provisions of this Act.

THE SCHEDULE

(See Section 4)

Description of Motor Vehicles and the rate of tax.

A. Vehicle for carrying passengers not plying for hire. I.	Rate of tax payable for
Vehicle other than Omnibuses	the year.
(1) Motor Cycle/Scooters kept for the personal use of the owners, not being companies registered under the law relating to registration of companies for the time being in force.	Rs. 30.00
(2) Motor Cycle/Scooters with side car for the personal use of owners, not being companies registered under the law relating to registration of companies for the time being in force.	... Rs.40.00
(3) (a) Fiat Car kept for the personal use of owners, not being companies registered under the law relating to registration of companies for the time being in force and invalid carriages.	Rs. 100.00
(b) Fiat Car owned by companies registered under the law relating to registration of companies for the time being in force for carrying employees or other passengers.	... Rs. 200.00
(4) (a) Ambassador Car kept for the personal use of owners, not being registered under the law relating to registration of companies for the time being in force and invalid carriages.	Rs. 120.00
(b) Ambassador Car owned by the companies registered under the law relating to registration of companies for the time being in force for carrying employees or other passengers.	Rs. 240.00
(5) (a) Jeep (private) kept for the personal use of owners not being registered under the law relating to registration of companies for the time being in force and invalid carriages.	Rs. 125.00
(b) Jeep (private) owned by companies registered under the law relating to registration of companies for the time being in force for carrying employees or other passengers.	Rs. 250.00'

(6) Motor Cycle/Scooters owned by Companies registered under the law relating to registration of companies for the time being in force.' for carrying employees or other passengers.

Rs. 75.00

(7) Motor Cycle/Scooters with side car owned by companies registered under the law relating to registration of companies for the time being in force for carrying employees or other passengers.

Rs. 90.00

II. Omnibuses with seating capacity for:

(a) Not more than 8.

Rs. 250.00

(b) More than 8, but not more than 20

Rs. 300/- for 9 seats plus
Rs. 30/- for every
additional seat beyond
9 & up to 20.

(c) More than 20.

Rs. 660/- for 21 seats plus
Rs. 25/- for every
additional seat beyond 21.

Provided that if an Omnibus is fitted with solid tires, there shall be a surcharge per annum of 12.5% of the amount payable under clause (a) or (b) or (c) above, as the case may be.

B. Vehicles for carrying passengers plying for hire:

Rate of tax payable for the year.

I. Stage Carriage with seating capacity for

(a) Not less than 8 but not more than 26

Rs. 350/- for 8 plus Rs. 40/-
for every additional seat
beyond 8 and
up to 26,

(b) Not less than 27 but not more than 45.

Rs. 1,100/- for 27 plus Rs.
35/- for every additional seat
beyond 27 upto 45:

Provided that if a stage carriage is fitted with solid tires there shall be a surcharge per annum of Rs. 12.5% of the amount payable under clause (a) or (b) above, as the case may be, for such stage carriage.

II. Vehicles other than stage carriage with seating capacity for

Rates of tax payable for the year.

(a) Not more than 4
3 Wheelers

Rs. 100.00

4 Wheelers

. Rs. 300/- for 5 plus
Rs. 30/- for every addi-
tional seat beyond 5.

(c) In case of Jeep (Tourist Taxi) plying in Sikkim, there shall be payable an additional charge per annum of 100% of the amount payable under clause (b) above:

Provided that if a vehicle for carrying passengers plying for hire which is not a stage carriage is fitted with solid tyres there shall be a surcharge per annum of 12.5% of the amount payable under clause (a) or (b) above as the case may be, for such vehicle.

c. Vehicle for transport of goods including private carriages :

Rate of tax payable for the year.

(a) Upto 500 Kilograms registered laden weight,

Rs. 175/

(b) Exceeding 500 Kilograms but not exceeding
2000 Kilograms registered laden weight.

Rs. 175/- plus Rs. 20/for every
additional 250 Kilograms or
part thereof above 500
Kilograms.

(c) Exceeding 2000 Kilograms but not exceeding
4000 Kilograms registered laden weight.

Rs. 295/- plus Rs. 25/
... for every additional 250
Kilograms or part there-
of above 2000 Kilograms.

(d) Exceeding 4000 Kilograms but not exceeding 8000
Kilograms registered laden weight.

Rs. 495/- plus Rs. 15/
... for every additional 250
Kilograms or part thereof
above 4000 Kilograms.

(e) Exceeding 8000 Kilograms registered laden
weight.

Rs. 655/- plus Rs. 20/for
every additional 250
Kilograms or part thereof
above 8000 Kilograms.

Provided that where a vehicle for transport of goods is fitted with solid tyres there shall be a surcharge per annum of 12.5% of the amount payable under clause (a) or (b) or (c) or (d) or (e) above as the case may be, for such vehicles.

D. Tractors not used solely for agricultural purposes.

	Rate of tax payable for the year.
(a) Upto 500 Kilograms unladen weight.	... Rs. 100/
(b) Exceeding 500 Kilograms but not exceeding 2,000 Kilograms unladen weight.	Rs. 100/- plus Rs. 25/ ... for every additional 250 Kilograms or part thereof above 500 Kilograms.
(c) Exceeding 2000 Kilograms but not exceeding 4,000 Kilograms unladen weight.	Rs. 250/- plus Rs. 30/- for ... every additional 250 Kilograms or part thereof, above 2,000 Kilograms.
(d) Exceeding 4000 Kilograms but not exceeding 8000 Kilograms unladen weight.	Rs. 490/- plus Rs. 50/ ... for every additional 250 Kilograms or part thereof, above 4000 Kilograms.
(e) Exceeding 8000 Kilograms unladen weight....	Rs. 1290/- plus 75/- for every additional 250 Kilograms or part thereof above 8000 Kilograms.

Provided that where a tractor is fitted with solid tyres there shall be a surcharge per annum of 12.5% of the amount payable under clause (a) or (b) or (c) or (d) or (e) above, as the case may be, for such tractor.

E. Trailers,.

	Rate of tax payable for the year.
(a) Upto 500 Kilograms registered laden weight.	Rs. 100/
(b) Exceeding 500 Kilograms but not exceeding 2000 Kilograms registered laden weight.	Rs. 100/- plus Rs. 20/- for every additional 250 Kilograms or part thereof, above 500 Kilograms.
(c) Exceeding 2000 Kilograms but not exceeding 4000 Kilograms registered laden weight.	Rs. 160/- plus Rs. 15/- for every additional 250 Kilograms or part thereof, above 2000 Kilograms.
(d) Exceeding 4000 Kilograms but not exceeding 8000 Kilograms registered laden weight.	Rs. 280/- plus Rs. 20/- for every additional 250 Kilograms or part thereof, above 4000 Kilograms.

- | | |
|--|---|
| (e) Exceeding 8000 Kilograms laden weight. | Rs. 660/- plus Rs. 25/- for every additional 250 Kilograms or part thereof, above 8000 Kilograms: |
|--|---|

Provided that where a tractor is fitted with solid tyres there shall be a surcharge per annum of 12.5% of the amount payable under clause (a) or (b) or (c) or (d) or (e) above, as the case may be, for such tractor.