

The Jammu and Kashmir Opium Smoking Act, 2011

JAMMU & KASHMIR

India

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Act 37 of 2011

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The Jammu and Kashmir Opium Smoking Act, 2011(Act No. 37 of 2011)[Received the assent of the Sadar-i-Riyasat on 24th December, 1954 and published in Government Gazette dated 21st Magh, 2011/3rd February, 1955.]An Act to provide for the control of the practice of smoking of prepared opium and to secure the ultimate prohibition of smoking of prepared opium in the Jammu and Kashmir State. Whereas it is expedient to provide for the control of the practice of smoking prepared opium and to secure the ultimate prohibition of smoking of prepared opium in the Jammu and Kashmir State ;It is hereby enacted as follows

1. Short title, extent and commencement.

(1)This Act may be called the Jammu and Kashmir Opium Smoking Act, 2011.(2)It extends to the whole of the Jammu and Kashmir State.(3)[It shall come into force from such date as may be appointed by the Government by notification in the Government Gazette in the behalf.] [The Act came into force from 1st September, 1955 by C.O. No. 1236-C of 1955.]

2. Definitions.

- In this Act, unless the context otherwise requires,-(a)"opium" means-(i)the capsules of the poppy (*Papaver somniferum* L);(ii)the spontaneously coagulated juice capsules which has not been submitted to any manipulations other than those necessary for packing and transport: and(iii)any mixture, with or without neutral materials, of any of the above forms of opium, but does not include any preparation containing not more than 0.2 per cent of morphine, or a manufactured drug which shall include (i) all cocoa derivatives, medicinal, hemp and opium derivatives ; and (ii) and other narcotic substance which the Government may by notification in the Government Gazette make in pursuance of any international convention declared to be a manufactured drug ;(b)"place" includes a building, house, shop, pool, chappar, enclosure, tent, vessel, raft and vehicle and any part thereof;(c)"prepared opium" means any product or admixture of opium obtained by any operation or series of operations designed to transform opium into an extract suitable for smoking, and

includes chandu, madak and the dross or other residue remaining after opium is smoked ;(d)"prescribed" means prescribed by rules made under this Act;(e)"register" means the register of smokers of prepared opium maintained by or under the authority of the State Government before the commencement of this Act as a register of smokers of prepared opium ;(f)"registered smoker" means a person whose name is entered in the register, at any time before the commencement of this Act, as a smoker of prepared opium.

3. Prohibition of smoking of prepared opium by persons other than registered smokers.

- No person other than a registered smoker shall, after the commencement of this Act, smoke prepared opium.

4. No fresh entry to be made in the register.

(1)No fresh names as smokers of prepared opium shall be entered in the register after the commencement of this Act.(2)Subject to the provisions of sub-section (1), the prescribed authority may, at any time of its own motion or on application by any interested person, omit the name of any person from the register, or correct in the prescribed manner any error or defect in any entry in the register.(3)The register shall be deemed to be a public document within the meaning of the Jammu and Kashmir Evidence Act, 1977.

5. Right of registered smoker to manufacture opium.

(1)A registered smoker shall, subject to such conditions as may be prescribed, be entitled to manufacture prepared opium not exceeding half a tola and to keep it in his possession for personal use only.(2)Any registered smoker who has, in his possession, prepared opium in contravention of the provisions of sub-section (1) shall be punishable with imprisonment which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

6. Penalty for unregistered smokers.

(1)Any person, other than a registered smoker, who-(a)manufactures prepared opium ;(b)has in his possession any prepared opium; or(c)has in his possession any pipes or any other utensils or apparatus used in connection with the manufacture or smoking of prepared opium ;Shall be punishable with imprisonment which may extend to one year, or with fine which may extend to one thousand rupees, or with both.(2)Any person other than a registered smoker who smokes or otherwise uses prepared opium shall be punishable-(a)for a first offence with imprisonment which may extend to two months, or with fine, or with both ; and(b)for any second or subsequent offence with imprisonment which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

7. Punishment for allowing places to be used for the commission of an offence or for selling or dealing in prepared opium.

- Whoever-(a)being the owner or occupier or having the use of any place, knowingly permits it to be used by any person other than a registered smoker for manufacturing or smoking prepared opium or.(b)sells or otherwise deals in prepared opium, shall be punishable with imprisonment which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

8. Power to issue warrants.

- Any District Magistrate, Additional District Magistrate or Sub-Divisional Magistrate who, upon information received and after such inquiry (if any) as he considers necessary, has reason to believe that any place is being or is likely to be used for the commission of an offence punishable under section 6 or section 7, may issue a warrant to an officer of the Excise Department, not below the rank of Sub-Inspector empowering him-(a)to enter such place by day or night with any person whose assistance such officer may consider necessary ;(b)to search all parts of such place in which such officer has reason to believe that any opium or appliance for the manufacture of prepared opium or for the smoking of opium is concealed and all or any person(s) whom he may find in such place ;(c)to arrest all persons-(i)whom such officer may find in such place actually engaged in smoking prepared opium ; or(ii)whom such officer reasonable suspects of having smoked prepared opium in such place immediately before his entry therein ; or(iii)from whose possession prepared opium recovered ;(d)to seize all opium and appliances for the smoking of prepared opium or for the manufacture of prepared opium which may found in such place.

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

(1)Any officer of the Excise Department, not below the rank of Sub-Inspector, who has reason to believe from personal knowledge or upon information given by a person a id taken down in writing that an offence punishable under section 6 or section 7 has been, is being or is about to be committed, or that an article liable to confiscation under this Act is kept or concealed in any place may, between sunrise and sunset.-(a)enter any such place ;(b)in case of resistance break open and remove any such obstacle to such entry ;(c)seize all opium and appliances for the smoking of prepared opium or for the manufacture of prepared opium and any other article which he has reason to believe to be liable to confiscation under section 14 and which may be found in such place ;(d)detain and search and if he thinks proper, arrest any person whom he has reason to believe to have committed an offence punishable under section 6 or section 7 :Provided that if such officer has reason to believe that a search warrant cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such place at any time between sunset and sunrise after recording the grounds for his belief.(2)Where an officer takes down any information in writing under sub-section (1), or records grounds for his belief under the proviso thereto, he shall forthwith send a copy thereof to his immediately official superior.

10. Searches how made.

- The provisions of the Code of Criminal Procedure, 1989, shall apply, in so far as they are not inconsistent with the provisions of section 8 and section 9, to all warrants issued and arrests, searches made under the said sections.

11. Provisions for bail and security.

- When any person arrested under this Act is prepared to furnish bail, he shall be released on bail or in the discretion of the officer making the arrest, on his own bond

12. Procedure after arrest and seizure.

(1)Whenever any person makes any arrest or seizure this Act, he shall, within a period of twenty-four hours after such arrest or seizure, - (a) make a full report giving particulars of such arrest or seizure to his immediate official superior; and (b) unless bail or, as the case may be, a bond has been accepted under section 11, produce the person arrested or the articles seized, if the arrest or seizure was made, (i) in pursuance of a warrant issued under section 8, to the authority by whom the warrant was issued; or (ii) under section 9, to the nearest Magistrate. (2) The authority or Magistrate to whom any person or article is produced under sub-section (1) shall, with all convenient despatch, take such measures as may be necessary for the disposal according to law of such person or article.

13. Officers of certain departments to help Excise Officers.

- Every officer of the police and the land revenue departments shall upon notice given or request made, be legally bound to give reasonable aid to any officer of the Excise Department in carrying out the provisions of this Act.

14. Forfeiture of illicit articles.

- On the conviction of any person for any offence under this Act, the Court may order that any opium or any instrument or appliance in respect of or by means of which such offence has been committed or any receptacle, package or covering in which such opium, instrument or appliance has been found and any other contents of such receptacle, package or covering shall be forfeited to the Government.

15. Jurisdiction to try offences.

- No Magistrate other than [a Judicial Magistrate] [Substituted by Act XL of 1966 for 'Magistrate'.] of the first class or [a Judicial Magistrate] [Substituted by Act XL of 1966 for 'Magistrate'.] of the second class, specially empowered in this behalf, shall try offence punishable under this Act.

16. Indemnity.

- No suit, prosecution or other legal proceeding whatever shall lie against any person in respect of anything which is in good faith done or intended to be done under this Act.

17. Power to make rules.

- The Government may make rules for carrying out the purpose of the Act.(2)In particular, and without prejudice to the generality of the foregoing power, such rules may provide for-(a)the circumstance in which an entry in the register may be omitted:(b)the authority by whom and manner in which any error or defect in any entry in the register may be erected or a in entry may be omitted ;(c)the conditions and restrictions subject to which a registered smoker may manufacture, possess or smoke prepared opium.(d)the payment of rewards out of fines imposed under this Act.

18. Repeal.

- The Jammu and Kashmir opium Smoking Act, 2007 (VII of 2007) is hereby repealed.