



The Orissa Gazette

PUBLISHED BY AUTHORITY.

No. 1. CUTTACK, FRIDAY, APRIL 21, 1939.

Separate paging is given to this Part, in order that it may be filed as a separate compilation.

PART V.

Acts of the Indian Legislature assented to by the Governor General.

GOVERNMENT OF INDIA. LEGISLATIVE DEPARTMENT.

The following Act of the Indian Legislature received the assent of the Governor General on the 1st December, 1938, and is hereby promulgated for general information :—

ACT NO. XXV OF 1938.

An Act to amend the law relating to the prevention of cruelty to animals.

WHEREAS it is expedient further to amend the Prevention of Cruelty to Animals Act, 1890, for the purposes hereinafter appearing; It is hereby enacted as follows :—

1. This Act may be called the Prevention of Cruelty to Animals (Amendment) Act, 1938.

Short title.

2. In section 2 of the Prevention of Cruelty to Animals Act, 1890 (hereinafter referred to as the said Act), at the end of clause (1) the

word "and" shall be omitted, and after clause (2) the following clause shall be added, namely:—

"(3) *phooka* or *doom dev* includes any process of introducing air or any substance into the female organ of a milch animal with the object of drawing off from the animal any secretion of milk."

3. For section 3 of the said Act the following section shall be substituted, namely :—

Substitution of new section for section 3, Act XI of 1890.

Penalty for cruelty to animals, and for sale of animals killed with unnecessary cruelty.

"3. If any person—

- (a) overdrives, beats, or otherwise treats any animal so as to subject it to unnecessary pain or suffering, or
- (b) binds, keeps, carries or consigns for carriage any animal in such manner or position as to subject it to unnecessary pain or suffering, or

XI of 1890.

XI of 1890.

Amendment of section 2, Act XI of 1890.

(c) offers for sale or without reasonable cause has in his possession any live animal which is suffering pain by reason of mutilation, starvation, thirst, over-crowding or other ill-treatment, or

(d) offers for sale any dead animal or part of a dead animal which he has reason to believe has been killed in an unnecessarily cruel manner, or

(e) without reasonable cause abandons any animal in circumstances which render it likely that it will suffer pain by reason of starvation or thirst,

he shall be punished, in the case of a first offence, with fine which may extend to fifty rupees, or with imprisonment for a term which may extend to one month and, in the case of a second or subsequent offence committed within three years of the previous offence, with fine which may extend to one hundred rupees, or with imprisonment for a term which may extend to three months, or with both,"

4. After section 3 of the said Act the following section shall be inserted, namely:—

Insertion of new section 3A in Act XI of 1890.

"3A. (1) If any person overloads any animal, he shall be punished with fine which may extend to fifty rupees, or with imprisonment for a term which may extend to one month.

(2) If the owner of any animal, or any person who, either as a trader, carrier or contractor or by virtue of his employment by a trader, carrier or contractor, is in possession of, or in control of the loading of any animal, permits the overloading of such animal, he shall be punished with fine which may extend to one hundred rupees."

5. For section 4 of the said Act the following section shall be substituted, namely:—

Substitution of new section for section 4, Act XI of 1890.

"4. (1) If any person performs upon any cow or other milch animal the operation called *phooka* or *doom dev*, or permits such operation to be performed upon any such animal in his possession or under his control, he shall be punished with fine

Penalty for practising *phooka*.

which may extend to five hundred rupees, or with imprisonment for a term which may extend to two years, or with both, and the animal on which the operation was performed shall be forfeited to Government:

Provided that in the case of a second or subsequent conviction of a person under this section he shall be punished with fine which may extend to five hundred rupees and with imprisonment for a term which may extend to two years.

(2) A Court may order payment out of any fine imposed under this section of an amount not exceeding one-tenth of the fine to any person other than a police officer or officer of a society or institution concerned with the prevention of cruelty to animals who has given information leading to the conviction."

6. In section 6 of the said Act, the brackets and figure Amendment of section 6, "1" at the beginning of sub-section (1) shall be omitted, and sub-sections (2) to (6) shall be omitted.

7. After section 6 of the said Act the following sections shall be inserted, namely:—

Insertion of new sections 6A, 6B and 6C in Act XI of 1890.

"6A. For the purposes of sections 3A and 6, an owner or other person in possession or control of an animal shall be deemed to have permitted an offence if he has failed to exercise reasonable care and supervision with a view to the prevention of such offence, and, for the purposes of section 4 if he fails to prove that he has exercised such care and supervision.

Interpretation.

6B. (1) The Provincial Government may, by general or special order, appoint infirmaries for the treatment and care of animals in respect of which offences against this Act have been committed, and may authorise the detention therein of any animal pending its production before a Magistrate.

Treatment and care of animals.

(2) The Magistrate before whom a prosecution for an offence against this Act has been instituted may direct that the animal concerned shall be treated and cared for

in an infirmary, until it is fit to perform its usual work or is otherwise fit for discharge, or that it shall be sent to a *pinjrapole*, or, if the Veterinary Officer in charge of the area in which the animal is found or such other Veterinary Officer as may be authorised in this behalf by rules made under section 15 certifies that it is incurable or cannot be removed without cruelty, that it shall be destroyed.

- (3) An animal sent for care and treatment to an infirmary shall not, unless the Magistrate directs that it shall be sent to a *pinjrapole* or that it shall be destroyed, be released from such place except upon a certificate of its fitness for discharge issued by the Veterinary Officer in charge of the area in which the infirmary is situated or such other Veterinary Officer as may be authorised in this behalf by rules made under section 15.
- (4) The cost of transporting an animal to an infirmary or *pinjrapole*, and of its maintenance and treatment in an infirmary, shall be payable by the owner of the animal in accordance with a scale of rates to be prescribed by the District Magistrate or, in Presidency-towns, by the Commissioner of Police :

Provided that when the Magistrate so orders, on account of the poverty of the owner of the animal, no charge shall be payable for the treatment of the animal.

- (5) If the owner refuses or neglects to pay such cost or to remove the animal within such time as a Magistrate may prescribe, the Magistrate may direct that the animal be sold and that the proceeds of the sale be applied to the payment of such cost.
- (6) The surplus, if any, of the proceeds of such sale shall, on application made by the owner within two months from the date of the sale, be paid to him.

Penalty for baiting
or inciting animals
to fight.

6C. If any person —

- (a) incites any animal to fight, or
- (b) baits any animal, or
- (c) aids or abets any such incitement or baiting,

he shall be punished with fine which may extend to fifty rupees.

Exception.—It shall not be an offence under this section to incite animals to fight if such fighting is not

likely to cause injury or suffering to such animals and all reasonable precautions are taken to prevent injury or suffering from being so caused."

Amendment of section 7,
Act XI of 1930.

8. In section 7 of the said Act —

- (a) after the word "owner", in both places where it occurs, the words "or is in charge" shall be inserted;

- (b) after the word "rupees" the following words shall be added namely:—

"where he is the owner of the animal, or to fifty rupees where he is in charge of but not the owner of the animal".

9. Section 7A of the said Act shall be renumbered as sub-

Amendment of section 7A, Act XI of 1930. section (1), and after the said sub-section the following sub-section shall be added, namely:—

- "(2) If a police officer, not below the rank of sub-inspector, or any person specially authorised by the Provincial Government in this behalf has reason to believe that *phooka* or *doom dev* has just been or is being performed on any animal within the limits of his jurisdiction, he may enter any place in which he has reason to believe such animal to be, and may seize the animal and produce it for examination by the Veterinary Officer in charge of the area in which the animal is seized."

Amendment of section 8,
Act XI of 1930.

10. In sub-section (1) of section 8 of the said Act,—

- (a) for the word "class" the words "or second class, Presidency Magistrate," shall be substituted;
- (b) for the words and figures "against section 4, section 5 or section 6" the words "against this Act" shall be substituted; and
- (c) for the words "above the rank of a constable" the words "not below the rank of sub-inspector" shall be substituted.

11. Section 10 of the said Act shall be renumbered as sub-

Amendment of section 10, Act XI of 1930.

section (1), and after the said sub-section the following sub-section shall be added, namely:—

- "(2) Any police officer above the rank of a constable who finds any animal so diseased, or so severely

injured, or in such a physical condition that it cannot, in his opinion, be removed without cruelty, may, if the owner is absent or refuse to consent to the destruction of the animal, forthwith summon the Veterinary Officer in charge of the area in which the animal is found and, if the Veterinary Officer certifies that the animal is mortally injured, or so severely injured or in such a physical condition that its destruction is desirable, the police officer may, after obtaining orders from a Magistrate, destroy the animal or cause it to be destroyed."

12. In section 12 of the said Act, for the figures and word "9, 10 and 11" the following shall be substituted, namely:—

"4 and 13, sections 9 and 10, and sections 6A, 7A, 8 and 15 so far as they relate to offences under section 4".

13. After section 12 of the said Act the following section shall be added namely:—

"13. Notwithstanding anything contained in the Code of Criminal Procedure, 1898, an offence punishable under section 4 shall be a cognizable offence within the meaning of that Code.

14. Any police officer above the rank of a constable or any person authorised by the Provincial Government in this behalf, who has reason to believe that an offence against this Act has been or is being committed in respect of any animal, may, if in his opinion the circumstances so require, seize the animal and produce the same for examination by the nearest Magistrate or by such Veterinary Officer as may be designated in this behalf by rules made under section 15; and such police officer or authorised person may, when seizing the animal, require the person in charge thereof to accompany it to the place of examination.

15. (1) The Provincial Government may, by notification in the official Gazette and subject to the condition of previous publication, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power,

the Provincial Government may make rules—

- (a) prescribing the maximum weight of loads to be carried or drawn by any animal;
- (b) prescribing conditions to prevent the overcrowding of animals;
- (c) prescribing the period during which and the hours between which, buffaloes shall not be used for draught purposes;
- (d) prescribing the purposes to which fines realized under this Act may be applied, including such purposes as the maintenance of infirmaries, pinjrapoles, and veterinary hospitals;
- (e) prohibiting the use of any bit or harness involving cruelty;
- (f) requiring persons carrying on the business of a farrier to be licensed and registered;
- (g) requiring persons owing, or in charge of, premises in which animals are kept or milked to register such premises, to comply with prescribed conditions as to the boundary walls or surroundings of such premises, to permit their inspection for the purpose of ascertaining whether any offence against section 4 is being, or has been, committed therein, and to expose in such premises copies of section 4 of this Act in a language or languages commonly understood in the locality; and
- (h) prescribing the manner in which cattle may be impounded in any place appointed for the purpose, so as to secure the provisions of adequate space, food and water.

(3) If any person contravenes, or abets the contravention of, any rule made under this section, he shall be punished with fine which may extend to fifty rupees.

16. Every person authorised by the Provincial Government under section 14 to be public servants, shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

17. No suit, prosecution or other legal proceeding shall lie against any person who is, or who is deemed to be, a public servant within the meaning of section 21 of the Indian Penal Code, in respect of anything in good faith done or intended to be done under this Act.

G. H. SPENCE,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Act of the Indian Legislature received the assent of the Governor-General on the 1st December 1938, and is hereby promulgated for general information:—

ACT NO. XXVI OF 1938.

An Act to regulate the admission of children to certain industrial employment

WHEREAS it is expedient to regulate the admission of children to certain industrial employments; It is hereby enacted as follows:—

Short title and extent. 1. (1) This Act may be called the Employment of Children Act, 1938.

(2) It extends to the whole of British India.

2. In this Act "competent authority", in respect of a major port, as defined in the Indian Ports Act, 1908, and in respect of a federal railway, as defined in the Indian Railways Act, 1890, means the Central Government, and in any other case means the Provincial Government.

3. (1) No child who has not completed his fifteenth year shall be employed or permitted to work in any occupation connected with the transport of passenger, goods or mails by railway.

(2) No child who has not completed his fifteenth year shall be employed or permitted to work in any occupation involving the handling of goods within the limits of any port to which for the time being any of the provisions of the Indian Ports Act, 1908, are applicable.

4. Whoever employs any child or permits any child to work in contravention of the provisions of section 3 shall be punishable with fine which may extend to five hundred rupees.

5. (1) No prosecution under this Act shall be instituted except by or with the previous sanction of an inspector appointed under section 6.

(2) No prosecution under this Act shall be instituted in any case where at the time of employment a certificate has been obtained from an authority empowered under this Act to grant such certificate that the child has completed his fifteenth year.

(3) No court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act.

6. The competent authority may appoint persons to be inspectors for the purpose of securing compliance with the provisions of this Act, and any inspector so appointed shall be deemed to be a public servant within the meaning of the Indian Penal Code.

XLV of 1960.

7. (1) The competent authority may by notification in the official Gazette and subject to the condition of previous publication make rules for carrying into effect the provision of this Act.

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

(a) regulate the procedure of inspectors appointed under section 6, and

(b) make provision for the grant of certificates of age in respect of young persons in employment or seeking employment, the authorities which may issue such certificates, the form of such certificates, the charges which may be made therefor, and the manner in which such certificates may be issued:

Provided that no charge shall be made for the issue of any such certificate if the application is accompanied by evidence of age deemed satisfactory by the authority concerned.

8. Sub section (1A) of section 6 of the Indian Ports Act, XV of 1908, and the words, brackets, figure and letter "and sub-section (1A)" in sub-section (2) of the said section shall be omitted.

G. H. SPENCE,

Secy. to the Govt. of India.

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

The following Act of the Indian Legislature received the assent of the Governor General on the 28th January, 1939, and is hereby promulgated for general information:—

ACT No. I OF 1939.

An Act further to amend the Indian Tariff Act, 1934.

XXXII of 1934. WHEREAS it is expedient further to amend the Indian Tariff Act, 1934, for the purpose of assisting the sale in India of wheat produced therein by imposing a temporary duty

of customs on the importation of wheat; It is hereby enacted as follows:—

Short title.

1. This Act may be called the Indian Tariff (Amendment) Act, 1939.

Amendment of First Schedule, Act XXXII of 1934.

2. In the First Schedule to the Indian Tariff Act, XXXII of 1934,—

(a) after Item No. 10, the following item shall be inserted, namely:—

"10(1) | WHEAT | protective | Re. 1-8 | ... | ... | Varch | 31st, 1940";

(b) after Item No. 11, the following item shall be inserted, namely:—

"11(1) | WHEAT | Protective | Re. 1-8 | ... | ... | March | 31st, 1940".

G. H. SPENCE,

Secy. to the Govt. of India.

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

The following Act of the Indian Legislature received the assent of the Governor General on the 2nd February, 1939, and is hereby promulgated for general information:—

ACT No. III of 1939.

An Act further to amend the Destructive Insects and Pests Act, 1914.

WHEREAS it is expedient further to amend the Destructive Insects and Pests Act, 1914,
II of 1914.

for the purpose hereinafter appearing; It is hereby enacted as follows:—

Short title.

1. This Act may be called the Destructive Insects and Pests (Amendment) Act, 1939.

Amendment of section 2, Act II of 1914.

2. In section 2 of the Destructive Insects and Pests Act, 1914,—
II of 1914.

(a) at the end of clause (b) the word "and" shall be omitted;

(b) at the end of clause (c) the word "and" shall be added; and

(c) after clause (c) the following clause shall be added, namely:—

"(d) a reference to British India shall be construed as a reference to British India and Eerar."

G. H. SPENCE,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

The following Act of the Indian Legislature received the assent of the Governor General on the 16th February, 1939, and is hereby promulgated for general information:—

ACT No. IV OF 1939.

An Act to consolidate and amend the law relating to motor vehicles.

WHEREAS it is expedient to consolidate and amend the law relating to motor vehicles in British India; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title, extent and commencement. 1. (1) This Act may be called the Motor Vehicles Act, 1939.

(2) It extends to the whole of British India.

(3) It shall come into force on the 1st day of July, 1939; but Chapter VIII shall not have effect until the 1st day of July, 1943.

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

(1) "axle weight" means in relation to an axle of a vehicle the total weight transmitted by the several wheels attached to that axle to the surface whereon the vehicle rests;

(2) "certificate of registration" means the certificate issued by a competent authority to the effect that a motor vehicle has been duly registered in accordance with the provisions of Chapter III;

(3) "contract carriage" means a motor vehicle which carries a passenger or passengers for hire or reward under a contract expressed or implied for the use of the vehicle as a whole at or for a fixed or agreed rate or sum and from one point to another without stopping to pick up or set down along the line of route passengers not included in the contract; and includes a motor cab notwithstanding that the passengers may pay separate fares;

Explanation.—"Contract carriage" does not include a motor vehicle, possession of which has been

temporarily transferred in accordance with an express agreement of hire for use as a private vehicle and which is used in accordance with the terms of such agreement;

(4) "delivery van" means any goods vehicle the registered laden weight of which does not exceed 5,000 pounds avoirdupois;

(5) "driver" includes, where a separate person acts as steersman of a motor vehicle, that person as well as any other person engaged in the driving of the vehicle;

(6) "fares" includes sums payable for a season ticket or in respect of the hire of a contract carriage;

(7) "goods" includes live-stock, and any thing (other than equipment ordinarily used with the vehicle) carried by a vehicle except living persons, but does not include luggage or personal effects carried in a motor car or in a trailer attached to a motor car or the personal luggage of passengers travelling in the vehicle;

(8) "goods vehicle" means any motor vehicle constructed or adapted for use for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods solely or in addition to passengers;

(9) "heavy transport vehicle" means a transport vehicle the registered axle weight of which exceeds 10,600 pounds avoirdupois, or the registered laden weight of which exceeds 14,500 pounds avoirdupois;

(10) "invalid carriage" means a motor vehicle the unladen weight of which does not exceed five hundredweights, specially designed and constructed, and not merely adapted, for the use of a person suffering from some physical defect or disability, and used solely by or for such a person;

(11) "licence" means the document issued by a competent authority authorising the person specified therein to drive a motor vehicle or a motor vehicle of any specified class or description;

(12) "licensing authority" means an authority empowered to grant licences, appointed by the Provincial Government by rule made under section 21;

- (13) "light transport vehicle" means any public service vehicle other than a motor cab, or any goods vehicle other than a heavy transport vehicle or a delivery van;
- (14) "locomotive" means a motor vehicle which is itself not constructed to carry any load (other than equipment used for the purpose of propulsion), the unladen weight of which exceeds 16,000 pounds avoirdupois; but does not include a road-roller;
- (15) "motor cab" means any motor vehicle constructed, adapted or used to carry not more than six passengers excluding the driver, for hire or reward;
- (16) "motor car" means any motor vehicle other than a transport vehicle, locomotive, road-roller, tractor, motor cycle or invalid carriage;
- (17) "motor cycle" means a motor vehicle, other than an invalid carriage, with less than four wheels, the unladen weight of which, inclusive of any side-car attached to the vehicle, does not exceed 900 pounds avoirdupois;
- (18) "motor vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or used solely upon the premises of the owner;
- (19) "owner" means, where the person in possession of a motor vehicle is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire purchase agreement, the person in possession of the vehicle under that agreement;
- (20) "permit" means the document issued by a Provincial or Regional Transport Authority authorising the use of a transport vehicle as a contract carriage, or stage carriage, or authorising the owner as a private carrier or public carrier to use such vehicle;
- (21) "prescribed" means prescribed by rules made under this Act;
- (22) "private carrier" means an owner of a transport vehicle other than a public carrier who uses that vehicle solely for the carriage of goods which are his property or the carriage of which is necessary for the purposes of his business not being a business of providing transport, or who uses the vehicle for any of the purposes specified in sub-section (2) of section 42;
- (23) "public carrier" means an owner of a transport vehicle who transports or undertakes to transport goods, or any class of goods, for another person at any time and in any public place for hire or reward, whether in pursuance of the terms of a contract or agreement or otherwise, and includes any person, body, association or company engaged in the business or carrying the goods of persons associated with that person, body, association or company for the purpose of having their goods transported;
- (24) "public place" means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage;
- (25) "public service vehicle" means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a motor cab, contract carriage, and stage carriage;
- (26) "registered axle weight" means in respect of any vehicle the axle weight certified and registered by the registering authority as permissible for that vehicle;
- (27) "registered laden weight" means in respect of any vehicle the total weight of the vehicle and load certified and registered by the registering authority as permissible for that vehicle;
- (28) "registering authority" means an authority empowered to register motor vehicles under Chapter III;
- (29) "stage carriage" means a motor vehicle carrying or adapted to carry more than six persons excluding the driver which carries passengers for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey;

- (30) "tractor" means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion) the unladen weight of which does not exceed 16,000 pounds avoirdupois; but excludes a road-roller;
- (31) "traffic signs" includes all signals, warning sign posts, direction posts, or other devices for the information, guidance or direction of drivers of motor vehicles;
- (32) "trailer" means any vehicle other than a side-car drawn or intended to be drawn by a motor vehicle;
- (33) "transport vehicle" means a public service vehicle, a goods vehicle, a locomotive or a tractor other than a locomotive or tractor used solely for agricultural purposes;
- (34) "unladen weight" means the weight of a vehicle or trailer including all equipment ordinarily used with the vehicle or trailer when working, but excluding the weight of a driver or attendant; and where alternative parts or bodies are used the unladen weight of the vehicle means the weight of the vehicle with the heaviest such alternative part or body;
- (35) "weight" means the total weight transmitted for the time being by the wheels of a vehicle to the surface on which the vehicle rests.

CHAPTER II.

LICENSING OF DRIVERS OF MOTOR VEHICLES.

3. (1) No person shall drive a motor vehicle in any public place unless he holds an effective licence issued to himself authorising him to drive the vehicle; and no person shall so drive a motor vehicle as a paid employee or shall so drive a public service vehicle unless his licence specifically entitles him so to do.

(2) A Provincial Government may prescribe the conditions subject to which sub-section (1) shall not apply to a person receiving instruction in driving a motor vehicle.

(3) Nothing contained in sub-section (1) shall for a period of twelve months after the commencement of this Act invalidate a licence to drive a motor vehicle issued by a competent authority under the provisions of the Indian Motor Vehicles Act,

1914 of 1914.

Age limit in connection with driving of motor vehicles.

in any public place.

(2) Subject to the provisions of section 14, no person under the age of twenty years shall drive a transport vehicle in any public place.

(3) Nothing contained in sub-section (1) or sub-section (2) shall prevent any person who, before the commencement of this Act, possessed a licence to drive a motor vehicle from obtaining a licence to drive a motor vehicle of the same class.

5. No owner or person in charge of a motor vehicle shall cause or permit any person who does not satisfy the provisions of section 3 or section 4 to drive the vehicle.

6. (1) No person shall, while he holds any licence for the time being in force, hold any other licence except a licence issued in accordance with the provisions of section 14, or a document authorising, in accordance with the rules made under section 92, the person specified herein to drive a motor vehicle.

(2) No holder of a licence shall permit it to be used by any other person.

(3) Nothing in this section shall prevent a licensing authority having the jurisdiction referred to in sub-section (1) of section 7 from adding to the classes of vehicle which the licence authorises the holder to drive.

7. (1) Any person who is not disqualified under section 4 for driving a motor vehicle and who is not for the time being disqualified for holding or obtaining a licence, may apply to the licensing authority having jurisdiction in the area in which he ordinarily resides or carries on business or, if the application is for a licence to drive as a paid employee, in which the employer resides or carries on business, for the issue to him of a licence.

(2) Every application under sub-section (1) shall be in Form A as set forth in the First Schedule, shall be signed by, or bear the thumb impresson of, the applicant in two places, and shall contain the information required by the form.

(3) Where the application is for a licence to drive as a paid employee or to drive a transport vehicle, or where in any other case the licensing authority for reasons to be stated in writing so requires, the application shall be accompanied by a medical

certificate in Form C, as set forth in the First Schedule, signed by a registered medical practitioner.

(4) Every application for a licence to drive as a paid employee and every application for a licence to drive a transport vehicle shall be accompanied by three clear copies of a recent photograph of the applicant.

(5) If, from the application or from the medical certificate referred to in sub-section (3), it appears that the applicant is suffering from any disease or disability specified in the Second Schedule or any other disease or disability which is likely to cause the driving by him of a motor vehicle of the class which he would be authorised by the licence applied for to drive to be a source of danger to the public or to the passengers, the licensing authority shall refuse to issue the licence:

Provided that—

(a) a licence limited to driving an invalid carriage may be issued to the applicant, if the licensing authority is satisfied that he is fit to drive such a carriage,

(b) the applicant may, except where he suffers from a disease or disability specified in the Second Schedule, claim to be subjected to a test of his fitness or ability to drive a motor vehicle of a particular construction or design, and, if he passes such test to the satisfaction of the licensing authority and is not otherwise disqualified, the licensing authority shall grant him a licence to drive such motor vehicle as the licensing authority may specify in the licence.

(6) No licence shall be issued to any applicant unless—

(a) he passes to the satisfaction of the licensing authority the test of competence to drive specified in the Third Schedule, or

(b) where the application is made within twelve months from the commencement of this Act, he satisfies the licensing authority that he was at the commencement of this Act the holder of a current licence granted under the provisions of the Indian Motor Vehicles Act, 1914, entitling him to drive a vehicle of the class or description which he would be entitled to drive under the licence applied for:

Provided that, where the application is for a licence to drive a motor cycle or a motor car, the licensing authority shall exempt the applicant from Part I of the test specified in the Third Schedule if the licensing authority is satisfied that the applicant has previously held a licence to drive and has had not less than twelve months' recent experience of driving a motor cycle or a motor car, as the case may be:

Provided further that where the application is for a licence to drive a motor vehicle (not being a transport vehicle) otherwise than as a paid employee, the licensing authority may exempt the applicant from Part I of the test specified in the Third Schedule if the applicant possesses a driving certificate issued by an automobile association recognised in this behalf by the Provincial Government.

(7) The test of competence to drive shall be carried out in a vehicle of the type to which the application refers, and, for the purposes of Part I of the test,—

(a) a person who passes the test in driving a motor car or a motor cab or a delivery van shall be deemed to have passed the test for all of these vehicles;

(b) a person who passes the test in driving a light transport vehicle shall be deemed also to have passed the test in driving the vehicles referred to in clause (a); and

(c) a person who passes the test in driving a heavy transport vehicle shall be deemed also to have passed the test in driving any motor vehicle other than a motor cycle.

(8) When an application has been duly made to the appropriate licensing authority and the applicant has satisfied such authority of his physical fitness and of his competence to drive and has paid to the authority a fee of five rupees, the licensing authority shall grant the applicant a licence unless the applicant is disqualified under section 4 for driving a motor vehicle or is for the time being disqualified for holding or obtaining a licence:

Provided that—

(a) the fee for a licence issued in accordance with the provisions of clause (b) of sub-section (6) shall be three rupees only, and

(b) a licensing authority may issue a licence to drive a motor cycle or a motor car notwithstanding that it is not the appropriate licensing authority, if the licensing authority is satisfied that there is good

reason for the applicant's inability to apply to the appropriate licensing authority.

8. (1) Every licence, except a licence issued under section 14, shall be in Form D as set forth in the First Schedule and shall have affixed thereto one of the signatures or thumb impressions given on the form of application for the licence and, in the case of a licence to drive as a paid employee or to drive a transport vehicle, one of the photographs referred to in sub-section (4) of section 7.

(2) A licence shall specify whether the holder is entitled to drive as a paid employee and whether he is entitled to drive a public service vehicle and shall further be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely:—

- (a) motor cycle,
- (b) motor car,
- (c) motor cab,
- (d) delivery van,
- (e) light transport vehicle,
- (f) heavy transport vehicle,
- (g) locomotive,
- (h) tractor,
- (i) road-roller,
- (j) invalid carriage, or
- (k) motor vehicle of a specified description.

9. (1) Subject to any rules made by a Provincial Government under sub-section (3), a licence issued under the foregoing sections shall be effective throughout British India.

(2) Subject, in the case of international driving permits issued in pursuance of the International Convention relative to motor traffic concluded at Paris on the 24th day of April 1926, or of any Convention modifying the same to any rules made by the Central Government under section 92 and subject in any other case to the provisions of sub-section (4), a licence to drive a motor vehicle issued by a competent authority in any Indian State or in the French or Portuguese Settlements bounded by India shall, if the holder is ordinarily resident in the State or Settlement in which the licence was issued, be valid throughout British India as if it were a licence issued under this Act:

Provided that such holder is not disqualified under any of the provisions of this Act for holding or obtaining a licence in British India.

(3) A provincial Government may, by rules made under section 21,—

- (a) provide that a specification entitling the holder of a licence to drive a public service vehicle shall be made in the licence only by or under the authority of the Regional Transport Authority constituted under Chapter IV,
- (b) regulate the submission of applications for such licences to the said authority, or
- (c) require as a condition of its validity in a province that a licence entitling the holder to drive a public service vehicle shall be countersigned by a prescribed authority in the province.

(4) If the Central Government is satisfied that licences issued in British India under this Act or not effective in any Indian State or French or Portuguese Settlement bounded by India or are effective subject to unreasonable conditions or that like conditions and requirements to those imposed by this Act are not imposed in a reasonable degree upon the issue of licences in any State or Settlement as aforesaid, the Central Government shall, by notification in the official Gazette, declare that licences generally or any particular class of licence issued in any such State or Settlement shall not be valid in British India.

10. A licence issued under the foregoing section shall, subject to the provisions contained in this Act as to the cancellation of licence and the disqualification of holders of licences for holding or obtaining licences, be effective without renewal for a period of twelve months only from the date of issue or last renewal.

11. (1) Any licensing authority may on application made to it renew a licence issued under the provisions of this Act.

(2) An application for the renewal of a licence shall be made in Form B as set forth in the First Schedule and shall contain the declaration required by that form; provided that where the applicant does not or is unable to subscribe to the said declaration the provisions of sub-section (5) of section 7 shall apply.

(3) The fee payable for the renewal of a licence shall be three rupees, if the application for renewal is made previous to,

or not more than fifteen days subsequent to, the date on which the licence is due to expire and shall be five rupees in any other case, unless the licensing authority is satisfied that the holder was prevented by good cause from applying for the renewal of the licence within fifteen days after its expiry.

(4) When the authority renewing the licence is not the authority which issued the licence, it shall intimate the fact of renewal to the authority which issued the licence.

12. Notwithstanding anything contained in the foregoing sections a licensing authority may at any time revoke a licence issued by it, or may require, as a condition of continuing to hold such licence, the holder thereof to furnish a fresh medical certificate in Form C as set forth in the First Schedule signed as required by sub-section (3) of section 7, if the licensing authority has reasonable grounds to believe that the holder of the licence is, by virtue of any disease or disability, unfit to drive a motor vehicle.

13. (1) Where the licensing authority refuses to issue or revokes or refuses to renew any licence, it shall do so by an order communicated to the applicant or the holder, as the case may be, giving the reasons in writing for such refusal or revocation.

(2) Any person aggrieved by the refusal of a licensing authority to grant or renew a licence or by the revocation of a licence may, within thirty days of the service on him of the order of such refusal or revocation, appeal to the prescribed authority, who shall decide the appeal after giving the licensing authority an opportunity of being heard, and the decision of the appellate authority shall be binding on the licensing authority.

(3) The order of a licensing authority shall unless the appellate authority conditionally or unconditionally, directs otherwise, be in force pending the disposal of an appeal under sub-section (2).

14. (1) The authority specified in Part A of the Fourth Schedule may grant licences, valid throughout British India to persons who have completed their eighteenth year to drive motor vehicles which are not property of the Central Government.

(2) A licence issued under this section shall specify the class or classes of vehicle which the holder is entitled to drive and the period for which he is so entitled.

(3) A licence issued under this section shall not entitle the holder to drive any motor vehicle except a motor vehicle which is the property of the Central Government.

(4) The authority issuing any licence under this section shall at the request of any Provincial Government furnish such information respecting any person to whom a licence is issued as that Government may at any time require.

15. (1) If a licensing authority is satisfied after giving him an opportunity of being heard that an person—

- (a) is a habitual criminal or a habitual drunkard, or
- (b) is using or has used a motor vehicle in the commission of a cognisable offence, or
- (c) has by his previous conduct as driver of a motor vehicle shown that his driving is likely to be attended with danger to the public,

it may, for reasons to be recorded in writing, make an order disqualifying that person for a specified period for holding or obtaining a licence.

(2) Upon the issue of any such order a person affected, if he is the holder of a licence, shall forthwith surrender his licence to the licensing authority making the order, if the licence has not already been surrendered, and the licensing authority shall—

- (a) if the licence is a licence issued under this Act, keep it until the disqualification has expired or has been removed, or
- (b) if it is not a licence issued under this Act, endorse the disqualification upon it and send it to the licensing authority by which it was issued.

(3) Any person aggrieved by an order made by a licensing authority under this section may, within thirty days of the receipt of the order, appeal to the prescribed authority, and such appellate authority shall give notice to the licensing authority and hear either party if so required by that party and may make such inquiry into the matter as it thinks fit. An order made by any such appellate authority shall be final.

16. (1) A Regional Transport Authority constituted under Chapter IV may for reasons to be recorded in writing and subject to any prescribed conditions declare any person disqualified, for a specified period, for holding or obtaining a licence to drive a public service vehicle in the province.

(2) Any person aggrieved by an order of a Regional Transport Authority made under sub-section (1) may within thirty days of the receipt of intimation of such order appeal against the order to the prescribed authority.

17. (1) Where a person is convicted of an offence under this Act, or of an offence in the commission of which a motor vehicle was used, the Court by which such person is convicted may, subject to the provisions of this section, in addition to imposing any other punishment authorised by law, declare the person so convicted to be disqualified, for such period as the Court may specify, for holding any licence or for holding a licence to drive a particular class or description of vehicle.

(2) A Court shall not order the disqualification of an offender convicted for the first or second time of an offence punishable under section 115.

(3) A Court shall order the disqualification of an offender convicted of an offence punishable under section 117, and such disqualification shall be for a period of not less than six months.

(4) A Court shall order the disqualification of an offender convicted of an offence against the provisions of clause (c) of sub-section (1) of section 87 or of section 89, and such disqualification shall be for a period of not less than one month.

(5) A Court shall, unless for special reasons to be recorded in writing it thinks fit to order otherwise, order the disqualification of an offender—

- (a) who having been convicted of an offence punishable under section 116 is again convicted of an offence punishable under that section,
- (b) who is convicted of an offence punishable under section 120, or
- (c) who is convicted of an offence punishable under section 123:

Provided that the period disqualification shall not exceed, in the cases referred to in clauses (a) and (b), two years, or, in the case referred to in clause (c), one year.

(6) A Court ordering the disqualification of an offender convicted of an offence punishable under section 116 may direct that the offender shall, whether he has previously passed the test of competence to drive specified in the Third Schedule or not, remain disqualified until he has subsequent to the making of the order of disqualification passed that test to the satisfaction of the licensing authority.

(7) The Court to which an appeal lies from any conviction of an offence of the nature specified in sub-section (1) may set aside or vary any order of disqualification made by the Court below, and the Court to which appeals ordinarily lie from any Court may set aside or vary any order of disqualification made by that Court, notwithstanding that no appeal lies against the conviction in connection with which such order was made.

18. (1) A person in respect of whom any disqualification order is made shall be debarrd to the extent and for the period specified in such order from holding or obtaining a licence and the licence, if any, held by such person at the date of the order shall cease to be effective during such period.

(2) The operation of a disqualification order made under section 17 shall not be suspended or postponed while an appeal is pending against such order or against the conviction as a result of which such order is made, unless the appellate Court so directs.

(3) Any person in respect of whom any disqualification order has been made may at any time after the expiry of six months from the date of the order apply to the Court or other authority by which the order was made, to remove the disqualification; and the Court or authority, as the case may be, may, having regard to all the circumstances, either remove or vary the order of disqualification:

Provided that where an application has been made under this section a second application thereunder shall not be entertained before the expiry of a further period of three months.

19. (1) The Court or authority making an order of disqualification shall endorse or cause to be endorsed upon the licence, if any, held by the person disqualified particulars of the order of disqualification and of any conviction of an offence in respect of which an order of disqualification is made; and particulars of any removal or variation of an order of disqualification made under sub-section (3) of section 18 shall be similarly so endorsed.

(2) A Court by which any person is convicted of an offence specified in the Fifth Schedule shall, whether or not an order of disqualification is made in respect of such conviction, endorse or cause to be endorsed particulars of such conviction on any licence held by the person convicted.

(3) Any person accused of an offence specified in the Fifth Schedule shall when attending the Court bring with him his licence if it is in his possession.

20. (1) An endorsement on any licence

Transfer of endorsement
and issue of licence free
from endorsement.

shall be transferred to any new or duplicate licence obtained by the holder thereof until the holder becomes entitled under the provisions of this section to have a licence issued to him free from endorsement.

(2) Where a licence is required to be endorsed and the licence is at the time not in the possession of the Court or authority by which the endorsement is to be made then—

(a) if the person in respect of whom the endorsement is to be made is at the time the holder of a licence, he shall produce the licence to the Court or authority within five days, or such longer time as the Court or authority may fix, or

(b) if, not being then the holder of a licence, he subsequently obtains a licence, he shall within five days after obtaining the licence produce it to the Court or authority;

and if the licence is not produced within the time specified it shall on the expiration of such time be of no effect until it is produced for the purpose of endorsement.

(3) A person whose licence has been endorsed shall, if during a continuous period of three years since the last endorsement was made no further order of endorsement has been made against him, be entitled, on surrendering his licence and on payment of a fee of five rupees, to receive a new licence free from all endorsements. If the endorsement was only in respect of exceeding a speed limit, he shall be entitled to have a clean licence issued on the expiration of one year from the date of the order.

Provided that in reckoning the said period of three years and one year, respectively, any period during which the said person was disqualified for holding or obtaining a licence shall be excluded.

(4) When a licence is endorsed by or an order of endorsement is made by any Court, the Court shall send particulars of the endorsement or order, as the case may be, to the licensing authority by which the licence was last renewed and to the licensing authority which granted the licence.

(5) Where the holder of a licence is disqualified by the order of any Court for holding or obtaining a licence, the Court shall take possession of the licence and forward it to the licensing authority by which it was granted or last renewed and that authority shall keep the licence until

the disqualification has expired or has been removed and the person entitled to the licence has made a demand in writing for its return to him:

Provided that, if the disqualification is limited to the driving of a motor vehicle of a particular class or description, the Court shall endorse the licence to this effect and shall send a copy of the order of disqualification to the licensing authority by which the licence was granted and shall return the licence to the holder.

(6) Where on an appeal against any conviction or order of a Court which has been endorsed on a licence, the appellate Court varies or sets aside the conviction or order, the appellate Court shall inform the licensing authority by which the licence was last renewed and the licensing authority which granted the licence, and shall amend or cause to be amended the endorsement of of such conviction or order.

21. (1) A Provincial Government may make rules for the purpose of carrying into effect the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the appointment, jurisdiction control and functions of licensing authorities and other prescribed authorities;

(b) for the conduct and hearing of appeals that may be preferred under this Chapter;

(c) the issue of duplicate licences to replace licences lost, destroyed or mutilated, the replacement of photographs which have become obsolete, and the issue of temporary licences to persons receiving instruction in driving, and the fees to be charged therefor;

(d) the conditions subject to which a Regional Transport Authority may disqualify a person for holding a licence to drive a public service vehicle;

(e) the medical examination and testing of applicants for licences and of drivers and the fees to be charged therefor;

(f) the refund of fees paid under the provisions of this Act or of any enactment relating to motor vehicles in force in British India at the commencement of this Act;

- (g) the granting by registered medical practitioners of the certificates referred to in sub-section (3) of section 7;
- (h) the communication of particulars of licences granted by one licensing authority to other licensing authorities;
- (i) the control of schools or establishments for the instruction of drivers of motor vehicles and the acceptance of driving certificates issued by such schools or establishments as qualifying the holder for exemption from Part I of the test specified in the Third Schedule;
- (j) the exemptions of drivers of road-rollers from all or any of the provisions of this Chapter or of the rules made thereunder; and
- (k) any other matter which is to be or may be prescribed.

CHAPTER III.

REGISTRATION OF MOTOR VEHICLES.

22. (1) No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place for the purpose of carrying passengers or goods unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner.

(2) Nothing in this section shall apply to a motor vehicle while being driven within the limits of jurisdiction of one registering authority to or from the appropriate place of registration for the purpose of being registered under section 23, 25 or 39 or to a motor vehicle exempted from the provisions of this Chapter while in the possession of a dealer in motor vehicles.

23. (1) Subject to the provisions of section 25 and section 39, every owner of a motor vehicle shall cause the vehicle to be registered by a registering authority in the province in which he has the residence or place of business where the vehicle is normally kept.

(2) A motor vehicle already registered under any enactment in force in British India at the commencement of this Act shall be deemed to be registered under this Act until the 1st day of April 1941, and on the application of the owner before that date shall be registered under this Act without payment of any registration fee.

(3) A Provincial Government may, by rules made under section 41, provide that within a prescribed period certificates of registration of any prescribed class of transport vehicles deemed to be registered under this Act by virtue of sub-section (2) shall be presented to a prescribed authority for the entry therein of all or any of the particulars specified in section 37.

24. (1) An application by or on behalf of the owner of a motor vehicle for registration shall be in Form E as set forth in the First Schedule, shall contain the information required by that form, and shall be accompanied by the prescribed fee.

(2) The registering authority shall issue to the owner of a motor vehicle registered by it a certificate of registration in Form G as set forth in the First Schedule and shall enter in record to be kept by it particulars of such certificate.

(3) The registering authority shall assign to the vehicle, for display thereon in the prescribed manner, a distinguishing mark (in this Act referred to as the registration mark) consisting of one of the groups of letters allotted to the province by the Sixth Schedule followed by a number containing not more than four figures.

25. (1) Notwithstanding anything contained in section 23, the owner of a motor vehicle may apply to any registering authority to have the vehicle temporarily registered in the prescribed manner and for the issue in the prescribed manner of a temporary certificate of registration and a temporary registration mark.

(2) A registration made under this section shall be valid only for a period not exceeding one month, and shall not be renewable.

26. The registering authority may before proceeding to register a motor vehicle require the person applying for registration of the vehicle to produce the vehicle either before itself or such authority as the Provincial Government may by order appoint in order that the registering authority may satisfy itself that the particulars contained in the application are true and that the vehicle complies with the requirements of Chapter V and of the rules made thereunder.

27. The registering authority may refuse to register any motor vehicle if the vehicle is mechanically defective or fails to comply with the requirements of Chapter V or of the rules made thereunder, or if the applicant fails to furnish particulars of any previous registration of the vehicle, and it shall furnish the applicant whose vehicle is refused registration with the reasons in writing for such refusal.

28. (1) Subject to the provisions of section 29, a motor vehicle registered in accordance with this Chapter in any province or deemed to be registered under this Act shall not require to be registered elsewhere in British India and a certificate of registration issued or in force under this Act in respect of such vehicle shall be effective throughout British India:

Provided that the Provincial Government may, by rules made under section 41, provide that the certificates of registration of transport vehicles of any prescribed class issued by an authority not within the province and effective by virtue of sub-section (2) of section 23 shall not be valid unless they contain the particulars specified in section 37 or such of those particulars as may be prescribed.

(2) Subject, in the case of international motor vehicle certificates issued in pursuance of the International Convention relative to motor traffic concluded at Paris on the 24th day of April, 1926, to any rules made by the Central Government under section 92, and subject in any other case to the provisions of sub-section (1) of section 23 and sub-section (3) and sub-section (4) of this section, a motor vehicle registered by a competent authority in any Indian State or in the French or Portuguese Settlements bounded by India shall not require to be registered in British India:

Provided that there is in force in respect of the vehicle a certificate conforming to and containing substantially the same particulars as the certificate of registration in Form G as set forth in the First Schedule issued by such competent authority in respect of such vehicle.

(3) A certificate complying with the requirements of the proviso to sub-section (2) shall be effective throughout British India as if it were a certificate of registration issued under this Act.

(4) Sub-section (2) shall not apply to any motor vehicle previously registered in British India, if the certificate of registration of the vehicle in British India is for the time being suspended or cancelled for any reason other than that of permanent removal of the vehicle from British India.

(5) If at any time the Central Government is satisfied that motor vehicles registered in British India under this Act are not permitted to be driven in any Indian State or French or Portuguese Settlement without fresh registration in such State or Settlement, or are permitted to be driven only subject to unreasonable conditions or that like conditions and requirements to those imposed under this Act (including the

specification of the particulars required by Form G as set forth in the First Schedule) are not imposed in a reasonable degree upon the issue and for the continued effectiveness of certificates of registration in any State or Settlement as aforesaid, the Central Government shall, by notification in the official Gazette, declare that certificates of registration generally or in respect of any particular class of motor vehicle issued in any such State or Settlement shall not be effective in British India.

29. (1) When a motor vehicle registered in one province has been kept in another province for a period exceeding twelve months, the owner of the vehicle shall apply to the registering authority, within whose jurisdiction the vehicle then is, for the assignment of a new registration mark and shall present the certificate of registration to that registering authority.

(2) The registering authority, to which application is made under sub-section (1), shall assign the vehicle a registration mark in accordance with the Sixth Schedule to be carried thenceforth on the vehicle and shall enter the mark upon the certificate of registration before returning it to the applicant and shall, in communication with the registering authority by whom the vehicle was previously registered, arrange for the transfer of the registration of the vehicle from the records of that registering authority to its own records.

(3) A Provincial Government may make rules under section 41 requiring the owner of a motor vehicle not registered within the province, which is brought into or is for the time being in the province, to furnish to a prescribed authority in the province such information with respect to the motor vehicle and its registration as may be prescribed.

30. (1) If the owner of a motor vehicle ceases to reside or have his place of business at the address recorded in the certificate of registration of the vehicle, he shall, within thirty days of any such change of address, intimate his new address to the registering authority by which the certificate of registration was issued, or, if the new address is within the jurisdiction of another registering authority, to that other registering authority, and shall at the same time forward the certificate of registration to the registering authority in order that the new address may be entered therein.

(2) A registering authority other than the original registering authority making

any such entry shall communicate the altered address to the original registering authority.

(3) Nothing in sub-section (1) shall apply where the change of the address recorded in the certificate of registration is due to a temporary absence not intended to exceed six months in duration or where the motor vehicle is neither used nor removed from the address recorded in the certificate of registration.

31. (1) Within thirty days of the transfer of ownership of any motor vehicle registered under this

Transfer of ownership.

Chapter, the transferee shall report the transfer to the registering authority within whose jurisdiction he resides and shall forward the certificate of registration to that registering authority together with the prescribed fee in order that particulars of the transfer of ownership may be entered therein.

(2) A registering authority other than the original registering authority making any such entry shall communicate the transfer of ownership to the original registering authority.

32. (1) If a motor vehicle is so altered that the particulars contained in the certificate of registration are no longer accurate, the owner of the vehicle shall, within fourteen days of the making of any such alteration, report the alteration to the registering authority within whose jurisdiction he resides and shall forward the certificate of registration to that authority together with the prescribed fee in order that particulars of the alteration may be entered therein:

Provided that it shall not be necessary to report any change in the unladen weight of the motor vehicle consequent on the addition or removal of fittings or accessories, if such change does not exceed two per cent. of the weight entered in the certificate of registration.

(2) A registering authority other than the original registering authority making any such entry shall communicate the details of the entry to the original registering authority.

33. (1) A registering authority or other prescribed authority, which has reason to believe that any motor vehicle within its jurisdiction is in such a condition that its use in a public place would constitute a danger to the public, or that it fails to comply with the requirements of Chapter V or of the rules made thereunder may, after giving the

Suspension of registration.

owner an opportunity of making any representation he may wish to make, for reasons to be recorded in writing suspend the certificate of registration of the vehicle until the defects are remedied to its satisfaction.

(2) An authority other than a registering authority shall, when making a suspension order under sub-section (1), intimate in writing the fact of suspension and the reasons therefor to the registering authority within whose jurisdiction the vehicle is at the time of the suspension.

(3) Where the registration of a motor vehicle has been suspended under sub-section (1) for a continuous period of not less than one month, the registering authority, within whose jurisdiction the vehicle was when the registration was suspended, shall, if it is not the original registering authority, inform that authority of the suspension: and when the suspension has continued without interruption for a period of not less than six months, the registering authority, within whose jurisdiction the vehicle was when the registration was suspended, may, if it is the original registering authority, cancel the registration, and, if it is not the original registering authority, shall forward the certificate of registration to that authority which may cancel it forthwith.

(4) The owner of a motor vehicle shall, on the demand of a registering authority or other prescribed authority which has suspended the certificate of registration of the vehicle under this section, surrender the certificate of registration and any token or card issued to authorise the use of the vehicle in a public place.

(5) A certificate of registration and any token or card surrendered under sub-section (4) shall be returned to the owner when the order suspending registration has been rescinded and not before.

34. (1) If a motor vehicle has been destroyed or has been rendered permanently incapable of use, the owner shall, within fourteen days or as soon as may be, report the

Cancellation of registration.

fact to the registering authority within whose jurisdiction he resides and shall forward to that authority the certificate of registration of the vehicle together with any token or card issued to authorise the use of the vehicle in a public place.

(2) The registering authority shall, if it is the original registering authority, cancel the registration and the certificate of registration, or, if it is not, shall forward the report and the certificate of registration to the original registering authority and that authority shall cancel the registration and the certificate of registration.

(3) Any registering authority may order the examination of a motor vehicle within its jurisdiction by such authority as the Provincial Government may by order appoint and, if upon such examination and after giving the owner an opportunity to make any representation he may wish to make it is satisfied that the vehicle is in such a condition that its use in a public place would constitute a danger to the public and that it is beyond reasonable repair, may cancel the registration of the vehicle.

(4) If a registering authority is satisfied that a motor vehicle has been permanently removed out of British India, the registering authority shall cancel the registration.

(5) A registering authority cancelling the registration of a motor vehicle under section 33 or under this section shall communicate the fact in writing to the owner of the vehicle and the owner of the vehicle shall forthwith surrender to that authority the certificate of registration of the vehicle and any token or card issued to authorise the use of the vehicle in a public place.

(6) A registering authority making an order of cancellation under this section shall, if it is the original registering authority, cancel the certificate of registration and the entry relating to the vehicle in its records, and, if it is not the original registering authority, forward the certificate of registration to that authority, and that authority shall cancel the certificate of registration and the entry relating to the motor vehicle in its records.

(7) The expression "original registering authority" in this section and in sections 30, 31, 32 and 33 means the registering authority in whose records the registration of the vehicle is recorded.

35. (1) Any owner of a motor vehicle aggrieved by an order of refusal under section 27 to register a motor vehicle or under sub-section (1) of section 28 to issue a certificate of fitness or by an order of suspension or cancellation made under section 33 or 34 or by an order of cancellation under sub-section (3) of section 38 may, within thirty days of the date on which he has received notice of such order, appeal against the order to the prescribed authority.

(2) The appellate authority shall give notice of the appeal to the original authority and after giving opportunity to the original authority and the appellant to be heard either personally or by pleader in the appeal pass such orders as it thinks fit:

Provided that orders of the original authority shall remain in force pending the disposal of the appeal unless the appellate authority otherwise directs.

36. (1) After the commencement of this Act, a registering authority shall refuse to register any transport vehicle other than a motor cab, unless the application for registration is accompanied by a document in Form F as set forth in the First Schedule signed by the maker of the vehicle or an assembler duly authorised by the maker in this behalf stating the greatest laden weight and greatest axle weights for which the vehicle is and the several axles are designed:

Provided that nothing in this sub-section shall apply to any application for the registration of a transport vehicle already registered under any enactment in force at the commencement of this Act.

(2) Where a transport vehicle or chassis, as the case may be, has affixed to it a metal plate, bearing the stamp of the maker or assembler and identified as appertaining to the particular vehicle or chassis to which it is attached, which contains the particulars specified in sub-section (1), that plate may at the discretion of a registering authority be deemed to be the document referred to in sub-section (1).

37. (1) A registering authority, when registering a transport vehicle other than a motor cab, shall enter in the record of registration and shall also enter in the certificate of registration of the vehicle the following particulars, namely:—

(a) the unladen weight of the vehicle;

(b) the number, nature and size of the tyres attached to each wheel;

(c) the registered laden weight of the vehicle and the registered axle weights pertaining to the several axles thereof, fixed in accordance with sub-section (2) with reference to the particulars of the tyres entered in the certificate of registration; and

(d) if the vehicle is used or adapted to be used for the carriage of passengers solely or in addition to goods, the number of passengers for whom accommodation is provided,

and the owner of the vehicle shall have the said particulars exhibited in the prescribed manner on the vehicle.

(2) Notwithstanding any statement contained in the document referred to in sub-section (1) of section 36 as supplied by the maker or assembler of a transport vehicle, the registered weight to be recorded

by the registering authority for any axle shall not exceed the permissible weight for that axle calculated in accordance with the Seventh Schedule, nor shall the registered laden weight of the vehicle exceed the sum of the several axle weights as so determined:

Provided that where it appears to a Provincial Government that heavier weights than those specified in the Seventh Schedule may be permitted in a particular locality for vehicles of a particular type, the Provincial Government may by notification in the official Gazette direct that the provisions of this sub-section shall apply with such modifications as may be specified in the notification.

(3) When by reason of an alteration in the number, nature or size of tyres attached to the vehicle the registered laden weight or any registered axle weight recorded in the certificate of registration no longer accords with the laden weight or the axle weight as determined in accordance with sub-section (2), the provisions of section 32 shall apply, and the registering authority shall enter in the certificate of registration a revised registered laden weight and registered axle weights.

38. (1) Subject to the provisions of section 39, a transport vehicle shall not be deemed to be validly registered for the purposes of section 22, unless it carries a certificate of fitness in Form H as set forth in the First Schedule, issued by the prescribed authority, to the effect that the vehicle complies for the time being with all the requirements of Chapter V and the rules made thereunder. Where the prescribed authority refuses to issue such certificate, it shall supply the owner of the vehicle with its reasons in writing for such refusal.

(2) Subject to the provisions of sub-section (3), a certificate of fitness shall remain effective for three years, unless a shorter period, not being in any case less than six months, is specified in the certificate by the prescribed authority.

(3) The issuing authority or other prescribed authority may for reasons to be recorded in writing cancel a certificate of fitness at any time, if satisfied that the vehicle to which it relates no longer complies with all the requirements of this Act and the rules made thereunder; and on such cancellation the certificate of registration of the vehicle and any permit granted in respect of the vehicle under Chapter IV shall be deemed to be suspended until a new certificate of fitness has been obtained.

(4) Notwithstanding anything contained in sub-section (1), a Provincial Government may, until the expiry of one year from the commencement of this Act, by rules made under section 41, dispense with the necessity for a certificate of fitness in the case of all or any transport vehicles in respect of which certificates of registration and permits had already been issued before the commencement of this Act.

39. (1) The authority specified in Part B of the Fourth Schedule may register any motor vehicle which is the property of the Central Government; and any vehicle so registered shall not, so long as it remains the property of the Central Government, require to be registered otherwise under this Act.

(2) A transport vehicle registered under this section shall carry a certificate of fitness in Form H as set forth in the First Schedule issued by the authority referred to in sub-section (1).

(3) An authority registering a vehicle under sub-section (1) shall assign a registration mark in accordance with the provisions contained in the Fourth Schedule and shall issue a certificate in respect of the vehicle that the vehicle has been registered under this section.

(4) If a vehicle registered under this section ceases to be the property of the Central Government, the provisions of section 23 shall thereupon apply.

(5) The authority registering a vehicle under sub-section (1) shall furnish to any Provincial Government all such information regarding the general nature, overall dimensions, and axle weights of the vehicle as the Provincial Government may at any time require.

40. (1) The registration mark assigned to a trailer shall be displayed in the prescribed manner on the side of the vehicle.

(2) No person shall drive a motor vehicle to which a trailer is or trailers are attached unless the registration mark of the motor vehicle so driven is displayed in the prescribed manner on the trailer or on the last trailer in the train, as the case may be.

41. (1) A Provincial Government may make rules for the purpose of carrying into effect the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the conduct and hearing of appeals that may be preferred under this Chapter;
- (b) the appointment, functions and jurisdiction of registering and other prescribed authorities;
- (c) the issue of certificates of registration and duplicate certificates of registration to replace certificates lost, destroyed or mutilated;
- (d) the temporary registration of motor vehicles, and the issue of temporary certificates of registration and marks;
- (e) the manner in which registration marks and the particulars referred to in sub-section (1) of section 37, and other prescribed particulars shall be exhibited;
- (f) the fees to be charged for the issue or alteration of certificates of registration, for certificates of fitness, for registration marks, and for the examination or inspection of motor vehicles, and the refund of such fees;
- (g) the forms, other than those set forth in the First Schedule, to be used for the purposes of this Chapter;
- (h) the communication between registering authorities of particulars of certificates of registration and by owners of vehicles registered outside the province of particulars of such vehicles and of their registration;
- (i) the particulars to be furnished by the owner of any motor vehicle to the registering authority, upon the transfer of possession of the motor vehicle under the terms of a hiring agreement;
- (j) the extension of the validity of certificates of fitness pending consideration of applications for their renewal;
- (k) the exemption from the provisions of this Chapter, and the conditions and fees for exemption, of motor vehicles in the possession of dealers;
- (l) the exemption of road-rollers from all or any of the provisions of this Chapter and the rules made thereunder, and the conditions governing such exemption; and

the exemption of delivery vans from the provisions of section 38 and the conditions governing such exemption; and

- (m) any other matter which is to be or may be prescribed.

CHAPTER IV.

CONTROL OF TRANSPORT VEHICLES.

42. (1) No owner of a transport vehicle shall use or permit the use of the vehicle in any public place, save in accordance with the conditions of a permit granted or countersigned by a Regional or Provincial Transport Authority authorising the use of the vehicle in that place in the manner in which the vehicle is being used;

Provided that a stage carriage permit shall, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a contract carriage:

Provided further that a stage carriage permit may, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a goods vehicle either when carrying passengers or not:

Provided further that a public carrier's permit shall, subject to any conditions that may be specified in the permit, authorise the holder to use the vehicle for the carriage of goods for or in connection with a trade or business carried on by him.

(2) In determining, for the purposes of this Chapter, whether a transport vehicle is or is not used for the carriage of goods for hire or reward,—

- (a) the delivery or collection by or on behalf of the owner of goods sold, used or let on hire or hire-purchase in the course of any trade or business carried on by him other than the trade or business of providing transport,
- (b) the delivery or collection by or on behalf of the owner of goods which have been or which are to be subjected to a process or treatment in the course of a trade or business carried on by him, or
- (c) the carriage of goods in a transport vehicle by a manufacturer of or agent or dealer in such goods whilst the vehicle is being used for demonstration purposes,

shall not be deemed to constitute a carrying of the goods for hire or reward; but the carriage in a transport vehicle of goods by a person not being a dealer in such

goods who has acquired temporary ownership of the goods for the purpose of transporting them to another place and there relinquishing ownership shall be deemed to constitute a carrying of the goods for hire or reward.

(3) Sub-section (1) shall not apply—

- (a) to any transport vehicle owned by or on behalf of the Central Government or a Provincial Government other than a vehicle used in connection with the business of an Indian State Railway;
- (b) to any transport vehicle owned by a local authority or by a person acting under contract with a local authority and used solely for road cleansing, road watering or conservancy purposes;
- (c) to any transport vehicle used solely for police, fire brigade or ambulance purposes;
- (d) to any transport vehicle used solely for the conveyance of corpses;
- (e) to any transport vehicle used for towing a disabled vehicle or for removing goods from a disabled vehicle to a place of safety;
- (f) to any transport vehicle used for any other public purpose prescribed in this behalf;
- (g) to any transport vehicle owned by, and used solely for the purposes of, any educational institution which is recognised by the Provincial Government or whose managing committee is a society registered under the Societies Registration Act, 1860;
- (h) subject to any prescribed conditions, to any transport vehicle owned by the Government of any Indian State or French or Portuguese Settlement bounded by India used for Government purposes unconnected with any commercial enterprise; or
- (i) to any trailer used for any purpose other than the carriage of goods for hire or reward when drawn by a motor vehicle constructed for the carriage of not more than six passengers excluding the driver.

(4) Subject to the provisions of sub-section (3), sub-section (1) shall, if the Provincial Government by rule made under section 68 so prescribes, apply to any motor vehicle adapted to carry more than nine passengers excluding the driver.

Power to Provincial Government to control road transport.

43. (1) A Provincial Government, having regard to—

- (a) the advantages offered to the public, trade and industry by the development of motor transport, and
- (b) the desirability of co-ordinating road and rail transport, and
- (c) the desirability of preventing the deterioration of the road system, and
- (d) the desirability of preventing un-economic competition among motor vehicles,

and after having heard the representatives of the interests affected and having consulted the Provincial and Regional Transport Authorities concerned, may, by notification in the official Gazette,—

- (i) prohibit or restrict throughout the province or in any area or on any route within the province, subject to such conditions as it may think desirable, the conveying of long distance goods traffic generally, or of prescribed classes of goods, by private or public carriers; or
- (ii) fix maximum or minimum fares or freights for stage carriages and public carriers to be applicable throughout the province or within any area or on any route within the province.

(2) The provincial Government shall permit, at such intervals of time as it may fix, the interests affected by any notification issued under sub-section (1) to make representations urging the cancellation or variation of the notification on the following grounds, namely:—

- (a) that the railways are not giving reasonable facilities or are taking unfair advantage of the action of the Provincial Government under this section; or
- (b) that conditions have changed since the publication of the notification; or
- (c) that the special needs of a particular industry or locality require to be considered afresh.

(3) If the Provincial Government, after considering any representation made to it under sub-section (2) and having heard the representatives of the interests affected and the Provincial and Regional Transport Authorities, is satisfied that any notification issued under sub-section (1) ought to

be cancelled or varied, it may cancel the notification or vary it in such manner as it thinks fit.

44. (1) The Provincial Government shall, by notification in the official Gazette, constitute for the province a Provincial Transport Authority to exercise and discharge the powers and functions specified in sub-section (3), and shall in like manner constitute Regional Transport Authorities to exercise and discharge throughout such areas (in this Chapter referred to as regions) as may be specified in the notification, in respect of each Regional Transport Authority, the powers and functions conferred by or under this Chapter on such Authorities:

Provided that in the North-West Frontier Province and in Chief Commissioners' Provinces the Provincial Government may abstain from constituting any Regional Transport Authority:

Provided further that the area specified as the region of a Regional Transport Authority shall in no case be less than an entire district, or the whole area of a Presidency-town.

(2) A Provincial Transport Authority or a Regional Transport Authority shall consist of such number of officials and non-officials as the Provincial Government may think fit to appoint; but no person who has any financial interest whether as proprietor, employee or otherwise in any transport undertaking shall be appointed as or continue as a member of a Provincial or Regional Transport Authority, and, if any person being a member of any such Authority acquires a financial interest in any transport undertaking, he shall, within four weeks of so doing, give notice in writing to the Provincial Government of the acquisition of such interest and shall vacate office.

(3) A Provincial Transport Authority shall exercise and discharge throughout the province the following powers and functions, namely:—

- (a) to co-ordinate and regulate the activities and policies of the Regional Transport Authorities, if any, of the province;
- (b) to perform the duties of a Regional Transport Authority where there is no such Authority and, if it thinks fit or if so required by a Regional Transport Authority, to perform those duties in respect of any route common to two or more regions;

(c) to settle all disputes and decide all matters on which differences of opinion arise between Regional Transport Authorities; and

(d) to discharge such other functions as may be prescribed.

(4) For the purpose of exercising and discharging the powers and functions specified in sub-section (3), a Provincial Transport Authority may, subject to such conditions as may be prescribed, issue directions to any Regional Transport Authority and the Regional Transport Authority shall be guided by such directions.

45. Every application for a permit shall be made to the General provision as to applications for permits. Regional Transport Authority of the region or of one of the regions in which it is proposed to use the vehicle and, if the applicant resides or has his principal place of business in any one of those regions, to the Regional Transport Authority of that region.

46. An application for a permit to use a motor vehicle as a stage carriage (in this Chapter referred to as a stage carriage permit) shall contain the following particulars, namely:—

- (a) the type and seating capacity of the vehicle in respect of which the application is made;
- (b) the route or routes on which or the area within which it is intended to use the vehicle;
- (c) the time table, if any, of the service to be provided; and
- (d) such other matters as may be prescribed.

47. (1) A Regional Transport Authority shall, in deciding whether to grant or refuse a stage carriage permit, have regard to the following matters, namely:—

- (a) the interest of the public generally;
- (b) the advantages to the public of the service to be provided, including the saving of time likely to be effected thereby and any convenience arising from journeys not being broken;
- (c) the adequacy of existing road passenger transport services between the places to be served, the fares charged by those

services and the effect upon those services of the service proposed;

- (d) the benefit to any particular locality or localities likely to be afforded by the service;
- (e) the operation by the applicant of other transport services and in particular of unremunerative services in conjunction with remunerative services; and
- (f) the condition of the roads included in the proposed route or routes;

and shall also take into consideration any representations made by persons already providing road transport facilities along or near the proposed route or routes or by any local authority or police authority within whose jurisdiction any part of the proposed route or routes lies or by any association interested in the provision of road transport facilities.

(2) A Regional Transport Authority shall refuse to grant a stage carriage permit if it appears from any time table furnished that the provisions of this Act relating to the speed at which vehicles may be driven are likely to be contravened:

Provided that before such refusal an opportunity shall be given to the applicant to amend the time table so as to conform to the said provisions.

48. A regional Transport Authority may, after consideration of the matters set forth in sub-section (1) of section 47,—

Power to restrict the number of stage carriages and impose conditions on stage carriage permits.

- (a) limit the number of stage carriages in respect of which stage carriage permits may be granted for a specified route or for specified routes or for a specified area;
- (b) limit the use of specified routes to stage carriages of a particular type or design;
- (c) issue a stage carriage permit in respect of a particular stage carriage or a particular service of stage carriages;
- (d) regulate timings of arrival or departure of stage carriages whether they belong to a single or more owners; or
- (e) attach to a stage carriage permit any prescribed condition or any one or more of the following conditions, namely:—

- (i) that the service specified in the permit shall be commenced not

later than a specified date and be continued for a specified period;

- (ii) that the service may be varied only in accordance with specified conditions;
- (iii) that copies of the fare table and time table shall be exhibited on the stage carriage and that the fare table and time table so exhibited shall be observed;
- (iv) that not more than a specified number of passengers and not more than a specified amount of luggage shall be carried on any specified vehicle at any one time;
- (v) that within municipal limits and in such other areas and places as may be prescribed passengers shall not be taken up or set down at or except at specified points; or
- (vi) that tickets shall be issued to passengers for the fares paid.

49. An application for a permit to use a motor vehicle as a contract carriage (in this Chapter referred to as a contract carriage permit) shall contain the following particulars, namely:—

Application for contract carriage permit.

- (a) the type and seating capacity of the vehicle;
- (b) the area for which the permit is required;
- (c) in the case of a motor vehicle other than a motor cab, the manner in which it is claimed that the public convenience will be served by the vehicle; and
- (d) any other particulars which may be prescribed.

50. A Regional Transport Authority shall, in deciding whether to grant or refuse a contract carriage permit, have regard to the extent to which additional contract carriages may be necessary or desirable in the public interest; and shall also take into consideration any representations which may then be made or which may previously have been made by persons already holding contract carriage permits in the region or by any local authority or police authority in the region to the effect that the number of contract carriages for which permits have already been granted is sufficient for or in excess of the needs of the region or any area within the region.

power to restrict the number of contract carriages and impose conditions on contract carriage permits.

51. A Regional Transport Authority may, after consideration of the matters set forth in section 50,—

- (a) limit the number of contract carriages generally or contract carriages of any specified type for which contract carriage permits may be granted in the region or any specified area within the region ;
- (b) fix in the case of motor cabs the fares which may be charged ;
- (c) require that every motor cab shall carry a copy of the fare table for inspection by passengers ;
- (d) require that any motor cab shall be fitted with a taxi meter ; or
- (e) impose on the use of a contract carriage any other condition which may be prescribed.

52. An application for a permit to use a transport vehicle

Application for private carrier's permit.

for the carriage of goods for or in connection with a trade or business carried on by the applicant (in this Chapter referred to as a private carrier's permit) shall contain the following particulars, namely :—

- (a) the type and carrying capacity of the vehicle ;
- (b) the nature of the goods which the applicant expects normally to carry in connection with his trade or business ;
- (c) the area for which the permit is required ; and
- (d) any other particular which may be prescribed.

53. (1) A Regional Transport Authority shall, in deciding

Procedure of Regional Transport Authority in considering application for a private carrier's permit.

whether to grant or refuse a private carrier's permit, have regard to the condition of the roads to be used by the vehicle or vehicles in respect of which the application is made, and shall satisfy itself that the vehicle or vehicles for which the permit is required will not be used except in connection with the business of the applicant.

(2) The Regional Transport Authority may in granting a private carrier's permit impose conditions to be specified in the permit relating to the description of goods which may be carried, or the area in which the permit shall be valid, or the maximum laden weight and axle weights of any vehicle used.

(3) If the applicant is the holder of a private carrier's permit which has been suspended or has been the holder of a private carrier's permit which has been revoked, the Regional Transport Authority may at its discretion notwithstanding anything contained in sub-section (1) refuse the application.

54. An application for a permit to use a motor vehicle for the carriage of goods for hire or reward

Application for public carrier's permit.

(in this Chapter referred to as a public carrier's permit) shall contain the following particulars, namely :—

- (a) the routes on which or the area in which it is intended to use the vehicle ;
- (b) the type and carrying capacity of the vehicle ;
- (c) the manner in which it is claimed that a public need will be served by the vehicle ;
- (d) such particulars as the Regional Transport Authority may require with respect to any business as a carrier of goods for hire or reward carried on by the applicant at any time before the making of the application, and of the rates charged by the applicant. ;
- (e) particulars of any agreement or arrangement, affecting in any material respect the provision within the region of the Regional Transport Authority of facilities for the transport of goods for hire or reward, entered into by the applicant with any other person by whom such facilities are provided, whether within or without the region ; and
- (f) any other particulars which may be prescribed.

55. A Regional Transport Authority shall, in deciding whether

Procedure of Regional Transport Authority in considering application for public carrier's permit.

to grant or refuse a public carrier's permit, have regard to the following

matters, namely :—

- (a) the interests of the public generally ;
- (b) the advantages to the public of the service to be provided and the convenience afforded to the public by the provision of such service ;
- (c) the adequacy of existing road transport services for the carriage of goods upon the routes or within the area to be served and the effect upon those services of the service proposed ;

- (d) the benefit to any particular locality or localities likely to be afforded the service;
 - (e) the need for providing for occasions when vehicles are withdrawn from service for overhaul or repair; and
 - (f) the condition of the roads included in the proposed routes or area;
- and shall also take into consideration any representations made by persons already providing road transport facilities along or near to the proposed route or routes or by any local authority within whose jurisdiction any part of the proposed route or routes lies.

56. The Regional Transport Authority may, after consideration of the matters set forth in section 55,—

- (a) limit the number of transport vehicles or transport vehicles of any specified type for which public carrier's permits may be granted in the region or in any specified area or on any specified routes within the region; or
- (b) attach to a public carrier's permit all or any of the following conditions, namely:—
 - (i) that the vehicle shall be used only on specified routes or in a specified area,
 - (ii) that the laden weight and the axle weights of any vehicle used shall not exceed a specified maximum,
 - (iii) that such records as may be prescribed relating to the plying of the vehicle shall be maintained, and
 - (iv) any other prescribed condition appropriate to the service to be provided by the vehicle which the Regional Transport Authority thinks proper to impose in the public interest or with a view to prevent uneconomic competition between road transport services.

57. (1) An application for a contract carriage permit or a private carrier's permit may be made at any time.

(2) An application for a stage carriage permit or a public carrier's permit shall be made not less than six weeks before the date on which it is desired that the permit shall take effect, or, if the Regional Transport Authority appoints dates for the receipt of such applications, on such dates.

(3) On receipt of an application for a stage carriage permit or a public carrier's permit, the Regional Transport Authority shall make the application available for inspection at the office of the Authority and shall publish the application or the substance thereof in the prescribed manner together with a notice of the date before which representations in connection therewith may be submitted and the date, not being less than thirty days from such publication, on which, and the time and place at which, the application and any representations received will be considered.

(4) No representation in connection with an application referred to in sub-section (3) shall be considered by the Regional Transport Authority unless it is made in writing before the appointed date and unless a copy thereof is furnished simultaneously to the applicant by the person making such representation.

(5) When any representation such as is referred to in sub-section (3) is made, the Regional Transport Authority shall dispose of the application at a public hearing at which the applicant and the person making the representation shall have an opportunity of being heard either in person or by a duly authorised representative.

(6) When any representation has been made by the persons or authorities referred to in section 50 to the effect that the number of contract carriages for which permits have already been granted in any region or any area within a region is sufficient for or in excess of the needs of the region or of such area, whether such representation is made in connection with a particular application for the grant of a contract carriage permit or otherwise, the Regional Transport Authority may take any such steps as it considers appropriate for the hearing of the representation in the presence of any persons likely to be affected thereby.

(7) When a Regional Transport Authority refuses an application for a permit of any kind, it shall give to the applicant in writing its reasons for the refusal.

58. (1) A permit other than a temporary permit issued under section 62 shall be effective without renewal for such period, not less than three years and not more than five years, as the Regional Transport Authority may in its discretion specify in the permit:

Provided that in the case of a permit issued or renewed within two years of the commencement of this Act, the permit shall be effective without renewal for such period of less than three years as the Provincial Government may prescribe.

(2) A permit may be renewed on an application made and disposed of as if it were an application for a permit :

Provided that, other conditions being equal, an application for renewal shall be given preference over new applications for permits.

59. (1) Save as provided in section 61, a permit shall not be transferable from one person to another except with the permission of the transport authority which granted the permit and shall not without such permission operate to confer on any person to whom a vehicle covered by the permit is transferred any right to use that vehicle in the manner authorised by the permit.

(2) The holder of a permit may, with the permission of the authority by which the permit was granted, replace by another vehicle of the same nature and capacity any vehicle covered by the permit.

(3) The following shall be conditions of every permit—

(a) that the vehicle or vehicles to which the permit relates are at all times so maintained as to comply with the requirements of Chapter V and the rules made thereunder;

(b) that the vehicle or vehicles to which the permit relates are not driven at a speed exceeding the speed lawful under this Act;

(c) that any prohibition or restriction imposed and any maximum or minimum fares or freights fixed by notification made under section 43 are observed in connection with any vehicle or vehicles to which the permit relates;

(d) that the vehicle or vehicles to which the permit relates are not driven in contravention of the provisions of section 72;

(e) that the provisions of this Act limiting the hours of work of drivers are observed in connection with any vehicle or vehicles to which the permit relates; and

(f) that the provisions of Chapter VIII so far as they apply to the holder of the permit are observed.

60. (1) The transport authority which granted a permit may cancel the permit or suspend it for such period as it thinks fit—

(a) on the breach of any condition specified in sub-section (3) of section 59, or of any condition contained in the permit, or

(b) if the holder of the permit uses or causes or allows a vehicle to be used in any manner not authorised by the permit, or

(c) if the holder of the permit ceases to possess the vehicle or vehicles covered by the permit, or

(d) if the holder of the permit has obtained the permit by fraud or misrepresentation :

Provided that no permit shall be cancelled unless an opportunity has been given to the holder of the permit to submit his explanation.

(2) Where a transport authority cancels or suspends a permit, it shall give to the holder in writing its reasons for the revocation or suspension.

61. (1) Where the holder of a permit dies, the person succeeding to the possession of the vehicles covered by the permit may, for a period of three months, use the permit as if it had been granted to himself :

Provided that such person has, within thirty days of the death of the holder, informed the transport authority which granted the permit of the death of the holder and of his own intention to use the permit :

Provided further that no permit shall be so used after the date on which it would have ceased to be effective without renewal in the hands of the deceased holder.

(2) The transport authority may, on application made to it within three months of the death of the holder of a permit, transfer the permit to the person succeeding to the possession of the vehicles covered by the permit.

62. (1) A Regional Transport Authority may at its discretion, and without following the procedure laid down in section 57, grant permits, to be effective for a limited period not in any case to exceed four months, to authorise the use of a transport vehicle temporarily—

(a) for the conveyance of passengers on special occasions such as to and from fairs and religious gatherings, or

(b) for the purposes of a seasonal business, or

(c) to meet a particular temporary need,

and may attach to any such permit any condition it thinks fit.

(2) A Regional Transport Authority may delegate all or any of its powers under this section to any one of its members.

63. (1) Except as may be otherwise prescribed, a permit granted by the Regional Transport Authority of any one region shall not be valid in any other region, unless the permit has been countersigned by the Regional Transport Authority of that other region, and a permit granted in any one province shall not be valid in any other province unless countersigned by the Provincial Transport Authority of that other province or by the Regional Transport Authority concerned.

(2) A Regional Transport Authority when countersigning the permit may attach to the permit any condition which it might have imposed if it had granted the permit, and may likewise vary any condition attached to the permit by the Authority by which the permit was granted.

(3) The provisions of this Chapter relating to the grant, revocation and suspension of permits shall apply to the grant, revocation and suspension of countersignatures of permits.

(4) Notwithstanding anything contained in sub-section (1), a Regional Transport Authority of one region may issue a temporary permit under clause (a) or clause (c) of sub-section (1) of section 62 to be valid in another region or province with the concurrence, given generally or for the particular occasion, of the Regional Transport Authority of that other region or of the Provincial Transport Authority of that other province, as the case may be.

Appeals.

64. Any person—

- (a) aggrieved by the refusal of the Provincial or a Regional Transport Authority to grant a permit, or by any condition attached to a permit granted to him, or
- (b) aggrieved by the revocation or suspension of the permit or by any variation of the conditions thereof, or
- (c) aggrieved by the refusal to transfer the permit to the person succeeding on the death of the holder of a permit, or
- (d) aggrieved by the refusal of the Provincial or a Regional Transport Authority to countersign a permit, or by any condition attached to such countersignature, or
- (e) aggrieved by the refusal of renewal of a permit, or
- (f) being a local authority or police authority or an association which, or a person providing transport

facilities who, having opposed the grant of a permit, is aggrieved by the grant thereof or by any condition attached thereto, or

- (g) being the holder of a licence, who is aggrieved by the refusal of a Regional Transport Authority to grant an authorisation to drive a public service vehicle,

may, within the prescribed time and in the prescribed manner, appeal to the prescribed authority who shall give such person and the original authority an opportunity of being heard.

65. (1) No person shall cause or allow any person who is employed by him for the purpose of driving a transport vehicle or who is subject to his control for such purpose to work—

- (a) for more than five hours before he has had an interval of rest of at least half an hour; or
- (b) for more than nine hours in one day; or
- (c) for more than fifty-four hours in the week.

(2) The Provincial Government may by rule made under section 68 grant such exemptions from the provisions of sub-section (1) as it thinks fit, to meet cases of emergency or of delays by reason of circumstances which could not be foreseen.

(3) The Provincial Government may require persons employing any persons whose work is subject to any of the provisions of sub-section (1) to fix beforehand the hours of work of such persons so as to conform with those provisions, and may provide for the recording of the hours so fixed.

(4) No person shall work or shall cause or allow any other person to work outside the hours fixed or recorded for the work of such persons in compliance with any rule made under sub-section (3).

(5) The Provincial Government may prescribe the circumstances under which any period during which the driver of a vehicle although not engaged in work is required to remain on or near the vehicle may be deemed to be an interval for rest within the meaning of sub-section (1).

66. Any contract for the conveyance of a passenger in a stage carriage or contract carriage in respect of which a permit has been issued under this Chapter, shall, so far as it purports to negative or restrict the liability of any

Voidance of contracts restrictive of liability.

person in respect of any claim made against that person in respect of the death of, or bodily injury to, the passenger while being carried in, entering or alighting from the vehicle, or purports to impose any conditions with respect to the enforcement of any such liability, be void.

67. (1) A provincial Government may make rules to regulate, in respect of stage carriages and contract carriages,—

Power to make rules as to stage carriages and contract carriages.

(a) the conduct of persons licensed to act as drivers of, and the licensing of and the conduct of conductors of, such vehicles when acting as such; and

(b) the conduct of passengers in such vehicles.

(2) Without prejudice to the generality of the foregoing provision, such rules may—

(a) authorise the removal from such vehicle of any person infringing the rules by the driver or conductor of the vehicle, or, on the request of the driver or conductor, or any passenger by any police officer;

(b) require a passenger who is reasonably suspected by the driver or conductor of contravening the rules to give his name and address to a police officer or to the driver or conductor on demand;

(c) require a passenger to declare, if so requested by the driver or conductor, the journey he intends to take or has taken in the vehicle and to pay the fare for the whole of such journey and to accept any ticket provided therefor;

(d) require, on demand being made for the purpose by the driver or conductor or other person authorised by the owner of the vehicle, production during the journey and surrender at the end thereof of any ticket issued to him;

(e) require a passenger, if so requested by the driver or conductor, to leave the vehicle on the completion of the journey the fare for which he has paid;

(f) require the surrender by the holder thereof on the expiry of the period for which it is issued of a ticket issued to him.

(g) require the maintenance of complaint books in stage carriages and prescribe the conditions under which passengers can record any complaints in the same.

68. (1) A Provincial Government may make rules for the purpose of carrying into effect the provisions of this Chapter.

Power to make rules for the purposes of this Chapter.

(2) Without prejudice to the generality of the foregoing power, rules under this section may be made with respect to all or any of the following matters, namely:—

(a) the period of appointment and the terms of appointment of and the conduct of business by Regional and Provincial Transport Authorities and the reports to be furnished by them;

(b) the conduct and hearing of appeals that may be preferred under this Chapter;

(c) the forms to be used for the purposes of this Chapter, including the forms of permits;

(d) the issue of copies of permits in place of permits lost or destroyed;

(e) the documents, plates and marks to be carried by transport vehicles, the manner in which they are to be carried and the languages in which any such documents are to be expressed;

(f) the badges and uniform to be worn by drivers and conductors of stage carriages and contract carriages;

(g) the fees to be paid in respect of permits, duplicate permits, plates and badges;

(h) the custody, production and cancellation on revocation or expiration of permits, and the return of permits which have become void or have been revoked;

(i) the conditions subject to which a permit issued in one region shall be valid in another region;

(j) the authorities to whom, the time within which and the manner in which appeals may be made;

(k) the construction and fittings of, and the equipment to be carried by, stage and contract carriages, whether generally or in specified areas;

- (l) the determination of the number of passengers a stage or contract carriage is adapted to carry and the number which may be carried;
- (m) the conditions subject to which goods may be carried on stage and contract carriages partly or wholly in lieu of passengers;
- (n) the safe custody and disposal of property left in a stage or contract carriage;
- (o) prohibiting the painting or marking of a stage or a contract carriage in such colour or manner as to induce any person to believe that the vehicle is used for the transport of mails;
- (p) the conveyance in stage or contract carriages of corpses or persons suffering from any infectious or contagious disease or goods likely to cause discomfort or injury to passengers and the inspection and disinfection of such carriages, if used for such purposes;
- (q) the provision of taxi meters on motor cabs requiring approval or standard types of taxi meters to be used and examining, testing and sealing taxi meters;
- (r) prohibiting the picking up or setting down of passengers by stage or contract carriages at specified places or in specified areas or at places other than duly notified stands or halting places and requiring the driver of a stage carriage to stop and remain stationary for a reasonable time when so required by a passenger desiring to board or alight from the vehicle at a notified halting place;
- (s) the requirements (including the provision of proper sanitary arrangements) which shall be complied with in any duly notified stand or halting place;
- (t) requiring the owners of transport vehicles to notify any change of address or to report the failure of or damage to any vehicle used for the conveyance of passengers for hire or reward;
- (u) requiring the person in charge of a stage carriage to carry any person tendering the legal or customary fare;
- (v) the conditions under which and the types of containers or vehicles in which animals or birds may be carried and the seasons during which animals or birds may or may not be carried;
- (w) the licensing of and the conduct of agents for the sale of tickets for travel by stage carriages;
- (x) the inspection of transport vehicles and their contents and of the permits relating to them;
- (y) the carriage of persons other than the driver in goods vehicles;
- (z) the records to be maintained and the returns to be furnished by the owners of transport vehicles; and
- (zu) any other matter which is to be or may be prescribed.

CHAPTER V.

CONSTRUCTION, EQUIPMENT AND MAINTENANCE OF MOTOR VEHICLES.

69. Every motor vehicle shall be so constructed and so maintained as to be at all times under the effective control of the person driving the vehicle.

70. (1) A Provincial Government may make rules regulating the construction, equipment and maintenance of motor vehicles and trailers.

(2) Without prejudice to the generality of the foregoing power, rules may be made under this section governing any of the following matters either generally in respect of motor vehicles or trailers or in respect of motor vehicles or trailers of a particular class or in particular circumstances, namely :—

- (a) the width, height, length and overhang of vehicles and of the loads carried;
- (b) seating arrangements in public service vehicles and the protection of passengers against the weather;
- (c) the size, nature and condition of tyres;
- (d) brakes and steering gear;
- (e) the use of safety glass;
- (f) signalling appliances, lamps and reflectors;

- (g) speed governors;
- (h) the emission of smoke, visible vapour, sparks, ashes, grit or oil;
- (i) the reduction of noise emitted by or caused by vehicles;
- (j) prohibiting or restricting the use of audible signals at certain times or in certain places;
- (k) prohibiting the carrying of appliances likely to cause annoyance or danger;
- (l) the periodical testing and inspection of vehicles by prescribed authorities;
- (m) the particulars other than registration marks to be exhibited by vehicles and the manner in which they shall be exhibited; and
- (n) the use of trailers with motor vehicles.

CHAPTER VI.

CONTROL OF TRAFFIC.

71. (1) No person shall drive a motor vehicle or cause or allow a motor vehicle to be driven in any public place at a speed exceeding the maximum speed fixed for the vehicle by or under this Act or by or under any law for the time being in force:

Provided that such maximum speed shall in no case exceed the maximum fixed for the vehicle in the Eighth Schedule.

(2) The Provincial Government or any authority authorised in this behalf by the Provincial Government may, if satisfied that it is necessary to restrict the speed of motor vehicles in the interests of public safety or convenience or because of the nature of any road or bridge, by notification in the official Gazette, fix such maximum speed limits as it thinks fit for motor vehicles or any specified class of motor vehicles or for motor vehicles to which a trailer is attached, either generally or in a particular area or on a particular road or roads.

72. (1) The Provincial Government may prescribe conditions for the issue of permits for heavy transport vehicles by the Provincial or Regional Transport Authorities and may prohibit or restrict the use of such vehicles in any area or route within the province:

Provided that any permit issued before the commencement of this Act may be continued or renewed by the competent

authority for a period not exceeding three years under the conditions upon which the permit was originally issued, unless the Provincial Government directs otherwise.

(2) Except as may be otherwise prescribed, no person shall drive or cause or allow to be driven in any public place any motor vehicle which is not fitted with pneumatic tyres.

(3) No person shall drive or cause or allow to be driven in any public place any motor vehicle or trailer—

- (a) the unladen weight of which exceeds the unladen weight specified in the certificate of registration of the vehicle, or
- (b) the laden weight of which exceeds the registered laden weight specified in the certificate of registration, or
- (c) any axle weight of which exceeds the maximum axle weight specified for that axle in the certificate of registration.

(4) Where the driver or person in charge of a motor vehicle or trailer driven in contravention of sub-section (2) or clause (a) of sub-section (3) is not the owner, a Court may presume that the offence was committed with the knowledge of or under the orders of the owner of the motor vehicle or trailer.

73. Any person authorised in this behalf by the Provincial Government may, if he has reason to believe that a goods vehicle or trailer if being used in contravention of section 72, require the driver to convey the vehicle to a weighing device, if any, within a distance of one mile from any point on the forward route or within a distance of five miles from the destination of the vehicle for weighment; and if on such weighment the vehicle is found to contravene in any respect the provisions of section 72 regarding weight, he may, by order in writing, direct the driver to convey the vehicle or trailer to the nearest place, to be specified in the notice, where facilities exist for the storage of goods, and not to remove the vehicle or trailer from that place until the laden weight or axle weight has been reduced or the vehicle has otherwise been treated so that it complies with section 72.

74. The Provincial Government or any authority authorised in this behalf by the Provincial Government, if satisfied that it is necessary in the interests of public safety or convenience, or because of the nature of any

road or bridge, may by notification in the official Gazette prohibit or restrict, subject to such exceptions and conditions as may be specified in the notification, the driving of motor vehicles or of any specified class of motor vehicles or the use of trailers either generally in a specified area or on a specified road.

75. (1) The Provincial Government or any authority authorised in this behalf by the Provincial Government may cause or permit traffic signs to be placed or erected in any public place for the purpose of regulating motor vehicle traffic.

(2) Traffic signs erected under sub-section (1) for any purpose for which provision is made in the Ninth Schedule shall be of the size, colour and type and shall have the meanings set forth in the Ninth Schedule, but the Provincial Government or any authority empowered in this behalf by the Provincial Government may make or authorise the addition to any sign set forth in the said Schedule, of transcriptions of the words, letters or figures thereon in such script as the Provincial Government may think fit, provided that the transcriptions shall be of similar size and colour to the words, letters or figures set forth in the Ninth Schedule.

(3) Except as provided by sub-section (1) no traffic sign shall, after the commencement of this Act, be placed or erected on or near any road; but all traffic signs erected prior to the commencement of this Act by any competent authority shall for the purposes of this Act be deemed to be traffic signs erected under the provisions of sub-section (1).

(4) A Provincial Government may, by notification in the official Gazette, empower any District Magistrate or Superintendent of Police to remove or cause to be removed any sign or advertisement which is so placed in his opinion as to obscure any traffic sign from view or any sign or advertisement which is in his opinion so similar in appearance to a traffic sign as to be misleading.

76. The Provincial Government or any authority authorised in this behalf by the Provincial Government may, in consultation with the local authority having jurisdiction in the area concerned, determine places at which motor vehicles may stand either indefinitely or for a specified period of time, and may determine the places at which public service vehicles may stop for a longer time than is necessary for the taking up and setting down of passengers.

77. A Provincial Government or any authority authorised in this behalf by the Provincial Government may, by notification in the official Gazette or by the erection at suitable places of the appropriate traffic sign referred to in Part A of the Ninth Schedule, designate certain roads as main roads for the purposes of the regulations contained in the Tenth Schedule.

78. Every driver of a motor vehicle shall drive the vehicle in conformity with any indication given by a traffic sign included in Part A of the Ninth Schedule and in conformity with the driving regulations set forth in the Tenth Schedule, and shall comply with all directions given him by any police officer for the time being engaged in the regulation of traffic in any public place.

79. The driver of a motor vehicle shall on the occasions specified in the Eleventh Schedule make the signals specified therein:

Provided that the signal of an intention to turn to the right or left or to stop may be given by a mechanical or an electrical device of a prescribed nature affixed to the vehicle.

80. No person shall drive or cause or allow to be driven in any public place any motor vehicle with a left hand steering control unless it is equipped with a mechanical or electrical signalling device of a prescribed nature and in working order.

81. No person in charge of a motor vehicle shall cause or allow the vehicle or any trailer to remain at rest on any road in such a position or in such a condition or in such circumstances as to cause or be likely to cause danger, obstruction or undue inconvenience to other users of the road.

82. No person driving or in charge of a motor vehicle shall carry any person or permit any person to be carried on the running board or otherwise than within the body of the vehicle.

83. No person driving a motor vehicle shall allow any person to stand or sit or anything to be placed in such a manner or position as to hamper the driver in his control of the vehicle.

84. No person driving or in charge of a motor vehicle shall cause or allow the vehicle to remain stationary in any public place, unless there is in the driver's seat a person duly licensed to drive the vehicle or unless the mechanism has been stopped and a brake or brakes applied or such other measures taken as to ensure that the vehicle cannot accidentally be put in motion in the absence of the driver.

85. No driver of a two wheeled motor cycle shall carry more than one person in addition to himself on the cycle and no such person shall be carried otherwise than sitting on a proper seat securely fixed to the cycle behind the driver's seat.

86. (1) The driver of a motor vehicle in any public place shall, on demand by any police officer in uniform, produce his licence for examination.

(2) The owner of a motor vehicle, or in his absence the driver or other person in charge of the vehicle, shall on demand by a registering authority or any person authorised in this behalf by the Provincial Government, produce the certificate of registration of the vehicle and, where the vehicle is a transport vehicle, the certificate of fitness referred to in section 38.

(3) If the licence or certificates, as the case may be, are not at the time in the possession of the person to whom demand is made, it shall be a sufficient compliance with this section if such person produces the licence or certificates within ten days at any police station in British India which he specifies to the police officer or authority making the demand:

Provided that, except to such extent and with such modifications as may be prescribed, the provisions of this subsection shall not apply to a driver driving as a paid employee, or to the driver of a transport vehicle or to any person required to produce the certificate of registration or the certificate of fitness of a transport vehicle.

87. (1) The driver of a motor vehicle shall cause the vehicle to stop and remain stationary so long as may reasonably be necessary—

(a) when required to do so by any police officer in uniform, or

(b) when required to do so by any person in charge of an animal if such person apprehends that the animal is, or being alarmed by the vehicle will become, unmanageable, or

(c) when the vehicle is involved in the occurrence of an accident to a person, animal or vehicle or of damage to any property, whether

the driving or management of the vehicle was or was not the cause of the accident or damage,

and he shall give his name and address and the name and address of the owner of the vehicle to any person affected by any such accident or damage who demands it provided such person also furnishes his name and address.

(2) The driver of a motor vehicle shall, on demand by a person giving his own name and address and alleging that the driver has committed an offence punishable under section 116, give his name and address to that person.

(3) In this section the expression "animal" means any horse, cattle, elephant, camel, ass, mule, sheep or goat.

88. The owner of a motor vehicle the driver of which is accused of any offence under this Act shall, on the demand of any police officer authorised in this behalf by the Provincial Government, give all information regarding the name and address of and the licence held by the driver which is in his possession or could by reasonable diligence be ascertained by him.

89. When any person is injured as the result of an accident in which a motor vehicle is involved, the driver of the vehicle or other person in charge of the vehicle shall—

(a) take all reasonable steps to secure medical attention for the injured person, and, if necessary, convey him to the nearest hospital, unless the injured person or his guardian, in case he is a minor, desires otherwise;

(b) give on demand by a police officer any information required by him, or, if no police officer is present, report the circumstances of the occurrence at the nearest police station as soon as possible, and in any case within twenty four hours of the occurrence.

90. When any accident occurs in which a motor vehicle is involved, any person authorised in this behalf by the Provincial Government may, on production if so required of his authority, inspect the vehicle and for that purpose may enter at any reasonable time any premises where the vehicle may be, and may remove the vehicle for examination:

Provided that the place to which the vehicle is so removed shall be intimated to the owner of the vehicle, and the vehicle shall be returned without unnecessary delay.

91. (1) The Provincial Government may make rules for the purpose of carrying into effect the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the nature of the mechanical or electrical signalling devices which may be used on motor vehicles;
- (b) the removal and the safe custody of vehicles including their loads which have broken down or which have been left standing or have been abandoned on roads;
- (c) the installation and use of weighing devices;
- (d) the exemption from all or any of the provisions of this Chapter of Fire Brigade vehicles, ambulances and other special classes of vehicle, subject to such conditions as may be prescribed;
- (e) the maintenance and management of parking places and stands and the fees, if any, which may be charged for their use;
- (f) prohibiting the driving down hill of a motor vehicle with the gear disengaged either generally or in a specified place;
- (g) prohibiting the taking hold of or mounting of a motor vehicle in motion;
- (h) prohibiting the use of foot-paths or pavements by motor vehicles;
- (i) generally, the prevention of danger, injury or annoyance to the public or any person, or of danger or injury to property or of obstruction to traffic; and
- (j) any other matter which is to be or may be prescribed.

CHAPTER VII.

MOTOR VEHICLES TEMPORARILY LEAVING OR VISITING BRITISH INDIA.

92. (1) The Central Government may, by notification in the official Gazette, make rules for all or any of the following purposes, namely:—

- (a) the grant and authentication of travelling passes, certificates or authorisations to persons temporarily taking motor vehicles out of British India to any place outside India or to persons temporarily proceeding out of British India to any place outside India and desiring to drive a motor vehicle during their absence from British India;

(b) prescribing the conditions subject to which motor vehicles brought temporarily into British India from outside India by persons intending to make a temporary stay in British India may be possessed and used in British India; and

(c) prescribing the conditions subject to which persons entering British India from any place outside India for a temporary stay in British India may drive motor vehicles in British India.

(2) No rule made under this section shall operate to confer on any person any immunity in any province from the payment of any tax levied in that province on motor vehicles or their users.

(3) Rules made under clauses (b) and (c) of sub-section (1) shall, in case of motor vehicles and persons entering British India from the French and Portuguese Settlements bounded by India, be applicable only to motor traffic to which the International Convention relating to motor traffic concluded at Paris on the 24th day of April 1926, applies.

(4) Nothing in this Act or in any rule made thereunder by a Provincial Government relating to—

- (a) the registration and identification of motor vehicles, or
- (b) the requirements as to construction, maintenance and equipment of motor vehicles, or
- (c) the licensing and the qualifications of drivers of motor vehicles

shall apply to any motor vehicle to which or to any driver of a motor vehicle to whom any rules made under clause (b) or clause (c) of sub-section (1) apply.

CHAPTER VIII.

INSURANCE OF MOTOR VEHICLES AGAINST THIRD PARTY RISKS.

Definitions.

93. In this Chapter—

- (a) “authorised insurer” means an insurer in whose case the requirements of the Insurance Act, 1938, IV of 1938, with respect to the registration of and deposits by insurers are complied with, and
- (b) “certificate of insurance” means a certificate issued by an authorised insurer in pursuance of sub-section (4) of section 95; and includes where more than one certificate has been issued in connection with a policy, or where a copy of a certificate has been issued, all those certificates or that copy, as the case may be.

94. (1) No person shall use except as a passenger or cause or allow any other person to use a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter.

Explanation.—A person driving a motor vehicle merely as a paid employee, while there is in force in relation to the use of the vehicle no such policy as is required by this sub-section, shall not be deemed to act in contravention of the sub-section unless he knows or has reason to believe that there is no such policy in force.

(2) This section shall not apply to any vehicle owned by or on behalf of the Central Government or a Provincial Government or a local authority notified in this behalf by the Provincial Government, or a State-owned railway; at any time when the vehicle is driven by a servant of the owner in the course of his employment, or is otherwise subject to the control of the owner.

95. (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which—

- (a) is issued by a person who is an authorised insurer, and
- (b) insures the person or classes of person specified in the policy to the extent specified in sub-section (2) against any liability which may be incurred by him or them in respect of the death of or bodily injury to any person caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not, except as may be otherwise provided under sub-section (3), be required—

- (i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment, or
- (ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mount-

ing or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises, or

(iii) to cover any contractual liability.

(2) Subject to the proviso to sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely:—

- (a) where the vehicle is a vehicle used or adapted to be used for the carriage of goods, a limit of twenty thousand rupees;
- (b) where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, in respect of persons other than passengers carried for hire or reward, a limit of twenty thousand rupees; and in respect of passengers a limit of twenty thousand rupees in all, and four thousand rupees in respect of an individual passenger, if the vehicle is registered to carry not more than six passengers excluding the driver or two thousand rupees in respect of an individual passenger, if the vehicle is registered to carry more than six passengers excluding the driver;
- (c) where the vehicle is a vehicle of any other class, the amount of the liability incurred.

(3) A Provincial Government may prescribe that a policy of insurance shall in order to comply with the requirements of this Chapter cover any liability arising under the provisions of the Workmen's Compensation Act, 1923, in respect of the death of or bodily injury to any paid employee engaged in driving or otherwise in attendance on or being carried in a motor vehicle.

(4) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance or a cover note in the prescribed form and containing the prescribed particulars of any conditions subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(5) Notwithstanding anything elsewhere contained in any law, a person issuing a policy of insurance under this section shall be liable to indemnify the person or classes of person specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of person.

96. (1) If, after a certificate of insurance or a cover note has

Duty of insurers to satisfy judgments against persons insured in respect of third party risks.

been issued under sub-section (4) of section 95 in favour of the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of section 95 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment unless before or after the commencement of the proceedings in which the judgment is given the insurer had notice through the Court of the bringing of the proceedings, or in respect of any judgment so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:—

- (a) that the policy was cancelled by mutual consent or by virtue of any provision contained therein before the accident giving rise to the liability, and that either the certificate of insurance was surrendered to the insurer or that the person to whom the certificate was issued has made an affidavit stating that the certificate has been lost or destroyed, or that either before or not later than fourteen days after the happening of the accident the insurer has commenced proceedings for cancellation of the certificate after compliance with the provisions of section 105; or
- (b) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:—
 - (i) a condition excluding the use of the vehicle—
 - (a) for hire or reward, where the vehicle is on the date of the

contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

- (b) for organised racing and speed testing, or
- (c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a public service vehicle or a goods vehicle, or
- (d) without side-car being attached, where the vehicle is a motor cycle; or
- (ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or
- (iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or
- (c) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

(3) Where a certificate of insurance or cover note has been issued under sub-section (4) of section 95 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any conditions other than those in clause (b) of sub-section (1) shall, as respects such liabilities as are required to be covered by a policy under clause (b) of sub-section (1) of section 95, be of no effect:

Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person.

(4) If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person.

(5) In this section the expressions "material fact" and "material particular" mean, respectively, a fact or particular of such a nature as to influence the judgment

of a prudent insurer in determining whether he will take the risk and, if so, at what premium and on what conditions, and the expression "liability covered by the terms of the policy" means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel or has avoided or cancelled the policy.

(6) No insurer to whom the notice referred to in sub-section (2) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment as is referred to in sub-section (1) otherwise than in the manner provided for in sub-section (2).

97. (1) Where under any contract of insurance effected in accordance with the provisions of this Chapter a person is insured against liabilities which he may incur to third parties then--

(a) in the event of the person becoming insolvent or making a composition or arrangement with his creditors, or

(b) where the insured person is a company, in the event of a winding up order being made or a resolution for a voluntary winding up being passed with respect to the company or of a receiver or manager of the company's business or undertaking being duly appointed, or of possession being taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the charge,

if, either before or after that event, any such liability is incurred by the insured person, his rights against the insurer under the contract in respect of the liability shall, notwithstanding anything to the contrary in any provision of law, be transferred to and vest in the third party to whom the liability was so incurred.

(2) Where an order for the administration of the estate of a deceased debtor is made according to the law of insolvency, then, if any debt provable in insolvency is owing by the deceased in respect of a liability to a third party against which he was insured under a contract of insurance in accordance with the provisions of this Chapter, the deceased debtor's rights against the insurer in respect of that liability shall, notwithstanding anything to the contrary in any provision of law, be transferred to and vest in the person to whom the debt is owing.

(3) Any condition in a policy issued for the purposes of this Chapter purporting either directly or indirectly to avoid the policy or to alter the rights of the parties thereunder upon the happening to the insured person of any of the events specified in clause (a) or clause (b) of sub-section (1) or upon the making of an order for the administration of the estate of a deceased debtor according to the law of insolvency shall be of no effect.

(4) Upon a transfer under sub-section (1) or sub-section (2) the insurer shall be under the same liability to the third party as he would have been to the insured person, but--

(a) if the liability of the insurer to the insured person exceeds the liability of the insured person to the third party, nothing in this Chapter shall affect the rights of the insured person against the insurer in respect of the excess and

(b) if the liability of the insurer to the insured person is less than the liability of the insured person to the third party, nothing in this Chapter shall affect the rights of the third party against the insured person in respect of the balance.

98. (1) No person against whom a claim is made in respect of any liability referred to in clause (b)

of sub-section (1) of section 95 shall on demand by or on behalf of the person making the claim refuse to state whether or not he was insured in respect of that liability by any policy issued under the provisions of this Chapter, or would have been so insured if the insurer had not avoided or cancelled the policy, nor shall he refuse, if he was or would have been so insured, to give such particulars with respect to that policy as were specified in the certificate of insurance issued in respect thereof.

(2) In the event of any person becoming insolvent or making a composition or arrangement with his creditors or in the event of an order being made for the administration of the estate of a deceased person according to the law of insolvency, or in the event of a winding up order being made or a resolution for a voluntary winding up being passed with respect to any company or of a receiver or manager of the company's business or undertaking being duly appointed or of possession being taken by or on behalf of the holders of any debentures secured by a floating charge on any property comprised in or subject to the charge, it shall be the duty of the insolvent debtor, personal representative of the deceased debtor or company

as the case may be, or the official assignee or receiver in insolvency, trustee liquidator, receiver or manager, or person in possession of the property to give at the request of any person claiming that the insolvent debtor, deceased debtor or company is under such liability to him as is covered by the provisions of this Chapter. such information as may reasonably be required by him for the purpose of ascertaining whether any rights have been transferred to and vested in him by section 97, and for the purpose of enforcing such rights, if any; and any such contract of insurance as purports whether directly or indirectly to avoid the contract or to alter the rights of the parties thereunder upon the giving of such information in the events aforesaid, or otherwise to prohibit or prevent the giving thereof in the said events, shall be of no effect.

(3) If, from the information given to any person in pursuance of sub-section (2) or otherwise, he has reasonable ground for supposing that there have or may have been transferred to him under this Chapter rights against any particular insurer, that insurer shall be subject to the same duty as is imposed by the said sub-section on the persons therein mentioned.

(4) The duty to give the information imposed by this section shall include a duty to allow all contracts of insurance, receipts for premiums, and other relevant documents in the possession or power of the person on whom the duty is so imposed to be inspected and copies thereof to be taken.

99. (1) No settlement made by an insurer in respect of any claim which might be made by a third party in respect of any liability of the nature referred to in clause (b) of sub-section (1) of section 95 shall be valid unless such third party is a party to the settlement.

(2) Where a person who is insured under a policy issued for the purposes of this Chapter has become insolvent, or where, if such insured person is a company, a winding up order has been made or a resolution for a voluntary winding up has been passed with respect to the company, no agreement made between the insurer and the insured person after liability has been incurred to a third party and after the commencement of the insolvency or winding up, as the case may be, nor any waiver, assignment or other disposition made by or payment made to the insured person after the commencement aforesaid shall be effective to defeat the rights transferred to the third party under this Chapter, but those rights shall be the same as if no such agreement, waiver assignment or disposition or payment has been made.

100. (1) For the purposes of sections 97, 98 and 99, a reference to "liabilities to third parties" in relation to a person insured under any policy of insurance shall not include a reference to any liability of that person in the capacity of insurer under some other policy of insurance.

(2) The provisions of sections 97, 98 and 99 shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of an amalgamation with another company.

101. Where a certificate of insurance has been issued to the person by whom a policy has been effected, the happening in relation to any person insured by the policy of any such event as is mentioned in sub-section (1) or sub-section (2) of section 97 shall, notwithstanding anything in this Chapter, not affect any liability of that person of the nature referred to in clause (b) of sub-section (1) of section 95; but nothing in this section shall affect any rights against the insurer conferred under the provisions of sections 97, 98 and 99 on the person to whom the liability was incurred.

102. Notwithstanding anything contained in section 306 of the Indian Succession Act, XXIX of 1925, the death of a person in whose favour a certificate of insurance or cover note had been issued, if it occurs after the happening of an event which has given rise to a claim under the provisions of this Chapter, shall not be a bar to the survival of any cause of action arising out of the said event against his estate or against the insurer.

103. When an insurer has issued a certificate of insurance in respect of contract of insurance between the insurer and the insured person, then—

(a) if and so long as the policy described in the certificate has not been issued by the insurer to the insured, the insurer shall, as between himself and any other person except the insured, be deemed to have issued to the insured person a policy of insurance conforming in all respects with the description and particulars stated in such certificate; and

(b) if the insurer has issued to the insured the policy described in the certificate, but the actual terms of the policy are less favourable to persons claiming

under or by virtue of the policy against the insurer either directly or through the insured than the particulars of the policy as stated in the certificate, the policy shall, as between the insurer and any other person except the insured, be deemed to be in terms conforming in all respects with the particulars stated in the said certificate.

104. (1) Whenever the period of cover under a policy of insurance issued under the provisions of this Chapter is terminated or suspended by any means before its expiration by effluxion of time, the insured person shall within seven days after such termination or suspension deliver to the insurer by whom the policy was issued the latest certificate of insurance given by the insurer in respect of the said policy, or, if the said certificate has been lost or destroyed, make an affidavit to that effect.

Duty to surrender certificate on cancellation of policy.

Chapter is terminated or suspended by any means before its expiration by effluxion of time, the insured person shall within seven days after such termination or suspension deliver to the insurer by whom the policy was issued the latest certificate of insurance given by the insurer in respect of the said policy, or, if the said certificate has been lost or destroyed, make an affidavit to that effect.

(2) Whoever fails to surrender a certificate of insurance or to make an affidavit, as the case may be, in accordance with the provisions of this section shall be punishable with fine which may extend to fifteen rupees for every day that the offence continues subject to a maximum of five hundred rupees.

105. Whenever a policy of insurance issued under the provisions of this Chapter is cancelled or suspended by the insurer who has issued the policy, the insurer shall within seven days notify such cancellation or suspension to the registering authority in whose records the registration of the vehicle covered by the policy of insurance is recorded or to such other authority as the Provincial Government may prescribe.

Duty of insurer to notify registering authority cancellation or suspension of the policy.

106. (1) Any person driving a motor vehicle in any public place shall on being so required by a police officer in uniform produce the certificate of insurance relating to the use of the vehicle:

Production of certificate of insurance.

Provided that if the driver of a motor vehicle within seven days from the date on which the production of the certificate of insurance was so required produces the certificate at such police station as may have been specified by him at the time its production was required he shall not be liable to conviction under this sub-section by reason only of failure to produce the certificate to the police officer.

(2) If, where owing to the presence of a motor vehicle in a public place an accident occurs involving bodily injury to another person, the driver of the vehicle does not at the time produce the certificate of insurance to a police officer, he shall produce the certificate of insurance at the police station at which he makes the report required by section 89:

Provided that no person shall be liable to conviction under this sub-section by reason only of failure to produce his certificate of insurance if within seven days from the occurrence of the accident he produces the certificate at such police station as may be specified by him to the police officer at the site of the accident or to the officer in charge of the police station at which he reported the accident.

(3) The owner of motor vehicle shall give such information as he may be required by or on behalf of a police officer empowered in this behalf by the Provincial Government to give for the purpose of determining whether the vehicle was or was not being driven in contravention of section 94 and on any occasion when the driver was required under this section to produce his certificate of insurance.

(4) In this section the expression "produce his certificate of insurance" means produce for examination the relevant certificate of insurance or such other evidence as may be prescribed that the vehicle was not being driven in contravention of section 94.

107. A Provincial Government may make rules requiring the owner of any motor vehicle when applying whether by payment of a tax or otherwise for authority to use the vehicle in a public place to produce such evidence as may be prescribed by those rules to the effect that either—

(a) on the date when the authority to use the vehicle comes in to operation there will be in force the necessary policy of insurance in relation to the use of the vehicle by the applicant or by other persons on his order or with his permission, or

(b) the vehicle is a vehicle to which section 94 does not apply.

108. (1) A Provincial Government may on the application of a co-operative society of public service vehicle owners registered or deemed to have been registered under the Co-operative Societies Act, 1912, or under an Act of a Provincial Legislature governing the registration of Co-operative Societies and subject to the control of the Registrar of Co-operative societies of the province, allow the society

Co-operative insurance.

to transact the business of an insurer for the purposes of this Chapter as if the society were an authorised insurer, subject to the following conditions, namely:—

- (a) the society shall establish and maintain a fund of not less than twenty-five thousand rupees for the first fifty vehicles or fractional part thereof and *pro rata* for every additional vehicle in the possession of members of the society and the said fund shall be lodged in such custody as the Provincial Government may prescribe and shall not be available for meeting claims or other expenses except in the event of the winding up of the society;
- (b) the liability of the society shall be limited as specified in clause (b) of sub-section (2) of section 95;
- (c) the society shall, if required by the Provincial Government, re-insure against claims above a prescribed amount;
- (d) the provisions of this Chapter, in so far as they relate to the protection of third parties and to the issue and production of certificates, shall apply in respect of any insurance effected by the society;
- (e) an independent authority not associated with the society shall be appointed by the Provincial Government to facilitate and assist in the settling of claims against the society;
- (f) the society shall operate on an insurance basis, that is to say,—
 - (i) it shall levy its premiums in respect of a period not exceeding twelve months, during which period the insured shall be held covered in respect of all accidents arising, subject to the limits of liability specified in clause (b) of sub-section (2) of section 95;
 - (ii) it shall charge premiums estimated to be sufficient, having regard to the risks, to meet the capitalised value of all claims arising during the period of cover, together with an adequate charge for expenses attaching to the issue of policies and to the settlement of claims arising thereunder;
- (g) the society shall furnish to the Superintendent of Insurance the returns required to be furnished by insurers under the provisions of the Insurance Act, 1938, and the

Superintendent of Insurance may exercise in respect thereof any of the powers exercisable by him in respect of returns made to him under the said Act; and

- (h) any provisions of law applicable to the winding up of authorised insurers shall be equally applicable to the society.

(2) Except as provided in sub-section (1), the Insurance Act, 1938, shall not apply to IV of 1938, any co operative society of public service vehicle owners allowed to transact the business of an insurer under this section.

109. A registering authority or the officer in charge of a police station shall, if so required by a person who alleges that he is entitled to claim compensation in respect of an accident arising out of the use of a motor vehicle, or if so required by an insurer against whom a claim has been made in respect of any motor vehicle, furnish to that person or to that insurer, as the case may be, on payment of the prescribed fee any information at the disposal of the said authority or the said police officer relating to the identification marks and other particulars of the vehicle and the name and address of the person who was using the vehicle at the time of the accident or was injured by it.

110. A Provincial Government may, by notification in the official Gazette, Power to appoint persons to investigate and report on accidents. appoint a person or a body of persons to investigate and report on accidents involving the death of or bodily injury to any person arising out of the use of motor vehicles and the extent to which their claims to compensation have been satisfied and to advise and assist such persons or their representatives in presenting their claims for compensation:

Provided that nothing in this section shall confer on any such person or body of persons the right to adjudicate in any way on the liability of the insurer or on the amount of damages to be awarded except at the express desire of the insurer concerned.

111. (1) The Central Government may make rules for the purpose of carrying into effect the provisions of this Chapter. Power to make rules.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the forms to be used for the purposes of this chapter;
- (b) the making of applications for and the issue of certificates of insurance;

- (c) the issue of duplicates to replace certificates of insurance lost or destroyed;
- (d) the custody, production, cancellation and surrender of certificates of insurance;
- (e) the records to be maintained by insurers of policies of insurance issued under this Chapter;
- (f) the identification by certificates or otherwise of persons or vehicles exempted from the provisions of this Chapter;
- (g) the furnishing of information respecting policies of insurance by insurers;
- (h) the carrying into effect of the provisions of section 108;
- (i) adapting the provisions of this Chapter to vehicles brought into British India by persons making only a temporary stay therein by applying those provisions with prescribed modifications; and
- (j) any other matter which is to be or may be prescribed.

CHAPTER IX.

OFFENCES, PENALTIES AND PROCEDURE.

112. Whoever contravenes any provision of this Act or of any rule made thereunder shall, if no other penalty is provided for the offence, be punishable with fine which may extend to twenty rupees, or, if having been previously convicted of any offence under this Act he is again convicted of an offence under this Act, with fine which may extend to one hundred rupees.

113. Whoever wilfully disobeys any direction lawfully given by any person or authority empowered under this Act to give such direction, or obstructs any person or authority in the discharge of any functions which such person or authority is required or empowered under this Act to discharge, or, being required by or under this Act to supply any information, withholds such information or gives information which he knows to be false or which he does not believe to be true, shall, if no other penalty is provided for the offence, be punishable with fine which may extend to two hundred rupees.

114. Whoever, being disqualified under this Act for holding or obtaining a licence, drives a motor vehicle in a public place or applies for or obtains

a licence or, not being entitled to have a licence issued to him free of endorsement, applies for or obtains a licence without disclosing the endorsements made on a licence previously held by him or, being disqualified under this Act for holding or obtaining a licence, uses in British India a licence such as is referred to in sub-section (2) of section 9, shall be punishable 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 any licence so obtained by him shall be of no effect.

115. (1) Whoever drives a motor vehicle in contravention of section 71 shall be punishable with fine which may extend to one hundred rupees.

(2) Whoever causes any person who is employed by him or is subject to his control in driving to drive a motor vehicle in contravention of section 71 shall be punishable with fine which may extend to two hundred rupees.

(3) No person shall be convicted of an offence punishable under sub-section (1) solely on the evidence of one witness to the effect that in the opinion of the witness such person was driving at a speed which was unlawful, unless that opinion is shown to be based on an estimate obtained by the use of some mechanical timing device.

(4) The publication of a time table under which, or the giving of any direction that, any journey or part of a journey is to be completed within a specified time shall, if in the opinion of the Court it is not practicable in the circumstances of the case for that journey or part of a journey to be completed in the specified time without infringing the provisions of section 71, be *prima facie* evidence that the person who published the time table or gave the direction has committed an offence punishable under sub-section (2).

116. Whoever drives a motor vehicle at a speed in a manner dangerous to the public, having regard to all the circumstances of the case including the nature, condition and use of the place where the vehicle is driven and the amount of traffic which actually is at the time or which might reasonably be expected to be in the place, shall be punishable on a first conviction for the offence with imprisonment for a term which may extend to six months, or with fine which may extend five hundred rupees, and for a subsequent offence if committed within three years of the commission of a previous similar offence with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

117. Whoever while driving or attempting to drive a motor vehicle is under the influence of drink or a drug to such an extent as to be incapable of exercising proper control over the vehicle, shall be punishable for a first offence with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both, and for a subsequent offence if committed within three years of the commission of a previous similar offence with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

118. Whoever drives a motor vehicle in any public place when he is to his knowledge suffering from any disease or disability calculated to cause his driving of the vehicle to be a source of danger to the public, shall be punishable for a first offence with fine which may extend to two hundred rupees and for a second or subsequent offence with fine which may extend to five hundred rupees.

119. Whoever abets the commission of an offence under section 116, 117 or 118, shall be punishable with the punishment provided for the offence.

120. Whoever without the written consent of the Provincial Government permits or takes part in a race or trial of speed between motor vehicles in any public place shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to three hundred rupees or with both.

121. Any person who drives or causes or allows to be driven in any public place a motor vehicle or trailer while the vehicle or trailer has any defect, which such person knows of or could have discovered by the exercise of ordinary care and which is calculated to render the driving of the vehicle a source of danger to persons and vehicles using such place, shall be punishable with fine which may extend to two hundred and fifty rupees or, if as a result of such defect an accident is caused causing bodily injury or damage to property, with fine which may extend to five hundred rupees.

122. Whoever being an importer of or dealer in motor vehicles, sells or delivers or offers to sell or deliver a motor vehicle or trailer in such condition that the

use thereof in a public place would be in contravention of Chapter V or any rule made thereunder or alters the motor vehicle or trailer so as to render its condition such that its use in a public place would be in contravention of Chapter V or any rule made thereunder shall be punishable with fine which may extend to two hundred rupees:

Provided that no person shall be convicted under this section if he proves that he had reasonable cause to believe that the vehicle would not be used in a public place until it had been put into a condition in which it might lawfully be so used.

123. (1) Whoever drives a motor vehicle or causes or allows a motor vehicle to be used or lets out a motor vehicle for use in contravention of the provisions of sub-section (1) of section 42 shall be punishable for a first offence with fine which may extend to five hundred rupees, and for a subsequent offence if committed within three years of the commission of a previous similar offence with a fine which shall not be less than one hundred rupees and may extend to one thousand rupees.

(2) Nothing in this section shall apply to the use of a motor vehicle in an emergency for the conveyance of persons suffering from sickness or injury or for the transport of materials for repair or of food or materials to relieve distress or of medical supplies for a like purpose:

Provided that the person using the vehicle reports such use to the Regional Transport Authority within seven days.

124. Whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the provisions of section 72 or of the conditions of any permit issued thereunder, or in contravention of any prohibition or restriction imposed under section 74 shall be punishable for a first offence with fine which may extend to one hundred rupees, and for a second or subsequent offence with fine which may extend to five hundred rupees.

125. Whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the provisions of section 94 shall be punishable with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

126. Whoever takes and drives away any motor vehicle without having either the consent of the owner thereof or other lawful authority shall be

punishable with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees, or with both :

Provided that no accused person shall be convicted under this section if the Court is satisfied that the accused acted in the reasonable belief that he had lawful authority or in the reasonable belief that the owner would in the circumstances of the case have given his consent if he had been asked therefor.

127. Whoever otherwise than with law-

Unauthorised inter-
ference with vehicle.

ful authority or
reasonable excuse
enters or mounts
any stationary motor vehicle or tampers with the brake or any part of the mechanism of a motor vehicle shall be punishable with fine which may extend to one hundred rupees.

128. (1) A police officer in uniform may

Power of arrest without
warrant.

arrest without
warrant any person
who commits in his
view an offence punishable under section 116
or section 117 or section 126 :

Provided that any person so arrested in connection with an offence punishable under section 117 shall be subject to a medical examination by a registered medical practitioner within two hours of his arrest or shall then be released from custody.

(2) A police officer in uniform may arrest without warrant—

- (a) any person who being required under the provisions of this Act to give his name and address refuses to do so, or gives a name or address which the police officer has reason to believe to be false, or
- (b) any person concerned in an offence under this Act or reasonably suspected to have been so concerned, if the police officer has reason to believe that he will abscond or otherwise avoid the service of a summons.

(3) A police officer arresting without warrant the driver of a motor vehicle shall, if the circumstances so require, take or cause to be taken any steps he may consider proper for the temporary disposal of the vehicle.

129. (1) Any police officer authorised in

Power of police officer
to impound document.

this behalf of other
person authorised in
this behalf by the
Provincial Government may, if he has reason to believe that any identification mark carried on a motor vehicle or any licence, permit, certificate of registration, certificate of insurance or other document produced to him by the driver or person in charge of a motor vehicle is a false

document within the meaning of section 464 of the Indian Penal Code, seize the mark or document and call upon the driver or owner of the vehicle to account for his possession of or the presence in the vehicle of such mark or document.

(2) Any police officer authorised in this behalf by the Provincial Government may, if he has reason to believe that the driver of a motor vehicle who is charged with any offence under this Act may abscond or otherwise avoid the service of a summons, seize any licence held by such driver and forward it to the Court taking cognizance of the offence.

(3) A police officer seizing a licence under sub-section (2) shall give to the person surrendering the licence a temporary acknowledgment therefor and such acknowledgment shall authorise the holder to drive until the licence has been returned to him or the Court has otherwise ordered.

130. (1) A Court taking cognizance of an

Summary disposal of
cases.

offence under this
Act may, unless the
offence is an offence
specified in Part A of the Fifth Schedule, state upon the summons to be served on the accused person that he—

- (a) may appear by pleader and not in person, or
- (b) may by a specified date prior to the hearing of the charge plead guilty to the charge by registered letter and remit to the Court such sum not exceeding twenty-five rupees as the Court may specify.

(2) Where the offence dealt with in accordance with sub-section (1) is an offence specified in Part B of the Fifth Schedule, the accused person shall, if he pleads guilty to the charge, forward his licence to the Court with the letter containing his plea in order that the conviction may be endorsed on the licence.

(3) Where an accused person pleads guilty and remits the sum specified and has complied with the provisions of sub-section (2), no further proceedings in respect of the offence shall be taken against him, nor shall he be liable to be disqualified for holding or obtaining a licence by reason of his having pleaded guilty.

131. No person prosecuted for an offence

Restriction on con-
viction.

punishable under section 115 or section 116 shall be convicted unless—

- (a) he was warned at the time the offence was committed that the question of prosecuting him would be taken into consideration, or

- (b) within fourteen days from the commission of the offence, a notice specifying the nature of the offence and the time and place where it is alleged to have been committed was served on or sent by registered post to him or the person registered as the owner of the vehicle at the time of the commission of the offence, or
- (c) within twenty-eight days of the commission of the offence, a summons for the offence was served on him :

Provided that nothing in this section shall apply where the Court is satisfied that—

- (a) the failure to serve the notice or summons referred to in this subsection was due to the fact that neither the name and address of the accused nor the name and address of the registered owner of the vehicle could with reasonable diligence have been ascertained in time, or
- (b) such failure was brought about by the conduct of the accused.

132. No Court inferior to that of a Presidency Magistrate or a Magistrate of the second class shall try any offence punishable under this Act or any rule made thereunder.

CHAPTER X.

MISCELLANEOUS.

133. (1) Every power to make rules given by this Act is subject to the condition of the rules being made after previous publication.

(2) All rules made under this Act shall be published in the official Gazette, and

shall, unless some later date is appointed, come into force on the date of such publication.

(3) All rules made under this Act by the Central Government or by any Provincial Government shall be laid for not less than fourteen days before the Central or Provincial Legislature, as the case may be as soon as possible after they are made, and shall be subject to such modifications as the Legislature may make during the session in which they are so laid.

Repeal.

134. (1) The Indian Motor Vehicles Act, 1914, is hereby repealed. VIII of 1914.

(2) Notwithstanding the repeal of Indian Motor Vehicles Act, 1914, rules made by any Provincial Government under sub-section (2) of section 11 of that Act and rules made by the Governor General in Council under section 14 of that Act, being rules in force at the commencement of this Act, shall subject to the provisions of sub-section (3) continue to be in force for a period of nine months from the commencement of this Act, unless before the expiry of that period they are cancelled by a Provincial Government or by the Central Government, as the case may be, by notification in the official Gazette.

(3) Notwithstanding the repeal of the Indian Motor Vehicles Act, 1914, rules made or purporting to be made by a Provincial Government under sub-section (2) of section 11 of that Act, requiring or relating to the insurance of motor vehicles, being rules in force at the commencement of this Act, shall, until Chapter VIII of this Act takes effect in the province, have effect as if enacted in this Act. VIII of 1914.

(4) Nothing contained in this Act shall, until the expiry of a period of nine months from the commencement of this Act, operate to invalidate any provisions relating to the taxation of motor vehicles contained in any Provincial enactment or rules made thereunder in force at the commencement of this Act.

THE SCHEDULES.
THE FIRST SCHEDULE.
FORMS.

FORM A.

[See section 7 (2).]

Form of application for licence to drive a motor vehicle.

I
Application.

I apply for a licence to enable me to drive
as a paid employee
*otherwise than as a paid employee

*vehicles of the following description :—

- (a) motor cycles,
- (b) motor cars,
- (c) invalid carriages,
- (d) motor cabs,
- (e) delivery vans,

(f) light transport vehicles ^{*including} public service vehicles,
_{excluding}

(g) heavy transport vehicles ^{*including} public service vehicles,
_{excluding}

- (h) tractors,
- (i) road-rollers,
- (j) locomotives,

(k) a vehicle of a special type (description attached) constructed or adapted to be driven by me.

* Strike out whichever inapplicable.

II

Particulars to be furnished by the applicant.

1. Full name and name of father.....
2. Permanent address.....
3. Temporary address.....
4. Age at date of application.....
5. Particulars of any licence previously held by applicant.....
6. Particulars and date of every conviction which has been ordered to be endorsed on any licence held by the applicant.
7. Have you been disqualified for obtaining a licence to drive? If so, for what reason?
8. Have you been subjected to a driving test as to your fitness or ability to drive a vehicle in respect of which a licence to drive is applied for? If so, give date, testing authority and result of test.

III

Declaration as to physical fitness of applicant.

The applicant is required to answer "Yes" or "No" in the space provided opposite each question.

- (a) Do you suffer from epilepsy, or from sudden attacks of disabling giddiness or fainting?
- (b) Are you able to distinguish with each eye at a distance of 25 yards in good daylight (with glasses, if worn) a motor car number plate containing seven letters and figures?
- (c) Have you lost either hand or foot or are you suffering from any defect in movement, control, or muscular power of either arm or leg?
- (d) Do you suffer from colour blindness or night blindness?
- (e) Do you suffer from a defect of hearing?
- (f) Do you suffer from any other disease or disability likely to cause your driving of a motor vehicle to be a source of danger to the public?

If so, give particulars.

I declare that to the best of my information and belief the particulars given in Section II and the declaration made in Section III hereof are true.

NOTE.—An applicant who answers "Yes" to questions (b) and (c) in the declaration and "No" to the other questions may claim to be subjected to a test as to his competency to drive vehicles of a specified type or types.

Date.....19 .

Signature or Thumb Impression of applicant.

Certificate of test of ability to drive.

The applicant has ^{passed} the test specified in the Third Schedule to the Motor Vehicles Act, 1939. The test was conducted on a* _{failed in} on (date)

*Signature of Testing Authority.
Duplicate Signature or Thumb
Impression of applicant.*

* Here enter description of vehicle.

FORM B.

[See section 11 (2).]

Form of application for renewal of driving licence.

I hereby apply for a renewal of the licence under the Motor Vehicles Act, 1939, which was issued to me on the by (state title of licensing authority).

I hereby declare that I am not subject to any disease or disability likely to cause my driving of a motor vehicle to be a source of danger to the public.

Date 19 ..

Signature of Applicant

FORM C.

[See section 7 (3) and section 12.]

Form of medical certificate in respect of an applicant for a licence to drive any transport vehicle or to drive any vehicle as a paid employee.

(To be filled up by a registered medical practitioner.)

1. What is the applicant's apparent age ?
2. Is the applicant, to the best of your judgment, subject to epilepsy, vertigo or any mental ailment likely to affect his efficiency ?
3. Does the applicant suffer from any heart or lung disorder which might interfere with the performance of his duties as a driver ?
4. (a) Is there any defect of vision ? If so, has it been corrected by suitable spectacles ?
- (b) Does the applicant suffer from night blindness or colour blindness ?
- (c) Does the applicant suffer from a degree of deafness which would prevent his hearing the ordinary sound signals ?
5. Has the applicant any deformity or loss of members which would interfere with the efficient performance of his duties as a driver ?
6. Does he show any evidence of being addicted to the excessive use of alcohol, tobacco or drugs ?
7. Is he, in your opinion, generally fit as regards (a) bodily health, and (b) eyesight ?
8. Marks of identification.

I certify that to the best of my knowledge and belief the applicant..... is the person hereinabove described, and that the attached photograph is a reasonably correct likeness.

(Signature).....

[Space for photograph.]

Name

Designation

NOTE.—Special attention should be directed to distant vision and to the condition of the arms and hands and the joints of both extremities.

FORM D.

[See section 8(I).]

Driving licence.

No

(Name) 19.....

son/daughter of (father's name).....

of (permanent address).....

orary address).....

Photograph

if necessary.

Signature or thumb impression.

is licensed to drive, throughout British India, vehicles of the following description :--*

- (a) Motor cycle.
- (b) Motor car.
- (c) Motor cab.
- (d) Delivery van.
- (e) Light transport vehicle.
- (f) Heavy transport vehicle.
- (g) Locomotive.
- (h) Tract.
- (i) Invalid carriage.
- (j) Road-roller.
- (k) A motor vehicle hereunder described :—

He is also authorised to drive as a paid employee.*

This licence is valid from.....to.....

(* To be struck out if inapplicable.)

Date.....19 . Signature and designation of Licensing authority.

Authorisation to drive a public service vehicle.

So long as this licence is valid and is renewed from time to time, the holder is authorised to drive a public service vehicle within the province of.....

Date.....19 . Signature and designation of prescribed authority.

And within the province of.....

Date.....19 . Signature and designation of prescribed authority.

And within the province of.....

Date.....19 . Signature and designation of prescribed authority.

This licence is hereby renewed up to

Signature of Licensing Authority.

the.....day of.....19 .

the.....day of.....19 .

the.....day of.....19 .

the.....day of.....19 .

the.....day of.....19 .

ENDORSEMENTS:

Date.	Section and rule.	Fine or other punishment.	Signature of Endorsing Authority.

FORM E.

[See section 24(1).]

Form of Application for the registration of a Motor Vehicle.

1. Full name, name of father, and address of person to be registered as registered owner.....
2. Class of vehicle.....
3. Type of body.....
4. Maker's name.....
5. Year of manufacture.....
6. Number of cylinders.....
7. Horse power.....
8. Maker's classification or, if not known, wheel base.....
9. Chassis number.....
10. Engine number.....
11. Seating capacity (including driver).....
12. Unladen weight.....
13. Particulars of previous registration and registered number (if any).....
Additional particulars to be completed only in the case of transport vehicle other than motor cabs—
14. Number, description and size of tyres—
(a) front axle.....
(b) rear axle.....
(c) any other axle.....
15. Maximum laden weight.....lbs.
16. Maximum axle weight—
(a) front axle.....lbs.
(b) rear axle.....lbs.
(c) any other axle.....lbs.

The above particulars are to be filled in for a rigid framed motor vehicle of two or of three axles, for an articulated vehicle of three axles, or, to the extent applicable, for a trailer (other than the trailer to be registered as part of an articulated vehicle) as the case may be. Where a second trailer or additional trailers are to be registered with an articulated motor vehicle, the following particulars are to be furnished for each such trailer:—

17. Type of body.....
18. Unladen weight.....
19. Number, description and size of tyres on the axle.....
20. Maximum axle weight.....

Date.....19 ..

Signature of applicant.

Explanation.—An articulated vehicle means a tractor to which a trailer is attached in such a manner that part of the trailer is superimposed on and part of the weight of the trailer is borne by the tractor.

NOTE.—The motor vehicle above described is held by the person to be registered as the registered owner, under a hire purchase agreement with.....

Signature of owner.

Signature of Hire Purchase Company.

FORM F.

[See section 36(1).]

Document to be furnished by the maker or authorised assembler in the case of transport vehicles other than motor cabs.

Certified that the.....
Chassis no.....and Engine no.....is designed for maximum weights as follows when fitted with the
tyre-equipment specified below:—

- Maximum laden weight.....lbs.
Maximum weight front axle.....lbs.
Maximum weight rear axle.....lbs.
Maximum weight any other axle.....lbs.

Tyres—

- Front wheels.....
Rear wheels.....
Other wheels.....

Special certificate to be furnished by an assembler.

Signature of maker or authorised assembler.

Certified that I am authorised by the maker of the vehicle described above to issue this certificate.

Signature of authorised assembler.

FORM G.

[See section 24(2).]

Form of Certificate of Registration.

Registered number.....

Brief description of vehicle.

(e.g., Ford touring car, Chevrolet 22 seater bus, Albion lorry, trailer, etc.) Name, name of father, and address of Registered Owner.....

Signature of registering authority.

Transferred to

Signature of registering authority.

Transferred to

*Signature of registering authority.**Detailed description.*

1. Class of vehicle.....
2. Maker's name.....
3. Type of body.....
4. Year of manufacture.....
5. Number of cylinders.....
6. Chassis number.....
7. Engine number.....
8. Horse power.....
9. Maker's classification or, if not known, wheel-base.....
10. Seating capacity (including driver).....
11. Unladen weight.....

Additional particulars in the case of all transport vehicles other than motor cabs—

12. Registered laden weight.....
13. Number, description and size of tyres—
 - (a) front axle.....
 - (b) rear axle.....
 - (c) any other axle.....
14. Registered axle weight—
 - (a) front axle.....lbs.
 - (b) rear axle.....lbs.
 - (c) any other axle.....lbs.

Additional particulars of alternative or additional trailer or trailers registered with an articulated vehicle—

15. Type of body.....lbs.
16. Unladen weight.....lbs.
17. Number, description and size of tyres on the axle.....lbs.
18. Registered axle weight.....lbs.

Date.....19

Signature of registering authority.

NOTE.—The motor vehicle above described is held by the person registered as the registered owner under a hire purchase agreement with.....

Date.....

Signature of registering authority.

FORM H.

[See sections 38 and 39(2).]

Certificate of fitness (applicable in the case of transport vehicle only).

Vehicle No.....is certified as complying with the provisions of Chapter V of the Motor Vehicles Act, 1939, and the rules made there under. This certificate will expire on.....

Signature and designation of Inspecting Authority.

Date.....19

The certificate of fitness is hereby renewed—

- up to.....19
- up to.....19
- up to.....19

Signature of Inspecting Authority.

THE SECOND SCHEDULE.

[See section 7(5).]

I. DISEASES AND DISABILITIES ABSOLUTELY DISQUALIFYING A PERSON FOR OBTAINING
A LICENCE TO DRIVE A MOTOR VEHICLE.

1. Epilepsy.
2. Lunacy.
3. Heart disease likely to produce sudden attacks of giddiness or fainting.
4. Inability to distinguish with each eye at a distance of twenty-five yards in good day light) with the aid of glasses, if worn) a series of seven letters and figures in white on a black ground of the same size and arrangement as those of the registration mark of a motor car.
5. A degree of deafness which prevents the applicant from hearing the ordinary sound signals.
6. Colour-blindness.
7. Night-blindness.

II. DISEASES AND DISABILITIES ABSOLUTELY DISQUALIFYING A PERSON FOR OBTAINING
A LICENCE TO DRIVE A PUBLIC SERVICE VEHICLE.

1. Leprosy.

THE THIRD SCHEDULE.

[See sections 7(6)(a) and 17 (6).]

TEST OF COMPETENCE TO DRIVE.

Part I.

The candidate shall satisfy the persons conducting the test that he is able to—

1. Start the engine of the vehicle.
2. Move away straight ahead or at an angle.
3. Overtake, meet or cover the path of other vehicles and take an appropriate course.
4. Turn right and left corners correctly.
5. Stop the vehicle in an emergency and normally, and in the latter case bring it to rest at an appropriate part of the road.
6. Drive the vehicle backwards and whilst so doing enter a limited opening either to the right or left.
7. Cause the vehicle to face in the opposite direction by means of forward and reverse gears.
8. Give by hand and by mechanical means (if fitted to the vehicle), or, in the case of a disabled driver for whom it is impracticable or undesirable to give signals by hand, by mechanical means, in a clear and unmistakable manner, appropriate signals at appropriate times to indicate his intended actions.
9. Act correctly and promptly on all signals given by traffic signs and traffic controllers, and take appropriate action on signs given by other road users.

NOTE.—(i) Requirements 6 and 7 are not applicable in the case of a motor cycle or tricycle not equipped with means for reversing.

(ii) Requirements 6, and 8 are not applicable in the case of invalid carriages.

Part II.

The candidate shall satisfy the person conducting the test that he is cognizant of the provisions of sections 81, 82, 83, 84 and 85 and of the Tenth Schedule; that he knows the meaning of the traffic signs specified in the Ninth Schedule; and, if he has not been medically examined, that he is not so deaf as to be unable to hear the ordinary sound signals, and is able to distinguish with each eye at a distance of twenty-five yards in good day light (with the aid of glasses, if worn) a registration mark containing seven letters and figures.

THE FOURTH SCHEDULE.

[See sections 14 (1) and 39 (1) and (3).]

AUTHORITIES ENTITLED TO GRANT LICENCES TO DRIVE, AND TO REGISTER MOTOR VEHICLES, THE PROPERTY OF THE CENTRAL GOVERNMENT, AND REGISTRATION MARKS FOR SUCH VEHICLES.

Part A.

The authorities specified in the second column may grant licences in respect of vehicles, the property of the Department of the Central Government specified in the first column.

Defence Department of the Central Government

1. District Commanders.
2. Commanders of independent brigades.
3. Officers commanding units having mechanically propelled vehicles in their charge.
4. Commanders, Royal Engineers.

Part B.

The authorities specified in the second column may register motor vehicles, the property of the Department of the Central Government specified in the first column, and may grant certificates of fitness in respect of such vehicles

Defence Department of the Central Government

... The Master General of the Ordnance in India.

Part C.

Registration marks for vehicles registered under section 39.

A broad arrow above two figures representing the last two figures of the year of purchase of the vehicle followed by not more than four figures.

THE FIFTH SCHEDULE.

[See sections 19 (2) and (3) and 130.]

OFFENCES ON CONVICTION OF WHICH AN ENDORSEMENT SHALL BE MADE ON THE LICENCE
OF THE PERSON AFFECTED.

Part A.

1. Driving recklessly or dangerously (section 116).
2. Driving while under the influence of drink or drugs (section 117).
3. Abetment of an offence under section 116 or 117 (section 119).
4. Taking part in unauthorised race or trial of speed (section 120).
5. Driving when disqualified (section 18).
6. Obtaining or applying for a licence without giving particulars of endorsement (section 114).
7. Failing to stop on the occurrence of an accident (section 87).
8. Altering a licence or using an altered licence.
9. Any offence punishable with imprisonment in the commission of which a motor vehicle was used.

Part B.

1. Driving without a licence, or without a licence which is effective, or without a licence applicable to the vehicle driven (section 3).
2. Allowing a licence to be used by another person [section 6 (2)].
3. Driving at excessive speed (section 115).
4. Driving when mentally or physically unfit to drive (section 118).
5. Abetment of an offence punishable under section 115 or 118.
6. Refusing or failing within specified time to produce licence (section 86).
7. Failing to stop when required (section 87).
8. Driving an unregistered vehicle (section 22).
9. Driving a transport vehicle not covered by a certificate of fitness (section 38).
10. Driving in contravention of any rule made under section 70 (2) (g) relating to speed governors.
11. Driving a vehicle exceeding the permissible limit of weight (section 124).
12. Failure to comply with a requisition made under section 73.
13. Using a vehicle in unsafe condition (section 121).
14. Driving a transport vehicle in contravention of section 42.

THE SIXTH SCHEDULE.

[See sections 24 (3) and 29 (2).]

REGISTRATION MARKS.

One of the groups of letters specified in the second column followed by any one other letter shall be used as the registration mark for a vehicle in the province specified in the first column.

Assam	...	...	...	AS.
Bengal	...	...	...	BG, BL.
Bihar	...	...	...	BR.
Bombay	...	...	...	BM, BY.
Central Provinces and Berar	...	...	...	CP.
Madras	...	...	...	MD, MS.
North-West Frontier Province	...	...	...	FP.
Orissa	...	...	...	OR.
Sind	...	...	...	KA.
Punjab	...	...	...	PB, PJ.
United Provinces	...	...	...	UP, US.
Ajmer-Merwara	...	...	...	AJ.
Coorg	...	...	...	CG.
Delhi	...	...	...	DL.

NOTE.—These letters shall be followed by not more than four figures, and the letters and figures shall be shown—

1. In the case of transport vehicles ... In black on a white ground.
2. In the case of temporary registration (section 25) ... In red on yellow ground.
3. In the case of registration marks allotted to dealers
[section 41 (2) (k)]. ... In white on a red ground.
4. In other cases ... In white on a black ground.

THE SEVENTH SCHEDULE.

[See section 37 (2).]

MAXIMUM AXLE WEIGHTS PERMISSIBLE FOR TRANSPORT VEHICLES.

Table A.

For each low pressure pneumatic tyre, fitted to a wheel on the axle, of a nominal size—	The permissible weight in pounds is—
5'00-17	980
5'25-17	1,060
5'25-18	1,100
5'50-17	1,140
5'50-18	1,195
5'50-20	1,225
6'00-16	1,200
6'00-17	1,350
6'00-18	1,450
6'00-20	1,550
6'25-16	1,300
6'50-16	1,400
6'50-17	1,550
6'50-18	1,700
6'50-20	1,850
7'00-15	1,500
7'00-16	1,675
7'00-17	1,850
7'00-18	2,050
7'00-20	2,200
7'50-15	1,700
7'50-16	2,050
7'50-17	2,150
7'50-18	2,450
7'50-20	2,650
7'50-24	2,650
8'25-18	2,900
8'25-20	3,100
8'25-22	3,100
8'25-24	3,100
9'00-15	2,650
9'00-18	3,200
9'00-20	3,550
9'00-22	3,550
9'00-24	3,650
9'75-15	3,175
9'75-18	3,900
9'75-20	4,200
9'75-22	4,200
9'75-24	4,400
10'50-20	4,850
10'50-22	5,000
10'50-24	5,200
11'25-20	5,450
11'25-22	5,800
11'25-24	6,050

Table B.

For each high pressure pneumatic tyre, fitted to a wheel on the axle, of a nominal size—	The permissible weight in pounds is—
30×5	2,000
33×5	2,000
34×5	2,000
35×5	2,000
32×6	2,650
34×6	2,650
36×6	2,650
32×6½	2,950
32×7	3,000
34×7	3,300
36×7	3,300
38×7	3,300
36×8	4,000
38×8	4,200
40×8	4,400
38×9	4,850
40×9	5,100
42×9	5,300
40×10	5,700
44×10	6,150

Explanation.—The figures "5'00-17", etc., in Table A represent, respectively, the nominal sectional diameter of the tyre and the diameter of the wheel rim; and the figures "30×5", etc., in Table B represent, respectively, the over-all diameter of wheel and tyre and the nominal sectional diameter of the tyre, all figures being in inches. The actual sectional diameter of the tyre when mounted on its appropriate rim and inflated shall in no case be less than the nominal sectional diameter.

Note.—Tyres may be calibrated in so-called metric sizes, for example, "170×20". In that case the first number represents the sectional diameter of the tyre in millimetres and the second number represents the diameter of the rim in inches. The permissible weight in pounds for each such tyre shall be determined by dividing the nominal sectional diameter of the tyre in millimetres by the figure 25.4, the quotient being the nominal sectional diameter in inches. The permissible weight given in Table A for the nearest equivalent nominal sectional diameter in inches and the actual rim-diameter shall be the permissible weight for that tyre.

THE EIGHTH SCHEDULE.

(See section 71.)

LIMITS OF SPEED FOR MOTOR VEHICLES.

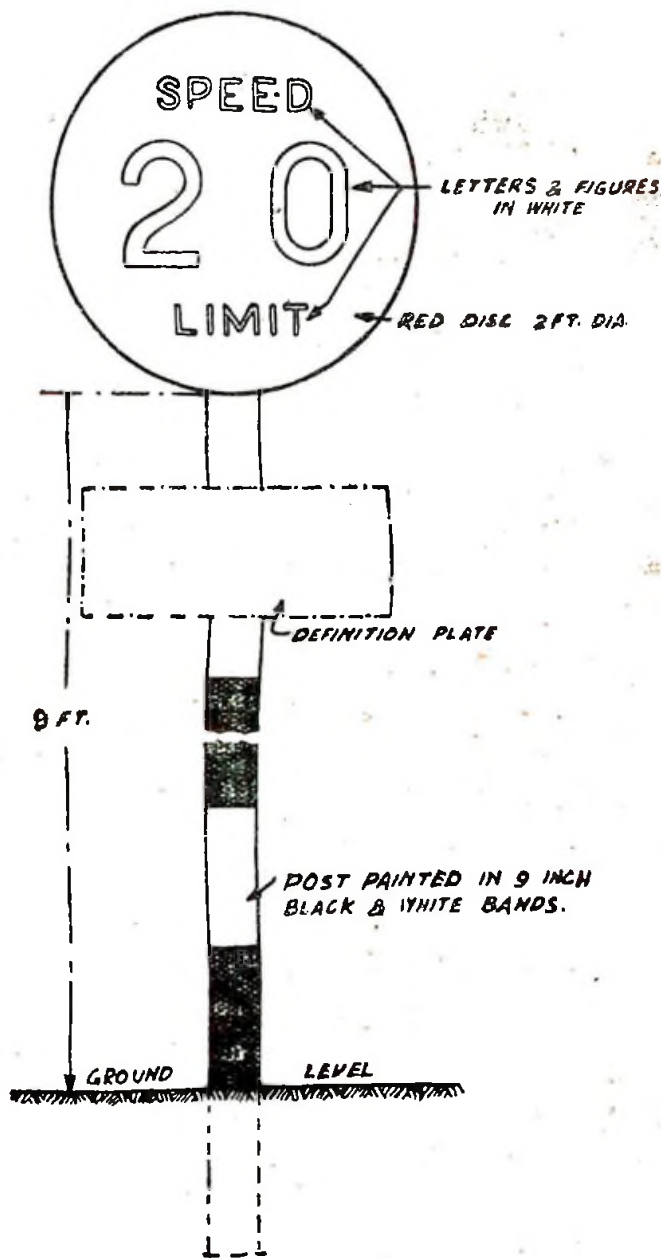
Class of Vehicle.	Maximum speed per hour.
<i>Miles.</i>	
1. Passenger vehicles, that is to say, vehicles constructed solely for the carriage of passengers and their effects :—	
(a) if all the wheels are fitted with pneumatic tyres and the vehicle is not drawing a trailer :—	
(i) if the vehicle is a motor cycle, motor car or motor cab ...	No limit.
(ii) if the vehicle is a public service vehicle other than a motor cab ...	30
(b) if the vehicle, being a motor car or motor cab, is drawing two-wheeled trailer of a laden weight not exceeding 1,700 pounds <i>avoirdupois</i> , and if all the wheels of the vehicle and trailer are fitted with pneumatic tyres ...	30
(c) any other vehicle, including an invalid carriage ...	20
2. Goods vehicles, that is to say, vehicles constructed or adapted for use or used for the conveyance of goods :—	
(a) if all the wheels are fitted with pneumatic tyres and the vehicle is a light transport vehicle and is not drawing a trailer ...	25
(b) in any other case ...	15
3. Tractors :—	
(a) if drawing not more than one trailer and all the wheels of the tractor and trailer are fitted with pneumatic tyres ...	15
(b) in any other case ...	6
4. Locomotives, whether drawing a trailer or not ...	6

THE NINTH SCHEDULE.

(See sections 75, 77 and 78.)

TRAFFIC SIGNS.

Part A.—Mandatory Signs.

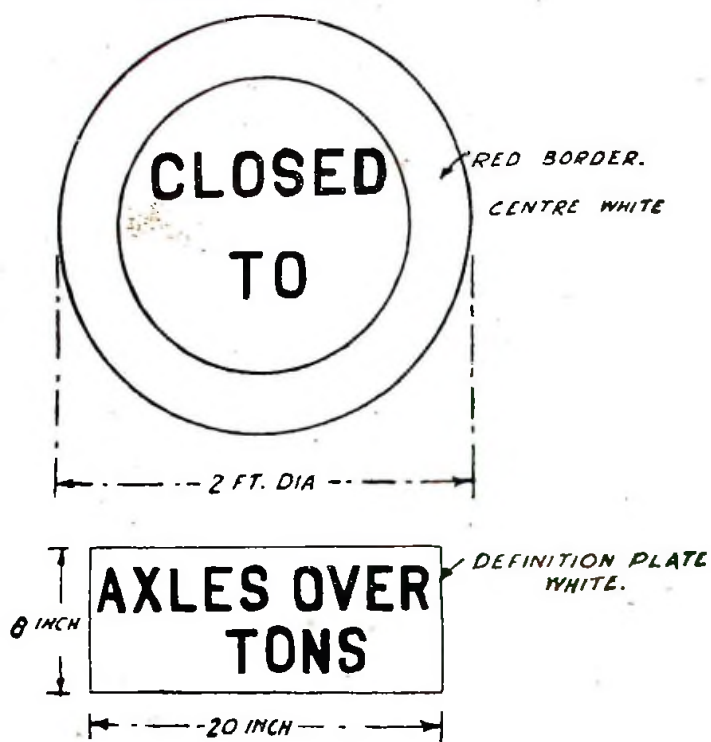
NO. 1
SPEED LIMIT

Note.—(1) The figure 20 is given merely as an example. The actual figures will be as prescribed in each case where this sign is used.

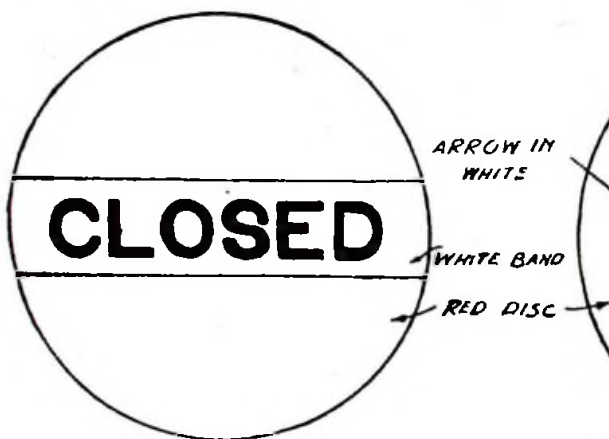
(2) The general design of the post is given for guidance.

(3) Where the speed limit is, or is to be, imposed only on a certain class or classes of motor vehicle the class or classes will be specified on the "definition plate". Where in addition to a general speed limit applicable to other motor vehicles a special speed limit is, or is to be, imposed on vehicles of a certain class or classes, the general speed limit will be specified on the disc and the special speed limit together with the class or classes of vehicle to which it applies will be specified on the "definition plate".

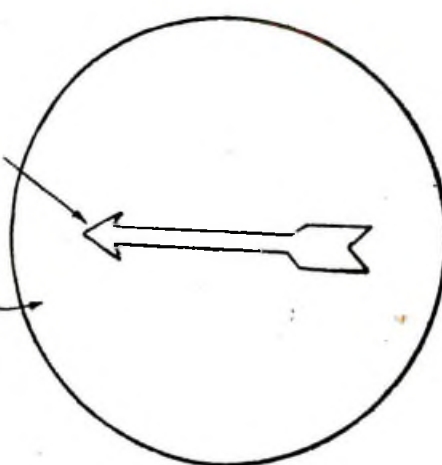
NO. 2
WEIGHT LIMIT



NO. 3
TOTAL PROHIBITION



NO. 4
DIRECTION SIGN



NO. 5
NO PARKING



Note.—Sign no. 5 as here set forth may be amplified by instructions inscribed upon a definition plate placed below it as in the general arrangement set forth in Sign no. 1 of this Part. Upon the definition plate may be set forth the times during which parking is prohibited. In like manner an arrow-head inscribed on the definition plate will indicate that parking is prohibited on that part of the street or road lying to the side of the sign to which the arrow-head points.

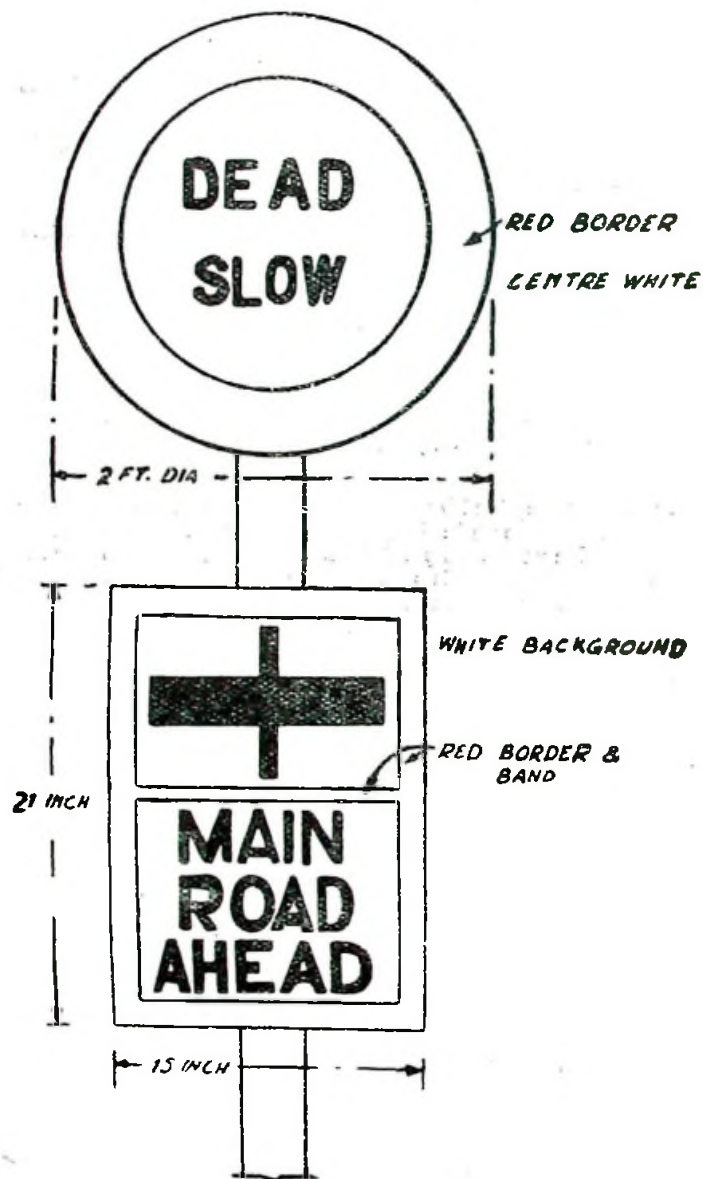
NO. 6
OVERTAKING PROHIBITED



NO. 7
USE OF SOUND SIGNALS PROHIBITED



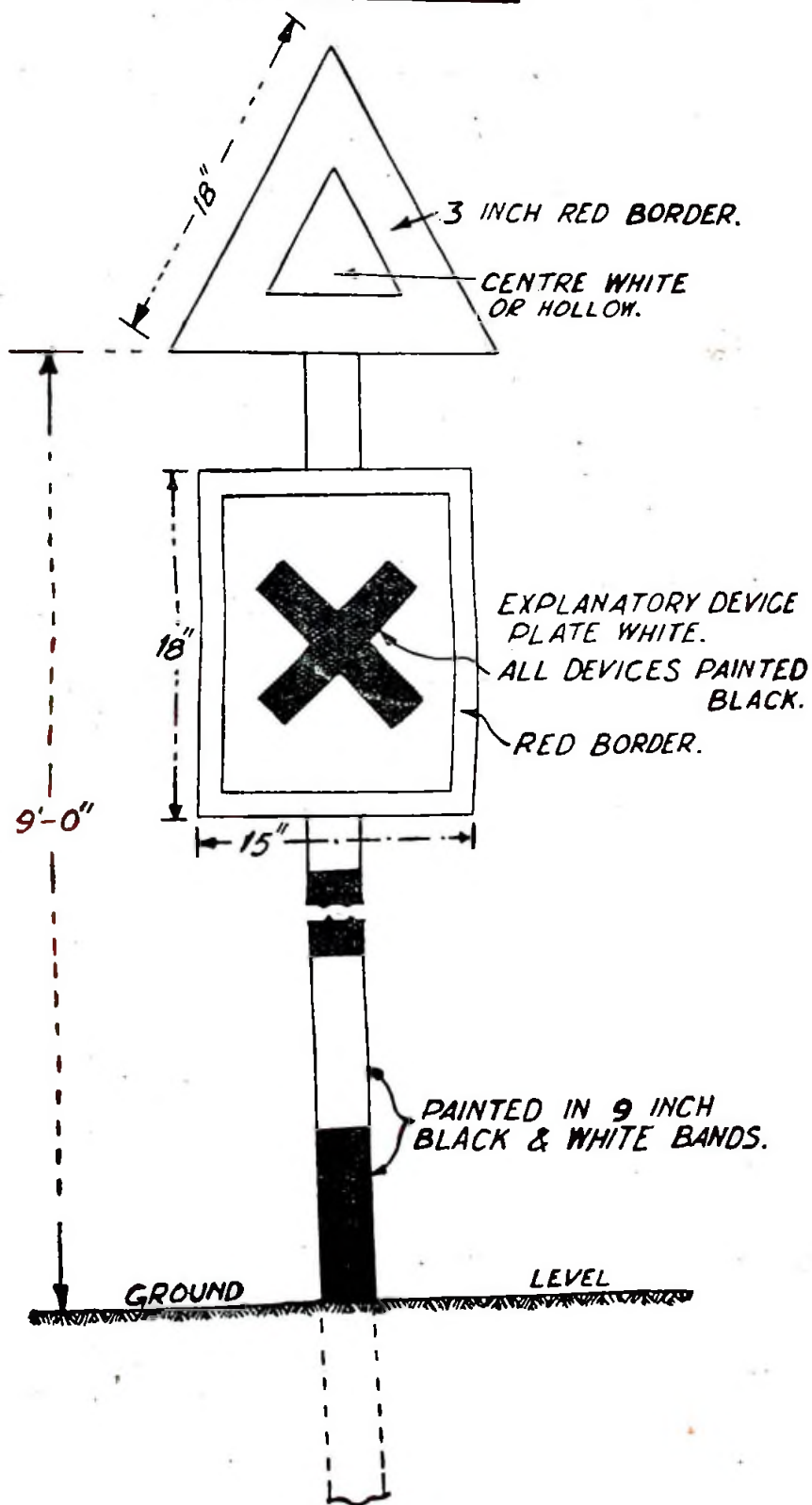
NO. 8
MAIN ROAD AHEAD



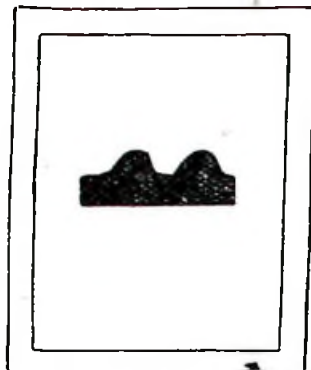
Part B.—Cautionary Signs.

The signs of this Part shall be used in conjunction with a red triangular plate, the centre of which shall be either hollow or painted white, in the manner indicated in the general design reproduced below.

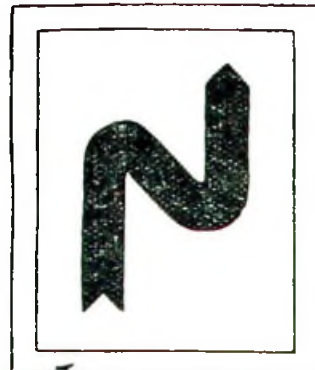
GENERAL DESIGN.



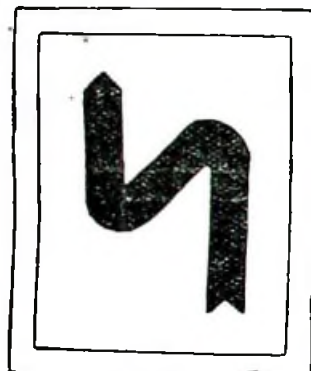
NO. 1
ROUGH ROAD



NO. 2
ZIG-ZAG (RIGHT)



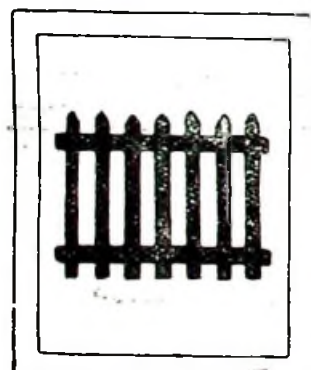
NO. 2
ZIG-ZAG (LEFT)



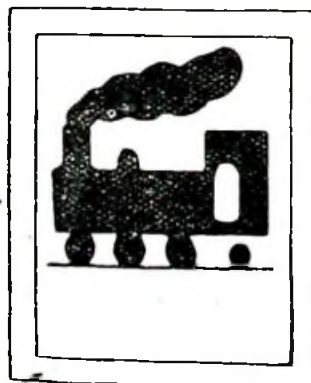
NO. 3
CROSS ROADS



NO. 4
LEVEL CROSSING
(GUARDED)



NO. 5
LEVEL CROSSING
(UNGUARDED)



RED BORDER

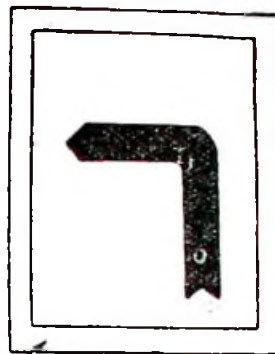
RED BORDER

RED BORDER

NO. 6
RIGHT TURN



NO. 6
LEFT TURN



RED BORDER

NO. 7
SCHOOL

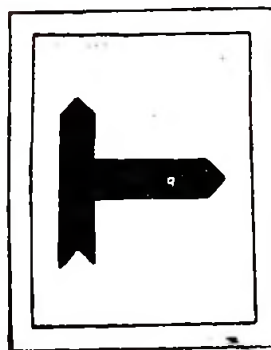


NO. 8
DEAD END CROSS ROAD

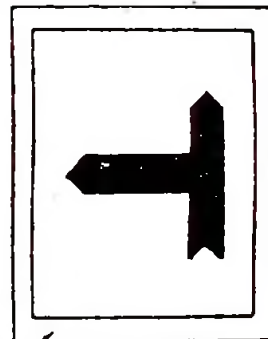


RED BORDER

NO. 9
SIDE ROAD (RIGHT)

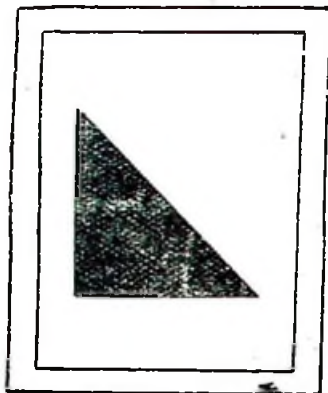


NO. 9
SIDE ROAD (LEFT)

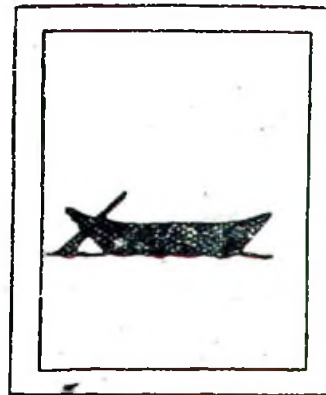


RED BORDER

NO. 10
STEEP HILL



NO. 11
FERRY



RED BORDER

NO. 12
HAIR PIN BEND (RIGHT)

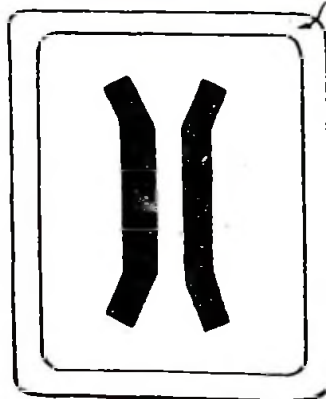


NO. 12
HAIR PIN BEND (LEFT)



RED BORDER

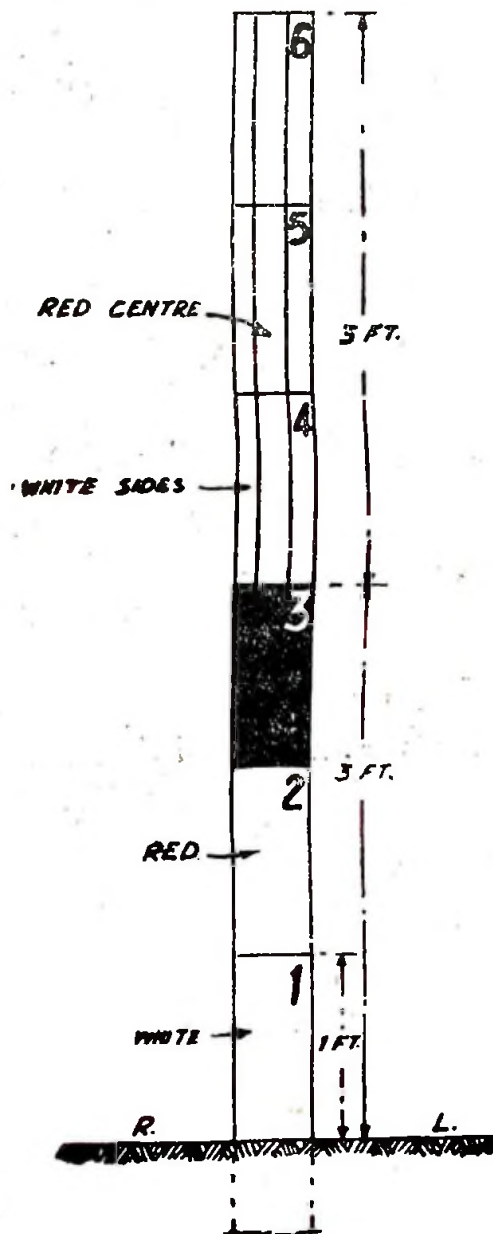
NO 13
NARROW BRIDGE



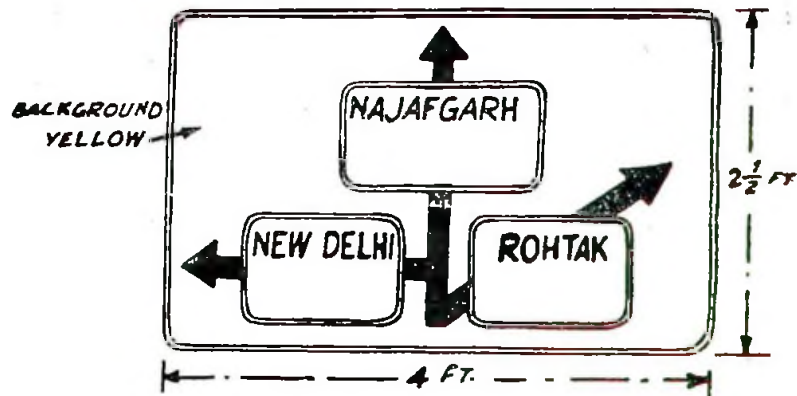
RED BORDER

Part C.—Informatory Signs.

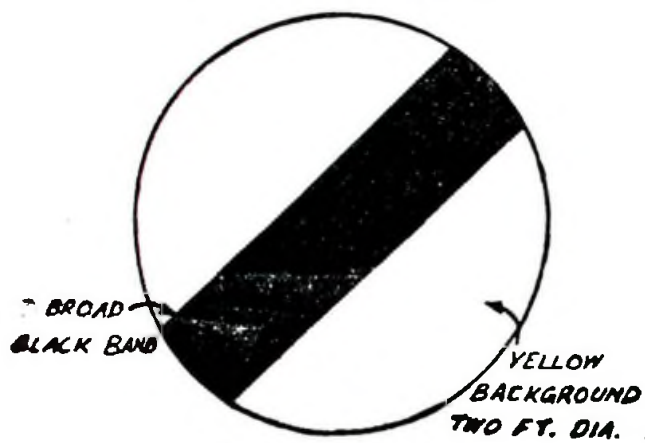
NO. 1
FLOOD GAUGE
SIDE ELEVATION.



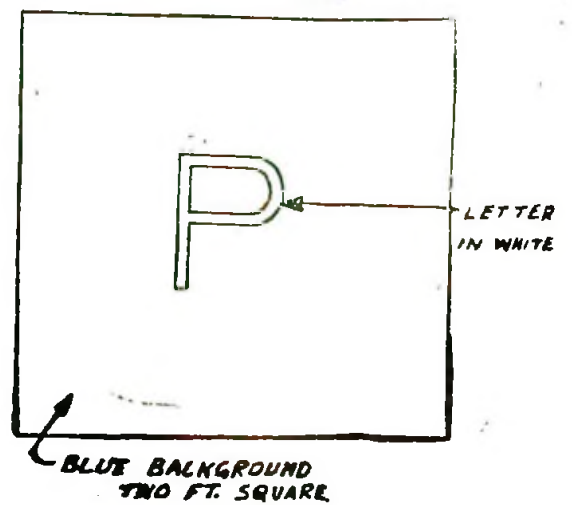
NO. 2
ROAD JUNCTION APPROACH.



NO. 3
END OF SPEED LIMIT.



NO. 4
PARKING SIGN.



THE TENTH SCHEDULE.

(See sections 77 and 78.)

DRIVING REGULATIONS.

1. The driver of a motor vehicle shall drive the vehicle as close to the left hand side of the road as may be expedient, and shall allow all traffic which is proceeding in the opposite direction to pass him on his right hand side.

2. Except as provided in regulation 3, the driver of a motor vehicle shall pass to the right of all traffic proceeding in the same direction as himself.

3. The driver of a motor vehicle may pass to the left of a vehicle the driver of which having indicated an intention to turn to the right has drawn to the centre of the road and may pass a tram-car or other vehicle running on fixed rails, whether travelling in the same direction as himself or otherwise, on either side:

Provided that in no case shall he pass a tram-car at a time or in a manner likely to cause danger or inconvenience to other users of the road or pass on the left hand side a tram-car, which when in motion would be travelling in the same direction as himself, while the tram-car is at rest for the purpose of setting down or taking up passengers.

4. The driver of a motor vehicle shall not pass a vehicle travelling in the same direction as himself—

(a) if his passing is likely to cause inconvenience or danger to other traffic proceeding in any direction, or

(b) where a point or corner or a hill or an obstruction of any kind renders the road ahead not clearly visible.

5. The driver of a motor vehicle shall not, when being overtaken or being passed by another vehicle, increase speed or do anything in any way to prevent the other vehicle from passing him.

6. The driver of a motor vehicle shall slow down when approaching a road intersection, a road junction or a road corner, and shall not enter any such intersection or junction until he has become aware that he may do so without endangering the safety of persons thereon.

7. The driver of a motor vehicle shall on entering a road intersection, if the road entered is a main road designated as such, give way to the vehicles proceeding along that road, and in any other case give way to all traffic approaching the intersection on his right hand.

8. The driver of a motor vehicle shall, when passing or meeting a procession or a body of troops or police on the march or when passing workmen engaged on road repair, drive at a speed not greater than fifteen miles an hour.

9. The driver of a motor vehicle shall—

(a) when turning to the left, drive as close as may be to the left hand side of the road from which he is making the turn and of the road which he is entering;

(b) when turning to the right, draw as near as may be to the centre of the road along which he is travelling and cause the vehicle to move in such a manner that—

(i) as far as may be practicable it passes beyond, and so as to leave on the driver's right hand, a point formed by the intersection of the centre lines of the intersecting roads; and

(ii) it arrives as near as may be at the left hand side of the road which the driver is entering.

THE ELEVENTH SCHEDULE.

(See section 79.)

SIGNALS.

1. When about to turn to the right or to drive to the right hand side of the road in order to pass another vehicle or for any other purpose, a driver shall extend his right arm in a horizontal position outside of and to the right of his vehicle with the palm of the hand turned to the front.

2. When about to turn to the left or to drive to the left hand side of the road, a driver shall extend his right arm and rotate it in an anti-clockwise direction.

3. When about to slow down, a driver shall extend his right arm with the palm downward and to the right of the vehicle and shall move the arm so extended up and down several times in such a manner that the signal can be seen by the driver of any vehicle which may be behind him.

4. When about to stop, a driver shall raise his right forearm vertically outside of and to the right of the vehicle, palm to the front.

5. When a driver wishes to indicate to the driver of a vehicle behind him that he desires that driver to overtake him, he shall extend his right arm and hand horizontally outside of and to the right of the vehicle and shall swing the arm backwards and forwards in a semi-circular motion.

G. H. SPENCE,

Secy. to the Govt. of India.

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

The following Act of the Indian Legislature received the assent of the Governor General on the 17th February, 1939, and is hereby promulgated for general information.

ACT No. V of 1939.

An Act further to amend the Indian Cotton Cess Act, 1923.

WHEREAS it is expedient further to amend the Indian Cotton Cess Act, 1923, for the purposes hereinafter appearing; It is hereby enacted as follows:—

1. This Act may be called the Indian Cotton Cess (Amendment) Act, 1939.
- Short title.

2. In section 2 of the Indian Cotton Cess Act, 1923 ^{XIV of 1923.} Amendment of section 2, Act XIV of 1923. (hereinafter referred to as the said Act),—

(a) the word "and" at the end of clause (e) shall be omitted; and

(b) after clause (f), the following clause shall be added, namely:—

"(g) a reference to British India includes a reference to Berar".

3. In clause (viii) of section 4 of the said Act for the word "ten" the word "eleven" and for the words "one to represent the industry in Bombay" the words "two to represent the industry in Bombay" shall be substituted.

G. H. SPENCE,

Secy. to the Govt. of India.

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

The following Act of the Indian Legislature received the assent of the Governor General on the 17th February, 1939, and is hereby promulgated for general information :—

ACT No. VI OF 1939.

An Act further to amend the Indian Merchant Shipping Act, 1923.

XXI of 1923. WHEREAS it is expedient further to amend the Indian Merchant Shipping Act, 1923, for the purpose hereinafter appearing ; It is hereby enacted as follows :—

1. This Act may be called the Indian Merchant Shipping (Amendment) Act, 1939.

2. In section 62 of the Indian Merchant Shipping Act, 1923, sub-section (2) shall be re-numbered as sub-section (3) and the following shall be inserted as sub-section (2), namely :—

“(2) The provisions of clauses (b) and (c) of sub-section (1) shall not apply to so much of the wages of a seaman as have been or are hereafter assigned by way of contribution to any fund approved in this behalf by the Central Government, the main purpose of which is the provision of benefits for seamen on retirement ; and the provisions of clauses (a) and (d) of sub-section (1) shall not apply to anything done or to be done for giving effect to such an assignment.”

G. H. SPENCE,

Secy. to the Govt. of India.

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

The following Act of the Indian Legislature received the assent of the Governor General on the 17th February, 1939, and is hereby promulgated for general information:—

ACT No. VII OF 1939.

An Act further to amend the Indian Income-tax Act, 1922.

WHEREAS it is expedient further to amend the Indian Income-tax Act, 1922, for the purposes hereinafter appearing; It is hereby enacted as follows:—

Short title and commencement. 1. (1) This Act may be called the Indian Income-tax (Amendment) Act, 1939.

(2) This section and Part I shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint, and Part II shall come into force on such subsequent date, not later than two years from the date appointed for the coming into force of Part I, as the Central Government may, in like manner, appoint:

Provided that sub-clauses (iii) and (iv) of clause (b) of section 11 shall not take effect earlier than the 1st day of April, 1940.

PART I.

2. In section 2 of the Indian Income-tax Act, 1922 (hereinafter referred to as the said Act),—

XI of 1922. Amendment of section 2, Act XI of 1922.

(a) in clause (3), before the word "Assistant"; in both places where it occurs, the word "Appellate" shall be inserted;

(b) after clause (6) the following clause shall be inserted, namely:—

"(6A) 'dividend' includes—

(a) any distribution by a company of accumulated profits, whether capitalised or not, if such distribution entails the release by the company to its shareholders of all or any part of the assets of the company;

(b) any distribution by a company of debentures or debenture-stock, to the extent to which the company possesses accumulated profits, whether capitalised or not;

(c) any distribution made to the shareholders of a company out of accumulated profits of the company on the liquidation of the company;

Provided that only the accumulated profits so distributed which arose during the six previous years of the company preceding the date of liquidation shall be so included; and

(d) any distribution by a company on the reduction of its capital to the extent to which the company possesses accumulated profits which arose after the end of the previous year ending next before the 1st day of April, 1938, whether such accumulated profits have been capitalised or not:

Provided that 'dividend' does not include a distribution in respect of any share issued for full cash consideration which is not entitled in the event of liquidation to participate in the surplus assets, when such distribution is made in accordance with sub-clause (c) or (d).

Explanation.—The words 'accumulated profits', wherever they occur in this clause, shall not include capital profit."

(c) existing clause (6A) shall be re-numbered as clause (6B) and, in that clause, as so re-numbered, for the words and figures "the Indian Contract Act, 1872;" the words and figures "the Indian Partnership Act, 1932:" shall be substituted, and the following words shall be added, namely:—

"provided that the expression 'partner' includes any person who being a minor has been admitted to the benefits of partnership;"

(d) after clause (6B), as so re-numbered, the following clauses shall be inserted, namely:—

"(6C) 'income' includes anything included in 'dividend' as defined in clause (6A) and anything which under *Explanation 2* to sub-section (1) of section 7 is a profit received in lieu of salary for the purposes of that sub-section and any sum deemed to be profits under the second proviso to clause (vii) of sub-section (2) of section 10 and the profits

of any business of insurance carried on by a mutual insurance company computed in accordance with Rule 9 in the Schedule;

(6D) 'Inspecting Assistant Commissioner' means a person appointed to be an Inspecting Assistant Commissioner of Income-tax under section 5;";

(e) in clause (9), after the word "family", the words "and a local authority" shall be inserted;

(f) in clause (11),—

(i) after the word "means" the following words shall be inserted, namely:—

"in respect of any separate source of income, profits and gains";

(ii) for the proviso to sub-clause (a) the following proviso shall be substituted, namely:—

"Provided that where an assessee has once been assessed in respect of a particular source of income, profits and gains, he shall not in respect of that source exercise this option so as to vary the meaning of the expression 'previous year' as then applicable to him except with the consent of the Income-tax Officer and upon such conditions as the Income-tax Officer may think fit; or";

(iii) after sub-clause (b) the following shall be added, namely:—

"or

(c) where a business, profession or vocation has been newly set up in the financial year preceding the year for which the assessment is to be made, the period from the date of the setting up of the business, profession or vocation to the 31st day of March next following or to the last day of the period determined under sub-clause (b), or, if the accounts of the assessee are made up to some other date than the 31st day of March and the case is not one for which a period has been determined by the Central Board of Revenue under sub-clause (b), then, at the option

of the assessee, the period from the date of the setting up of the business, profession or vocation to such other date:

Provided that when such other date does not fall between the setting up of the business, profession or vocation and the next following 31st day of March, it shall be deemed that there is no previous year; and

when the assessee is a partner in a firm, 'previous year' in respect of his share of the income, profits and gains of the firm means the previous year as determined for the assessment of the income, profits and gains of the firm;"; and

(g) in clause (15), for the words "from all sources to which this Act applies" the words, brackets and figures "referred to in sub-section (1) of section 4" shall be substituted, for the word and figures "section 16" the words "this Act" shall be substituted, and the following words shall be added, namely:—

"'total world income' includes all income, profits and gains wherever accruing or arising except income to which, under the provisions of sub-section (3) of section 4, this Act does not apply; and".

3. In section 3 of the said Act, the words "applicable to the total income of an assessee" shall be omitted; for the words "all income, profits and gains" the words "the total income" shall be substituted, and for the words "company, firm and other association of individuals" the words "company and local authority, and of every firm and other association of persons or the partners of the firm or members of the association individually" shall be substituted.

4. In section 4 of the said Act,—
Amendment of section 4 of Act XI of 1922.

(a) for sub-sections (1) and (2) the following sub-sections shall be substituted, namely:—

"(1) Subject to the provisions of this Act, the total income of any previous year of any

person includes all income, profits and gains from whatever source derived which—

- (a) are received or are deemed to be received in British India in such year by or on behalf of such person, or
- (b) if such person is resident in British India during such year,—
 - (i) accrue or arise or are deemed to accrue or arise to him in British India during such year, or
 - (ii) accrue or arise to him without British India during such year, or
 - (iii) having accrued or arisen to him without British India before the beginning of such year and after the 1st day of April, 1933, are brought into or received in British India by him during such year; or
- (c) if such person is not resident in British India during such year, accrue or arise or are deemed to accrue or arise to him in British India during such year:

Provided that there shall not be included in any assessment for the year ending on the 31st day of March, 1940, both the amount of the income, profits and gains referred to in sub-clause (ii) of clause (b) and the amount of the income, profits and gains referred to in sub-clause (iii) of clause (b) but only the greater of these two amounts:

Provided further that, in the case of a person not ordinarily resident in British India, income, profits and gains which accrue or arise to him without British India shall not be so included unless they are derived from a business controlled in or a profession or vocation set up in India or unless they are brought into or received in British India by him during such year:

Provided further that if in any year the amount of income accruing or arising without British India exceeds the amount brought into British India in that year, there shall not be included in the assessment of the income of that year so much of such excess as does not exceed four thousand five hundred rupees.

Explanation 1.—Income, profits and gains accruing or arising without British India shall not be deemed to be received in or brought into British India within the meaning of this sub-section by reason only of the fact that they are taken into account in a balance-sheet prepared in British India.

Explanation 2.—Income which would be chargeable under the head 'Salaries' if payable in British India and not being pension payable without India shall be deemed to accrue or arise in British India wherever paid if it is earned in British India.

Explanation 3.—A dividend paid without British India shall be deemed to be income accruing and arising in British India to the extent to which it has been paid out of profits subjected to income-tax in British India.

- (2) For the purposes of sub-section (1), where a husband is not resident in British India, remittances received by his wife resident in British India out of any part of his income which is not included in his total income shall be deemed to be income accruing in British India to the wife.”;

(b) in sub-section (3),—

- (i) for the words “This Act shall not apply to the following classes of income” the words “Any income, profits or gains falling within the following classes shall not be included in the total income of the person receiving them” shall be substituted;

- (ii) after clause (i) the following clause shall be inserted, namely:—

“(ia) Any income derived from business carried on on behalf of a religious or charitable institution when the income is applied solely to the purposes of the institution and—

- (a) the business is carried on in the course of the carrying out of a primary purpose of the institution, or
- (b) the work in connection with the business is mainly carried on by beneficiaries of the institution.”;

- (iii) to clause (iii) the following words shall be added, namely:—

“except income from a trade or business carried on by the authority so far as that income is not income arising from the supply of a commodity or service within its own jurisdictional area”;

- (iv) in clause (iv), for the figures “1897” the figures “1925” shall be substituted;

- (v) clause (v) shall be omitted;

- (vi) to the last paragraph the following words shall be added, namely:—

“, but nothing contained in clause (i), clause (ia) or clause (ii) shall operate to exempt from the provisions of this Act that part of the income of a private religious trust which does not enure for the benefit of the public”.

Insertion of new sections 4A and 4B in Act XI of 1922.

5. After section 4 of the said Act and in Chapter I the following sections shall be inserted, namely:—

Residence in British India.

“4A. For the purposes of this Act—

- (a) any individual is resident in British India in any year if he—

- (i) is in British India in that year for a period amounting in all to one hundred and eighty-two days or more; or

- (ii) maintains or has maintained for him a dwelling place in British India for a period or periods amounting in all to one hundred and eighty-two days or more in that year, and is in British India for any time in that year; or

- (iii) having within the four years preceding that year been in British India for a period of or for periods amounting in all to three hundred and sixty-five days or more, is in British India for any time in that year otherwise than on an occasional or casual visit;

- (b) a Hindu undivided family, firm or other association of persons is resident in British India unless the control and management of its affairs is situated wholly without British India; and

- (c) a company is resident in British India in any year (a) if the control and management of its affairs is situated wholly in British India in that year, or (b) if its income arising in British India in that year exceeds its income arising without British India in that year.

Ordinary residence.

4B. For the purposes of this Act—

- (a) an individual is ‘not ordinarily resident’ in British India in any year if he has not been resident in British India in nine out of the ten years preceding that year or if he has not during the seven years preceding that year been in British India for a period of, or for periods amounting in all to, more than two years;

- (b) a Hindu undivided family is deemed to be ordinarily resident in British India if its manager is ordinarily resident in British India;

- (c) a company, firm or other association of persons is ordinarily resident in British India if it is resident in British India.”

Substitution of new section for section 5, Act XI of 1922.

6. For section 5 of the said Act the following section shall be substituted,

namely:—

“5. (1) There shall be the following classes of income-tax authorities for the purposes of this Act, namely:—

- (a) the Central Board of Revenue,
(b) Commissioners of Income-tax,
(c) Assistant Commissioners of Income-tax who may be either Appellate Assistant Commissioners of Income-tax or Inspecting Assistant Commissioners of Income-tax,
(d) Income-tax Officers.

- (2) The Central Government may appoint a Commissioner of Income-tax for any area specified in the order of appointment, and may appoint Commissioners of Income-tax, not more than three in all, each to discharge, without reference to area, and to the exclusion of any Commissioner

appointed for any area, the functions of a Commissioner in respect of any cases or classes of cases assigned to him by the Central Board of Revenue.

- (3) The Central Government may appoint for any area as many Appellate or Inspecting Assistant Commissioners of Income-tax and Income-tax Officers as it thinks fit.
- (4) Appellate Assistant Commissioners of Income-tax shall be under the direct control of the Central Board of Revenue and shall perform their functions in respect of such persons or classes of persons and of such incomes or classes of income and in respect of such areas as the Central Board of Revenue may direct, and, where two or more Appellate Assistant Commissioners have been appointed for the same area, in accordance with any orders which the Central Board of Revenue may make for the distribution and allocation of the work to be performed.
- (5) Inspecting Assistant Commissioners of Income-tax and Income-tax Officers shall perform their functions in respect of such persons or classes of persons and of such incomes or classes of income and in respect of such areas as the Commissioner of Income-tax may direct, and, where two or more Inspecting Assistant Commissioners of Income-tax or Income-tax Officers have been appointed for the same area, in accordance with any orders which the Commissioner of Income-tax may make for the distribution and allocation of the work to be performed. The Commissioner may, with the previous approval of the Central Board of Revenue, by general or special order in writing, direct that the powers conferred on the Income-tax Officer and the Appellate Assistant Commissioner by or under this Act shall, in respect of any specified case or class of cases, be exercised by the Inspecting Assistant Commissioner and the Commissioner, respectively, and, for the purposes of any case in respect of which such order applies, references in this Act or in any rules made hereunder to the Income-tax Officer and the Appellate Assistant Commissioner shall be deemed to be references

to the Inspecting Assistant Commissioner and the Commissioner, respectively.

- (6) The Central Board of Revenue may, by notification in the official Gazette, empower Commissioners of income-tax, Appellate or Inspecting Assistant Commissioners of Income-tax and Income-tax Officers to perform such functions in respect of such classes of persons or such classes of income and for such area as may be specified in the notification, and thereupon the functions so specified shall cease within the specified area to be performed in respect of the specified classes of persons or classes of income by the other authorities appointed under sub-sections (2) and (3).
- (7) Assistant Commissioners of Income-tax and Income-tax Officers shall, for the purposes of this Act, be subordinate to the Commissioner of Income-tax for the area in which they perform their functions or where they perform functions assigned to them by a Commissioner of Income-tax appointed without reference to area, to that Commissioner.
- (8) All officers and persons employed in the execution of this Act shall observe and follow the orders, instructions and directions of the Central Board of Revenue:

Provided that no such orders, instructions or directions shall be given so as to interfere with the discretion of the Appellate Assistant Commissioner in the exercise of his appellate functions."

7. In section 6 of the said Act, for clauses (iii), (iv), (v) and (vi) the following clauses shall be substituted, namely:—

- "(iii) Income from property.
(iv) Profits and gains of business, profession or vocation.
(v) Income from other sources."

8. In sub-section (1) of section 7 of the said Act,—

Amendment of section 7, Act XI of 1922.

- (a) the words "received by him" shall be omitted;
(b) for the words "which are paid by or on behalf of the Crown" the

words "which are due to him from, whether paid or not, or are paid by or on behalf of, the Crown" shall be substituted;

- (c) for the words "by or on behalf of any private employer" the following words shall be substituted, namely:—

"any private employer; and for the purposes of this sub-section advances by way of loan or otherwise of income chargeable under this head shall be deemed to be salary due on the date when the advance is received:

Provided that the tax shall not be payable in respect of any sum which the assessee by the conditions of his employment is required to spend out of his remuneration wholly, necessarily and exclusively in the performance of his duties:";

- (d) in the existing proviso after the word "Provided" the word "further" shall be inserted;

- (e) after the proviso the following further proviso shall be inserted, namely:—

"Provided further that where tax is deductible at the source under section 18, the assessee shall not be called upon to pay the tax himself unless he has received the salary without such deduction.";

and

- (f) the existing *Explanation* shall be numbered *Explanation 1*, and after that *Explanation*, the following *Explanation* shall be added, namely:—

"*Explanation 2*.—A payment due to or received by an assessee from an employer or former employer or from a provident or other fund at or in connection with the termination of his employment, whether or not the employment is then terminated or to be terminated, is to the extent to which it does not consist of contributions by the assessee or interest on such contributions a profit received in lieu of salary for the purposes of this sub-section, unless the payment is made solely as compensation for loss of employment and not by way of remuneration for past services:

Provided that nothing herein contained shall render liable to income-tax any payment from

a provident fund to which the Provident Funds Act, 1925, applies, or any payment from a recognised provident fund within the meaning of Chapter IXA if such payment is exempted from payment of income-tax under the provisions of Chapter IXA, or any payment from an approved superannuation fund within the meaning of Chapter IXB made on the death of a beneficiary or in lieu of or in commutation of an annuity, or by way of refund of contributions on the death of a beneficiary or on his leaving the employment in connection with which the fund is established."

9. In section 8 of the said Act, to the first proviso the following shall be added, namely:—

Amendment of section 8, Act XI of 1922.

"or in respect of any interest payable on money borrowed for the purpose of investment in the securities by the assessee except interest chargeable under this Act which is payable without British India, not being interest on a loan issued for public subscription before the 1st day of April, 1938, unless in respect of interest which is so chargeable tax has been paid or deducted under section 18, or unless there is a person in British India who may be appointed an agent under section 43 in respect of such interest".

10. In section 9 of the said Act,—

Amendment of section 9, Act XI of 1922.

- (a) in sub-section (1),—

- (i) for the words "under the head 'Property'" the words "under the head 'Income from Property'" shall be substituted, and for the words "his business" the words "any business, profession or vocation carried on by him the profits of which are assessable to tax" shall be substituted;

- (ii) for clause (iv) the following clause shall be substituted, namely:—

"(iv) where the property is subject to a mortgage or other capital charge, the amount of any interest on such mortgage or charge; where the property subject to an annual charge

not being a capital charge, the amount of such charge; where the property is subject to a ground rent, the amount of such ground rent; and where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital:

Provided that no allowance shall be made in respect of any interest or annual charge payable without British India and chargeable under this Act, not being interest on a loan issued for public subscription before the 1st day of April, 1938, except interest or a charge on which tax has been paid or from which tax has been deducted under section 18 or in respect of which there is an agent for the payee in British India who may be assessed under section 43 ;”;

(iii) for clause (vii) the following clause shall be substituted, namely :—

“(vi) in respect of vacancies, that part of the net annual value, after deducting the foregoing allowances, which is proportional to the period during which the property is wholly unoccupied or, where the property is let out in parts, that portion of the net annual value, after deducting the foregoing allowances appropriate to any vacant part, which is proportional to the period during which such part is wholly unoccupied ;”;

(iv) the proviso shall be omitted ;

(b) after sub-section (2) the following sub-section shall be added, namely :—

“(3) Where property is owned by two or more persons and their respective shares are definite and ascertainable, such persons shall not in respect of such property be assessed as an association of persons, but the share of each such person in the income from the property as computed in accordance with this section shall be included in his total income.”

11. In section 10

Amendment of section of the said Act,—
10, Act XI of 1922.

(a) in sub-section (1), for the word “Business”, where it first occurs,

the words “Profits and gains of business, profession or vocation” shall be substituted, and for the word “business”, in all other places where it occurs throughout the section, the words “business, profession or vocation” shall be substituted ;

(b) in sub-section (2),—

(i) in clause (i), for the words “proportional part” the words “proportional annual value of the part” shall be substituted ;

(ii) in clause (iii), the words “where the payment of interest thereon is not in any way dependent on the earning of profits” shall be omitted ; and to the clause the following proviso shall be added namely :—

“Provided that no allowance shall be made under this clause in any case for any interest chargeable under this Act which is payable without British India, not being interest on a loan issued for public subscription before the 1st day of April, 1938, except interest on which tax has been paid or from which tax has been deducted under section 18 or in respect of which there is an agent in British India who may be assessed under section 43 or, in the case of a firm, for any interest paid to a partner of the firm ;”;

(iii) in clause (vi),—

(a) for the words “original cost thereof to the assessee” the words “written down value thereof” shall be substituted ;

(b) in clause (b) of the proviso, after the words “in any year” the words and figures “not being a year which ended prior to the 1st day of April 1939,” shall be inserted ;

(iv) for clause (vii) the following clause shall be substituted, namely :—

“(vii) in respect of any machinery or plant which has been sold or discarded, the amount by which the written down value of the machinery or plant exceeds the amount for which the machinery or plant is actually sold or its scrap value :

Provided that such amount is actually written off in the books of the assessee :

Provided further that where the amount for which any such machinery or plant is sold exceeds the written down value, the excess shall be deemed to be profits of the previous year in which the sale took place ;”;

- (x) clauses (viii), (viii) and (viii) shall be re-numbered, respectively, clause (viii), clause (ix) and clause (x), and in clause (c) of the proviso to the clause re-numbered clause (x), for the word “businesses” the words “businesses, professions or vocations” shall be substituted;
- (xi) after clause (x), as renumbered by this Act, the following clause shall be inserted, namely :—

“(xi) when the assessee’s accounts in respect of any part of his business, profession or vocation are not kept on the cash basis, such sum, in respect of bad and doubtful debts, due to the assessee in respect of that part of his business, profession or vocation, and in the case of an assessee carrying on a banking or money-lending business, such sum in respect of loans made in the ordinary course of such business as the Income-tax Officer may estimate to be irrecoverable but not exceeding the amount actually written off as irrecoverable in the books of the assessee :

Provided that if the amount ultimately recovered on any such debt or loan is greater than the difference between the whole debt or loan and the amount so allowed, the excess shall be deemed to be a profit of the year in which it is recovered, and if less, the deficiency shall be deemed to be a business expense of that year ;”;

- (vii) existing clause (ix) shall be re-numbered (xii), and in that clause, for the brackets and words “(not being in the nature of capital expenditure) incurred solely for the purpose of earning such profits or gains” the brackets and words “(not being in the nature of capital expenditure or personal expenses of the assessee) laid out or expended wholly and exclusively for the purpose of such business, profession or vocation” shall be substituted and the proviso at the end of that clause shall be omitted :

- (c) for sub-section (3) the following sub-sections shall be substituted, namely :—

“(3) Where any building, machinery, plant or furniture in respect of which any allowance is due under clause (iv), clause (v), clause (vi) or clause (vii) of sub-section (2) is not wholly used for the purposes of the business, profession or vocation, the allowance shall be restricted to the fair proportional part of the amount which would be allowable if such building, machinery, plant or furniture was wholly so used.

- (4) Nothing in clause (ix) or clause (xii) of sub-section (2) shall be deemed to authorise the allowance of any sum paid on account of any cess, rate or tax levied on the profits or gains of any business, profession or vocation or assessed at a proportion of or otherwise on the basis of any such profits or gains ; and nothing in clause (xii) of sub-section (2) shall be deemed to authorise—

(a) any allowance in respect of a payment which is chargeable under the head ‘Salaries’ if it is payable without British India and tax has not been paid thereon nor deducted therefrom under section 18 ; or

(b) any allowance in respect of any payment by way of interest, salary, commission or remuneration made by a firm to any partner of the firm ; or

(c) any allowance in respect of a payment to a provident or other fund established for the benefit of employees unless the employer has made effective arrangements to secure that tax shall be deducted at source from any payments made from the fund which are taxable under the head ‘Salaries’.

- (5) In sub-section (2), ‘paid’ means actually paid or incurred according to the method of accounting upon the basis of which the profits or gains are computed under this section ; ‘plant’ includes vehicles, books, scientific apparatus and surgical equipment purchased for

the purposes of the business, profession or vocation; and 'written down value' means—

- (a) in the case of assets acquired in the previous year, the actual cost to the assessee;
- (b) in the case of assets acquired before the previous year but after the commencement of the Indian Income-tax (Amendment) Act, 1939, the actual cost to the assessee less all depreciation allowable to him under this section;
- (c) in the case of assets acquired before the commencement of the Indian Income-tax (Amendment) Act, 1939, the actual cost to the assessee less for each financial year since acquisition the amount of depreciation applicable to the assets at the rates in force for each such year since the 1st day of April, 1922, and at the rates in force on the 1st day of April 1922, for each such year prior to that date:

Provided that where the provisions of the proviso to sub-section (2) of section 2 are applicable, the actual cost to the assessee referred to in clauses (a) (b) and (c) shall be the actual cost to the person succeeded in the business, profession or vocation:

Provided further that there shall not be so deducted from the actual cost any depreciation allowance or part of any depreciation allowance which was due for a year which ended prior to the 1st day of April, 1939, but to which full effect was not given owing to the absence of profits or gains chargeable for that year, or owing to the profits or gains so chargeable being less than the allowance.

- (6) A trade, professional or similar association performing specific services for its members for remuneration definitely related to those services shall be deemed for the purpose of this section to carry on business in respect of those services, and the profits and gains therefrom shall be liable to tax accordingly.
- (7) Notwithstanding anything to the contrary contained in section 8, 9, 10, 12 or 18, the profits and gains of any business of insurance and the tax payable thereon shall be computed in accordance with the rules contained in the Schedule to this Act."

Omission of section 11, Act XI of 1922.

12. section 11 of the said Act shall be omitted.

Amendment of section 12, Act XI of 1922.

13. In section 12 of the said Act,—

- (a) in sub-section (1), for the words "Other sources" the words "Income from other sources" shall be substituted, and for the words "and from every source to which this Act applies" the words "which may be included in his total income" shall be substituted;

- (b) in sub-section (2), for the words "provided that no allowance shall be made on account of any personal expenses of the assessee" the following shall be substituted, namely:—

"provided that no allowance shall be made on account of—

- (a) any personal expenses of the assessee, or

- (b) any interest chargeable under this Act which is payable without British India, not being interest on a loan issued for public subscription before the 1st day of April 1928, or not being interest on which tax has been paid or from which tax has been deducted under section 18, or

- (c) any payment which is chargeable under the head 'Salaries', if it is payable without British India and tax has not been paid thereon nor deducted therefrom under section 18."

- (c) after sub-section (2) the following sub-section shall be added namely:—

"(3) Where an assessee lets on hire-machinery, plant or furniture belonging to him, he shall be entitled to allowances in accordance with the provisions of clauses (iv), (v), (vi) and (vii) of sub-section (2) of section 10."

14. After section 12 of the said Act

Insertion of new section 12A in Act XI of 1922. the following section shall be inserted namely:—

"12A. Where a managing agent of Managing Agency Commission, a company is liable under an agreement made for adequate consideration to share managing agency commission with a third party or parties, the said agent and the said party or parties shall file

a declaration showing the proportion in which such commission is shared between them, and on proof to the satisfaction of the Income-tax Officer of the facts contained in such declaration such agent and each such party shall be chargeable only on the share to which such agent or party is entitled under the agreement."

Amendment of section 13, Act XI of 1922. 15. In section 13 of the said Act, the figures "11" shall be omitted.

16. For sub-section (2) of section 14 of the said Act the following sub-section shall be substituted, namely:—

"(2) The tax shall not be payable by an assessee—

- (a) if a partner of an unregistered firm, in respect of any portion of his share in the profits and gains of the firm computed in the manner laid down in clause (b) of sub-section (1) of section 16 on which the tax has already been paid by the firm; or
- (b) if a member of an association of persons other than a Hindu undivided family, a company or a firm, in respect of any portion of the amount which he is entitled to receive from the association on which the tax has already been paid by the association."

Amendment of section 15, Act XI of 1922. 17. In section 15 of the said Act,—

- (a) in sub-section (1), for the figures "1897" the figures "1925" shall be substituted, and for the words "by an assessee in respect of any sums paid by him to effect an insurance on his own life or on the life of his wife, or in respect of a contract for a deferred annuity on his own life or on the life of his wife" the words "in respect of any sums paid by an assessee to effect an insurance on the life of the assessee or on the life of a wife or husband of the assessee or in respect of a contract for a deferred annuity on the life of the assessee or on the life of a wife or husband of the assessee" shall be substituted;

- (b) in sub-section (3), for the word "proviso" the words "second proviso" shall be substituted, and for the words "one-sixth of the total income of the assessee" the following words shall be substituted, namely:—

"in the case of an individual, one-sixth of the total income of the

assessee, or six thousand rupees, whichever is less, and in the case of a Hindu undivided family, one-sixth of the total income of the assessee, or twelve thousand rupees, whichever is less".

Amendment of section 18, Act XI of 1922. In section 16 of the said Act,—

- (a) for sub-sections (1) and (2) the following sub-sections shall be substituted, namely:—

"(1) In computing the total income of an assessee—

- (a) any sums exempted under the second proviso to sub-section (1) of section 7, the second and third provisos to section 8, sub-section (2) of section 14 and section 15 shall be included;
- (b) when the assessee is a partner of a firm, then, whether the firm has made a profit or a loss, his share (whether a net profit or a net loss) shall be taken to be any salary, interest, commission or other remuneration payable to him by the firm in respect of the previous year increased or decreased respectively by his share in the balance of the profit or loss of the firm after the deduction of any interest, salary, commission or other remuneration payable to any partner in respect of the previous year:

Provided that if his share so computed is a loss, such loss may be set off or carried forward and set off in accordance with the provisions of section 24;

- (c) all income arising to any person by virtue of a settlement or disposition whether revocable or not, and whether effected before or after the commencement of the Indian Income-tax (Amendment) Act, 1939, from assets remaining the property of the settlor or disposer shall be deemed to be income of the settlor or disposer, and all income arising to any person by virtue of a revocable transfer of assets shall be deemed to be income of the transferor:

Provided that for the purposes of this clause a settlement, disposition or transfer shall be deemed to be revocable if it contains any provision for the retransfer directly or indirectly of the income or assets to the

settlor, disponent or transferor, or in any way gives the settlor, disponent or transferor a right to reassume power directly or indirectly over the income or assets:

Provided further that the expression 'settlement or disposition' shall for the purposes of this clause include any disposition, trust, covenant, agreement, or arrangement, and the expression 'settlor or disponent' in relation to a settlement or disposition shall include any person by whom the settlement or disposition was made:

Provided further that this clause shall not apply to any income arising to any person by virtue of a settlement or disposition which is not revocable for a period exceeding six years or during the lifetime of the person and from which income the settlor or disponent derives no direct or indirect benefit but that the settlor shall be liable to be assessed on the said income as and when the power to revoke arises to him.

- (2) For the purposes of inclusion in the total income of an assessee any dividend shall be deemed to be income of the previous year in which it is paid, credited or distributed or deemed to have been paid, credited or distributed to him, and shall be increased by the amount of income-tax (but not super-tax) payable thereon calculated at the rate applicable to the total income of a company for the financial year in which the dividend is paid, credited or distributed or deemed to have been paid, credited or distributed:

Provided that when any portion of the profits and gains of the company out of which such dividend has been paid, credited or distributed or deemed to have been paid, credited or distributed or deemed to have been paid, credited or distributed was not liable to income-tax in the hands of the company, the income-tax to be added under this section shall be calculated upon only such proportion of the dividend as the amount of the profits and gains of the company liable to income-tax bears to the total profits and gains of the company.”;

- (b) in sub-clause (iv) of clause (a) of sub-section (3), after the words “by such individual” the words “otherwise than for adequate consideration” shall be inserted;

- (c) in clause (b) of sub-section (3), for the words “association of individuals” the words “person or association of persons” shall be substituted, the words “consisting of such individual and his wife” shall be omitted, for the words “to the association” the words “otherwise than for adequate consideration to the person or association” shall be substituted, and to the clause the words “for the benefit of his wife or a minor child or both” shall be added.

Substitution of new section for section 17, of the said Act the Act XI of 1922. following section shall be substituted, namely:—

“17. (1) Where a person is not resident in British India, and is a British subject as defined in section 17 of the British Nationality and Status of Aliens Act, 1914, or a subject of a State in India or Burma, the tax, including super-tax, payable by him or on his behalf on his total income shall be an amount bearing to the total amount of the tax including super-tax which would have been payable on his total world income had it been his total income the same proportion as his total income bears to his total world income; and in the case of any other non-resident person, the income-tax payable by him or on his behalf on his total income shall be at the maximum rate and the super-tax payable thereon shall be an amount bearing to the total amount of super-tax which would have been payable on his total world income had it been his total income the same proportion as his total income bears to his total world income..

- (2) Where there is included in the total income of any assessee any income (including income from a share in an unregistered firm, if assessed as such) exempted from tax by or under the provisions of this Act, the income-tax excluding super-tax payable by the assessee shall be an amount bearing to the total amount of the income-tax excluding super-tax which would have been payable on the total income had

no part of it been exempted the same proportion as the unexempted portion of the total income bears to the total income."

20. In section 18 Amendment of section 18, of the said Act,—
Act XI of 1922.

- (a) in sub-section (2), for the words "but not super-tax" the words "and super-tax" shall be substituted, and for the words "at the rate applicable to the estimated income of the assessee under this head" the words "at a rate representing the average of the rates applicable to the estimated total income of the assessee under this head" shall be substituted;
- (b) after sub-section (2A) the following sub-section shall be inserted, namely:—
 "(2B) Any person responsible for paying any income chargeable under the head 'Salaries' to a person not resident in British India shall at the time of payment deduct income-tax at the maximum rate and also super-tax at the rate or rates applicable to the estimated income of the assessee under this head.";
- (c) in the proviso to sub-section (3), after the words "the total income" the words "or the total world income" shall be inserted and for the words "herein referred to" the words, brackets, figure and letter "referred to in this sub-section or in sub-section (2B), as the case may be," shall be substituted;
- (d) after sub-section (3) the following sub-section shall be inserted, namely:—
 "(3A) Any person responsible for paying to a person not resident in British India any interest not being 'Interest on Securities', or any other sum chargeable under the provisions of this Act, shall, at the time of payment, unless he is himself liable to pay income-tax thereon as an agent, deduct income-tax at the maximum rate.";
- (e) existing sub-sections (3A), (3B), (3C) and (3D) shall be renumbered, respectively, (3B), (3C), (3D) and (3E);
- (f) in sub-section (3B), as re-numbered by this Act, for the words "total income" in both places where they occur, the words "total world income" shall be substituted; after the words "Interest on Securities" the words "or any other sum chargeable under this Act" shall be inserted; for the words "paying such interest" the words "making such payments" shall be substituted; and the words "income-tax and" shall be omitted;
- (g) in sub-section (3C), as re-numbered by this Act, after the words "Interest on Securities" the words "or any other sum chargeable under this Act" shall be inserted; for the words "pays to that person in any year an amount of such interest" the words "makes to that person in any year payments" shall be substituted; for the words "paying such interest" the words "making such payments" shall be substituted; for the word, brackets, figure and letter "sub-section (3A)" the word, brackets, figure and letter "sub-section (3B)" shall be substituted; the words "income-tax on the total amount of such interest at the rate appropriate to such total, and" shall be omitted; and for the words "such total" the words "the total amount of such payments" shall be substituted;
- (h) in sub-section (3D), as re-numbered by this Act, for the words "total income" the words "total world income" shall be substituted;
- (i) in sub-section (3E), as re-numbered by this Act, for the word, brackets, figure and letter "sub-section (3C)" the word, brackets, figure and letter "sub-section (3D)" shall be substituted;
- (j) in sub-section (5) after the word "section" the words, brackets and figures "and any sum by which a dividend has been increased under sub-section (2) of section 16" shall be inserted, after the word "security" the words "or of the shareholder" shall be inserted, and in the second proviso to the said sub-section,—
- (i) for the words, figures and brackets "sub-section (3) of section 16" the words, letters, figures and brackets "clause (c) of sub-section (1) or sub-section (3) of section 16, section 44D or section 44E" shall be substituted and

- (iv) for the words "that person" the words "such other person" shall be substituted;

(k) in sub-section (7), for the words "and pay" the words "or after deducting fails to pay" shall be substituted; and for the word "he", where it first occurs, the words, brackets, figures and letters "he, and in the cases specified in sub-sections (3D) and (3E) the company of which he is the principal officer" shall be substituted, and for the word "he", where it occurs for the second time, the words "he or it" shall be substituted;

(l) in sub-section (9), for the words "at the time of payment of interest or dividends" the words "at the time of payment of the sum from which tax has been deducted" shall be substituted, and for the word, brackets, figure and letter "or (3D)" the word, brackets, figures and letters "(3D) or (3E)" shall be substituted.

Substitution of new section for section 19, Act XI of 1922.

21. For section 19 of the said Act the following section shall be substituted,

namely :—

"19. In the case of income in respect of which provision is not made under section 18 for deduction of income-tax at the time of payment, and in any case where income-tax has not been deducted in accordance with the provisions of section 18, income-tax shall be payable by the assessee direct."

22. In section 20A of the said Act, for the words "one thousand" the words "four hundred" shall be substituted.

Amendment of section 20A, Act XI of 1922.

23. In section 21 of the said Act,—

Amendment of section 21, Act XI of 1922.

- (a) after the words "in the prescribed form" the words "and verified in the prescribed manner" shall be inserted;
- (b) in clause (a), after the word "received" the words "or to whom was due" shall be inserted;
- (c) in clause (b), after the words "received" the words "or so due" shall be inserted, and after the word "paid" the words "or due, as the case may be" shall be added;

- (d) in clause (c), after the word "income-tax" the words "and super-tax" shall be inserted.

24. In section 22 of the said Act,—

Amendment of section 22, Act XI of 1922.

- (a) for sub-section (1) the following sub-section shall be substituted, namely :—

"(1) The Income-tax Officer shall, on or before the 1st day of May in each year, give notice, by publication in the press and by publication in the prescribed manner, requiring every person whose total income during the previous year exceeded the maximum amount which is not chargeable to income-tax to furnish, within such period not being less than sixty days as may be specified in the notice, a return, in the prescribed form and verified in the prescribed manner, setting forth (along with such other particulars as may be required by the notice) his total income and total world income during that year :

Provided that the Income-tax Officer may in his discretion extend the date for the delivery of the return in the case of any person or class of persons."

- (b) in sub-section (2), the words "other than a company" shall be omitted, and for the words "shall serve" the words "may serve" shall be substituted, and after the words "his total income" the words "and total world income" shall be inserted; and to the said sub-section the following proviso shall be added; namely :—

"Provided that the Income-tax Officer may in his discretion extend the date for the delivery of the return."

- (c) in sub-section (3), the words "and any return so made shall be deemed to be a return made in due time under this section" shall be omitted;

- (d) in sub-section (4), the words "on the principal officer of any company or" shall be omitted; and after the words "on any person" the words "who has made a return under sub-section (1) or" shall be inserted; and

- (e) after sub-section (4) the following sub-section shall be added, namely :—

"(5) The prescribed form of the returns referred to in sub-sections (1) and (2) shall, in the

case of an assessee engaged in any business, profession or vocation, require him to furnish particulars of the location and style of the principal place wherein he carries on the business, profession or vocation and of any branches thereof, the names and addresses of his partners, if any, in such business, profession or vocation and the extent of the share of the assessee and the shares of all such partners in the profits of the business, profession or vocation and any branches thereof."

Amendment of section 23, Act XI of 1922. 25. In section 23 of the said Act,—

(a) in sub-section (1), after the word "satisfied" the words "without requiring the presence of the assessee or the production by him of any evidence" shall be inserted;

(b) in sub-section (2), for the words and figure "has reason to believe that a return made under section 22 is incorrect or incomplete, he shall serve on the person who made the return" the words and figure "is not satisfied without requiring the presence of the person who made the return or the production of evidence that a return made under section 22 is correct and complete, he shall serve on such person" shall be substituted;

(c) in sub-section (4),—

(i) for the words beginning "If the principal officer" and ending "as the case may be" the words, brackets and figures "If any person fails to make the return required by any notice given under sub-section (2) of section 22 and has not made a return or a revised return under sub-section (3) of the same section" shall be substituted;

(ii) after the word "judgment" the words "and determine the sum payable by the assessee on the basis of such assessment" shall be inserted;

(iii) for the words "in the case of a registered firm, may cancel its registration" the words "in the case of a firm, may refuse to register it or may cancel its registration if it is already registered" shall be substituted;

(d) after sub-section (4) the following sub-section shall be added, namely:—

"(5) Notwithstanding anything contained in the foregoing sub-sections, when the assessee is a

firm and the total income of the firm has been assessed under sub-section (1), sub-section (3) or sub-section (4), as the case may be,—

(a) in the case of a registered firm, the sum payable by the firm itself shall not be determined but the total income of each partner of the firm, including therein his share of its income, profits and gains of the previous year, shall be assessed and the sum payable by him on the basis of such assessment shall be determined:

Provided that if such share of any partner is a loss it shall be set off against his other income or carried forward and set off in accordance with the provisions of section 24:

Provided further that when any of such partner, is a person not resident in British India his share of the income, profits and gains of the firm shall be assessed on the firm at the rates which would be applicable if it were assessed on him personally, and the sum so determined as payable shall be paid by the firm; and

(b) in the case of an unregistered firm, the Income-tax Officer may instead of determining the sum payable by the firm itself proceed in the manner laid down in clause (a) as applicable to a registered firm, if, in his opinion, the aggregate amount of the tax including super-tax, if any, payable by the partners under such procedure would be greater than the aggregate amount which would be payable by the firm and the partners individually if the firm were assessed as an unregistered firm."

Amendment of section 26, Act XI of 1922. 26. In section 26A of the said Act,—

(a) sub-section (1) shall be omitted;

(b) sub-section (2) shall be re-numbered sub-section (1), and—

(i) for the portion of the said sub-section preceding the proviso the following shall be substituted, namely:—

"(1) Where the Income-tax Officer is satisfied that Power to assess individual members of certain companies. in respect of any previous year the profits and gains distributed as dividends by any company up to the end of the

sixth month after its accounts for that previous year are laid before the company in general meeting increased by any income-tax payable thereon are less than sixty per cent. of the assessable income of the company of that previous year, he shall, unless he is satisfied that having regard to losses incurred by the company in earlier years or to the smallness of the profit made, the payment of a dividend or a larger dividend than that declared would be unreasonable, make with the previous approval of the Inspecting Assistant Commissioner an order in writing that the undistributed portion of the assessable income of the company of that previous year as computed for income-tax purposes shall be deemed to have been distributed as dividends amongst the shareholders as at the date of the general meeting aforesaid, and thereupon the proportionate share thereof of each shareholder shall be included in the total income of such shareholder for the purpose of assessing his total income:

Provided that when the reserves representing accumulations of past profits which have not been the subject of an order under this sub-section exceed the paid up capital of the company, together with any loan capital which is the property of the shareholders, or the actual cost of the fixed assets of the company whichever of these is greater, this section shall apply as if instead of the words 'sixty per cent. of the assessable income' the words 'one hundred per cent. of the assessable income' were substituted:

Provided further that no order under this sub-section shall be made where the company has distributed not less than fifty-five per cent. of the assessable income of the company, unless the company, on receipt of a notice from the Income-tax Officer that he proposes to make such an order, fails to make within three months of the receipt of such notice a further

distribution of its profits and gains so that the total distribution made is not less than sixty per cent. of the assessable income of the company of the previous year concerned:";

(ii) for the proviso the following shall be substituted, namely:—

"Provided further that this sub-section shall not apply to any company in which the public are substantially interested or to a subsidiary company of such a company if the whole of the share capital of such subsidiary company is held by the parent company or by the nominees thereof.";

(iii) in the *Explanation*, the whole of clause (a), the brackets and letter "(b)" and the whole of clauses (c) and (d) shall be omitted;

(c) sub-section (3) shall be re-numbered as sub-section (2) and in the sub-section, as so re-numbered, before the words "Assistant Commissioner" the word "Inspecting" shall be inserted and the words "firm, association or" shall be omitted;

(d) sub-sections (4) and (5) shall be re-numbered, respectively, sub-sections (3) and (4), and in sub-section (3), as so re-numbered,—

(i) paragraph (i) shall be omitted;

(ii) in paragraph (ii), for the word, brackets and figure "sub-section (2)" the word, brackets and figure "sub-section (7)" shall be substituted; for the words "and may be recovered from such member" the words "if it cannot be recovered from such member" shall be substituted and the words following those words shall be omitted;

(iii) in paragraph (iii), the words "firm or other association" and the words "firm or association" shall be omitted;

(e) after sub-section (4), as re-numbered by the foregoing clause, the following sub-section shall be added, namely:—

"(5) When a company is a shareholder deemed under sub-section (1) to have received a dividend, the amount of the dividend thus deemed to have been paid to it shall be deemed

to be part of its total income for the purpose also of the application of that sub-section to distributions of profits by that company."

Amendment of section
24, Act XI of 1922.

27. In section 24 of the said Act,—

(a) to sub-section (1) the following proviso shall be added, namely:—

"Provided that where the assessee is an unregistered firm which has not been assessed under the provisions of clause (b) of sub-section (5) of section 23 in the manner applicable to a registered firm, any such loss shall be set off only against the income, profits and gains of the firm and not against the income, profits and gains of any of the partners of the firm; and where the assessee is a registered firm, any loss which cannot be set off against other income, profits and gains of the firm shall be apportioned between the partners of the firm and they alone shall be entitled to have the amount of the loss set off under this section.";

(b) for sub-section (2) the following sub-sections shall be substituted, namely:—

"(2) Where any assessee sustains a loss of profits or gains in any year, being a previous year not earlier than the previous year for the assessment for the year ending on the 31st day of March, 1940, under the head 'Profits and gains of business, profession or vocation', and the loss cannot be wholly set off under sub-section (1), the portion not so set off shall be carried forward to the following year and set off against the profits and gains, if any, of the assessee from the same business, profession or vocation for that year; and if it cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following year, and so on; but no loss shall be so carried forward for more than six years, and a loss arising in the previous years for the assessment for the years ending on the 31st day of March, 1940, the 31st day of March, 1941, the 31st day of March, 1942, the 31st day of March, 1943, and the 31st day of March, 1944, respectively, shall be

carried forward only for one, two, three, four and five years, respectively:

Provided that nothing herein contained shall entitle any assessee, being a registered firm, to have carried forward and set off any loss which has been apportioned between the partners, under the proviso to sub-section (1), or entitle any assessee, being a partner in an unregistered firm which has not been assessed under the provisions of clause (b) of sub-section (5) of section 23 in the manner applicable to a registered firm, to have carried forward and set off against his own income any loss sustained by the firm:

Provided further that where an unregistered firm is assessed as a registered firm under clause (b) of sub-section (5) of section 23, during any year, its losses shall also be carried forward and set off under this section as if it were a registered firm:

Provided further that where a change has occurred in the constitution of a firm or where any person carrying on any business, profession or vocation has been succeeded in such capacity by another person, otherwise than by inheritance, nothing in this section shall be deemed to entitle any person other than the person incurring the loss to have it set off against his income, profits or gains.

(3) When, in the course of the assessment of the total income of any assessee, it is established that a loss of profits or gains has taken place which he is entitled to have set off under the provisions of this section, the Income-tax Officer shall notify to the assessee by order in writing the amount of the loss as computed by him for the purposes of this section."

Amendment of section
24A, Act XI of 1922.

28. In section 24A of the said Act,—

(a) in sub-section (1), for the words beginning "for the period from the expiry of the last previous year" and ending "for the financial year in which such assessment is made" the following words shall be substituted, namely:—

"of the period from the expiry of the last previous year of which the

income has been assessed in his hands to the probable date of his departure from British India, or where he has not been previously assessed, on his total income of the period up to the probable date of his departure from British India. The assessment shall be made on the total income of each completed previous year included in such period at the rate at which such income would have been charged had it been fully assessed, and as respects the period from the expiry of the last of such completed previous years to the probable date of departure the Income-tax Officer shall estimate the total income of such person during such period and assess it at the rate in force for the financial year in which such assessment is made"; and in the proviso, for the words "or have been assessed at too low a rate" the words "or have been under-assessed, or have been assessed at too low a rate, or have been the subject of excessive relief under this Act but" shall be substituted;

- (b) in sub-section (2), for the words "comprised in the period first referred to in" the words "comprised in the relevant period referred to in the first sentence of" shall be substituted.

Amendment of section 24B, Act XI of 1922. **29.** In section 24B of the said Act,—

- (a) for sub-section (2) the following sub-section shall be substituted, namely,—

"(2) Where a person dies before the publication of the notice referred to in sub-section (1) of section 22 or before he is served with a notice under sub-section (2) of section 22 or section 34, as the case may be, his executor, administrator or other legal representative shall, on the serving of the notice under sub-section (2) of section 22 or under section 34, as the case may be, comply therewith, and the Income-tax Officer may proceed to assess the total income of the deceased person as if such executor, administrator or other legal representative were the assessee.";

- (b) in sub-section (3), the words, brackets and figure "of sub-section (2)" shall be omitted and after

the words "and for this purpose may" the following words shall be inserted, namely:—

"by the issue of the appropriate notice which would have had to be served upon the deceased person had he survived,".

Amendment of section 30, Act XI of 1922. **30.** In section 25 of the said Act,—

- (a) in sub-section (3), after the words "is discontinued" the words "then, unless there has been a succession by virtue of which the provisions of sub-section (4) have been rendered applicable," shall be inserted;

- (b) after sub-section (3) the following sub-sections shall be inserted, namely:—

"(4) Where the person who was at the commencement of the Indian Income-tax (Amendment) Act, 1930, carrying on any business, profession or vocation on which tax was at any time charged under the provisions of the Indian Income-tax Act, 1918, is succeeded in such capacity by another person, the change not being merely a change in the constitution of a partnership, no tax shall be payable by the first mentioned person in respect of the income, profits and gains of the period between the end of the previous year and the date of such succession, and such person may further claim that the income, profits and gains of the previous year shall be deemed to have been the income, profits and gains of the said period. Where any such claim is made, an assessment shall be made on the basis of the income, profits and gains of the said period, and, if an amount of tax has already been paid in respect of the income, profits and gains of the previous year exceeding the amount payable on the basis of such assessment, a refund shall be given of the difference.

- (5) No claim to the relief afforded under sub-section (3) or sub-section (4) shall be entertained unless it is made before the expiry of one year from the date on which the business, profession or vocation was discontinued or the succession took place, as the case may be.";

- (c) existing sub-section (4) shall be re-numbered sub-section (6), and in that sub-section, so re-numbered, for the words, brackets and figures "sub-section (1) or sub-section (3)" the words, brackets and figures "sub-section (1), sub-section (3) or sub-section (4)" shall be substituted.

31. (a) In sub-section (1) of section 21A of the said Act, the words "that a separation of the members of the family has taken place and" shall be omitted;

(b) in sub-section (2) of section 25A of the said Act, after the words "Where such an order has been passed" the words "or where any person has succeeded to a business, profession or vocation formerly carried on by a Hindu undivided family whose joint family property has been partitioned on or after the last day on which it carried on such business, profession or vocation" shall be inserted, the words "separation or" shall be omitted, and, in the proviso, for the words "separated members and groups of members" the words "members and groups of members whose joint family property has been partitioned" shall be substituted.

32. In section 26 of the said Act,—
Amendment of section 26, Act XI of 1922.

- (a) in sub-section (1), for the words beginning "the assessments on the firm" and ending "proportionate to his interest in the firm" the words "the assessment shall be made on the firm as constituted" shall be substituted, and to the said sub-section the following provisos shall be added, namely:—

"Provided that the income, profits and gains of the previous year shall, for the purpose of inclusion in the total incomes of the partners, be apportioned between the partners who in such previous year were entitled to receive the same:

Provided further that when the tax assessed upon a partner cannot be recovered from him it shall be recovered from the firm as constituted at the time of making the assessment."

- (b) for sub-section (2) the following sub-section shall be substituted, namely:—

"(2) Where a person carrying on any business, profession or vocation has been succeeded in such

capacity by another person, such person and such other person shall, subject to the provisions of sub-section (4) of section 25, each be assessed in respect of his actual share, if any, of the income, profits and gains of the previous year:

Provided that, when the person succeeded in the business, profession or vocation cannot be found, the assessment of the profits of the year in which the succession took place up to the date of succession, and for the year proceeding that year shall be made on the person succeeding him in like manner and to the same amount as it would have been made on the person succeeded or when the tax in respect of the assessment made for either of such years assessed on the person succeeded cannot be recovered from him, it shall be payable by and recoverable from the person succeeding, and such person shall be entitled to recover from the person succeeded the amount of any tax so paid."

33. In section 27 of the said Act, the words "or, in the case of a company, the principal officer thereof" shall be omitted.
Amendment of section 27, Act XI of 1922.

34. In section 28 of the said Act,—
Amendment of section 28, Act XI of 1922.

- (a) for sub-section (1) the following sub-section shall be substituted, namely:—

"(1) If the Income-tax Officer, the Appellate Assistant Commissioner or the Commissioner, in the course of any proceedings under this Act, is satisfied that any person—

- (a) has without reasonable cause failed to furnish the return of his total income which he was required to furnish by notice given under sub-section (1) or sub-section (2) of section 22 or section 34 or has without reasonable cause failed to furnish it within the time allowed and in the manner required by such notice, or

- (b) has without reasonable cause failed to comply with a notice under sub-section (4) of section 22 or sub-section (2) of section 23, or

- (c) has concealed the particulars of his income or deliberately furnished inaccurate particulars of such income,

he may direct that such person shall pay by way of penalty, in the case referred to in clause (a), in addition to the amount of the income-tax and super-tax, if any, payable by him, a sum not exceeding one and a half times that amount, and in the cases referred to in clauses (b) and (c), in addition to any tax payable by him, a sum not exceeding one and a half times the amount of the income-tax and super-tax, if any, which would have been avoided if the income as returned by such person had been accepted as the correct income:

Provided that—

- (a) no penalty for failure to furnish the return of his total income shall be imposed on an assessee whose total income is less than three thousand five hundred rupees unless he has been served with a notice under sub-section (2) of section 22;
- (b) where a person has failed to comply with a notice under sub-section (2) of section 22 or section 34 and proves that he has no income liable to tax, the penalty imposed under this sub-section shall be a penalty not exceeding twenty-five rupees;
- (c) no penalty shall be imposed under this sub-section upon any person assessable under section 42 as the agent of a person not resident in British India for failure to furnish the return required under section 22 unless a notice under sub-section (2) of that section or under section 34 has been served on him;
- (b) in sub-section (2), for the words "Assistant Commissioner" the words "Appellate Assistant Commissioner" shall be substituted; for the words "in addition to the income-tax payable by him" the words "in addition to the income-tax and super-tax, if any, payable by him" shall be substituted; and for the words "not exceeding the amount of income-tax" the words "not exceeding one and a half times the amount of income-tax and super-tax" shall be substituted;

- (c) in sub-section (5), for the words "Assistant Commissioner" the words "Appellate Assistant Commissioner" shall be substituted;

- (d) after sub-section (5) the following sub-section shall be added, namely:—

"(6) The Income-tax Officer shall not impose any penalty under this section without the previous approval of the Inspecting Assistant Commissioner."

35. For section 29 of the said Act the following section shall be substituted, namely:—

Substitution of new section for section 29, Act XI of 1932.

"29. When any tax or penalty is due in consequence of any order passed under or in pursuance of this Act, the Income-tax Officer shall serve upon the assessee or other person liable to pay such tax or penalty a notice of demand in the prescribed form specifying the sum so payable."

36. In section 30 of the said Act,—

Amendment of section 30, Act XI of 1932.

- (a) in sub-section (1),—

- (i) for the words and figures "or rate at which he is assessed under section 23 or section 27" the words and figures "of income assessed under section 23 or section 27, or the amount of loss computed under section 24 or the amount of tax determined under section 23 or section 27" shall be substituted;

- (ii) after the words and figure "assessment under section 27, or", the word "objecting" shall be inserted, and the words "against him" shall be omitted;

- (iii) after the word, letter and figure "section 25A" the words, figures and brackets "or sub-section (2) of section 26" shall be inserted, and after the words "made by an Income-tax Officer" the words, letters, figures and brackets "or objecting to any penalty imposed by an Income-tax Officer under sub-section (6) of section 44E or sub-section (5) of section 44F or sub-section (1) of section 46" shall be inserted;

- (iv) after the words "made by an Income-tax Officer" the following words, figures and letters shall be inserted, namely:—

"or objecting to a refusal of an Income-tax Officer to allow a claim to a refund under section 48, 49 or 49F, or to the amount of the refund allowed by the Income-tax Officer under any of those sections, and any assessee, being a company, objecting to an order made by an Income-tax Officer under sub-section (1) of section 23A";

- (v) for the words "Assistant Commissioner" the words "Appellate Assistant Commissioner" shall be substituted;

- (vi) for the proviso the following provisos shall be substituted, namely:—

"Provided that no appeal shall lie against an order under sub-section (1) of section 46 unless the tax has been paid:

Provided further that where the partners of a firm are individually assessable on their shares in the total income of the firm, any such partner may appeal to the Appellate Assistant Commissioner against any order of an Income-tax Officer determining the amount of the total income or the loss of the firm or the apportionment thereof between the several partners, but in respect of matters which are determined by such order may not appeal against the assessment of his own total income:

Provided further that a shareholder in a company in respect of which an order under section 23A has been passed by an Income-tax Officer, may not in respect of matters determined by such order appeal against the assessment of his own total income."

- (b) in sub section (2), after the word and figure "section 27" the words, letters and figures "or of the intimation of an order under sub-section (1), of section 23A or under section 48, 49 or 49F" shall be inserted, and for the words "Assistant Commissioner" the words "Appellate Assistant Commissioner" shall be substituted.

Amendment of section 31, Act XI of 1922. 37. In section 31 of the said Act,—

- (a) for the words "Assistant Commissioner", wherever they occur in the section, the words "Appellate Assistant Commissioner" shall be substituted;

- (b) after sub-section (2) the following sub-section shall be inserted, namely:—

"(2A) The Appellate Assistant Commissioner may, at the hearing of an appeal, allow an appellant to go into any ground of appeal not specified in the grounds of appeal if the Appellate Assistant Commissioner is satisfied that the omission of that ground from the form of appeal was not wilful or unreasonable."

- (c) in sub-section (3),—

- (i) in clause (a), after the word "assessment" the words "and, in the case of an assessment on a firm or association of persons, authorise the Income-tax Officer to amend accordingly any assessment made on any partner of the firm or any member of the association," shall be inserted;

- (ii) in clause (b), after the words "fresh assessment", where they occur for the second time, the words "and determine where necessary the amount of tax payable on the basis of such fresh assessment" shall be added;

- (iii) for the words and figures "section 25 or section 28" the words, figures and letter "section 25, or sub-section (1) of section 23A or sub-section (2) of section 26 or section 48, 49 or 49F" shall be substituted;

- (iv) after clause (d) and before the proviso the following shall be inserted, namely:—

"or, in the case of an order under sub-section (1) of section 25A,

- (c) confirm such order or cancel it and either direct the Income-tax Officer to make further inquiry and pass a fresh order or to make an assessment in the manner laid down in sub-section (2) of section 25A,

or, in the case of an order under section 28 or sub-section (6) of

section 44E or sub-section (5) of section 44F or sub-section (1) of section 46,

- (f) confirm or cancel such order or vary it so as either to enhance or reduce the penalty ; ;

or, in the case of an appeal against a computation of loss under section 24,

- (g) confirm or vary such computation ; ;

- (v) in the proviso, after the word "assessment" the words "or a penalty" shall be inserted ;

- (vi) after the proviso the following proviso shall be added, namely :—

" Provided further that at the hearing of any appeal against an order of an Income-tax Officer, the Income-tax Officer shall have the right to be heard either in person or by a representative. "

38. In sub-section (1) of section 32

Amendment of section 32, Act XI of 1922.

of the said Act, for the words "Assistant Commissioner"

the words "Appellate Assistant Commissioner" shall be substituted, and for the words, brackets and figures "enhancing his assessment under sub-section (3) of section 31" the words, brackets and figures "under sub-section (3) of section 31 enhancing his assessment or a penalty imposed under section 28 or sub-section (6) of section 44E or sub-section (5) of section 44F" shall be substituted.

39. In sub-section (1) of section 33 of the

Amendment of section 33, Act XI of 1922.

said Act, for the words "Assistant Commissioner" the

words "Appellate Assistant Commissioner" the words "Appellate Assistant Commissioner" shall be substituted, and for the word, brackets and figure "sub-section (4)" the word, brackets and figure "sub-section (5)" shall be substituted.

40. Section 33A

Omission of section 33A, Act XI of 1922.

of the said Act shall be omitted.

41. (1) Section 34 of the said Act shall

Amendment of section 34, Act XI of 1922.

be re-numbered as sub-section (1) of that section, and in

the section, as so re-numbered,—

- (a) for the words "for any reason" the words "in consequence of definite information which has come into his possession the Income-tax Officer discovers that" shall be substituted ;

- (b) for the words "has escaped assessment in any year, or has been assessed at too low a rate" the words "have escaped assessment in any year, or have been under-assessed, or have been assessed at too low a rate, or have been the subject of excessive relief under this Act" shall be substituted ;

- (c) for the words "at any time within one year" the following shall be substituted, namely :—

"in any case in which he has reason to believe that the assessee has concealed the particulars of his income or deliberately furnished inaccurate particulars thereof, at any time within eight years, and in any other case at any time within four years" ;

- (d) after the proviso the following proviso shall be added, namely :—

"Provided further that when the income, profits or gains concerned are income, profits or gains liable to assessment for a year ending prior to the commencement of the Indian Income-tax (Amendment) Act, 1939, or where the assessment made or to be made is an assessment made or to be made on a person deemed to be the agent of a non-resident person under section 43, this sub-section shall have effect as if for the periods of eight years and four years a period of one year were substituted. "

- (2) To the said section, as so re-numbered, the following sub-section shall be added, namely :—

"(2) No order of assessment under section 23 or of assessment or re-assessment under sub-section (1) of this section shall be made after the expiry, in any case to which clause (c) of sub-section (1) of section 28 applies, of eight years, and in any other case, of four years from the end of the year in which the income, profits or gains were first assessable. "

42. In sub-section

Amendment of section 35, Act XI of 1922.

(1) of section 35 of the said Act,—

- (a) for the words "Assistant Commissioner", in both places where they occur, the words "Appellate Assistant Commissioner" shall be substituted ;

- (b) for the words "within one year", in both places where they occur, the words "within four years" shall be substituted ;

(c) for the words "den and made upon an assessee" the words "assessment order passed by him" shall be substituted;

(d) for the words "brought to his notice by the assessee" the words "brought to his notice by an assessee" shall be substituted;

(e) after the proviso the following proviso shall be added, namely:—

"Provided further that no such rectification shall be made of any mistake in any order passed more than one year before the commencement of the Indian Income-tax (Amendment) Act, 1939."

43. In section 37 of the said Act, for the words "Assistant Commissioner", in both places where they occur, the words "Appellate Assistant Commissioner" shall be substituted.

44. (1) For clause (3) of section 38 of the said Act the following clause shall be substituted, namely:—

"(3) require any assessee to furnish a statement of the names and addresses of all persons to whom he has paid in any year rent, interest, commission, royalty or brokerage, or any annuity not being an annuity taxable under the head 'Salaries', amounting to more than four hundred rupees, together with particulars of all such payments made."

45. In section 40 of the said Act, for the words "being in receipt on behalf of such beneficiary of any income" the words "being entitled to receive on behalf of such beneficiary any income" shall be substituted and to the said section the following proviso shall be added, namely:—

"Provided that in the case of a beneficiary being a person residing out of British India the tax may be levied upon and recovered from him direct."

46. (1) Section 41 of the said Act shall be re-numbered subsection (1) of that section, and in the section, so re-numbered,—

(a) the words "are received by" shall be omitted;

(b) after the words "the Official Trustees or" the word "by" shall be omitted;

(c) after the words "appointed by or under any order of a Court" the words "or any trustee or trustees appointed under a duly executed trust deed, (including the trustee or trustees under any Wakf deed which is valid under the Mussalman Wakf Validating Act, 1913), are entitled to receive on behalf of any person" shall be inserted;

(d) after the words "receiver or manager", where they occur for the second time, the words "or trustee or trustees" shall be inserted;

(e) for the words "any person on whose behalf such income, profits or gains are received" the words "the person on whose behalf such income, profits or gains are receivable" shall be substituted;

(f) the following provisos shall be added, namely:—

"Provided that where any such income, profits or gains or any part thereof are not specifically receivable on behalf of any one person, or where the individual shares of the persons on whose behalf they are receivable are indeterminate or unknown, the tax shall be levied and recoverable at the maximum rate:

Provided further that when part only of the income, profits and gains of a trust is chargeable under this Act, that proportion only of the income, profits and gains receivable by a beneficiary from the trust which the part so chargeable bears to the whole income, profits and gains of the trust shall be deemed to have been derived from that part."

(2) To sub-section (1) of section 41, as so re-numbered, the following sub-section shall be added, namely:—

"(2) Nothing contained in sub-section (1) shall prevent either the direct assessment of the person on whose behalf income, profits or gains therein referred to are receivable, or the recovery from such person of the tax payable in respect of such income, profits or gains."

47. In section 42 of the said Act,—

(a) in sub-section (1),—

(i) for the words "In the case of any person residing out of British India, all profits or gains

accruing or arising to such person," the words "All income, profits or gains accruing or arising," shall be substituted;

- (ii) for the words "or property in British India" the following words shall be substituted, namely:—

"in British India, or through or from any property in British India, or through or from any asset or source of income in British India, or through or from any money lent at interest and brought into British India in cash or in kind";

- (iii) for the words "shall be chargeable to income-tax in the name of the agent of any such person, and" the words "where the person entitled to the income, profits or gains is not resident in British India, shall be chargeable to income-tax either in his name or in the name of his agent, and in the latter case" shall be substituted;

- (iv) in the proviso, for the words "Provided that" the following shall be substituted, namely:—

"Provided that where the person entitled to the income, profits or gains is not resident in British India, the income-tax so chargeable may be recovered by deduction under any of the provisions of section 18 and that";

- (v) after the proviso the following provisos shall be added, namely:—

"Provided further that any such agent, or any person who apprehends that he may be assessed as such an agent, may retain out of any money payable by him to such non-resident person a sum equal to his estimated liability under this sub-section, and in the event of any disagreement between the non-resident person and such agent or person as to the amount to be so retained, such agent or person may secure from the Income-tax Officer a certificate stating the amount to be so retained pending final settlement of the liability, and

the certificate so obtained shall be his warrant for retaining that amount:

Provided further that the amount recoverable from such agent or person at the time of final settlement shall not exceed the amount specified in such certificate except to the extent to which such agent or person may at such time have in his hands additional assets of such non-resident person.";

- (b) in sub-section (2), after the words "Where a person not resident" the words "or not ordinarily resident" shall be inserted; the words ", and not being a British subject or a firm or company constituted within His Majesty's Dominions or a branch thereof" shall be omitted; the words "or the Assistant Commissioner, as the case may be," shall be omitted; and for the words commencing "between the resident and the non resident" and ending "connection with the non-resident" the words "between such persons, the course of business is so arranged that the business done by the resident person with the person not resident or not ordinarily resident" shall be substituted;

- (c) for sub-section (3) the following sub-section shall be substituted, namely:—

"(3) In the case of a business of which all the operations are not carried out in British India, the profits and gains of the business deemed under this section to accrue or arise in British India shall be only such profits and gains as are reasonably attributable to that part of the operations carried out in British India."

Amendment of sec- 48. In section 43
tion 43, Act XI of 1922. of the said Act,—

- (a) before the proviso the following proviso shall be inserted, namely:—

"Provided that where transactions are carried on in the ordinary course of business through a broker in British India in such circumstances that the broker does not in respect of such transactions deal directly with or on behalf of a non-resident principal but deals with or through

a non-resident broker who is carrying on such transactions in the ordinary course of his business and not as a principal such first mentioned broker shall not be deemed to be an agent under this section in respect of such transactions:" ;

- (b) in the existing proviso after the word "Provided" the word "further" shall be inserted.

43. For section 44 of the said Act the following section shall be substituted, namely:—

"44. Where any business, profession or vocation carried on by a firm or association of persons has been discontinued, or where an association of persons is dissolved, every person who was at the time of such discontinuance or dissolution a partner of such firm or a member of such association shall, in respect of the income, profits and gains of the firm or association, be jointly and severally liable to assessment under Chapter IV and for the amount of tax payable and all the provisions of Chapter IV shall, so far as may be, apply to any such assessment."

50. In section 44C of the said Act, for the words "in any year" the words "in the year" shall be substituted.

51. After Chapter VB of the said Act the following Chapter shall be inserted, namely:—

"CHAPTER VB.

SPECIAL PROVISIONS RELATING TO AVOIDANCE OF LIABILITY TO INCOME-TAX AND SUPER-TAX.

44D. (1) Where any person has, by means of a transfer of assets, by virtue or in consequence whereof, either alone or in conjunction with associated operations, any income which if it were the income of such person would be chargeable to income-tax becomes payable to a person not resident or to a person resident but not ordinarily resident in British India, acquired any rights by virtue or in consequence of which he has within the meaning of this section power to enjoy such income, whether forthwith or in the future, that income shall, whether it would or would not have been chargeable to income-tax apart from the provisions of this section, be deemed to be income of such first mentioned person for all the purposes of this Act.

(2) Where any person receives or is entitled to receive, whether before or after any transfer of assets by virtue or in consequence whereof either alone or in conjunction with associated operations any income becomes payable to a person not resident or resident but not ordinarily resident in British India, any sum paid or payable by way of a loan or repayment of a loan or any other sum, being a sum which is not paid or payable for full consideration in money or money's worth, paid or payable otherwise than as income, such income shall, whether it would or would not have been chargeable to income-tax apart from the provisions of this section, be deemed to be the income of the first mentioned person for all the purposes of this Act.

(3) Sub-sections (1) and (2) shall not apply if such first mentioned person shows to the satisfaction of the Income-tax Officer either—

- (a) that neither the transfer nor any associated operation had for its purpose or for one of its purposes the avoidance of liability to taxation; or
- (b) that the transfer and all associated operations were *bona fide* commercial transactions and were not designed for the purpose of avoiding liability to taxation.

(4) For the purposes of this section, an 'associated operation' means, in relation to any transfer, an operation of any kind effected by any person in relation to any of the assets transferred or any assets representing whether directly or indirectly any of the assets transferred, or to the income arising from any such assets, or to any assets representing whether directly or indirectly the accumulations of income arising from any such assets.

(5) A person shall, for the purposes of this section, be deemed to have power to enjoy income of a person not resident, or resident but not ordinarily resident, in British India, if—

- (a) the income is in fact so dealt with by any person as to be calculated at some point of time and, whether in the form of income or not, to enure for the benefit of the first mentioned person, or
- (b) the receipt or accrual of the income operates to increase the value to such first mentioned person of any assets held by him or for his benefit, or
- (c) such first mentioned person receives or is entitled to receive at any time any benefit provided or to be provided out of that income or out of moneys which are or will be available for the purpose by reason of the effect or successive effects of

the associated operations on that income and on any assets which represent that income, or

(d) such first mentioned person has power by means of the exercise of any power of appointment or power of revocation or otherwise to obtain for himself, whether with or without the consent of any other person, the beneficial enjoyment of the income, or

(e) such first mentioned person is able, in any manner whatsoever and whether directly or indirectly, to control the application of the income.

(6) In determining whether a person has power to enjoy income within the meaning of this section, regard shall be had to the substantial result and effect of the transfer and any associated operations, and all benefits which may at any time accrue to such person as a result of the transfer and any associated operations shall be taken into account irrespective of the nature or form of the benefits.

(7) For the purposes of this section—

(a) the expression 'assets' includes property or rights of any kind, and the expression 'transfer' in relation to rights includes the creation of those rights;

(b) the expression 'benefit' includes a payment of any kind;

(c) references to income of a person not resident or of a person not ordinarily resident in British India shall, where the amount of the income of a company for any year or period has been deemed to have been distributed under sub-section (1) of section 23A, include references to so much of the income of the company for that year or period as is equal to the amount deemed to have been distributed to that person;

(d) references to assets representing any assets, income or accumulations of income include references to shares in or obligations of any company to which, or obligation of any other person to whom, those assets, that income or those accumulations are or have been transferred;

(e) any body corporate incorporated outside British India shall be treated as if it were resident out of British India whether it is so resident or not.

(8) The provisions of this section shall apply for the purposes of assessment to

income-tax and super-tax for the year ending on the 31st day of March, 1940, and subsequent years, and shall apply, in relation to transfers of assets and associated operations whether carried out before or after the commencement of the Indian Income-tax (Amendment) Act, 1939.

(9) Where any person has been charged to tax on any income deemed to be his under the provisions of this section, and that income is subsequently received by him, whether as income or in any other form, it shall not again be deemed to form part of his income for the purposes of this Act.

44E. (1) Where the owner of any securities [in this sub-section (1) referred to as 'the owner'] agrees to sell or transfer those securities, and by the same or any collateral agreement—

(a) agrees to buy back or re-acquire the securities, or

(b) acquires an option, which he subsequently exercises, to buy back or re-acquire the securities,

then, if the result of the transaction is that any interest becoming payable in respect of the securities is receivable otherwise than by the owner, the interest payable as aforesaid shall, whether it would or would not have been chargeable to tax apart from the provisions of this section, be deemed for all the purposes of this Act to be the income of the owner and not to be the income of any other person.

(2) the references in sub-section (1) to buying back or re-acquiring the securities shall be deemed to include references to buying or acquiring similar securities, so, however, that where similar securities are bought or acquired, the owner shall be under no greater liability to tax than he would have been under if the original securities had been bought back or re-acquired.

(3) Where any person carrying on a business which consists wholly or partly in dealing in securities agrees to buy or acquire any securities, and by the same or any collateral agreement—

(a) agrees to sell back or re-transfer the securities, or

(b) acquires an option, which he subsequently exercises, to sell back or re-transfer the securities,

then, if the result of the transaction is that any interest becoming payable in respect of the securities is receivable by him, no account shall be taken of the transaction in computing for any of the purposes of this Act the profits arising from or loss sustained in the business.

(4) Sub-section (5) shall have effect, subject to any necessary modifications, as if references to selling back or re-transferring the securities included references to selling or transferring similar securities.

(5) For the purpose of this section—

(a) the expression 'interest' includes a dividend;

(b) the expression 'securities' includes stocks and shares;

(c) securities shall be deemed to be similar if they entitle their holders to the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those rights, notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or the manner in which they can be transferred.

(6) The Income-tax Officer may by notice in writing require any person to furnish him within such time as he may direct (not being less than twenty-eight days), in respect of all securities of which such person was the owner at any time during the period specified in the notice, such particulars as he considers necessary for the purposes of this section and for the purpose of discovering whether tax has been borne in respect of the interest on all those securities; and, if that person without reasonable excuse fails to comply with the notice, he shall be liable to a penalty not exceeding five hundred rupees and to a further penalty of the like amount for every day after the infliction of such penalty during which the failure continues.

44F. (1) Any person upon whom notice is served by the Income-tax Officer requiring him to furnish a statement of particulars relating to any securities in which, at any time during the period specified in the notice he has had any beneficial interest, and in respect of which, within such period, either no income was received by him, or the income received by him was less than the sum to which the income would have amounted if the income from such securities had accrued from day to day and been apportioned accordingly, shall, whether an assessment to income-tax or super-tax in respect of his total income has or has not been made for the relevant year or years of assessment, furnish such a statement and such particulars in the form and within the time (not being less than twenty-eight days) required by the notice.

(2) If it appears to the Income-tax Officer by reference to all the circumstances in relation to the securities of any such person

(including circumstances with respect to sales, purchases, dealings, contracts, arrangements, transfers, or any other transactions relating to such securities) that such person has thereby avoided or would avoid more than ten per cent. of the amount of the income-tax or super-tax for any year which would have been payable in his case in respect of the income from those securities if the income had been deemed to accrue from day to day and had been apportioned accordingly, and the income so deemed to have been apportioned to him had been treated as part of his total income from all sources for the purposes of income-tax or super-tax, then those securities shall be deemed to be securities to which sub-section (3) applies.

(3) For the purposes of assessment to income-tax or super-tax in the case of any such person, the income from any securities to which this sub-section applies shall be deemed to accrue from day to day, and in the case of the sale or transfer of any such securities by or to him shall be deemed to have been received as and when it is deemed to have accrued:

Provided that this section shall not apply if such person proves to the satisfaction of the Income-tax Officer that the avoidance of income-tax or super-tax was exceptional and not systematic and that there was not in his case in any of the three preceding years any such avoidance of income-tax or super-tax, or that the provisions of section 44E have been applied in his case in respect of such income.

(4) If any person fails to furnish any statement or particulars required under this section, or if the Income-tax Officer is not satisfied with any statement or particulars furnished under this section, the Income-tax Officer may make an estimate of the amount of the income which, under the foregoing provisions of this section, is to be deemed to form part of the person's total income for the purposes of income-tax or super-tax.

(5) If any person without reasonable excuse fails to furnish any statement or particulars required under this section, he shall be liable to a penalty not exceeding five hundred rupees, and to a further penalty of the like amount for every day after the infliction of such penalty during which the failure continues.

(6) For the purpose of this section the expression 'Securities' includes stocks and shares."

52. In section 45 of the said Act, for the words, brackets and figure "under sub-section (4)" the words, brackets and figure "under sub-section (3)"

Amendment of section 45, Act XI of 1922.

shall be substituted, and the words, figures and letter "or under section 33A" shall be omitted and to the section the following shall be added, namely:—

"provided further that where an assessee has been assessed in respect of income arising outside British India in country the laws of which prohibit or restrict the remittance of money to British India, the Income-tax Officer shall not treat the assessee as in default in respect of that part of the tax which is due in respect of that amount of his income which by reason of such prohibition or restriction cannot be brought into British India, and shall continue to treat the assessee as not in default in respect of such part of the tax until the prohibition or restriction is removed.

Explanation.—For the purposes of this section income shall be deemed to have been brought into British India if it has been utilized or could have been utilized for the purposes of any expenditure actually incurred by the assessee without British India or if the income whether capitalized or not has been brought into British India in any form."

53. In sub-section (7) of section 46 of the said Act, after the word and figure "section 42" the words and figure "or of the proviso to section 45" shall be inserted, and for the words "the year" the words "the financial year" shall be substituted.

54. In section 47 of the said Act, after the word and figure "section 28", the words, letters, figures and brackets "sub-section (6) of section 44E, sub-section (5) of section 44E" shall be inserted.

55. For section 48 of the said Act the following section shall be substituted, namely —

"48 (1) If any individual, Hindu undivided family, company, local authority, firm or other association of persons, or any partner of a firm or member of an association individually satisfies the Income-tax Officer or other authority appointed by the Central Government in this behalf that the amount of tax paid by him or on his behalf or

treated as paid on his behalf or any year exceeds the amount with which he is properly chargeable under this Act for that year, he shall be entitled to a refund of any such excess.

(2) The Appellate Assistant Commissioner in the exercise of his appellate powers, or the Commissioner in the exercise of his appellate powers or powers of revision if satisfied to the like effect shall cause of refund to be made by the Income-tax Officer of any amount found to have been wrongly paid or paid in excess.

(3) Where income of one person is included under any provision of this Act in the total income of any other person such other person only shall be entitled to a refund under this section in respect of such income.

(4) Nothing in this section shall operate to validate any objection or appeal which is otherwise invalid or to authorise the revision of any assessment or other matter which has become final and conclusive, or the review by any officer of a decision of his own which is subject to appeal or revision, or, where any relief is specifically provided elsewhere in this Act, to entitle any person to any relief other or greater than that relief or to entitle any person to claim a refund of tax payable before the commencement of the Indian Income-tax (Amendment) Act, 1939, which he would not be entitled to claim but for the passing of that Act."

56. Section 48A of the said Act shall be omitted.

57. In section 49 of the said Act,—

(a) in sub-section (1),—

(i) after the word "paid", where it occurs for the first time, the words and figures "by deduction under section 18 or otherwise" shall be inserted; after the word "paid", where it occurs for the second time, the words "by deduction or otherwise" shall be inserted, and for the words "for that year" the words "for the corresponding year" shall be substituted;

- (ii) the following proviso shall be added, namely:—

“Provided that in no case shall the rate at which such refund is calculated exceed half the Indian rate of tax appropriate to the income of the person entitled to relief.”;

- (b) in sub-section (2), for clause (b) the following clause shall be substituted, namely:—

“(b) the expression ‘Indian rate of tax’ means the amount of Indian income-tax exclusive of super-tax after deduction of any relief due to a claimant under the other provisions of this Act but before deduction of any relief due to him under this section, divided by his total income after deducting therefrom any income (including income from a share in an unregistered firm) exempted from tax by or under the provisions of this Act, added to the amount of Indian super-tax before deduction of any relief due to the claimant under this section divided by his total income?”.

Insertion of new sections 49A, 49B and 49C in Act XI of 1922.

58. After section 49 of the said Act the following sections shall be inserted,

namely:—

“49A. (1) The Central Government may,

by notification in the official Gazette, make provision for the

granting of relief in respect of income on which has been paid both income-tax (including super-tax) under this Act and Dominion income-tax.

- (2) For the purposes of this section ‘Dominion income-tax’ means any income-tax or super-tax charged under any law in force in any Indian State or in any part of His Majesty’s Dominions (other than the United Kingdom) where the laws of that State or part provide for relief in respect of tax charged on income both in that State or part and in British India which appears to the Central Board of Revenue to correspond to the relief which may be granted by this section.

49B. Where a shareholder has received a dividend

from a company which has paid income-tax imposed in British

India or elsewhere, he shall be deemed, in respect of such dividend, himself to have paid the income-tax (exclusive of super-tax) paid by the company on so much of the dividend as bears to the whole the same proportion as the amount of income on which the company has paid such income-tax bears to the whole income of the company.

49C. (1) Where a shareholder has received a dividend

from a company which has obtained relief under the relief referred to in section 49 or granted under section 49A or under the India and Burma (Income-tax Relief) Order, 1926, he shall be deemed in respect of such dividend himself to have obtained such relief at the rate at which such relief has been granted, in respect of income-tax only, to the company for the financial year preceding the year in which the dividend was paid.

- (2) If the rate at which a shareholder is deemed under sub-section (1) to have obtained relief exceeds the rate at which he would have been entitled to relief had such relief been given direct to him by or under the said sections or order, any excess shall be recovered from him either as an addition to the tax payable by him on any assessment made on him under section 23 or section 34 or by setting it off against any relief due to him under section 48.

49D. If any person who has paid by deduction or

otherwise Indian income tax for any year in respect of any income arising

without British India in a country the laws of which do not provide for any relief in respect of income-tax charged in British India proves that he has paid income-tax by deduction or otherwise under the laws of the said country in respect of the same income, he shall be entitled to the deduction from the Indian income-tax payable of a sum equal to one-half of such Indian income-tax or to one-half of such tax payable in the said country, whichever is the less.”

59. Section 49A of the said Act shall be renumbered 49E, and in that section so re-numbered, for

Amendment of section 49A, Act XI of 1922,

the words "Assistant Commissioner" the words "Appellate Assistant Commissioner" shall be substituted.

60. Section 49B of the said Act shall be re-numbered 49F, and in that section so re-numbered, the word, figures and letter "or 48A shall be omitted.

61. In section 50 of the said Act,—

(a) after the word "income-tax" the words "or super-tax" shall be inserted;

(b) for the words beginning "one year from the last day" and ending "whichever period may expire later" the following shall be substituted, namely:—

"four years from the last day of the financial year commencing next after the expiry of the previous year in which the income arose, accrued or was received or was deemed to have arisen, accrued or been received or was brought into British India :

Provided that where the claim is to a refund of income-tax or super tax paid prior to the commencement of the Indian Income-tax (Amendment) Act, 1939, the claim shall not be allowed unless it is made within one year from the last day of the year in which the tax was recovered or before the last day of the financial year commencing after the expiry of the previous year as defined in clause (11) of section 2 in which the income arose on which the tax was recovered, whichever period may expire later:—

(c) in the existing proviso, after the word "Provided" the word "further" shall be inserted; after the word and figures "section 49" the words, brackets and figures "of tax paid prior to the commencement of the Indian Income-tax (Amendment) Act, 1939" shall be inserted.

62. Section 50A of the said Act shall be omitted.

63. In clause (c) of section 51 of the said Act, before the word and figures "section 22" the words, brackets and figure "sub-section (2) of" shall be inserted.

64. In section 52 of the said Act,—

(a) after the words, figures and letter "or section 20A" the words and figures "or section 21" shall be inserted, and the words, brackets figures and letters "or sub-section (2) of section 33A or sub-section (3) of section 50A" shall be omitted.

(b) for the words be "deemed to have committed the offence described in section 177 of the Indian Penal Code" the words "be punishable, on conviction before a Magistrate, with simple imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both" shall be substituted.

65. In section 53 of the said Act,—

(a) in sub-section (1), for the words "Assistant Commissioner" the words "Inspecting Assistant Commissioner" shall be substituted;

(b) for sub-section (2) the following sub-section shall be substituted, namely:—

"(2) The Inspecting Assistant Commissioner may either before or after the institution of proceedings compound any such offence."

66. In section 54 of the said Act,—

(a) in the first proviso to sub-section (2) the words "Provided that" shall be omitted and the proviso shall be numbered as sub-section (3);

(b) in sub-section (3) so re-numbered,—

(i) after clause (c) the following clauses shall be inserted, namely:—

"(d) of any such particulars to a Civil Court in any suit to which Government is a party, which relates to any matter arising out of any proceeding under this Act, or

(e) of any such particulars to the Auditor General of India for the purpose of enabling him to discharge his functions under section 144 of the Government of India Act, 1925, or

(f) of any such particulars to any officer appointed by the Auditor General of India or the Central Board of Revenue to audit income-tax receipts or refunds, or

(g) of any such particulars, relevant to any inquiry into the conduct of an official of the Income-tax Department, to any persons appointed Commissioners under the Public Servants (Inquiries) Act, 1850, or to an officer otherwise appointed to hold such inquiry, or to a Public Service Commission established under the Government of India Act, 1935, when exercising its functions in relation to any matter arising out of any such inquiry";

(ii) existing clause (cc) shall be re-lettered clause (h) and for existing clause (d) the following clauses shall be substituted, namely:—

"(i) of such facts, to an authorised officer of the United Kingdom, or of any Indian State or of any part of His Majesty's Dominions which has entered into an agreement with British India for the granting of double taxation relief, as may be necessary for the purpose of enabling such relief or a refund under section 49 of this Act to be given, or

(j) of such facts, to an officer of a Provincial Government, as may be necessary for the purpose of enabling that Government to levy or realise any tax imposed by it on agricultural income, or

(k) of such facts, to any authority exercising powers under the Sea Customs Act, 1878, or any Act of the Central Legislature imposing a duty of excise as may be necessary for enabling it duly to exercise such powers, or

(l) of such facts, to a Returning Officer, as may be necessary to establish whether a person is or is not entitled to be entered on an electoral roll, or

(m) so much of such particulars, to the appropriate authority, as may be necessary to establish whether a person has or

has not been assessed to income-tax in any particular year or years, where under the provisions of any law for the time being in force such fact is required to be established."

(c) in the second and third provisos to sub-section (2) the words "Provided further that" shall be omitted and these provisos shall be numbered, respectively, as sub-section (4) and sub-section (5);

(d) in sub-section (4) so re-numbered, after the words "proceeding under" the words, letter and figure "section 25A or" shall be inserted.

Amendment of section 55, Act XI of 1922.

67. In section 55 of the said Act,—

(a) for the words "company unregistered firm or other association of individuals" the words "company, local authority, unregistered firm or other association of persons" shall be substituted, and after the words "not being a registered firm", the words "or the partners of the firm or members of the association individually," shall be inserted;

(b) before the existing proviso the following proviso shall be inserted, namely:—

"Provided that where under the provisions of clause (b) of sub-section (5) of section 23 an unregistered firm has been assessed in the manner applicable to a registered firm, super-tax shall be payable by each partner of the firm individually on his share in the income, profits and gains of the firm and not by the firm itself";

and

(c) in the existing proviso,—

(i) after the word "Provided" the word "further" shall be inserted;

(ii) after the words "unregistered firm" the words "or other association of persons not being a company" shall be inserted;

(iii) for the words "an individual having a share in the firm" the words "a partner of the firm or a member of the association, as the case may be" shall be substituted.

XXXVII of 1850.

VII of 1878.

68. In section 56 of the said Act, after Amendment of section 56, the word "company" Act XI of 1922. the words "local authority" shall be inserted, and for the words "association of individuals" the words "association of persons" shall be substituted.

Omission of section 57, **69.** Section 57 of the Act XI of 1922. said Act shall be omitted.

Amendment of section 58, **70.** In section 58 of Act XI of 1922. the said Act,—

(a) in sub-section (1), for the words "the proviso" the words "the second proviso" shall be substituted, and the figures "17", "21" and "48" shall be omitted and for the words, brackets and figures "sub-sections (2) and (3)" the word, brackets and figure "sub-section (2)" shall be substituted, and for the figures "20", the words, figures and brackets "and 20 and the first proviso to sub-section (1) of section 41 and section" shall be substituted;

(b) in sub-section (2), for the words, brackets, figures and letters "sub-sections (3A), (3B), (3C) and (3D)" the words, brackets, figures and letters "sub-section (2), (2A), (2B), (3B), (3C), (3D) and (3E)" shall be substituted and the word and figures "section 57" shall be omitted.

Amendment of section 58A, Act XI of 1922. **71.** In clause (b) of section 58A of the said Act,

(a) in sub-clause (i) the words "individuals or" shall be omitted;

(b) in sub-clause (ii) the words and figures "or section 11" shall be omitted

72. In section 58B of the said Act, sub-section (2) shall be omitted, and sub-sections (3), (4) and (5) shall be re-numbered (2), (3) and (4), respectively and in sub-section (4) as so re-numbered after the word "recognise" the words "or an order withdrawing recognition from" shall be inserted.

Amendment of section 58F, Act XI of 1922. **73.** In section 58F of the said Act,—

(a) to sub-section (1) the words "or six thousand rupees, whichever is less" shall be added;

(b) in sub-section (2) for the words beginning "In the accounts of a recognised provident fund" and ending "Such interest shall be

exempt from payment of income-tax," the following shall be substituted, namely:—

"Interest credited on the accumulated balance of any employee in a recognised provident fund shall be exempt from payment of income-tax, if and in so far as it does not exceed one-third of the salary of the employee for the year concerned and".

74. In sub-section (3) of section 58G of the said Act, for the Amendment of section 58G, Act XI of 1922. words beginning "from the payment of which" and ending "in addition to any other income-tax" the following shall be substituted, namely:—

"and super-tax which would have been payable by the employee in respect of his total income for each of the years concerned if the fund had not been a recognised provident fund, and the amount by which such total exceeds the total of all sums paid by or on behalf of such employee by way of tax for such years shall be payable by the employee in addition to any other income-tax and super-tax".

Amendment of section 58K, Act XI of 1922. **75.** In sub-section (2) of section 58K of the said Act,—

(a) after the word "shall" the following words shall be inserted, namely:—

"if the employer has made effective arrangements to secure that tax shall be deducted at source from the amount of such share when paid to the employee,";

(b) for the word, brackets and figures "clause (ix)" the word, brackets and figures "clause (xii)" shall be substituted.

76. After Chapter IXA of the said Act the following Chapter shall be inserted, namely:—

"CHAPTER IXB.

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF SUPERANNUATION FUNDS.

58N. In this Chapter, unless there is anything repugnant in the subject or context,—

Definitions.

(a) "approved superannuation fund," means a superannuation fund or any part of a superannuation fund

which has been and continues to be approved by the Central Board of Revenue in accordance with the provisions of this Chapter;

(b) 'employer', 'employee' and 'contribution' have, in relation to superannuation funds, the meanings assigned to those expressions in section 58A in relation to provident funds;

(c) 'ordinary annual contribution' means an annual contribution of a fixed amount or an annual contribution computed on some definite basis by reference to the earnings, the contributions or the number of members of the fund.

53O. (1) The Central Board of Revenue may accord approval to any superannuation fund or any part of a superannuation fund which in its opinion complies with the requirements of section 58P, and may at any time withdraw such approval, if in its opinion the circumstances of the fund or part cease to warrant the continuance of the approval.

(2) The Central Board of Revenue shall communicate in writing to the trustees of the fund the grant of approval with the date on which the approval is to take effect and, where the approval is granted subject to conditions, those conditions.

(3) The Central Board of Revenue shall communicate in writing to the trustees of the fund any withdrawal of approval with the reasons for such withdrawal and the date on which the withdrawal is to take effect.

(4) The Central Board of Revenue shall neither refuse nor withdraw approval to any superannuation fund or any part of a superannuation fund unless it has given the trustees of that fund a reasonable opportunity of being heard in the matter.

53P. In order that a superannuation fund may receive and retain approval the following conditions shall be satisfied, namely:—

(a) the fund shall be a fund established under an irrevocable trust in connection with a trade or undertaking carried on in British India;

(b) the fund shall have for its sole purpose the provision of annuities for employees in the trade or undertaking on their retirement at or after a specified age or on their becoming incapacitated prior to such retirement, or for the

widows, children or dependants of persons who are or have been such employees on the death of those persons; and

(c) the employer in the trade or undertaking shall be a contributor to the fund:

Provided that the Central Board of Revenue may, if it thinks fit and subject to such conditions, if any, as it thinks proper to attach to the approval, approve a fund or any part of a fund—

(i) notwithstanding that the rules of the fund provide for the return in certain contingencies of contributions paid to the fund, or

(ii) if the main purpose of the fund is the provision of such annuities as aforesaid, notwithstanding that such provision is not its sole purpose, or

(iii) notwithstanding that the trade or undertaking in connection with which the fund is established is carried on only partly in British India.

53Q. (1) An application for approval of a superannuation fund or part of a superannuation fund for any year of assessment shall be made in writing before the end of that year by the trustees of the fund to the Income-tax Officer, and shall be accompanied by a copy of the instrument under which the fund is established and by two copies of the rules and of the accounts of the fund for the last year for which such accounts have been made up. The Central Board of Revenue may require such further information to be supplied as it thinks proper.

(2) If any alteration in the rules, constitution, objects or conditions of the fund is made at any time after the date of the application for approval, the trustees of the fund shall forthwith communicate such alteration to the Income tax Officer, and in default of such communication any approval given shall, unless the Central Board of Revenue otherwise orders, be deemed to have been withdrawn from the date on which the alteration took effect.

53R. Income derived from investments or deposits of an approved superannuation fund shall be exempt from payment of income-tax, and any sum paid by an employer or an employee by way of contribution towards an approved superannuation fund shall, in the

case of an employer, be deducted in computing his income, profits or gains for the purpose of assessment, and, in the case of an employee, be treated for all the purposes of this Act as if it were a sum to which the provisions of section 15 apply:

Provided that no such exemption shall be allowable to an employee in respect of any sum which is not an ordinary annual contribution:

Provided further that where a contribution by an employer is not an ordinary annual contribution it shall, for the purposes of this section, be treated, as the Central Board of Revenue may direct, either as an expense incurred in the year in which the sum is paid, or as an expense to be spread over such period of years as the Central Board of Revenue thinks proper.

58S. (1) Where any contributions (including interest on contributions, if any) are repaid to an employee, the amount so repaid shall be deemed for the purposes of income-tax and super-tax to be income of the employee for that year.

(2) Where any contributions (including interest on contributions, if any) are repaid to an employee during his lifetime but not at or in connection with the termination of his employment, income-tax on the amount so repaid or paid shall except in the case of an employee whose employment was carried on abroad, be deducted by the trustees of the fund at the average rate of tax at which the employee was liable to income tax and super-tax during the preceding three years or during such period, if less than three years, as he was a member of the fund, and shall be paid by the trustees to the credit of the Central Government within the prescribed time and in such manner as the Central Board of Revenue may direct.

58T. Where an employer deducts from the emoluments paid to an employee or pays on his behalf any contributions of that employee to an approved superannuation fund, he shall include all such deductions or payments in the return which he is required to furnish under section 21.

58U. If a fund or a part of a fund for any reason ceases to be an approved superannuation fund, the trustees of the fund shall nevertheless remain liable to account for tax on any sum paid—

- (a) on account of returned contributions (including interest on contributions, if any), and

- (b) in commutation or in lieu of annuities,

in so far as the sum so paid is in respect of contributions made before the fund or part of the fund ceased to be an approved fund under the provisions of this Chapter.

58V. The trustees of an approved superannuation fund and any employer who contributes to an approved superannuation fund shall, when required by notice from the Income-tax Officer, within twenty-one days of the date of such notice—

- (a) furnish to the Income-tax Officer a return containing such particulars of contributions made to the fund as the notice may require;
- (b) prepare and deliver to the Income-tax Officer a return containing—
- (i) the name and place of residence of every person in receipt of an annuity from the fund,
 - (ii) the amount of the annuity payable to each annuitant,
 - (iii) particulars of every contribution (including interest on contributions, if any) returned to the employer or to employees; and
 - (iv) particulars of sums paid in commutation or in lieu of annuities;
- (c) furnish to the Income-tax Officer a copy of the accounts of the fund to the last date prior to such notice to which such accounts have been made up, together with such other information and particulars as the Central Board of Revenue may reasonably require."

77. In sub-section (2) of section 59 of the Amendment of section said Act, sub-clause 59, Act XI of 1922. (ii) of clause (a) shall be omitted, and sub-clause (iii) shall be re-numbered (ii).

Amendment of section 78. In section 60 of the said Act, -

- (a) in sub-section (2), after the words "twelve months" the following words, brackets and figures shall be inserted, namely:—
- "or a payment which is under the provisions of sub-section (1) of section 7 a profit in lieu of salary", and

for the words "such relief as it may think fit" the words "the appropriate relief" shall be substituted;

(b) the following sub-section shall be added, namely:—

“(3) After commencement of the Indian Income-tax (Amendment) Act, 1939, the power conferred by sub-section (1) shall not be exercisable except for the purpose of rescinding an exemption, reduction or modification already made.”

Substitution of new section for section 61, Act XI of 1922. 79. For section 61 of the said Act the following section shall be substituted, namely:—

“61. (1) Any assessee, who is entitled

Appearance by authorised representative. or required to attend

before any Income-tax authority in connection with any proceeding under this Act otherwise than when required under section 37 to attend personally for examination on oath or affirmation, may attend by a person authorised by him in writing in his behalf, being a relative of or a person regularly employed by the assessee, or a lawyer or accountant or Income-tax practitioner, and not being disqualified by or under sub-section (3).

(2) In this section,—

(i) a person regularly employed by the assessee shall include any officer of a Scheduled Bank with which the assessee maintains a current account or has other regular dealings;

(ii) ‘lawyer’ means a Barrister-at-Law or Solicitor or any other person entitled to plead in any Court of law in British India

(iii) ‘accountant’ means a registered accountant enrolled in the Register of Accountants maintained by the Central Government under the Auditors Certificate Rules, 1932, or a holder of a restricted certificate under the Restricted Certificate Rules, 1932, or a member of an association of accountants recognised in this behalf by the Central Board of Revenue;

(iv) ‘Income-tax practitioner’ mean—

(a) any person who, before the 1st day of April 1938, attended before an Income-tax authority on behalf of any assessee otherwise than in the capacity of an employee or relative of that assessee;

(b) any person who has passed any accountancy examination recognised in this behalf by the Central Board of Revenue; or

(c) any person who has acquired such educational qualifications as the Central Board of Revenue may prescribe for this purpose.

(3) No person who has been dismissed from Government service after the 1st day of April, 1938, shall be qualified to represent an assessee under sub-section (1); and if any lawyer or registered accountant is found guilty of misconduct in connection with any income-tax proceedings by the authority empowered to take disciplinary action against members of the profession to which he belongs, or if any other person is found guilty of such misconduct by the Commissioner of Income-tax, the Commissioner of Income-tax may direct that he shall be thenceforward disqualified to represent an assessee under sub-section (1):

Provided that—

(a) no such direction shall be made in respect of any person unless he is given a reasonable opportunity of being heard,

(b) any person against whom such direction is made may, within one month of the making of the direction, appeal to the Central Board of Revenue to have the direction cancelled, and

(c) no such direction shall take effect until one month from the making thereof or, when an appeal is preferred, until the disposal of the appeal.”

80. In sub-section (2) of section 63 of said Act, for the words “association of individuals” the words “association of persons” shall be substituted.

Amendment of section 63, Act XI of 1922. 81. In section 64 of the said Act,—

(a) in sub-section (1) for the word “business”, where it first occurs, the words “a business, profession or vocation” shall be substituted; for the word “business”, where it occurs for the second time the words “business, profession or vocation” shall be substituted; and for the words “his principal place of business” the words “the principal place of his business, profession or vocation” shall be substituted;

(b) to sub-section (3) the following provisos shall be added, namely:—

“Provided further that the place of assessment shall not be called in question by an assessee if he has made a return in response to the notice under sub-section (1) of section 22 and has stated therein the principal place wherein he carries on his business, profession or vocation, or if he has not made such a return shall not be called in question after the expiry of the time allowed by the notice under sub-section (2) of section 22 or under section 34 for the making of a return :

Provided further that if the place of assessment is called in question by an assessee the Income-tax Officer shall if not satisfied with the correctness of the claim, refer the matter for determination under this sub-section before assessment is made.”

Amendment of section 66, Act XI of 1922. **82.** In section 66 of the said Act,—

(a) in sub-section (2), the words, figures and letter “or of a decision by a Board of Referees under section 33A” and the words “or decision”, in both places where they occur, shall be omitted;

(b) in the first proviso to sub-section (2), the words and figures “or section 32” shall be omitted;

(c) in the proviso to sub-section (7), the following words shall be added, namely:—

“unless the High Court, on intimation given by the Commissioner within thirty days of the receipt of the result of such reference that he intends to ask for leave to appeal to His Majesty in Council, makes an order authorising the Commissioner to postpone payment of such refund until the disposal of the appeal to His Majesty in Council”;

(d) in clause (a) of sub-section (8), the words “the North-West Frontier Province and” shall be omitted.

Amendment of section 66A, Act XI of 1922. **83.** To sub-section (1) of section 66A of the said Act the following proviso shall be added, namely:—

“Provided that where in any reference heard by the Bench of the Court of the Judicial Commissioner of

the North-West Frontier Province, a difference of opinion arises between the Judicial Commissioner and the Judge of the said Court the opinion the Judicial Commissioner shall prevail.”

Addition of Schedule to Act XI of 1922. **84.** The following shall be added as a Schedule to the said Act, namely:—

“THE SCHEDULE.

[See section 10 (7).]

RULES FOR THE COMPUTATION OF THE PROFITS AND GAINS OF INSURANCE BUSINESS.

1. In the case of any person who carries on, or at any time in the preceding year carried on, life insurance business, the profits and gains of such person from that business shall be computed separately from his income, profits or gains from any other business.

2. The profits and gains of life insurance business shall be taken to be either—

(a) the gross external incomings of the preceding year from that business less the management expenses of that year, or

(b) the annual average of the surplus disclosed by the actuarial valuation made for the last inter-valuation period ending before the year for which the assessment is to be made, after adjusting such surplus so as to exclude from it any surplus or deficit included therein which was made in any earlier inter valuation period and any expenditure other than expenditure which may under the provisions of section 10 of this Act be allowed for in computing the profits and gains of a business,

whichever is the greater:

Provided that the amount to be allowed as management expenses shall not exceed—

(a) $7\frac{1}{2}$ per cent. of the premiums received during the preceding year in respect of single premium life insurance policies, plus

(b) in respect of the first year's premiums received in respect of other life insurance policies for which the number of annual premiums received is less than twelve, or for which the number of years during which premiums are payable is less than twelve, for each such premium or each such year $7\frac{1}{2}$ per cent. of such first year's premiums received during the preceding year, plus

- (c) 85 per cent. of the first year's premiums received during the preceding year in respect of other life insurance policies and 8½ per cent. of other premiums received during that year in respect of all life insurance policies other than single premium life insurance policies.

3. In computing the surplus for the purpose of rule 2,—

- (a) one-half of the amounts paid to or reserved for or expended on behalf of policyholders shall be allowed as a deduction:

Provided that in the first such computation made under this rule of any such surplus no account shall be taken of any such amounts to the extent to which they are paid out of or in respect of any surplus brought forward from a previous intervalation period:

Provided further that if any amount so reserved for policyholders ceases to be so reserved, and is not paid to or expended on behalf of policyholders, one-half of such amount, if it has been previously allowed as a deduction, shall be treated as part of the surplus for the period in which the said amount ceased to be so reserved;

- (b) any amount either written off or reserved in the accounts or through the actuarial valuation balance sheet to meet depreciation of or loss on the realisation of securities or other assets, shall be allowed as a deduction, and any sums taken credit for in the accounts or actuarial valuation balance sheet on account of appreciation of or gains on the realisation of the securities or other assets shall be included in the surplus:

Provided that if upon investigation it appears to the Income-tax Officer after consultation with the Superintendent of Insurance that having due regard to the necessity for making reasonable provision for bonuses to participating policyholders and for contingencies, the rate of interest or other factor employed in determining the liability in respect of outstanding policies is materially inconsistent with the valuation of the securities and other assets so as artificially to reduce the surplus, such adjustment shall be made to the allowance for depreciation of, or to the amount to be included in

the surplus in respect of appreciation of, such securities and other assets, as shall increase the surplus for the purposes of these rules to a figure which is fair and just;

- (c) the whole amount of interest received in respect of any securities of the Central Government which have been issued or declared to be income-tax free shall be deducted.

4. Where for any year an assessment is made in accordance with the annual average of a surplus disclosed by a valuation for an inter-valuation period exceeding twelve months, then, in computing the tax payable for that year, credit shall not be given in accordance with sub-section (5) of section 18 for the tax paid in the preceding year, but credit shall be given for the annual average of the income-tax paid by deduction at source from interest on securities or otherwise during such period.

5. For the purposes of these rules—

- (i) 'preceding year' means that year for which annual accounts are required to be prepared under the Insurance Act, 1938, immediately preceding the year for which the assessment is to be made or until the commencement of the Insurance Act, 1938, the previous year as defined in section 2 of this Act;

- (ii) "gross external incomings" means the full amount of incomings from interest, dividends, fines and fees and all other incomings from whatever source derived (except premiums received from policyholders and interest and dividends on any annuity fund) and includes also profits from reversions and on the sale or the granting of annuities, but excludes profits on the realisation of securities:

Provided that incomings, including the annual value of the property occupied by the assessee, which but for the provisions of sub-section (7) of section 10 would have been assessable under section 9 shall be computed upon the basis laid down in the last named section, and that there shall be allowed from such gross incomings such deductions as are permissible under that section;

- (iii) "management expenses" means the full amount of expenses (including commissions) incurred exclusively in the management of the business of life insurance, and in the case of a company carrying

on other classes of business as well as the business of life insurance in addition thereto a fair proportion of the expenses incurred in the general management of the whole business. Bonuses or other sums paid to or reserved on behalf of policyholders, depreciation of, and losses on the realisation of, securities and any expenditure other than expenditure which may under the provisions of section 10 of this Act be allowed for in computing profits and gains of a business are not management expenses for the purposes of these rules;

(iv) "life insurance business" means life insurance business as defined in clause (11) of section 2 of the Insurance Act, 1938;

(v) "securities" includes stocks and shares.

6. The profits and gains of any business of insurance other than life insurance shall be taken to be the balance of the profits disclosed by the annual accounts, copies of which are required under the Insurance Act, 1938, to be furnished to the Superintendent of Insurance after adjusting such balance so as to exclude from it any expenditure other than expenditure which may under the provisions of section 10 of this Act be allowed for in computing the profits and gains of a business. Profits and losses on the realisation of investments, and depreciation and appreciation of the value of investments shall be dealt with as provided in rule 3 for the business of life insurance.

7. The profits and gains of companies carrying on dividing society or assessment business shall be taken to be 15 per cent of the premium income of the previous year, or in the case of non-resident companies 15 per cent of the British Indian premium income of the previous year.

8. The profits and gains of the British Indian branches of an insurance company not resident in British India, in the absence of more reliable data, may be deemed to be the proportion of the total world income of the company corresponding to the proportion which its British Indian premium income bears to its total premium income. For the purpose of this rule, the total world income of life insurance companies not resident in British India whose profits are periodically ascertained by actuarial valuation shall be computed in the manner laid down in these rules for the computation of the profits and gains of life insurance business carried on in British India.

9. These rules apply to the assessment of the profits of any business of insurance carried on by a mutual insurance company."

PART II.

Insertion of new section 85. After section 5A in Act XI of 1922. of the said Act the following section shall be inserted, namely:—

"5A. (1) The Central Government shall appoint an Appellate Tribunal consisting of not more than ten persons to exercise the functions conferred on the Appellate Tribunal by this Act.

(2) The Appellate Tribunal shall consist of an equal number of judicial members and accountant members as hereinafter defined.

(3) A judicial member shall be a person who has exercised the powers of a District Judge or who possesses such qualifications as are normally required for appointment to the post of District Judge; and an accountant member shall be a person who has, for a period of not less than six years, practised professionally as a Registered Accountant enrolled on the Register of Accountants maintained by the Central Government under the Auditors Certificate Rules, 1932:

Provided that the Central Government may appoint as an accountant member of the Tribunal any person not possessing the qualifications required by this sub-section, if it is satisfied that he has qualifications and has had adequate experience of a character which render him suitable for appointment to the Tribunal.

(4) The Central Government shall appoint a judicial member of the Tribunal to be president thereof.

(5) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted from members of the Tribunal by the president of the Tribunal.

(6) A Bench shall consist of not less than two members of the Tribunal, and shall be constituted so as to contain an equal number of judicial members and accountant members, or so that the number of members of one class does not exceed the number of members of the other class by more than one.

(7) If the members of a Bench differ in opinion on any point the point shall be decided according to the opinion of the majority, if there is a majority; but if the members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the president of the Tribunal for hearing on such point or points by one or more of the other

members of the Tribunal, and such point or points shall be decided according to the opinion of the majority of the members of the Tribunal who have heard the case, including those who first heard it.

(8) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure, and the procedure of Benches of the Tribunal in all matters arising out of the discharge of its functions, including the place at which the Benches shall hold their sittings."

Amendment of section 28, Act XI of 1922.

86. In section 28 of the said Act,—

(a) in sub-section (1) and sub-section (2), for the words "or the Commissioner" the words "or the Appellate Tribunal", and for the words "he may direct" the words "he or it may direct" shall be substituted;

(b) in sub-section (5), for the words "or a Commissioner who has made" the words "or the Appellate Tribunal on making" shall be substituted.

Omission of section 32, Act XI of 1922.

87. Section 32 of the said Act shall be omitted.

Substitution of new section for section 33, Act XI of 1922.

88. For section 33 of the said Act the following section shall be substituted,

namely:—

"33. (1) Any assessee objecting to an order passed by Appeals against orders of Appellate Assistant Commissioner. an Appellate Assistant Commissioner under section 28 or section 31 may appeal to the Appellate Tribunal within sixty days of the date on which he is served with notice of such order.

(2) The Commissioner may, if he objects to any order passed by an Appellate Assistant Commissioner under section 31, direct the Income-tax Officer to appeal to the Appellate Tribunal against such order, and such appeal may be made at any time before the expiry of sixty days from the date of the order.

(3) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner, and shall, except in the case of an appeal referred to in sub-section (2), be accompanied by a fee of one hundred rupees.

(4) The Appellate Tribunal may, after giving both parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, and shall communicate any such orders to the assessee and to the Commissioner.

(5) Save as provided in section 66 orders passed by the Appellate Tribunal on appeal shall be final."

89. In section 35 of the said Act, sub-sections (2) and (3) shall be renumbered sub-sections (3) and (4), respectively, and the following shall be inserted as sub-section (2), namely:—

"(2) The provisions of sub-section (1) apply also in like manner to the rectification of mistakes by the Appellate Tribunal."

90. In section 37 of the said Act, for the words "and Commissioner" the words "and Commissioner and Appellate Tribunal" and for the words "or Commissioner" in clause (c) the words "Commissioner or Appellate Tribunal" shall be substituted.

91. In sub-section (2) of section 48 of the said Act, for the words "The Appellate Assistant Commissioner in the exercise of his appellate powers, or the Commissioner in the exercise of his appellate powers or powers of revision" the words "The Appellate Assistant Commissioner or the Appellate Tribunal in the exercise of their appellate powers" shall be substituted.

Amendment of section 66, Act XI of 1922.

92. In section 66 of the said Act,—

(a) for sub-sections (1), (2), (3), (3A), (4) and (5), the following sub-sections shall be substituted, namely:—

"(1) Within sixty days of the date Statement of case upon which by Appellate Tribunal he is served notice of an order under sub-section (4) of section 33 the assessee or the Commissioner may, by application in the prescribed form, accompanied where application is made by the assessee by a fee of one hundred rupees, require the Appellate Tribunal to refer to the High Court any question of law arising out of such order, and the Appellate Tribunal shall within ninety days of the receipt of such

application draw up a statement of the case and refer it to the High Court:

Provided that, if, in the exercise of its powers under sub-section (2), the Appellate Tribunal refuses to state a case which it has been required by the assessee to state, the assessee may, within thirty days from the date on which he receives notice of the refusal to state the case, withdraw his application and, if he does so, the fee paid shall be refunded.

(2) If on any application being made under sub-section (1) the Appellate Tribunal refuses to state the case on the ground that no question of law arises, the assessee or the Commissioner, as the case may be, may, within six months from the date on which he is served with notice of the refusal, apply to the High Court, and the High Court may, if it is not satisfied of the correctness of the decision of the Appellate Tribunal, require the Appellate Tribunal to state the case and to refer it, and on receipt of any such requisition the Appellate Tribunal shall state the case and refer it accordingly.

(3) If on any application being made under sub-section (1) the Appellate Tribunal rejects it on the ground that it is time-barred, the assessee or the Commissioner, as the case may be, may, within two months from the date on which he is served with notice of the rejection, apply to the High Court, and the

High Court, if it is not satisfied of the correctness of the Appellate Tribunal's decision, may require the Appellate Tribunal to treat the application as made within the time allowed under sub-section (1).

(4) If the High Court is not satisfied that the statements in a case referred under this section are sufficient to enable it to determine the question raised thereby, the Court may refer the case back to the Appellate Tribunal to make such additions thereto or alterations therein as the Court may direct in that behalf.

(5) The High Court upon the hearing of any such case shall decide the questions of law raised thereby and shall deliver its judgment thereon containing the grounds on which such decision is founded and shall send a copy of such judgment under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case conformably to such judgment."

(b) in sub-section (6), the words "on the application of an assessee" shall be omitted;

(c) in sub-section (7A), for the words, brackets, figures and letter "under sub-section (3) or sub-section (3A)", the words, brackets and figures "under sub-section (2) or sub-section (3)" shall be substituted.

G. H. SPENCE,

Secy. to the Govt. of India.

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

The following Act of the Indian Legislature received the assent of the Governor General on the 17th March 1939, and is hereby promulgated for general information:—

ACT No. VIII OF 1939.

An Act to consolidate and clarify the provisions of Muslim law relating to suits for dissolution of marriage by women married under Muslim law and to remove doubts as to the effect of the renunciation of Islam by a married Muslim woman on her marriage tie.

WHEREAS it is expedient to consolidate and clarify the provisions of Muslim law relating to suits for dissolution of marriage by women married under Muslim law and to remove doubts as to the effect of the renunciation of Islam by a married Muslim woman on her marriage tie; It is hereby enacted as follows:—

1. (1) This Act may be called the Dissolution of Muslim Marriages Act, 1939.
Short title and extent.

(2) It extends to the whole of British India.

2. A woman married under Muslim law shall be entitled to obtain a decree for the dissolution of her marriage on any one or more of the following grounds, namely:—

- (i) that the whereabouts of the husband have not been known for a period of four years;
- (ii) that the husband has neglected or has failed to provide for her maintenance for a period of two years;
- (iii) that the husband has been sentenced to imprisonment for a period of seven years or upwards;
- (iv) that the husband has failed to perform, without reasonable cause, his marital obligations for a period of three years;
- (v) that the husband was impotent at the time of the marriage and continues to be so;
- (vi) that the husband has been insane for a period of two years or is suffering from leprosy or a virulent venereal disease;
- (vii) that she, having been given in marriage by her father or other

guardian before she attained the age of fifteen years, repudiated the marriage before attaining the age of eighteen years:

Provided that the marriage has not been consummated;

(viii) that the husband treats her with cruelty, that is to say,—

- (a) habitually assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment, or
- (b) associates with women of evil repute or leads an infamous life, or
- (c) attempts to force her to lead an immoral life, or
- (d) disposes of her property or prevents her exercising her legal rights over it, or
- (e) obstructs her in the observance of her religious profession or practice, or
- (f) if he has more wives than one, does not treat her equitably in accordance with the injunctions of the Qoran;
- (ix) on any other ground which is recognised as valid for the dissolution of marriages under Muslim law:

Provided that—

- (a) no decree shall be passed on ground (iii) until the sentence has become final;
- (b) a decree passed on ground (i) shall not take effect for a period of six months from the date of such decree, and if the husband appears either in person or through an authorised agent within that period and satisfies the Court that he is prepared to perform his conjugal duties, the Court shall set aside the said decree; and
- (c) before passing a decree on ground (v) the Court shall, on application by the husband, make an order requiring the husband to satisfy the Court within a period of one year from the date of such order that he has ceased to be impotent, and if the husband so satisfies the Court within such period, no decree shall be passed on the said ground.

Notice to be served on heirs of the husband when the husband's whereabouts are not known.

3. In a suit to which, clause (i) of section 2 applies—

- (a) the names and addresses of the persons who would have been the heirs of the husband under Muslim law if he had died on the date of the filing of the plaint shall be stated in the plaint,
- (b) notice of the suit shall be served on such persons, and
- (c) such persons shall have the right to be heard in the suit :

Provided that paternal uncle and brother of the husband, if any, shall be cited as party even if he or they are not heirs.

4. The renunciation of Islam by a married Muslim woman or her conversion to a faith other than

Islam shall not by itself operate to dissolve her marriage :

Provided that after such renunciation, or conversion, the woman shall be entitled to obtain a decree for the dissolution of her marriage on any of the grounds mentioned in section 2 :

Provided further that the provisions of this section shall not apply to a woman converted to Islam from some other faith who re-embraces her former faith.

5. Nothing contained in this Act shall affect any right which a married woman may have under Muslim law to her dower or any part thereof on the dissolution of her marriage.

6. Section 5 of the Muslim Personal Law (Shariat) Application Act, 1937, is hereby repealed.

Repeal of section 5 of Act XXVI of 1937.

G. H. SPENCE,

Secy. to the Govt. of India.