

THE BOMBAY EXCISE MANUAL - VOLUME II (PART IV)
SELECTIVE PARAGRAPHS

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A. TOURING AND SHOP INSPECTION.

214. General instructions regarding touring and shop inspection.- (1) In view of the altered circumstances, e.g., the declared policy or Prohibition, the introduction of the rationing system and the steady increase in crime, the Commissioner considers it desirable to issue fresh instructions as to the extent and nature of touring to be performed by any excise officers of different grades.

(2) The first and most important point which the Commissioner would impress upon all officers is that they are now more preventive than inspecting officers. The main duty of all officers is to detect crime, and pure inspection is of secondary importance and is to be regarded more as an accessory to the more important preventive work.

The Commissioner will judge of the work of an excise officer not by statistics of inspection work or by the extent of area covered in touring but by the amount of crime detected or of successful preventive work in the charge of that officer, from Superintendent to Sub-Inspector.

(3) Many subordinates are inclined to look upon shop inspection as an end in itself. This is a legacy from the past when there was no rationing, when the shops were given out on fixed fee, when maxima prices were fixed and when it was the duty of this department to protect the customer from the greediness of the licensee.

The conditions are now quite different except in the case of maximum selling price shops. It is not for this department to check short sales- at least directly-in auction shop areas where the customer has to look after himself. The shop inspection is thus no longer an end in itself, but only a means to an end, the end being the detection of crime.

(4) The Commissioner finds that in most cases the shop inspection is a farce. The Sub-Inspector or Inspector makes a regular stereotyped tour during a fixed period. Every shopkeeper knows, to almost within a day, when a visit might be expected, and also knows that he is absolutely free from further inspection till his turn comes again under the rotation system- whether that period be one month or three months. Such inspection has no value. The Visit to any shop for inspection purposes must be a surprise one. It must not be at regular known intervals. The results would be much better; the licensees would be very much more careful if a few shops were thoroughly examined and severe notice taken of any serious errors than if all the shops were hurriedly inspected as of routine. The Superintendents must see that shop inspections are really surprise visits- and that warning is not given beforehand by sending constables ahead to make bundobust or by following a strict rotation. Sometimes it may not be possible to avoid

giving a warning, but the Superintendents should take severely to task any officer who is given to this habit. It might often pay to inspect a shop twice running at short intervals.

(5) The main reasons which necessitate shop inspection are :-

- (a) The excuse of shop inspection often serves to cover a visit to particular locality which the officer wants to visit for detecting cases or securing information. The excise officer's movements are often keenly watched, and an excuse has to be provided for moving about without raising suspicion if possible.
- (b) A proper inspection of a shop safeguards the Government revenue. Special attention has therefore to be paid to such malpractices as might result in loss of revenue to Government and illegal profit to the licensee.
- (c) The Collection of true statistics. The shop is the unit on which all statistics are based and it is on these statistics that the excise policy to be adopted from time to time is based in its turn.
- (d) A careful and intelligent analysis of the situation at each shop generally supplies the best clue as to the extent of illicit practices in that locality. For instance, an intelligent officer could find out from inquiry at each shop whether regular customers are falling out and, if so, whence they get their supply, whether the sales have fallen abnormal and, if so, for what reasons, whether the prices charged by the licensee are too high or too low, and, if so, the reasons underlying the same and so forth.

If an inspecting officer is to make full enquiries on all the above points he must spend often a day or more at each shop. The cursory routine inspection now prevalent is of no use and must be deprecated.

(6) The Commissioner would now lay down the broad principles which must govern touring and shop inspection: -

- (a) The Inspector, Assistant Inspector or Sub-Inspector in immediate charge must inspect every shop in his jurisdiction with a definite period. But, in order to ensure surprise visits, to avoid regular rotation and to ensure thorough enquiry into the conditions of that locality, it is necessary to extend the period. The Commissioner would ask the Superintendents to carefully consider the conditions of each individual charge and fix the period for that charge.
- (b) Inspector who have Assistant or Sub-Inspectors under them in immediate charge are not expected to inspect every shop. They must inspect at random a percentage of the shops in the charge of each officer under them. Their object will be to find out if

these subordinates have done the inspection properly, in fact to check the work of these subordinate. The Inspector is naturally responsible to a greater extent than his subordinates as to the proper enforcement of preventive measure. It is for him to direct his subordinates as to the areas to which they are to pay greater attention, and to advise them, taking into consideration the special conditions of each charge, as to the best methods to be employed in detecting crimes.

(c) The Superintendents must fix for each Inspector the minimum percentage of checking work to be done.

(d) The Superintendents are responsible for the detection work in their charge. They must keep themselves fully informed of the conditions of every corner of their charge and advise their subordinates as to the best methods of using their energy for detecting crime. They must also fix the rotation period of inspection of shops and modify this from time to time as necessary.

(7) The Superintendent is expected to inspect the office of each Inspector thoroughly once every year. He is not expected to inspect every shop. He must however visit every corner of his charge and make thorough enquires as to the conditions in each corner. In inspecting shops he must first confine himself to finding out whether the inspection by his subordinates has been a thorough one. He has really to check the work of his subordinates. As far as possible he must also find out for himself the conditions around that locality. Therefore, the Superintendent must also avoid rushing through this inspection. The Commissioner specially deprecates the dashing through long distances in motor cars for routine inspection. Above all the Commissioner must insist that a Superintendent visits every outlying part of his charge however inaccessible it be to motors.

(Commr.'s No. 65-105/26 of 5th April 1926 and G.R., R.D., No. 3320/24 of 26th March 1925.)

(8) In particular the Commissioner would like to impress on all excise officers the importance of general supervision and a thorough knowledge of their charges as a part of good preventive work. This means that touring should not be confined to villages where there are shops or where excise offences are to be investigated, but that every village in the charge should be occasionally visited in order that no village may feel itself immune from excise supervision. The Commissioner consider that every excise officer in immediate charge of an area should make a point of visiting and gathering useful information in every village in his charge at least once a year irrespective of whether it has shops or excise offences. Superintendents should see that suitable activity is shown in this respect.

(Commr.'s No. 29-195/36 of 11th June 1936.)

(9) A Superintendent can do much more in the way of gauging excise officer a worth, improving his work, warning him against his failings and detecting his misdoings by taking him with him while touring in his charge, watching his methods of inspection and investigation and teaching him the right ones than by reams of paper returns, and he should do this regularly and train the excise officers under him to make use of all their legitimate powers and not be constantly asking for orders.

(10) Although most Superintendents have more than one district in their charge the district must remain the unit of excise as of the other administration.

(11) The Superintendents should endeavour to make their tours more continuous than they have been hitherto, with fewer returns to headquarters, so as to spend some days in each Inspector's charge to thoroughly scrutinize their work and the state of their charges. They should specially watch the work of probationers and acting officers.

(12) The Superintendents when touring should impress upon Inspectors that the duty of protecting the revenue by detection and prevention of illicit distillation, smuggling from foreign territory and from lower duty areas is far more important than shop inspection and that their value as excise officers will be principally judged by their success in this respect. Protection must be given to the public against persons put in the position of monopolists and all malpractices complained of must be carefully investigated, but, where the public make no complaints, an Inspector's time would be more usefully employed in searching for frauds against the revenue than in getting up cases against licensees.

(13) The annual confidential reports of excise officers with the cases detected by each should contain the name of every man who has acted during the year or who is on probation, whether he has detected any cases or not, so that the worthless or unsuitable men may be rejected before they are made permanent.

(Commr.'s No. 7362 of 27th November 1909 as amended by No. 7950 of 23rd December 1909.)

Note 1. The Commissioner's instructions as to how the detective ability of an excise officer is to be judged for grant of special rewards, etc. are given in paragraph 305 post.

Note 2.- Officers of the Excise Department, both gazetted and non-gazetted, are entitled to occupy district bungalows,, P.W.D. bungalows, including rest houses and inspection houses, canal chaukis and store buildings used as rest houses, and Forest Department rest houses, and travellers' bungalows, in the Province, in accordance with the rules for the occupation of these bungalows, contained in the pamphlet entitled, "List of Bungalows intended for the use of touring officers and travelling public in the Province of Bombay with the rules for their occupation.

215. Hints for inspection of shops- The principal object of the inspection of licensed country liquor or drugs shops is to see that the licensee does not defraud Government revenue by malpractices such as those mentioned below: -

(a) Selling illicit liquor or drug

(1) This can be detected by keeping watch on a suspected licensee or by dropping on him suddenly and unexpectedly and taking stock of all his liquor or drug. (If at the time of taking stock, the account is not written up to date the licensee should be asked to state what quantities of liquor or drugs, as the case may be, that have been sold since the closing of the previous day's account. This is generally found noted on a slate or a slip of paper. The quantity thus ascertained from him should be noted down carefully as it is material to the correct taking of the stock.) Then each item entered under the column of receipt in the licensee's shop account book should be carefully checked with the permits issued from the distilleries, or warehouses; and after deducting the total sales from the receipts it should be seen whether book balance tallies with the stocks on hand as actually measured. If the stock exceeds greatly the balance as drawn up in the account book the presumption is that the licensee obtains part of his supply from some illicit source (or in the case of liquor dilutes it). Again, if the accounts show that there is a sudden or gradual falling off in the licensee's sales and if such a falling off be not accounted for in some other manner it may be assumed that it is due to the fact that either the licensee is selling illicit liquor or drugs, as the case may be, or someone in the vicinity of licensee's shop is selling such liquor or drug.

(2) It should be noted with regard to stock taking in ganja shops that as the value of ganja depreciates considerably when it is in a broken state the stock should be weighed with some care and not oftener than is actually necessary. In inspecting intoxicating drug shops it should be seen that the scales are accurate and the weights correct and properly stamped.

(b) Selling liquor diluted with water.

(1) To detect this kind of offence the shop should be visited suddenly and at the hour when the sales are usually brisk. The liquor exposed for sale, especially that contained in bottles or jars from which the licensee is serving his customers, should be tested as it is a trick of some licensees to dilute only a portion of their liquor for immediate use.

(2) In testing the strength of spirits in foreign liquor –shops the instructions contained in paragraph 218 post and those given below should be kept in view: -

(i) In regard to spirits imported in cases and passed on to retailers the test as ascertained from time to time by the Bombay Custom House and communicated confidentially by the

Collector of Customs, Bombay, shall be the strength of such spirits for the purposes of this (25⁰ U.P. or 35⁰ U.P.) rule instead of the test ascertained in the shops by means of the Syke's Hydrometer.

N.B.- This concession is allowed because it has been found that the tests made by hydrometer are not accurate in the case of spirits which contain sugar or colouring matter because the sugar or the colouring matter in the spirit increases its specific gravity and prevents the hydrometer from registering the correct strength. The more scientific Custom House test is made by distillation, after separating the saccharine or colouring matter, and shows the real strength of the spirit. This real strength as shown in the confidential list supplied by the Bombay Custom House is to be taken as the correct strength.

(ii) In the case of cheaper spirits imported in wood and bottled in this country it shall also be assumed in consideration of a possible defect in the hydrometer test that the rule is not contravened if there is not a deficiency of more than two degrees under the prescribed limit.

(Commissioner's NO. 823 of 14th February 1902.)

(c) Selling or having in his shop liquor of a description which the licensee is not authorised to sell under the terms of his license, as for instance, selling of foreign liquor in country liquor shops and vice versa.

A breach of license condition in this respect is injurious to Government revenue as well as to the trade of the shop-keeper authorised to sell such special descriptions of liquor. Licensees who are sufferers by such evil practice on the part of their neighbouring shop-keepers generally give information regarding such misdoings but it is better for the Inspector to depend on his own resources and to ascertain by means of a reliable party sent as a customer whether any licensee is contravening his license conditions in this manner.

(d) Selling by short measures or weights.

The offence is generally committed by licensees of out of the way shops who sometimes keep double sets of measures, one as prescribed by the Collector and duty stamped and the other for actual use or in some cases glasses and bottles of short size are used for serving liquor to customers. Malpractices of this kind can be checked if surprise visits are paid to the shop at the hour when the sales are generally brisk and the shop-keeper is caught red-handed while using such false measures or measures other than those prescribed by the Collector.

(e) Selling at rates higher than the maxima prices fixed, if any, by the terms of the license.

To make sure that the licensee abides by the terms of his license in this respect it should first be seen whether he has duly exhibited in the regional language of the district the price and the strength of the liquor he is authorised to sell on the signboard which he has to affix under the condition of his license in a conspicuous part in front of his shop. Secondly, the customers in the shop should be accosted at random what price they had paid for liquor purchased by them. Thirdly, someone unknown to the licensee should be sent with marked money to purchase a certain quantity of liquor and it should be seen whether the quantity served is worth the money paid for it according to the official price.

(f) Selling foreign liquor for consumption on the premises by licensees authorised to sell the same only for removal off the premises.

This offence is a serious one and if carried on to a considerable extent would seriously affect the sales of the licensed retail 'On' dealers who generally pay heavy license fees. The detection of this offence is a simple matter, as it is generally sufficient for the conviction of an 'Off' licensee if customers are found in possession of liquor which they are drinking in the shop of such a licensee. If such a licensee is in the habit of supplying liquor retail to certain known customers only the time when it is usual for the customers to go for the liquor should be noted and they should be surprised while in the act of drinking it. Care should, however, be taken that the customers when so surprised do not destroy or upset the open bottle or the glasses with the liquor in them as they form the chief evidence in the case.

(g) Adulteration of liquor.

By the term "adulteration of liquor" is commonly meant the mixing or permitting to be mixed with liquor or intoxicating drugs any foreign ingredient likely to add to its apparent intoxicating quality or strength. The presence of noxious ingredients can only be usually detected by chemical analysis and sealed samples of the suspected liquor or drugs should be taken in the presence of the witnesses with a view that they should be sent to the Chemical Analyser to Government if the Collector so directs.

(h) Selling liquor before or after the regulated hours.

The carrying out of this provision is important so as to restrict the consumption of liquor and consequent drunkenness.

(i) Permitting the customers to drink to intoxication in shops.

This is an offence the prevention of which, though lies more within the province of the police, the Abkari Officers are also expected to see that drunkenness does not take place to the injury of the moral welfare and industrious habits of the peoples.

(j) Other Malpractices.

The above are the most serious offences the detection of which in the interests of Government revenue and the public welfare must be the aim of every Excise Inspector and his subordinates in the inspection of liquor and drug shops. But besides these, there are some minor breaches of license conditions which should not be lost sight of when inspecting liquor shops. The following are some such offences: -

- (1) Failure to write accounts up to date.
- (2) The conduct of shop business by unauthorised persons, that is, by person not provided with nokarnamas or not authorised to act by competent authority.
- (3) Failure to label bottles, casks, jars, etc., containing liquor.
- (4) Failure to keep hydrometer, thermometer and properly stamped measures.
- (5) Failure to maintain if required by the license, minima stocks of liquor as fixed by the Collector.
- (6) Failure to post up signboard as required by the license.
- (7) Failure to produce the license, permits or passes.

When an Inspector or Sub-Inspector succeeds in detecting any of the above offences, whether serious or not, he should at once seal the liquor or drug regarding which the offence is committed, in the presence of the licensee and a Panch and keep it in safe custody and report the whole facts of the case to his immediate superior for orders, submitting at the same time with his report the licensee's written statement.

(Adapted from Commissioner in Sind's No. Exc-189 of 13th October 1919.)

216. Hints for the inspection premises where toddy trees are situated and toddy is drawn-

(1) The object of the inspection of the premises where a licensee draws toddy is to see that trees are not being illicitly tapped along with the trees for which a license has been taken. To prevent illicit tapping of trees it is necessary that all the licensed trees should be marked with numbers. The marking and numbering of trees must be done in accordance with the procedure laid down in the Toddy Tapping Rules. The Sub-Inspector of the range or the Inspector in charge of the division should take the earliest opportunity of examining the trees numbered and see that they are correct according to the number licensed. Both the numbered and the unnumbered trees

should be closely scrutinized with a view to seeing that the former are the trees that are actually licensed and numbered by the licensee and the latter are not being tapped illicitly. The examining officer should carefully note any of the signs which betray that a tree is being illicitly tapped. These signs soon become familiar to an officer after he has had a little practice in the examination of trees. It is easy to discern when a date tree is being tapped as the whole of the fronds or leaves which form the corona are clean shaved from off one side of the corona downwards to the trunk and it is into this portion of the tree so laid bare that the incision is made and below which the tappers attach their pots. Brab trees have the pots fastened on the male tree to the long flower shoots and on the female tree to the long stalks on which the fruits are produced. As both flower shoots and fruit stalks droop downwards clear from among the leaves it is easily seen when a brab-tree is being tapped. It is not, however, such an easy matter to tell when a coconut tree is being tapped, as frequently the flower shoot which is being tapped is well hid amongst the leaves of the tree and cannot possibly be seen from the ground. A sure indication nevertheless is the trunk of the tree which for several inches together and at regular intervals all the way up presents smooth polished appearance caused by the tapper sliding his feet alternatively from notch to notch the trunk as he descends the trees.

(2) Illicit tapping of toddy trees is generally attempted in out of the way villages or tracts of land. A trick with tappers, especially with tapper of brab-trees, is to carefully efface the number on a licensed tree which has proved unproductive and after removing from the tree the stalks or spikes from which the toddy has flowed to place a similar number on another brab-tree (generally an adjoining one) and to tap it. The trick is difficult of being discovered. Such trees should be carefully numbered as previously indicated. Sometimes licensed toddy shop – keepers may take licenses for a few trees only and tap a number of trees illicitly to meet the actual demand for toddy at the shop. This can be detected if the Inspector visits the shops frequently and examines the accounts with a view to see that the quantity of toddy received in the shop daily corresponds with the estimated juice of the number of trees licensed to be tapped by him. If the quantity brought to the shop largely exceeds the average yield of the trees, the presumption is that the licensee supplements his supply by tapping trees illicitly. The Inspector should in such cases make prompt inquiries to ascertain whether his presumption is correct. The chief points to be attended to in detecting an illicit tapper are as follows: -

- (a) He should be watched for at the hour when it is customary for him to tap unlicensed trees.
- (b) If the tree or trees are situated in an exposed place the detecting officer should take precautions that the tapper does not find out that he is being watched.

(c) To secure a conviction the tapper should, if possible, be detected in the very act of tapping the tree with the tapping implement and the usual gourd or chatty of toddy in his possession.

217. Direction for testing the strength of spirit and for remedying defects in thermometers. –

(1) The directions for testing the strength of spirit are given in the book entitled “Spirit Tables for use with Sykes Glass Hydrometer and Glass 'A' Hydrometer.”

(2) The method of remedying certain defects in thermometers is explained in paragraph 417 post.

218. Testing of spirit in foreign liquor shops - With regard to the testing of spirits contained in corked bottles exposed for sale in foreign liquor shops the following instructions of Government should be observed: -

(1) When it is necessary to test liquors suitable officer of excise should visit the dealer's premises and make the requisite inquiries without giving any needless cause of complaint.

(G.R.R.D.No. 8018 of 1st November 1884.)

(2) In cases in which the licensees sell spirits in full corked bottles, the opening of a bottle by an Inspector when examining the spirit, the removing of the capsule and the extraction of the cork must to a certain extent diminish the selling value of the bottle so opened by causing it to be regarded with some suspicion by any intending purchaser. If the spirit is found to be of the proper strength as asserted by the licensee it would be hard on him that he should lose part of the value of the goods for no fault of his, but merely to satisfy the Inspector that the liquor is of the correct strength. To obviate any possibility of loss being thus caused to the licensee it is ruled that when the liquor contained in a bottle opened for the purpose of examination is found to conform to the conditions of the licensee, the licensee should be compensated for the depreciation in its selling value by being paid a sum equal to one-fourth of the value of the bottle of the spirit so opened, the charge being defrayed by Government.

(G.R., R.D., No. 217 of 10th January 1885.)

219. Measures to check adulteration of toddy at shops and booths. – (1) The following instructions regarding the manner of taking and dealing with the toddy samples are issued for the information and guidance of all excise officers.

(2) What shops should be tested - Suspicion will naturally fall on shops which have very low selling prices or which in their accounts of receipts of toddy show an unduly high yield per tree

tapped. These will usually be shops in larger towns but rural shops should not be neglected entirely, and an occasional random test may be worth making. Superintendents of Excise must use their judgment in deciding the extent and frequency of tests.

(3) Procedure. – (a) Hitherto one of the chief difficulties has been the sealing up of bottles immediately if fermentation was not complete. The following method has been prescribed by the Chemical Analyser to Government for stopping fermentation without interfering with subsequent analysis.

(b) Suspected toddy sufficient to fill three-quart bottles should be purchased and about 24 ounces thereof should be put in each bottle, to which 6 grains of boric acid should be added and the bottle should be shaken, corked, sealed and labelled. The label should indicate that a preservative has been added. Two bottles of the sample should then be sent to the Chemical Analyser for analysis and the third bottle given to the licensee.

(c) This method of using boric acid should now be invariably adopted and the Superintendents of Excise (who will receive their supply from the Government Medical Stores, Bombay) should arrange to supply boric acid in twelve grains packets to excise officers for their use. In future no sample should be taken from a toddy shop without sealing it up then and there in the presence of Panchas, and a duplicate sample similarly sealed should be given to the licensee concerned.

(d) When toddy samples have been preserved as directed above in the event of a prosecution, the defence may allege that the adulterant was contained in the boric acid powder and the Panchas will not be able to state the exact nature of the preservative introduced. To meet such a defence, it is necessary that each packet of boric acid should contain 12 grains. Half will then be added to the bottle (this can be judged by eye) and the other half should immediately be sealed up in an envelope which should be signed by the same Panchas. If then this defence is raised the envelope can be produced and, if the Court so desires, the contents can be sent to the Chemical Analyser to Government for analysis. It is probable, however, that the knowledge that this can be done may prevent bogus pleas from being raised in Courts.

(4) Chloral Hydrate Adulteration- Chloral Hydrate is the drug generally used as an adulterant to produce a narcotic effect in toddy which has been weakened by the addition of water. If it is taken in large doses, it is injurious to human health. Its bona fide use is mainly for medical purposes. It has been declared a poison under the Poisons Act and has now been put in class A of the poison specified in rule 2 of the rules framed by Government under Section 2 of the

Act so that its sale may be regulated under a license and its use in adulteration of toddy may be prevented to a great extent.

(G.N., H.D., No. 7922/3, dated 27th July 1936.)

(5) Government do not wish to fetter the discretion vested in the Commissioner and the local officers as regards the nature or severity of action to be taken against those who offended against the provisions of the Abkari Act in this direction and realise that in exceptional cases or in cases of casual offenders lenient or departmental action would adequately meet the requirements. At the same time they wish it to be impressed on all licensees that Government is anxious to put an end to those malpractices, and local officers should not hesitate in suitable cases to take strong action such as prosecution, cancellation of licenses or black listing offenders.

(6) From the orders of Government referred to in (5) above it should be understood by all officers that there is now no reason to avoid such publicity as is involved in open raids, prosecutions, etc. At the same time the instructions issued by Government should be carefully noted as regards the form of action which is suitable in different cases.

(7) Action should be taken in future in every case of adulteration with noxious drugs reported by the Chemical Analyser. It should be noted that prosecution, if any, will not be under the Bombay Prevention of Adulteration Act but under Section 46(a) of the Bombay Abkari Act.

(G.R., R.D., No. 5372/33 of 18th June, 1936 Commr.'s No. 88-3/36 of 13th July 1936 and 31st July 1936.)

220. Opium Adulteration of toddy- It was suspected that tincture opii was used in adulterating toddy. But from the Bombay Dangerous Drugs Rules 1935, it appears that tincture opii could be obtained by members of the public only from a Chemist or Druggist licensed under form D.D.2, who can sell it only on a prescription given by an approved practitioner. There is therefore no particular reason to suspect the use of tincture opii in toddy adulteration. But as many of the samples sent to the Chemical Analyser were found to contain opium, it is likely that a liquid preparation of raw opium is used as an adulterant of toddy. The Chemical Analyser to Government reports that any liquid preparation of opium or even opium previously finely ground up with water or with toddy itself and strained would serve the purpose of the adulterators, as liquid stuff is easier to manipulate. He further reports that a liquid thus prepared from a quarter of a tola of opium will contain about the same quantity of morphine as one ounce of the tincture and will be sufficient to drug 96 bottles or over 14 gallons of toddy. With these

clues excise officers should make it their business to discover positive evidence of the procedure adopted by toddy licensees whose toddy is found to be adulterated with opium.

(Commr.'s No. 88-3/36 of 13th July 1936.)

221. Excise officer's power to inspect poisons shops- Government have, under Rule 13 of the rules framed under the Poisons Act, 1919 (XIX of 1919), empowered excise officers of or above the rank of Assistant Inspectors to visit and inspect the premises of a license-holder, a dispensing chemist or a druggist where poison is kept for sale and they may inspect all poisons found therein and the registers maintained under Rules 10, 11 and 12.

(G.N., H.D., No 705, dated 11th November 1922 as amended by No. 8548 of 19th August 1925.)

222. Officers should see that drunkenness is not allowed at toddy shops- While touring through the Province, the Commissioner has noticed a great deal of drunkenness in urban shops and particularly in urban shops situated in industrial areas. Rural shop appears to be comparatively free from such drunkenness.

Condition 18 of the licensee for the retail vend of palm toddy at a shop is perfectly clear. It lays down that ".....no drunkenness.....shall be allowed in or near the shop....."

The Commissioner could not see that any real effort was being made by excise Officers to enforce this condition upon licensees and their managers.

The Commissioner concluded that many excise officers treat the problem of drunkenness as a matter for the Police, who interfere in cases of disorderliness and incapacity.

Excise officers must see that licence condition 18 is strictly observed by the licensees of toddy shops.

There are two principal objects underlying the condition.

One-to keep shops in a decent state in which people can drink a reasonable amount under proper conditions.

Two-to put a check on members of the public who have not sufficient self control to stop drinking when they have had sufficient but will continue to drink as long as they have any money in their pockets.

The tendency of drunkenness becomes aggravated when rival licensees endeavour to undersell one another and reduce the price of toddy so much that the cost ceases to exercise any check upon drinking.

It is obligatory upon licensees to make such arrangements for the management of shops that drinking is conducted under decent conditions without drunkenness.

It is the duty of excise officers to see that licensees fulfil this obligation and to enforce condition 18.

(Commr's No.88-14/42 of 18th April 1945.)

223. Maintenance of dead stock lists at country liquor shops- In inspecting Country liquor shops the inspecting excise officer should see that dead stock lists are maintained and additions and alterations are made therein strictly in accordance with the rule contained in Appendix I to Part III, Volume I of the Manual.

224. Closure of shops punctually at prescribed closing hour- (1) The attention of all excise officers is drawn to the conditions in the excise and opium licenses requiring licensed premises to be closed at the authorised closing hour and to paragraph 28 of Part III, Volume I, of the Manual and they must see that the licensees do not violate the conditions. The doors of the licensed premises must be closed precisely at the fixed hour and no customer should remain on or be permitted to enter the premises after that hour.

(2) The Collectors, the Superintendents of Excise and the Divisional Forest Officers, West Khandesh and West, Nasik, should see that the above orders are strictly carried out by the subordinate excise officers.

(Commr.'s No. 88-32/38 and No. 88-32/38 (a) of 18th July 1938.)

225. Particulars to be shown on opening page for each year in visit book-

In the visit book of shops, the opening page should be set apart at the beginning of each year for recording the following particulars so as to render all information available for ready reference to the inspecting officers.

Particulars.

Your

Name of Licensee.....

Name of approved servants: -.....

No. 1.....

No.2.....

No.3.....

License fee Rs.

Instalments paid: -

(1) Rs.....Challan No.....Dated.....

(2) Rs.....Challan No.....Dated.....

(3) Rs.....Challan No.....Dated.....

(4) Rs.....Challan No.....Dated.....

Minimum stock (if any)

Ration fixed for the year (in the case of C.L. shops)

Shop whitewashed on

Casks painted on (in the case of C.L. shops)

Notes of exemption and authority for sale, e.g.,

(1) Exempted from clause..... of the (Country Liquor) license

vide Collector's No.of

(2) Exempted from maintaining two, four- and eight-drams measures vide
Collector's No.ofand so on.

Excise officers should note the particulars from time to time as they are available on their inspection of shops.

226. Irregularities found at shops should be noted in visit book, if not of confidential or secret nature—

(1) All irregularities found at an inspection shall be entered in the visit book and with regard to anything that is not so entered it will be presumed that no irregularity existed at the time of the inspection or that it escaped the Inspector's notice. Also, for liquor shops the thermometer and hydrometer readings and the strength shall be recorded in the visit book for every cask or jar tested.

(2) The above will not apply to anything of a confidential or secret nature, such as information of sales above the maximum price, by short measure or on credit. If sufficient evidence for prosecution is forthcoming, the Inspector will at once send a detailed report to the Superintendent with any statements recorded. Otherwise he will pursue his investigation secretly and record the results day by day in his confidential note-book for his own information and that of his superiors and successors, and report to the Superintendent when he has obtained sufficient evidence.

(Commr.'s No. 7361 of 27th November 1909.)

227. Irregularities detected at shops how dealt with- Irregularities on the part of licensees detected by excise officers in the course of their inspection of shops should be reported by them

to the Superintendents of Excise, who, if the irregularity is trifling, should deal with it himself and if it is important should report it to the Collector.

(G.R., R.D., No. 11801 of 2nd October 1917.)

228. Serious breaches of licence conditions to be reported to Superintendent-

When an Excise Inspector, Assistant Inspector or Sub-Inspector considers that a holder of a shop license should be proceeded against he should at once make a report in the following form to the Superintendent of Excise with all the particulars required to enable him to pass orders.

(Commr.'s No. 7361 of 27th November 1909.)

Inspector's report on irregularities detected on shop inspection.

(1) Name of the Shop	...	...
(2) Name of the licensee	...	...
(3) Name and particulars of irregularities detected	...	...
(4) License condition broken	...	...
(5) Licensee's explanation (vide his statement attached)	...	...
(6) Inspector's remarks	...	...
Superintendent's Order. Inspectors.			Excise Assistant Sub

229. Less Serious breaches need not be reported but recorded in visit book-

In the case of less serious breaches, which neither cause loss or trouble to the public, or endanger the revenue, such as delay in white-washing , occasional shortage of minimum stock, delay in furnishing monthly accounts, in which the inspecting officer does not think a prosecution called for, it is not necessary for him to make a report at all. Whatever irregularity he finds on inspection of a shop, he must record in the visit book, and shall fix a time by which it is to be rectified, if it is not one that can be set right immediately, and this will be considered as an order given in writing to the licensee. If the licensee fails to set things right within the time fixed, then the Inspector will report to the Superintendent, unless for reasons to be recorded in the visit book he gives him further him.

(Commr.'s No. 7361 of 27th November 1909.)

230. Action to be taken against licensees for selling liquor on days on which shops are ordered to be closed-

Cases have come to the Commissioner's notice in which licensees who either kept their shops open and conducted sales of intoxicants on the days on which the shops were ordered to be closed, or managed to sell intoxicants on these days surreptitiously elsewhere than on the shop premises, were given an option to compound their offences for sums ranging from Rs. 10 to 15 under section 55A of the Bombay Abkari Act. Such punishments are not adequate. It is, therefore, ordered for the guidance of the officers concerned that for offences such as selling liquor on days on which the shops are ordered to be closed in the interest of temperance or public peace, the Collector should normally consider whether cancellation of the license would not be the appropriate punishment, and only award a lesser penalty in exceptional circumstances. Superintendents of Excise should not dispose of such cases. These considerations apply also to other infractions of the rules which affect Government's policy of Prohibition.

(Commr.'s No. 20-376/38 of 17th November 1938.)

B. DETECTION OF CRIME.

231. Detection work must be done though it is difficult and risky- (1) The Commissioner notes a tendency by officers to slacken in detective work owing to hostility of villagers, scarcity of informers, etc. Yet the need for vigilant detection is greater now than ever before. Officers and their staffs are after all paid for doing detective work, and it must be done even though it is more difficult and risky than usual.

(2) Superintendents should see that their subordinates do not slacken their detective work. They should report any, who fail to do their duty in this respect, and whether they should be retained in the Department or otherwise dealt with.

(Commr.'s No. 3-1-A/30 of 18th July 1930.)

232. Complete Co-operation between all officers of the Excise Department enjoined.-

(1) A case was brought to the Commissioner's notice in which a senior Excise Inspector failed to co-operate with a brother officer and render him the necessary assistance when detecting cases in a village. The officer was reduced for this default.

(2) The Commissioner desires to impress on all officers the necessity for complete co-operation between all officers of the Department. The strength of the excise force is limited and unless excise officers assist each other whole-heartedly detection work must suffer. The

Commissioner will severely punish any officer who fails in his duty to Government and his fellow officers in this respect.

(Commr.'s No. 31-10/28, of 7th March 1928.)

233. Police Patils and village servants bound to assist excise officers. –

(1) under section 39 of the Bombay Abkari Act, village officers are required-

(a) to give immediate information to excise officers of the commission of any offence and of the intention or preparation to commit any offence under this Act which may come to their knowledge.

(b) to take all reasonable measures in their power to prevent the commission of any such offence which they may know, or have reason to believe, is about to be committed and

(c) to assist excise officers in carrying out the provisions of the Act.

The penalty for failure to act in accordance with section 39 is contained in section 52 of the same Act.

(2) In most villages, village officers are indifferent. In many cases, they even connive at such offences and do not give information to excise officers. Often village officers have been found in league with illicit distillers. With the present excise policy, the revenue is gradually decreasing and failure on the part of the village officers to render the necessary assistance to the excise staff makes the situation worse. It is therefore necessary that the provisions of sections 39 and 52 of the Abkari Act should be more strictly enforced. Considerable use of similar provisions of Abkari laws is made in some other Provinces. The Commissioner would request all Collectors to issue special instructions to village officers under their control impressing upon them the necessity for co-operating actively with the excise staff in putting down excise offences in their villages. They may also be warned that any disregard on their part of these instructions will be strictly dealt with.

(3) The Village Police Act. Section 6, moreover, goes much further than the Bombay Abkari Act, by imposing on the police patil the active and positive duty of (i) preventing the commission of offences generally, and (ii) detecting and bringing all offenders to justice, and by section 7 of the Act, he can require all village servants to aid him in performing his duty. It is surprising that this obligation has hitherto, so far as it is known, not been enforced upon the police patil and village servants, as regards excise offences. Possibly district revenue and excise officers are unaware of this possible use. The Act can be used to compel the police patil to put down all illicit distillation and excise offences, as far as he reasonably can, and furnish regular information about illicit distillers, etc., and to hold him responsible for illicit distillation if it

continues. Under section 9 of the village police Act, the police patil can be punished for non-compliance. The Commissioner would request that Collectors should impress firmly on police patils their obligations under the village police Act, as regards excise officers, and enforce the obligation strictly in future.

(4) The excise staff are being instructed to bring promptly to the notice of Collectors failure on the part of the village officers including police patils to comply with the above provisions of the law. Suitable punishment penal or departmental in some cases is likely to be very effective in bringing home to all village officers their responsibilities as regards the giving of information, etc., in respect of excise offences.

(5) Excise officers should report immediately to the Superintendents all cases wherein village officers are found to violate the provisions of section 39 of the Bombay Abkari Act, and police patils, Section 6 of the village police Act. In particular, if the active responsibility of the police patil and village servants is enforced in future, the regular excise staff should be able to count on valuable assistance in putting down excise offences,

(Commr.'s No. 82-31/30 of 24th March 1930.)

234. Information regarding offences should be taken down in writing whenever practicable- The expression "reason to believe" as used in section 36 (b) of the Abkari Act has been defined by section 26 of the Indian Penal Code as follows: -

"A person is said to have 'reason to believe' a thing if he had sufficient cause to believe that thing but not otherwise".

In order, therefore, to guard against any possible mischief and an unnecessary harassment of innocent persons (as it frequently happens that information regarding illicit practices is falsely given from malice or some such cause) the information regarding irregularities should, whenever practicable, be taken down in writing. If time allows, independent inquiries should be made to test the correctness or otherwise of such information, and if it is confirmed, steps should be taken without any unnecessary delay. As many informants shrink from making a written statement great care is required to be exercised in the preliminary inquiries made, when information seriously implicating any person is received without any written statement.

235. Hints for detection of illicit distillation - (1) Illicit manufacture of liquor being one of the most serious offences against the provisions of the Abkari Act requires to be constantly inquired after and watched for. It is generally attempted in isolated villages in the districts. Information regarding the misdoing of an illicit distiller frequently leaks out through some

party who has had a quarrel with him or through some customer of his. Constant inquiries are required to be made regarding illicit distillation, and the careful control of the licensed liquor shops will do much to prevent illicit distillation. The object of the illicit distiller being gain, an effectual way of stopping him from distilling such liquor is closing the means through which he can ordinarily dispose it of. If the sales of liquor at any shop are found to be unaccountably small or to have suddenly fallen off or if the usual customers of any such licensed liquor shop have ceased obtaining their supplies of liquor from such shop without any apparent cause, the customers should be closely watched and inquiries made in the matter as it will probably be found that the customers are obtaining their supplies of liquor from some illicit source.

(2) Liquor may be illicitly manufactured from molasses, hivra bark, mhowra flowers, sugarcane juice, toddy, dates, figs, etc., hence in districts where these materials are abundant extreme vigilance is necessary and measures should be adopted to prevent these malpractices.

(3) If possible, as illicit distiller should be detected in the very act of distilling liquor. Anyone found in possession of a still or apparatus kept for the purpose of manufacturing liquor is also liable to conviction before a Magistrate, especially if with the still, any quantity of illicit liquor or any article commonly used in the manufacture of liquor is also found.

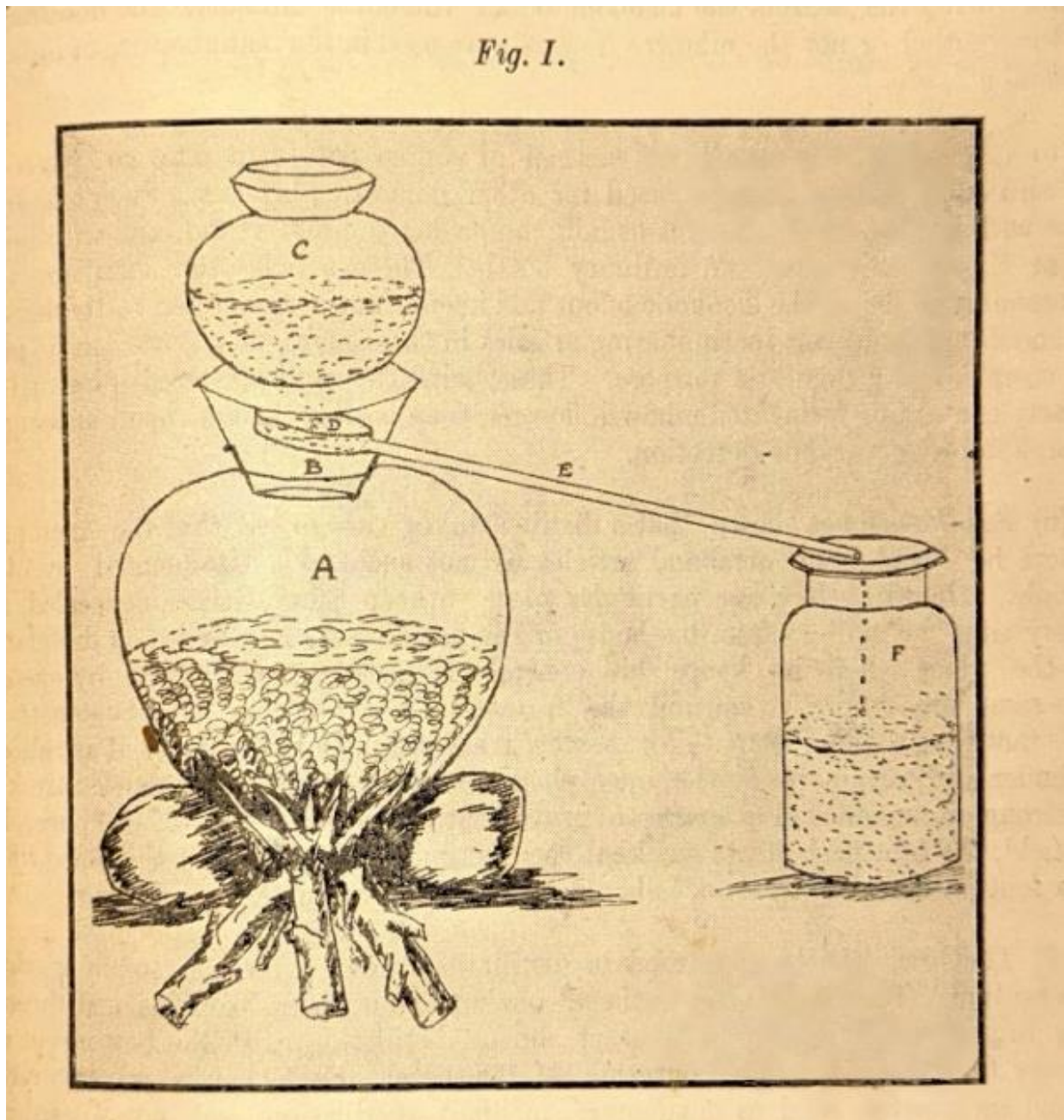
236. Hints on how to connect an alleged illicit distiller with the Contraband articles found in open places, wastelands, etc. –

(1) Habitual illicit distillers are shrewder than those who distill on occasions. They know the law, and they also know that Excise Officers have an eye on them. They, therefore, are very guarded and take every precaution to see that no contraband article is kept in their houses, fields or other places in their possession. So long as such offenders are not caught in the act of distilling liquor (which is very difficult), and so long as they do not keep their contraband articles in their houses, fields or enclosed places, they know that the law cannot touch them. Ordinarily, it is difficult to bring such offenders to book, but with a little more shrewdness on the part of detecting excise officers it is possible to bring them within the clutches of the Law.

(2) Section 43 (1) (h) of the Bombay Abkari Act, 1878, prescribes the punishment for any person, who (i) uses, (ii) keeps, or (iii) has in his possession any materials still, etc. This is not construed to mean that (i) using, and (ii) keeping imply possession, as several officers seem to think, in view of the fact that (iii) having a possession is a distinct offence. Where there is evidence to prove that a person (i) used, or (ii) kept materials, a still, etc., whether in his possession or not, the act individually constitutes an offence under section 43 (i) (h), in the

same way as he would be liable under the section if a still etc. was found in his possession irrespective of whether he used the still or kept the still or not.

(3) Figure I below is a diagram of a still commonly used for illicit distillation



A- Boiler, containing wash to be distilled, which is placed on the fire.

B- Condenser (Ordinarily earthen). Called "Nan" in Marathi and "Chadava" in Gujarati, which is open at both ends.

C- Brass chatty containing cold water, placed on top of B to condense the alcoholic vapour rising from A and passing through B to the bottom of this chatty.

D- "Chattu" (Wooden), fitted inside B, into which condensed liquor drops from the bottom of the vessel C.

E- Pipe attached to D through which the liquor passes into the receiver.

F- Receiver (a bottle, etc.).

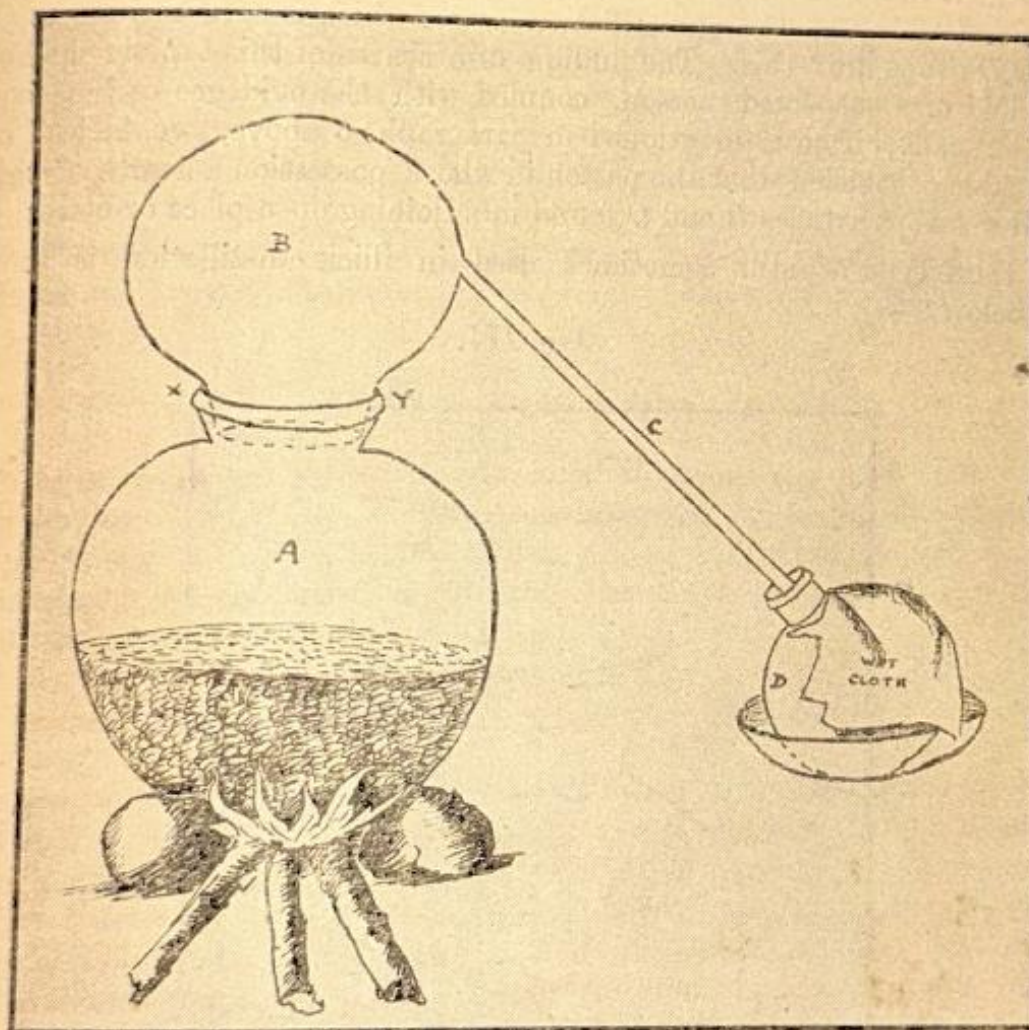
These implements are in addition to a pot used for fermenting the various materials used in distillation. Before working a still, all these implements are put together and made steam-tight by means of pieces of cloth and mud-plaster.

- (4) It should be remembered that if the implements are used in distilling liquor, they have an alcoholic odour, unlike those vessels which are used in making "gudaku" (a mixture used in smoking a hookah) or in boiling mhowra flowers for cattle-food. This point should be brought out in the Panchnama to rebut any defence that may be brought forward that an implement found in search was used in manufacturing "gudaku" or for boiling cattle-food. If refuse mhowra flowers are found during the search, the alcoholic odour thereof is similarly the determining factor whether or not the mhowra flowers were used in the manufacture of liquor or "gudaku", etc.
- (5) Implement A is usually an earthen or copper pot (or it may be a kerosene oil tin) such as may also be used for other domestic purpose. Such is also the case with implement C, which is usually an ordinary brass vessel, and with implement F, which is often an ordinary bottle. These articles the distillers wash thoroughly to dispel the alcoholic odour and keep in their possession. Implements B and D however, incriminating articles in themselves, as no use can be made of them for any domestic purpose. These, with the mud-plastered pipe and the chatty containing fermented mhowra flowers, the distillers keep in open unoccupied places in order to evade detection.
- (6) Experience has shown that a distiller takes care to see that the open place where he keeps his contraband articles is not such as is frequented by other people. He will select one particular place to keep these articles concealed, and every time he will go from his house or the place where he carries on distillation to the place where he keeps his contraband articles and return by one and the same way thereby causing the formation of a foot-path or a beaten track. The fact that such a foot-path or beaten track starts from the house of an alleged offender and terminates at the open place where the contraband articles are kept is strong circumstantial evidence to prove that the person from whose house, hut or field, the foot-path starts has kept the incriminating articles at the place where the foot-path ends. This fact should be brought out in the Panchnama.
- (7) The brass chatty C if used in distillation shows a circular steam mark on the bottom. This mark is due to the alcoholic vapour, rising from boiler A through the implement B, coming

in contact during distillation a with the bottom of the chatty C and causing discolouration of the metal. Such marks are invariably found on chatties used as condensers in illicit distillation, and not if used for other domestic purposes. The circumference of the mark at the bottom of the chatty C corresponds to the upper circumference of the implement B, over which it is placed. The fact that other chatties found in the same house or in other houses did not bear such a steam mark and that the circumference of the mark tallied with the circumference of the implement B found in the adjoining waste land, coupled with the evidence, if any, of a foot-path or beaten track as mentioned above, would lead one to a reasonable conclusion that the implement B (used exclusively for distillation), found in the adjoining open place was “used” and after use was “kept” at the place where it was found by the person in whose house the chatty bearing the corresponding steam mark was found or by any other person with his knowledge, consents or connivance. The head of the family is primarily responsible, unless he satisfactorily accounts for the steam mark and the articles found in the search under the conditions and circumstances stated above.

- (8) As stated above, before distillation commence all the parts of the still are fitted up and mud-plastered so as to make the still steam-tight. Therefore, implement B, which is fitted to the month of the boiler A, will bear a circular mud-plaster mark which will correspond to the mouth of the boiler. If the mud-plaster circular mark on B, found in an adjoining open place, coincides with the circumference of the mouth of the boiler A, found inside the house, this will further corroborate the evidence.
- (9) Fig. II, is a diagram of another type of still which is also commonly used in illicit distillation

Fig. II.



A- Boiler, a chatty in which fermented wash is boiled.

B- Smaller chatty, with mouth downwards fitted into the month of A.

C- Bamboo pipe, of which one end is fitted into a hole in chatty B and the other and into a receiver.

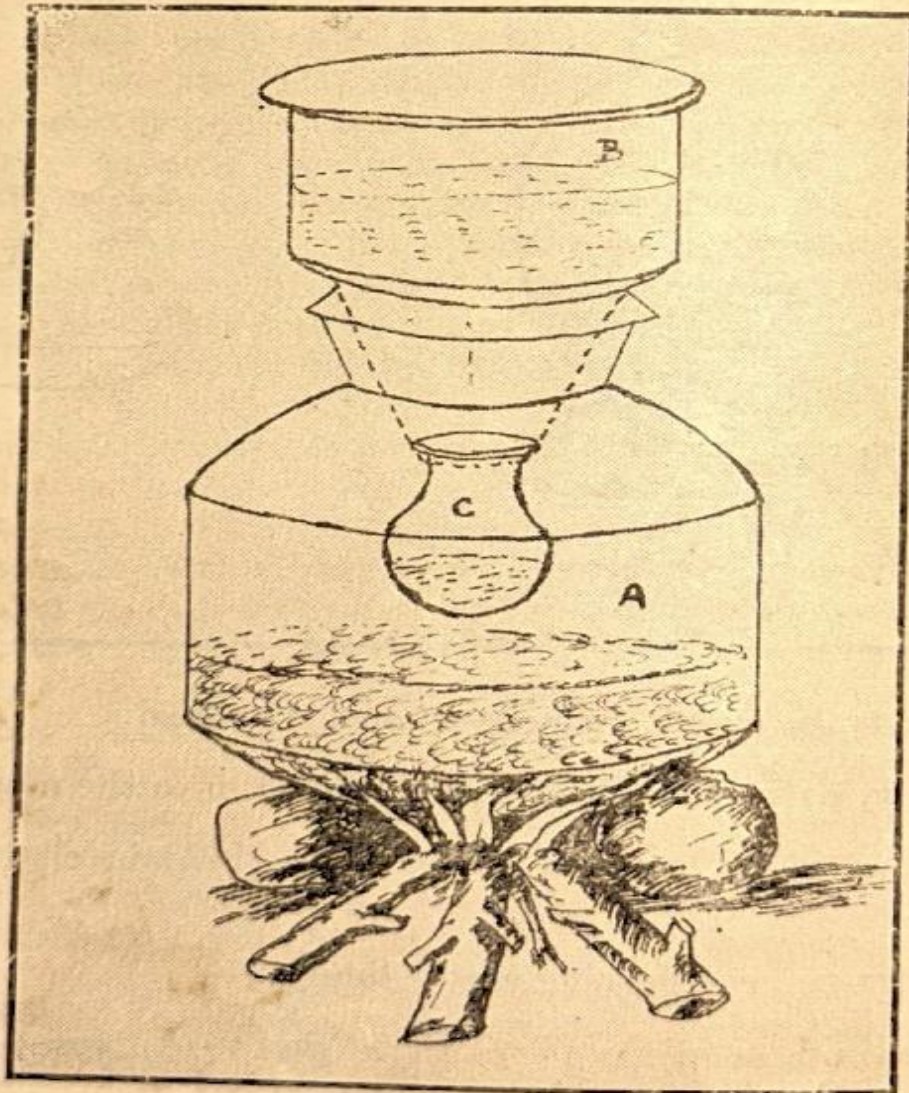
D- A third chatty to receive condensed liquor.

All parts are fitted up, a piece of cloth is wrapped round the pipe and the joints are packed with cloth and mud-plastered to make the whole apparatus steam-tight. During distillation the tops of vessels B and D, which are plastered with mud, are kept sprinkled with water to keep the vessels cool and so help condensation of alcoholic vapour. The alcoholic vapour rises from the boiler A, is cooled in B and passes through pipe C into the receiver D where it is condensed

into liquor. Parts A and D are washed thoroughly and kept inside the house whereas parts B and C are kept in the open to evade detection. The evidence to be gathered in this case to connect an alleged offender with the articles found in open places will be as follows: -

- (a) The circular mud-plaster line X, Y on implement B, found outside, corresponds to the circumference of the mouth of the boiler A, found inside the house.
 - (b) In this method of distillation, the hearth used in distilling liquor consist of two pits in the ground (which are filled up with earth after distillation) one big pit with sides burnt and coal and ashes inside, showing that fire was kindled in it and one small pit to rest the receiver D. The latter pit would contain wet earth, as during distillation water which is sprinkled on top of the receiver D drops into this. The finding of a hearth of this type in the house or in the field of a suspected person, coupled with the evidence of the foot-path or beaten track, if any, mentioned in paragraph 6 above, would lead one to a reasonable conclusion that the person in whose possession a hearth of this type is found has kept articles B and C found in adjoining open place or places.
- (10) A third type of still sometimes used in illicit distillation is shown in Fig. III, below: -

Fig. III.



A- Boiler, used for boiling fermented wash.

B- Copper chatty placed on top of A, used as a condenser.

C- Small pot, suspended inside the boiler A, to receive the condensed liquor. This is called “mungi Bhatti” in Gujarati. The word “mungi” means silent, and “bhatti” means a still.

The alcoholic vapour rising from the boiler A comes in contact with the bottom of chatty B, containing cold water, where it condenses and drops down into the receiving vessel C, which is suspended by string inside the boiler A. All the three parts of this

still are such as may ordinarily be used for other domestic purposes. None of these articles are exclusively meant for illicit distillation, as in the case of some parts of the two stills described above. Perhaps, as the parts of this still do not indicate whether or not they are used in illicit distillation, the still is called “mungi bhatti” or “silent still”. However, this type of still being uneconomical, it is rarely found in use.

(Paragraph 3 of Excise Supplement to the Bombay Police Gazette, 1939.)

237. Hints for detection of smuggling – The offence falling under section 37 of the Abkari Act, is “the smuggling of liquor or intoxicating drugs”. This offence is equally serious as the one of illicit manufacturer of liquor or intoxicating drugs”. The great disparity between the prices of liquor or intoxicating drugs in the shops in foreign territories or Indian States as compared with those prevailing in licensed shops in the British territory offers a high incentive to licensees and others to smuggling of liquor and drugs. The following are some of the ways in which liquor and drugs are smuggled.

(a) By boats and coasting steamers.

These are supervised by the officers of the Customs and Salt Departments. It is the duty also of Abkari officers to see as much as possible that liquor, etc. are not smuggled by such means, and on receipt of any reliable information thereof to have such vessels searched with the assistance of Customs or Salt Department officers as the case may be.

(b) By railway passenger or goods trains.

Passengers are at times found to smuggle liquor in bottles carried in ordinary handbags or amongst their baggage or in copper or tin vessels made for the purpose of smuggling liquor. Ganja, like opium, is likely to be smuggled in packages of other goods. Passengers coming from stations where ganja is cheap are likely to smuggle it amongst their baggage. In this connection the following opinion of the Remembrancer of Legal Affairs may be kept in view:

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“It is doubtful whether the provisions of section 43 (a) of the Abkari Act regarding illicit import and transport of liquor or drugs can be enforced against common carriers, e.g. Railway Companies. The only course which the Railway Companies can legally adopt in the circumstance is to refuse to receive servants to give the requisite intimation to the Railway Police in view to the seizure by them of such consignments under section 37 of the Abkari Act”.

(c) By hired or private motor cars or service under buses.

A watch should be kept on a suspected smuggler, if necessary, with the help of an informer or other person who knows the suspect. If smuggling is suspected to take place in a hired or a private motor car the detecting excise officer may, if necessary, with the help of the police, arrange to detain and search the car for contraband articles on the way. The excise or police officer in detaining the car should be in a position to prove his identity when challenged. To this end he should either be in a position to prove his identity when challenged. To this end he should either be in uniform or produce the taken book or a badge to show his authority for taking the action. If smuggling is suspected to take place in services motor buses which are public conveyance, except under special orders of the Collector or Superintendent or under special circumstances of a particular case, they should not be detained on the way but arrangements should be made to check and search for contraband articles or take necessary action at halting places or preferably at the place where the smuggler is expected to leave the bus to go to the place of destination with the baggage.

(d) By carts from foreign territory.

The liquor in such cases may generally be found concealed under grass or some other country produce which favours such concealment. At the examination of such carts in a difficult matter a long probe made of iron or steel with a sharp point is very useful in examining carts loaded with hay, chunam, sand etc.

(e) By foot passengers from liquor or drugs shops in foreign territory.

The inhabitants of British villages lying near the frontier of foreign territories or Indian States are tempted by the cheap price of liquor or drugs in those places to smuggle them into British territory.

(f) During certain festivals.

During certain festivals, such as Holi, Dasara and Moharram, smuggling is especially rife in the districts and a constant watch is required to be kept especially after sunset on the days of, and some days previous to, such festivals.

(g) From Goa.

With a view to check the smuggling of country liquor from Goa into British territory Government have directed that the Collectors of Salt Revenue and Customs should enjoy special vigilance on the part of the frontier establishment, especially at Castle-Rock, the coast Guard establishment and the customs establishment at all ports and landing places. The

Collectors of Belgaum, Kanara and Ratnagiri and the Superintendent, Southern Maratha Railway Police, were also desired to co-operate with the Customs Department in all possible ways from the prevention of smuggling.

(G.R., R.D., No. 1568 of 28th February 1893 as amended)

238. Hints for detection of illicit sale- (1) One of the most serious offences against the Abkari revenue is the “illicit sale of liquor or drugs.” Illicit sale of liquor is carried on more or less in large cities and in such parts of them as are distant from licensed liquor shops. In the districts the illicit distiller is usually an illicit seller of liquor.

(2) As the successful detection of cases of this kind greatly depends on the preliminary inquiries, the Abkari Officer should in the first instance correctly ascertain through some reliable person such as a resident of the locality in which the suspected party’s home or shop is situated, whether any liquor or intoxicating drug is actually being sold illicitly. As illicit seller is generally very wary and he has therefore to be approached with the utmost caution. If asked abruptly for liquor or drug by a customer not known to him, he will probably refuse to supply it and sometimes frequent trials have to be made, especially in the case of persons who supply liquor or drugs to certain known customers only or those that are introduced through them. If a trustworthy customer be not available for testing the correctness of the information regarding illicit sales, it is the practice with excise officers to send in a trustworthy man of their own to purchase liquor or drug either for consumption on the premises or for removal. If the liquor is unhesitatingly sold to such a man successively for two or three days the same man is sent for the last time with a marked coin to purchase a quantity of the liquor or drug. Before sending such man with the marked money care is taken to search the man in the presence of the independent witnesses in order that the accused may not plead that the man had brought such liquor or drug with him. Further the man sent with the marked money is directed to go straight to the place where liquor is sold illicitly by the alleged offender and the witnesses should see that he does so. The money sent with him is also marked in the presence of such persons. All the while the excise officers is watching from some distance the movements of his man and as soon as some premeditated sign is made by him to show that liquor or drug is sold to him he at once rushes in with the Police or other independent witnesses, seizes the liquor or drug and the marked money and all things liable to confiscation found in the possession of the illicit seller.

(3) Doubts are sometimes raised by trying Magistrates as to the propriety or otherwise of sending in man to buy liquor or drug in the manner stated above as such action on the part of

excise officers may amount to their deliberately seducing men into committing crimes. But Government have expressed the opinion that “it is only by offering to buy that it can generally be discovered whether a suspected vendor is willing to sell and trying the inclination in this way involves no temptation as it is exactly what the vendor wants and invites in all cases where in the device is successful”. But while this is so Government have directed that “the excise officers should always bear in mind the principle that the object is to keep lawless people within the law not to seduce weak people to transgress it and more convictions so far from being good in themselves are a great though necessary evil”.

(G.R., R.D. No., 1491 of 3rd March 1888)

239. Further hints how to effect a test purchase in order successfully to catch a case of illicit sale of excisable articles-

(1) It must first be remembered that the burden of proving that the accused sold an excisable article lies with the prosecution. In such cases action should be taken as follows.

(2) Secure the services of a reliable person to serve as a bogus customer. Call two witnesses and inform them of the offences which is to be detected and what they are called on to witness. Present the bogus customer before them and your party including yourself. Search the Panchas and ask the Panchas to search you and your party. Remove all coins from the person of the bogus customer and your constables. Mark coins before the Panchas and ask them to hand the marked coins over to the bogus customer, after satisfying themselves that he has no other coins or excisable articles. Arrange for a signal to be given by the customer as soon as the sale is effected. Let the bogus customer go ahead, and the Panchas follow at a visible distance with one of the constables in disguise. Ask the bogus customer to go straight to the house of the suspect and the Panchas to see that the bogus customer goes there without going anywhere else; (this fact should be prominently brought out in the Panchnama). The staff should remain at a visible distance from the Panchas and the Inspector behind them, also at a visible distance from the staff. Care should be taken to see that the staff wait scattered about and not in a throng, so that the approach of the excise party may not be suspected even by a passerby. As soon as the pre-arranged signal is given by the customer, in token of the sale having been effected, it should be communicated by the Panchas or the constable with them to those behind, and the party (including Panchas), headed by the detecting officer, should rush to the place of offence. The Inspector should at once catch the suspect so as to ensure that he does not do away with the marked coins. Secure the suspect and search him in the presence of the Panchas and secure the marked coins. Call two witnesses of the locality. Let them search the constable again and

then commence searching the premises for incriminating articles and for marked coins (if none were found on the person of the suspect), after securing from the bogus customer in the presence of the Panchas the excisable article sold by the suspect.

(3) The Panchnama should contain all these facts, viz; (i) the result of searching the person of the bogus customer and all concerned in detecting the crime; (ii) the fact of handing over the marked coins to the bogus customer after removing all other coins; (iii) the fact that the bogus customer had nothing with him but the marked coins, and empty bottles if necessary; (iv) the fact that bogus customer had gone straight to the house of the suspect without going anywhere else and that the Panchas had kept an eye on the bogus customer; (v) that the marked coins were recovered from the possession of the suspect (the exact place should be described); (vi) that excisable articles were sold to the bogus customer; (vii) the result of the search suspect's premises and (viii) that nothing but the articles noted in the Panchnama were taken away by the excise party at the conclusion of the search.

As everything depends on the Panchama all such facts should be recorded on the spot so as to dispel any doubt that a particular fact deposed in court was an afterthought and got up to bolster up a weak point. Avoid all irregularities. Bring out all facts necessary to fasten the guilt on the suspect, so that he may not be given the benefit of doubt. If the marking of the coins and sending of the bogus customer has been done in a village other than that in which the accused resides, it would be advisable to draw up two Panchnamas, one of steps (i) to (v) and another of steps (vi) to (viii) mentioned above, it being noted that the search of a house or an enclosed place is to be held in the presence of two respectable witnesses of the locality under section 103 of Criminal Procedure Code.

(Paragraph 18 of the Excise Supplement to the Bombay Police Gazette, 1939.)

C. RAIDS, SEARCHES AND ARRESTS.

240. Excise officers empowered to investigate offences under the Abkari Act-

(1) Under section 41 of the Bombay Abkari Act, the Abkari officers, who are empowered under that section, may investigate all offences punishable under the Act and in conducting such investigation exercise the powers conferred by the Code of Criminal Procedure, 1878, upon an officer in charge of a Police station for the investigation of a cognizable offence.

(2) Government have invested Excise Inspectors and Assistant Inspectors with powers of investigation under section 41. Excise Sub-Inspectors should not be allowed to exercise these powers until they have been specially empowered by the Commissioner in that behalf.

(G.R., R.D., No. 156-C of 5th September 1928.)

(3) A question having been raised whether excise officers should be required in the exercise of the powers conferred by section 41 of the Bombay Abkari Act to follow the procedure prescribed by sections 157 and 172 of the Criminal Procedure Code, Government have decided that in the exercise of their new powers Abkari officers are required to follow the procedure prescribed by sections 157 and 172 of the Criminal Procedure Code in the matter of sending reports to magistrates and of keeping diaries of proceedings of investigation subject to the variations of procedure indicated in the provisos to section 41 (2) of the Abkari Act. They therefore directed that appropriate postcards for the reports similar to those used by the Police and a simple diary form should be provided for the use of Abkari officers in the exercise of their new powers.

(G.R.,R.D., No. 7223 of 4th August 1913.)

Note.- It should be noted that this direction of the law applies to investigations, under section 41 of an offence and not to detection under section 36 or 37 of the Abkari Act which proceeds the exercise of the powers under section 41, e.g., when an officer receives information that such and such a person distils liquor he is not to follow the procedure prescribed under sections 157 and 172 of the Criminal Procedure Code at once, i.e., before proceeding to act under sections 36 and 37, because his action under the latter powers is first to verify the information that he received and to locate the place of the alleged offence. If however, after proceeding under section 36 and 37 any investigation is considered necessary the excise officer proceeds under section 41 and from this point the investigation starts when the procedure prescribed by section 157 and 172 of the Criminal Procedure Code is required to be followed.

241. Excise officers provided with token book with their photographs - (1) Very often the authority of the excise officers to search any person or place is questioned when they are dressed in plain clothes. There is also the likelihood of private individuals posing as excise officers and harassing people. A small token book containing a photograph (bust) of the officer of the size of 3" X 2" and showing his full name and the substantive post held by him is, therefore, issued to each officer.

(2) All officers of the Excise Department on the permanent establishment, including probationers and those serving at warehouses, should possess the token book.

(3) Corrections in the token books may be attested by the Superintendents.

(Commr.'s No. 65-125/27 of 17th November 1927 and No. 65-20/28 of 29th October 1928 and 28th November 1928.)

242. Constabulary staff provided with token cards to prove their identity- Token cards made of stout cardboard and covered with cloth, bearing the following inscription in two languages- English and one of the regional languages of the Province according to the region

where they are used- are issued to the Excise constabulary staff. These cards are issued to all the excise petty officers and to some constables who are most likely to be, or most usually, employed on detection work in mufti:

Name.....

Designation.....

Buckle No.....

Date of Issue.....

Has been appointed to the Bombay Excise Force and is vested with powers functions and privileges of an Excise Petty Officer or Constable.

Superintendent of Excise, Division,

(Commr.'s No. 77-1/37 of 9th September 1937.)

243. Requisition for police assistance by excise officers - Instructions regarding the requisition for police assistance by excise officers in carrying out the provisions of the Bombay Abkari and opium Acts are contained in paragraphs 59 to 61.

244. Senior officers must conduct operations where one officer calls another officer for help in a raid.- When an excise officer of higher rank is called outside his own jurisdiction to help another excise officer, the officer of higher rank or, where officers of equal rank are concerned, the senior of the two must be responsible for the conduct of operations.

(Commr.'s No 82-46/40 of 10th April 1940.)

245. Precaution to be taken and arrangements made in effecting raids for excise crime.-

(1) In connection with a raid by an excise officer aided by armed police for the detection of excise offences there was occasion to use fire arms owing to a riot, On inquiry it was found that the police men were posted singly for guarding the suspected houses with the result that no discipline could be maintained during the disturbance which subsequently occurred. The following instruction are, therefore, issued for the guidance of excise officers: When armed police aid is invoked for raiding villages for excise offence the excise officers should not use police men for guarding suspected houses or for other excise work. The police men should be grouped in a prominent place to be used in case of an emergency.

(Commr.'s No. 65-108/25 of 2nd June 1925.)

(2) Some disgraceful episodes have been reported lately, of the whole raiding staff running away, and firearms not being ready or loaded. In one case the musket was with one man and

the cartridges with another. So, the musket was useless when the letter decamped. Such fiascos lower the prestige of the Department and Government and embolden villagers to commit excise crimes. They also indicate that the control and supervision, over their men, of some officers in charge of raiding parties is defective.

(3) when a raid is made, it is obvious that it should be made a success. Firearms should be taken; revolvers should be kept loaded and the constables carrying muskets should also carry the ammunition on their persons. Fire-arms should be used if unfortunately, this is necessary. Those constables in charges where collisions with excise offenders occur or may occur, who have not firearms, should all be provided with stout lathis, the cost of which should be met from the grant under “8 Excise-District Executive Establishment Contingencies Clothing charges”, and be drilled beforehand in their use. The raiding parties should be made strong in numbers. If serious opposition is likely, application should be made for the necessary armed police to accompany the party.

(Commr.'s No 3-1A/30 of 18th July 1930.)

(4) The Commissioner has noticed that some excise officers when raiding villages scatter their men over a wide area, keeping at times only a single constable at each hut or place. In some cases the men are so distributed that they cannot see one another and in cases of attack are unable to come to the rescue of one another. The villagers also seeing the men so placed take advantage of their isolated positions and quickly put them to flight or out of action. As a result the excise parties come off very badly, and the raids fail. This splitting up of the parties is thus very dangerous.

(5) To avoid such cases, it is necessary that parties be not split up too much. In villages, where the people are turbulent or rowdy and specially when there is a risk of an attack, it is better to raid fewer huts and keep a sufficient number of men together at a strategic point or points. In any case, it is always desirable that a sufficient number of men armed with musket and lathis be kept together at a suitable place to act as a protecting party. This place should form a rendezvous for the other men to fall back on in case of assault.

(Commr.'s No 82-1/30 of 18th April 1931.)

(6) A case has occurred, in which, as a result of unsatisfactory arrangements made by the excise officers carrying out the raid, the excise raiding party was severely assaulted and had to retreat after being assaulted. The excise officer neither took any police assistance nor a sufficient number of arms. The only musket that was taken with the party was kept with a man who had no training in the handling of arms, and the cartridges, which should have been with the man carrying the musket, were carried in a handbag by another man. The men of the party were

also so scattered and distributed that no two persons were within sight of each other with the result that the men had no chance of coming to one another's assistance when assaulted.

(7) Unsatisfactory arrangements, like those noted above, resulting in severe assaults on, and retreat of, the excise raiding parties, besides lowering the prestige of Government embolden villagers to commit more crime. All excise officers are therefore requested to see that proper and careful arrangements are made for carrying out raids and that the parties are kept under proper control.

(8) In the case referred to above, the excise officer carried with him an unloaded revolver. While loading it at the time of the attack it was knocked off his hands by a lathi stroke by one of the assailants, with the result that the Government revolver was lost. With a view to prevent such losses and attacks the excise officers should keep their revolvers ready loaded in their leather cases, viz., and not wait to load them at the moment of attack. The fear of the loaded revolvers accidentally going off is remote, as they are well protected by the leather cases. It is also desirable that the revolver when in use should be attached to the wrist by a stout cord to prevent loss.

(Commr.'s No. 81-2/31 of 22nd September 1931.)

246. Powers exercised by excise officers in cases of assault - (1) As assaults on excise parties whilst raiding villages for the detection of cases of illicit distillation are becoming frequent the Commissioner considers it necessary to draw the attention of all excise officers to the powers exercisable by them when such assaults are made.

(2) Under section 38-A of the Abkari Act an excise officer can arrest any person who obstructs him in the execution of his duty. This arrest should be effected in the manner prescribed in section 46 of the Criminal Procedure Code. If it is necessary to use firearms the directions given in G.R., R.D., No 177 of 12th January 1903 should be followed Nos. 1 to 4 of these directions are reproduced in paragraph 247 post. Secondly, an excise officer has also the protection of law under the right of self-defence. The provisions of the law relating to the right of private defence are given in sections 96 to 106, Indian Penal Code. Where police assistance is available on the spot it should be invoked at once but where, as is usually or often the case, it is not available and the officer in charge of the party has to act on his own initiative, he and his party should act in accordance with the instructions given above.

(3) It is thus clear that the law gives excise officers ample powers.

(4) Superintendents are requested to examine their subordinate officers to see that they have studied and fully understood their powers.

(Commr's No. 81-18/28 of 18th October 1928.)

247. Directions for use of firearms in effecting arrests. – (1) Where a person forcibly resists the endeavour to arrest him or attempts to evade arrest the police officer making the arrest may, under section 46 of the Criminal Procedure Code, use all means necessary to effect the arrest. If, therefore, an arrest cannot other-wise be effected, the use of fire-arms for the purpose is justifiable and the same section of the Criminal Procedure Code protects the police officer from the consequences even of causing the death of a person fired on and killed under such circumstances in cases where such person is accused of an offence punishable with death or with transportation for life.

(2) Even in cases of offences punishable in a lesser degree than by death or transportation for life though section 46 of the Criminal Procedure Code does not authorise the killing of a suspected person merely for the sake of effecting his arrest it does not deprive the police officer of his right of self-defence, if the resistance to arrest is such as would justify him in causing death in defence of his own person under section 100 of the Indian Penal Code. This right of self-defence includes the use of firearms to overcome the resistance, if necessary, even with fatal effect. Police officer who are entrusted with a warrant or who have reason to suppose that crimes of particular gravity have been committed by a specified person, are bound to arrest the person and are punishable if they fail to do so. They cannot desist upon a mere show of resistance; they are bound to redouble their efforts, even at the risk of their lives, if opposed, and the law protects them from any consequences which the resistance entails.

(3) The above statement of the law as to the right of self-defence given to a police officer attempting to effect an arrest does not of course apply when the person to be arrested merely “attempts to evade arrest”, i.e., without resistance, flies to avoid arrest. In such a case the amount of violence which may be used by the officer effecting the arrest, depends upon the cause of the arrest. When the offence in question is one punishable with death or transportation for life, such as murder or dacoity, and there is no other means of effecting the arrest of the suspected person, the resort to firearms is justifiable in spite of any danger there may be of thereby wounding him and causing his death. If, however, the offence is one punishable in a lesser degree than by death or transportation for life, and the suspected person merely tries to evade arrest by flight without resistances, the police officer would ordinarily not be justified in causing the death of such person, and it would be very hazardous for the officer to fire in such a case and thereby to run the risk of inflicting what might prove to be fatal injuries.

(4) These instructions apply also to the case of police officers endeavouring to arrest prisoners who have escaped from, or are attempting to escape from, lawful custody and who are thereby guilty of an offence punishable with two years' rigorous imprisonment and fine under section 224, Indian Penal Code.

(G.R., R.D., No. 177 of 12th January 1903.)

248. How to use firearms in cases of assaults, etc.- (1) Cases have occurred where excise officers in the detection of excise cases have been severely assaulted with the result that they have been compelled to open fire. A common procedure followed in such cases has been to fire in the air. This is clearly against the orders of Government. Experience has shown that it leads to greater loss of life. The rioters become emboldened seeing that the firing takes no effect.

(2) The attention of the Superintendents is drawn to the instructions for the use of firearms contained in paragraph 994 of the Bombay District police Manual, Volume III (1927) and in particular to note (ii) thereunder. Superintendents are requested to warn all their subordinate officers that in cases where they are compelled to use firearms they should be used only in the manner laid down in the instructions referred to above.

(Commr's, No. 82-18/30 11th October 1930.)

(3) The attention of all Excise Officers is drawn to the above orders, and they are informed that they should use firearms whenever compelled to do so, strictly in accordance with the instructions given in paragraph 994 (2) of the District Police Manual, Volume III (1927) (reproduced below). Firing in the air is against the orders of Government and should never be resorted to.

(Commr'. No. 82-55/37 of 29th September 1937.)

“994 (2). When, in exercise of the powers given by section 128 of the code of Criminal Procedure, 1898 a Magistrate or an officer in charge of a Police Station engaged in dispersing an unlawful assembly is compelled, in the last resort, to direct the Police acting under him to use their fire-arms, he shall give the rioters the fullest warning of his intention, warning them beforehand that the fire will be effective, that ball ammunitions will be used at the first round, and that blank cartridges will not be used. Firing shall cease the instant it is no longer necessary. Care should be taken not to fire upon persons separated from the crowd, nor to fire over the heads of the crowd as thereby innocent persons may be injured. Blank cartridges should never be served out to police employed to suppress a riot.

Note: - (ii) When firing becomes inevitable, aim should be taken at the crowd and not in the air as experience proves that the latter procedure leads ultimately to greater loss of life.”

249. Private arms should not be taken on raids in addition to Government arms- Government disapprove of private firearms being taken by excise officers on raids in addition to the Government equipment of an armed party. It is almost inevitable that these private firearms will be used by inadequately trained individuals who are probably not fully amenable to control. All excise officers should not therefore take or use private firearms in raiding parties when Government arms are taken.

(Commr.'s No. 82-1/80 of 17th April 1931.)

250. Cases of assault should immediately be reported to Commissioner and District Magistrate - (1) A case has recently occurred in which an assault on an Excise Sub-Inspector and his constable, out on detection work, was reported to the Commissioner a fortnight after the assaults. It is necessary that the Commissioner should be in receipt of the earliest possible information of all cases of assaults on the excise staff. All the Superintendents are therefore requested to arrange that reports of all cases of assaults on any member of the excise staff are communicated to the Commissioner without delay.

(2) Intimations regarding the serious cases of assaults on the excise staff, in which there is opening of fire or serious casualties, should be communicated to the district Magistrates concerned, by wire, as required by the Standing Orders of Government (G.R.,G.D., No. 1987 of 9th May 1899), a copy of the intimation being sent to the Commissioner.

(Commr.'s No. 82-30/37 of 8th June 1937.)

252. Hints on the precautions to be taken in searching an enclosed place.- (1) Prior to the search, the preliminary step to be taken by an Excise Officer is to attach or put under surveillance the place to be searched, in order to ensure that the occupants of the place do not in any way interfere with the contraband articles kept therein.

(2) Before proceeding to attach the place proposed to be searched, get at least one independent witness to accompany the raiding party. Any scuffle or struggle that takes place usually occurs just on the arrival of the raiding party. The occupant of the place to be search frequently show opposition, and try to do away with or run away with, or destroy, or remove to adjoining open places, the contraband articles which they have in their exclusive possession when the search is to commence. The evidence of an independent witness in these matters and in the matter of catching persons red-handed doing these overt acts will be more convincing than the evidence of members of the raiding party, which the defence will call an interested party. This independent witness should be asked to satisfy himself by searching the members of the raiding

party before proceeding to raid, that the party has nothing contraband with them. This will check any allegation or probable defence that the contraband article found in the search of a place (particularly a field), was brought and planted by one of the raiding party when they entered this place.

(3) Keep all the occupants of the place to be searched under surveillance while you wait for the arrival of the two or more respectable residents of the locality to serve as Panchas, so that if anybody tries to do away with any article even if kept in the adjoining open land that person could be caught red handed. There will be a tendency for the suspected person or his people to do away with contraband articles even though kept in adjoining open places accessible to others.

(4) The search should not be commenced until after the arrival of the Panchas, who should be asked to examine and satisfy themselves that the persons entering an enclosed place to search it have nothing contraband with them.

(5) The suspected person should be asked to be present and witness the search and also to satisfy himself that the persons searching the place have nothing contraband with them. Shrewd suspected persons will intentionally avoid being present in order to keep a loop-hole to escape conviction. If the suspect avoids being present during the search the fact should be recorded in the Panchnama.

(6) In searching a house one or two constables only should ordinarily enter the place with the Panchas and the excise officer conducting the search. No contraband articles should be removed from its place unless the excise officer and the Panchas, and also the accused if present, have seen the position and the manner in which the article was kept, and have examined the article on the spot.

(7) The exact place in which each contraband article is found should be noted in the Panchnama. It should also be stated how the article was kept or concealed and the special circumstances, if any, which led to the discovery of any article should be mentioned.

(8) The Panchnama should as far as possible, be drawn up as soon as the search of the place is over. Care should be taken to see that the inmates of the place to be searched are not kept out of it longer than absolutely necessary in the interest of the search. When several places are to be searched in one raid, the excise officer conducting the searches should make a note as each place is searched of the several articles found in that place with the exact position and the circumstances in which these were found. He should only then proceed to the next place to be searched. After all the places are searched separate Panchnamas should be drawn up from the notes taken in respect of each place that was searched. Each Panchnama should be

written out at the particular place searched, and from which any contraband article was found. Some officers make all such Panchnamas in the village 'chawdi'. This is irregular. When the search of a house or an enclosed place is completed, the accused person, if present, or any other member of his family should be asked, in the presence of the Panchas to satisfy himself that nothing but the contraband articles seized has been removed from the place searched and to search, if he wishes to, the constables who entered the house, etc., for the search. This should be repeated in the case of every place that was searched. This is to avoid any subsequent allegation of theft of jewellery, money etc., against the excise constables who entered the house or enclosed place for the search. The fact that nothing but the contraband article seized was removed from the house should be recorded in the Panchnama, to rebut any subsequent allegation of theft against members of the raiding party.

(Paragraph 30 of the Excise Supplement to the Bombay Police Gazette, 1939.)

253. Searches at Viramgam railway station- The Land Custom Department desire that excise officers should not enter the customs enclosure at the Viramgam railway station to search the incoming passengers and that if they have information against any particular individual, they should seek the co-operation of the Senior Customs Inspector, Viramgam. The excise officer at Viramgam may therefore, carry out the search within the cordoned area only when he has definite and fairly reliable information that any particular individual (and not passengers generally) has in his possession contraband articles, and he should always inform the Senior Customs Inspector, in advance, of his intention to do so.

Cordial co-operation between the Customs and Excise Departments is necessary and the result of the co-operation leading to successful discovery will depend largely on the tact of the officers. If at all it is necessary for the Excise officer to move about in plain clothes for such searches, he should carry with him his token card. This should be done on other occasions as well.

(Commr.s No. 29-72/45 of 19th February 1945.)

254. Assistance of Officer Commanding the Unit should be sought before Military Lines are entered for search - The instructions laid down in paragraph 3 of the following letter of the Government of India, Home Department, No. F. 117/1/34, Police, dated 19th July 1934, should be strictly followed in making investigations etc. of excise offences in military lines.

“The attention of the Government of India has been drawn to a case in which an Inspector of Police, having received information of the location of stolen property within the area of a military barracks and being under the necessity of taking immediate action in regard to it,

entered the military lines and of his own initiative seized the stolen property and arrested the suspect. He there after reported his action to the Commanding Officer.

“2. While there was nothing improper in the action taken by the Inspector, it is desirable, in order to avoid the risk of unfortunate incidents, that the assistance of the Officer Commanding the unit should be sought before military lines are entered by the Police. An additional safeguard is the wearing of uniform by the investigating police officer or officers.

“3. The Government of India will be glad if the Government of Bombay will consider the desirability of issuing instructions to the police to ensure that, so far as circumstances permit, previous notice is given confidentially to the officer Commanding, Adjutant or Orderly Officer concerned when any investigation, search or arrest is contemplated within military lines, and that the police officers engaged are in uniform. The same considerations apply to investigations, etc., by Excise Officers, and I am to ask that the issue of similar instructions to the Excise staff may also be considered (Vide Home Department Letter No. F.8/32-Police, dated the 1st December 1932).”

(G.M., R.D., No. 9900-C/28 of 1st July 1934 and Commr's. No. 82-52/34 of 31st August 1934.)

257. Hints on the precautions to be taken in drawing up a Panchnama - It is noticed from experience that in places where excise offences, particularly illicit distillation, are rife, there is a tendency among the people of the locality to save the residents of their village from the clutches of the excise law. On this account Panchas, however literate, frequently pretend not to know to read or write, so that if the Panchnama is written by the excise officer conducting the search or by any of his staff the Panchas can easily state in Court that the contents of the Panchnama (or any important part of it which offers a loop-hole for escape), produced before the Court was not in accordance with what was read out to the Panchas before they signed or put their thumb impression thereon. As a safeguard against this tendency it is very desirable to have the Panchnama written by one of the Panchas, who should then be cited as a witness to prove the Panchnama. When no literate Panchas are available to write the Panchnama and when, under these circumstances, the Panchnama has to be written by a member of the raiding party, steps should be taken to have the local school master or some literate man from the village read the Panchnama to the Panchas in the presence of the excise officer. If no such literate man is available in the village, a man from the adjoining village should, if possible, be got. Before the excise officer leaves the village in which the search was made he should ask the person who read the Panchnama to the Panchas to endorse in his own handwriting a certificate below the Panchnama as follows: -

“Certified that I read the Panchnama before the above-signed Panchas (whose signatures are also taken below), and they declared that the facts noted therein were correct”.

This procedure has saved many a case from being lost, particularly when attempts were made to induce Panchas to change their statements in favour of accused persons.

(Paragraph 31 of the Excise Supplement to the Bombay Police Gazette, 1939.)

258. Sealing of excisable articles seized - Liquor and other excisable article seized in the presence of the Panchas should be sealed with the seal of one of the Panchas or otherwise secured with a label bearing the signatures of the Panchas. If liquor bottles thus sealed or secured are required to be opened by the Inspector before putting the case on trial, they should be opened and resealed as above directed after examination in the presence of another panch. As far as possible liquor bottles seized bearing the seal or the signatures of the Panchas in whose presence they were attached should not be opened except in the presence of the Magistrate for purpose of taking strength of the spirit contained in the bottle. It is not **necessary** to show the strength of the liquor in preliminary case report. It should be shown in the final case report after the case is over. This precaution is necessary to ward off any chance of allegation being made by the defence that the liquor bottles etc. were tampered with by the detecting excise officer as they were sealed with his seal and remained in his possession for some time before being sent to the Court. They should also be sealed with the seal of the investigating excise officer before being sent to the Court.

259. Preliminary and Final reports should be sent to Superintendents - Whenever any offence is detected or thing seized, a preliminary report in Form Exhibit 128 shall be submitted within 24 hours, and a full report in Form Exhibit 129 as soon as the case is concluded-vide paragraph 304. Sub-Inspectors should not be debarred from submitting these reports.

(Commr.'s No. 7361 of 27th November 1909.)

260. Submission of case diaries by subordinate excise officers to their Superintendents.-

Although every excise officer empowered under section 41 of the Bombay Abkari Act should maintain in each case investigated by him a case diary as required by section 172 of the Criminal Procedure Code, the Commissioner considers that it is not necessary that he should send a copy of it to his Superintendent of Excise, as the preliminary and final case reports

which the officer is required to submit to his Superintendent furnish the latter with all information which he would ordinarily need in each case. If, however, the Superintendent finds it necessary to examine the case diary maintained by any investigating officer, he may at any time call for the production of such diary.

(Commr.'s No. 82-5/41 of 18th February 1941.)