

The Opium Act, 1878

WEST BENGAL

India

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An Act to amend the law relating to opium. Preamble. - Whereas it is expedient to amend the law relating to opium; It hereby enacted as follows :

1. Short title. -

This Act may be called the Opium Act, 1878. Local extent. It extends to the whole of India except the State of Jammu and Kashmir.

2. Repeal and amendment of enactment. -

[Repealed by the Repealing and Amending Act, 1891 (12 of 1891); and the Amendment Act, 1894 (4 of 1894).]

3. Interpretation clause. -

In this Act, unless there be something repugnant in the subject or context-'Opium' means-(i)the capsules of the poppy (*papaver somniferum*, L), whether in their original form or cut, rushed or powdered, and whether or not juice has been extracted therefrom;(ii)the spontaneously coagulated juice of such capsules which has not been submitted to any manipulations other than those necessary for packing and transport; and(iii)any mixture with or without natural 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 as defined in Section 2 of the Dangerous Drugs Act, 1930;'Magistrate' means, in the presidency-towns, a Presidency Magistrate, and elsewhere, a Magistrate of the first class or when specially empowered by the Government to try cases under this Act, a Magistrate of the second class;'Customs frontiers' means any of the customs frontiers of India as defined by the Central Government under Section 3-A of the Sea Customs Act, 1878;'import' and 'export' means respectively to bring into, or take out of, a State otherwise than across any customs frontiers;'transport' means to remove from one place to another within the same State;'sale' does

not include sale for export across customs frontiers, and 'sell' shall be construed accordingly.

4. Prohibition of poppy cultivation and possession, etc., of opium. -

Except as permitted by this Act, or by any other enactment relating to opium for the time being in force, or by rules framed under this Act or under any such enactment, no one shall-(a)possess opium;(b)transport opium;(c)import or export opium; or(d)sell opium.

5. Power to make rules to permit such matters. -

The State Government may, from time to time, by notification in the official Gazette, make rules consistent with this Act, to permit absolutely, or subject to the payment of duty or to any other conditions, and to regulate within the whole or any specified part of the territories administered by such Government, all or any of the following matters :(a)the possession of opium;(b)the transport of opium;(c)the importation or exportation of opium; and(d)the sale of opium and the form of duties leviable on the sale of opium by retail:Provided that no duty shall be levied under any such rule on any opium imported and on which a duty is imposed by or under the law relating to sea customs for the being in force or under the Dangerous Drugs Act, 1930.

5A. Excise duty of opium. -

(1)There shall be issued and paid a duty of excise on opium produced in Uttar Pradesh at such rates not exceeding two rupees per kilogram as the State Government may notify from time to time, and different rates may be notified in respect of different forms of opium.(2)Until a notification is issued under sub-section (1), the duty of excise on poppy heads produced in Uttar Pradesh shall be levied and paid at the following rates, namely :

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| (a) on poppy heads exported outside Uttar Pradesh | Twenty-five paise per kilogram |
| (b) on poppy heads other than those mentioned in Clause, (a) | Fifty paise per kilogram |

5B. Countervailing duty on opium. -

(1)There shall be levied and paid countervailing duty on opium produced outside but imported into Uttar Pradesh at such rates as the State Government may, from time to time, notify and different rates may be notified in respect of different forms of such opium :Provided that the rate of duty notified under this sub-section shall not exceed the rate fixed for similar forms of opium produced in Uttar Pradesh.(2)Until a notification is issued under sub-section (1), the countervailing duty on poppy heads produced outside but imported into Uttar pradesh shall be levied and paid at the rate of fifty paise per Kilogram.

5C. Power to make rules. -

The State Government may, by notification, make rules to carry out the purposes of Sections 5-A and 5-B.

6. Duty on opium imported by land. -

[Repealed by the Dangerous Drugs Act, 1930].

7. Warehousing opium. -

The State Government may, by notification published in the official Gazette, declare any place to be a warehouse for all or any opium legally imported, whether before or after the payment of any duty leviable thereon, into the territories administered by the Government, or into any specified part thereof, and intended to be exported thence. So long as the declaration remains in force the owner of such opium shall be bound by it in that warehouse.

8. Power to make rules relating to warehouses. -

The State Government may, from time to time, by notification in the official Gazette make rules consistent with this Act to regulate the safe custody of opium warehouses under Section 7; the levy of fees for such warehousing; the removal of such opium for sale or exportation; and the manner in which it shall be disposed of, if any duty or fees leviable on it be not paid within twelve months from the date of warehousing the same.

9. Penalty for illegal cultivation of poppy, etc. -

Any person who, in contravention of this Act, or of rules made and notified under Section 5 or Section 8-(a) possesses opium, or (b) transports opium, or (c) imports or exports opium, or (d) sells opium, or (e) omits to warehouse opium or removes or does any act in respect of warehouse opium; and any person who otherwise contravenes any such rule, shall, on conviction, be punishable for each such offence with imprisonment which may extend to three years, with or without fine; and where a fine is imposed, the convicting Court shall direct the offender to be imprisoned in default of payment of the fine for a term which may extend to six months, and such imprisonment shall be in excess of any other imprisonment to which he may have been sentenced.

10. Presumption in prosecutions under Section 9. -

In prosecutions under Section 9, it shall be presumed, until the contrary is proved, that all opium for which the accused person is unable to account satisfactorily is opium in respect of which he has committed an offence under this Act.

11. Confiscation of opium. -

In any case in which an offence under Section 9 has been committed-(a) the opium in respect of which any offence under the same section has been committed; (b) where, in the case of an offence under clause, (b) or (c) of the same section, the offender is transporting, importing or exporting any opium exceeding the quantity (if any) which he is permitted to transport, import or export, as the

case may be, the whole of the opium which has been transported or exported; (c) where, in the case of an offence under clause, (d) of the same section the offender has in his possession any opium other than the opium in respect of which the offence has been committed, the whole of such opium, shall be liable to confiscation. The vessels, packages and coverings in which any opium liable to confiscation under this section is found, and the other contents (if any) of the vessel or package in which such opium may be concealed, and the animals and conveyances used in carrying it, shall likewise be liable to confiscation.

12. Order of confiscation by whom to be made. -

When the offence is convicted, or when the persons charged with an offence in respect of any opium is acquitted, but the Magistrate decides that the opium is liable to confiscation, such confiscation may be ordered by the Magistrate. Whenever confiscation is authorized by this Act, the officer ordering it may give the owner of the thing liable to be confiscated an option to pay, in lieu of confiscation such fine as the officer thinks fit.

13. Power to make rules regarding disposal of things confiscated and rewards. -

When an offence against this Act has been committed but the offender is not known or cannot be found, or when opium in the possession of any person cannot be satisfactorily accounted for, the case shall be inquired into and determined by the Collector of the District or Deputy Commissioner, or by any other person authorized by the State Government in this behalf, either personally or in right of his office, who may order such confiscation : Provided that no such order shall be made until the expiration of one month from the date of seizing the things intended to be confiscated or without hearing the persons (if any) claiming any right thereto, and the evidence thereto, and the evidence (if any) which they may produce in support of their claim.

14. Power to enter, arrest and seize, on information that opium is unlawfully kept in any enclosed place. -

Any officer of the department of Central Excise, Narcotics, Drugs Control, Customs, Revenue, Police or Excise, superior in rank to a peon or constable, authorized in this behalf by the Central Government or the State Government who has reason to believe from personal knowledge or from information given by any person and taken down in writing, that opium liable to confiscation under this Act, is kept or concealed in any building, vessel or enclosed place, may, between sunrise and sunset, - (a) enter into any such building, vessel or place; (b) in case of resistance, break open any door and remove any other obstacle to such entry; (c) seize such opium and any other thing which he has reason to believe to be liable to confiscation under Section 11 or any other law for the time being in force relating to opium; and (d) detain and search, and, if he thinks proper, arrest, any person who, he has reason to believe to be guilty of any offence relating to such opium under this Act or any other law for the time being in force.

15. Power to seize opium in open place. -

Any officer of any of the said departments may-(a)seize, in any open place or in transit, any opium or other thing which he has reason to believe to be liable to confiscation under Section 11 or any other law for the time being in force relating to opium;(b)Power to detain, search and arrest. detain and search any person whom he has reason to believe to be guilty of any offence against this or any other such law, and, if such person has opium in his possession, arrest him and any other persons in his company.

16. Searches how made. -

All searches under Section 14 or Section 15 shall be made in accordance with the provisions of the Code of Criminal Procedure.

17. Officers to assist each other. -

The officers of the several departments mentioned in Section 14 shall, upon notice given or request made, be legally bound to assist each other in carrying out the provisions of this Act.

18. Vexatious entries, searches, seizures and arrests. -

Any officer of any of the said departments, who, without reasonable ground of suspicion, enters or searches, or causes to be entered or searched, any building, vessel or place, or vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for any opium or other thing liable to confiscation under this Act, or vexatiously and unnecessarily detains, searches or arrests any person, shall, for every such offence, be punished with fine not exceeding five hundred rupees.

19. Issue of warrants. -

The Collector of the district, Deputy Commissioner or other officer authorized by the State Government in this behalf, either personally or in right of his office, or a Magistrate, may issue his warrant for the arrest of any person whom he has reason to believe to have committed an offence relating to opium, or for the search, whether by day or night, of any building or vessel or place in which he has reason to believe opium, liable to confiscation to be kept or concealed.All warrants under this section shall be executed in accordance with the provisions of the Code of Criminal Procedure.

20. Disposal of person arrested or thing seized. -

Every person arrested and thing seized under Section 14 or Section 15, shall be forwarded without delay to the officer-in-charge of the nearest police station : and every person arrested and thing seized under Section 19 shall be forwarded without delay to the officer by whom the warrant was

issued. Every officer to whom any person or thing is forwarded under this section shall, with all convenience despatch, take such measures as may be necessary for the disposal according to law, of such person or thing.

21. Report of arrests and seizures. -

Whenever any officer makes any arrest or seizure under this Act, he shall, within forty-eight hours next after such arrest or seizure, make full report of all the particulars of such arrest or seizure to his immediate official superior.

22. Procedure in case of illegal poppy cultivation. -

[Repealed].

23. Recovery of arrears of fees, duties, etc. -

Any arrear of any fee or duty imposed under this Act or any rule made hereunder, and any arrear due from any farmer of opium, revenue may be recovered from the person primarily liable to pay the same to the State Government or from his surety (if any) as if it were an arrear of land revenue.

24. Farmer may apply to Collector or other officer to recover amount due to him by licensee. -

When any amount is due to a farmer of opium revenue from his licensee, in respect of a licence, such farmer may make an application to the Collector of the district, Deputy Commissioner or other officer authorised by the State Government in this behalf, praying such officer to recover, such amount on behalf of the applicant; and, on receiving such application, such Collector, Deputy Commissioner or other officer may in his discretion recover such amount as if it were an arrear of land revenue, and shall pay any amount so recovered to the applicant : Provided that the execution of any process issued by such Collector, Deputy Commissioner or other officer for the recovery of such amount shall be stayed if the licensee institutes a suit in the Civil Court to try the demand of the farmer, and furnishes security to the satisfaction of such officer for the payment of amount which court may adjudge to be due from him to such farmer : Provided also that nothing contained in this section or done thereunder shall affect the right of any farmer of opium revenue to recover by suit in the Civil Court or otherwise any amount due to him from such licensee.

25. Recovery of penalties due under bond. -

When any person, in compliance with any rule made hereunder, gives a bond for the performance of any duty or act, such duty or act shall be deemed to be a public duty, or an act in which the public are interested, as the case may be, within the meaning of the Indian Contract Act, 1872, Section 74 : and upon breach of the condition of such bond by him, the whole sum named therein as the amount to be paid in case of such breach may be recovered from him as if it were an arrear of land revenue.

Schedule

[Repealed].