

OPIUM ACT, 1878

1 of 1878

[9th January, 1878]

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SCHEDULE 1 :- SCHEDULE

OPIUM ACT, 1878

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STATEMENT OF OBJECTS AND REASONS "The prevention of the Bill has the

following objects: first to enable the Governor-General in council to bring the Opium Act, 1878, into force in such local areas and at such respective dates as he thinks fit; secondly, to remove the doubts as to whether sections 4 and of that Act admitted of the free export and import of opium, when thought desirable; thirdly, to permit and regulate, by rules framed under that Act. section 8, the form of opium duties and to facilitate the recovery of their dues by farmers; lastly, to correct a clerical error in section 22 of the same Act"

1. Short title :-

This Act may be called THE OPIUM ACT, 1878. Local extent.- ¹ [It extends to the whole of India except the State of Jammu and Kashmir.]

1. Substituted for the previous clause by the Opium and Revenue Laws (Extension of Application) Act, 1950 (XXXIII of 1950), Section 2 and Schedule -(18-4-1950). By Section 2 of this Act all the rules and orders made under this Act which were in force immediately before the commencement of this Act in certain parts of India, were extended to, and would be in force in, the rest of India except the State of Jammu and Kashmir. And further by Section 4 any law corresponding to this Act in, force in any Part B State, other than Jammu and Kashmir, or in the merged territory of Cooch Behar was repealed, subject to a saving clause.

2. Repeal and amendment of enactment :-

Repealed by the Repealing and Amending Act, 1891 (XII of 1891), and the Amending Act, 1894 (IV of 1894).]

3. Interpretation-clause :-

In this Act, unless there be something repugnant in the subject or context,-

¹['opium" means-

²[(i) the capsules of the poppy (*papaver somniferum* L.), whether in their original form or cut, crushed 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 neutral materials, of any of the above forms of opium,

Section 2 of the Dangerous Drugs Act, 1930 ;]

³["Magistrate" means, in the presidency-towns, a Presidency Magistrate, ⁴and elsewhere, a Magistrate of the first class or (when specially empowered by the State Government to try cases under this Act) a Magistrate of the second class;

⁵ ["customs frontiers" means any of the customs frontiers of India as defined by the Central Government under S.3A 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.]

1. Substituted for the original definition by the Dangerous Drugs Act, 1930 (II of 1930), Section 40 and Schedule II.

2. Substituted for clause (i) by the Opium Laws (Amendment) Act, 1957 (LII of 1957), Section 2 (21-12-1957).

3. Cf. definition in sub-section (2) of Section 3 of the Code of Criminal Procedure.

4. City Magistrates in Ahmedabad have been Invested with the powers of a Pre- sidency Magistrate-See Guj. Act XIX of 19CI, Section 14 (3) (4-11-1961).

5. Substituted for the former definitions of 'import', 'export', 'transport' and 'sale', by the Opium and Revenue Law (Extension of Application) Act, 1950 (XXXIII of 1950), Section 2 (2) and Schedule (18-4-1950).

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-

¹[* * * *]

¹[(a) possess opium;

¹[(b)] transport opium;

¹[(c)] import or export opium; or

¹ [(d)] sell opium.

1. Sub-clauses (a) and (b), relating to the cultivation of the poppy and the manufacture of opium, were omitted and the subsequent sub-clauses relettered, by the Dangerous Drugs Act, 1930 (II of 1930), Section 40 and Schedule II.

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

The ¹[State Govern- ment] ²[* * *] 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:-

³[* * * * *]

³[(a) the possession of opium;

³[(b) the transport of opium;

³[(c) the importation or exportation of opium; and

³[(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 time being in force or under ⁸ [Dangerous Drugs Act, 1930].

1. Substituted for the words 'Provincial Government' by A.L.O., 1950.

2. The words 'subject to the control of the Governor-General-in-Council' were omitted by A.O., 1937 (1-4-1937).

3. Sub-clauses (a) and (b), relating to the cultivation of the poppy and the manufacture of opium, were omitted and the subsequent sub-clauses relettered, by the Dangerous Drugs Act, 1930 (II of 1930), Section 40 and Schedule II.

8. Substituted for 'section 6' by the Dangerous Drugs Act, 1930 (II of 1930), Sec- tion 40 and Schedule II.

6. Duty on opium imported by land :-

Repealed by the Dangerous Drugs Act, 1930 (II of 1930). Section 40 and Schedule II.)

7. Warehousing opium :-

¹[- The ²[State Government] may, hy notification published in the ³ [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 that

Govern- ment, or into any specified pan, thereof, and intended to be exported thence. So long as the declaration remains in force, the owner of all such opium shall be bound to deposit it in that warehouse.)

1. Substituted for the original section, by A.O., IS37 (1-4-1937).
2. Substituted for the words 'Provincial Government' by A.L.O., 1950.
3. Substituted for the words 'Gazette of India' by A.O., 1937.

8. Power to make rules relating to warehouses :-

The ¹[State Govern- ment] ²[* * *] may, from time to time, by notification in the ³ [Official Gazette [make rules consistent with this Act to regulate the safe custody of opium ware- housed 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 dis- posed of, if any duty or fees leviabale on it be not paid within twelve months from the date of warehousing the same.

1. Substituted for the words 'Provincial Government' by A.L.O., 1950.
2. The words 'subject to the control of the Governor-General-in-Council' were omitted by' A.O., 1937 (1-4-1937).
3. Substituted for the words 'Gazette of India' by A.O., 1937.

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 .-

¹[(a)] possesses opium, or

¹[(b)] transports opium, or

¹[(c)] imports or exports opium, or

¹[(d)] sells opium, or

¹[(e)] omits to warehouse opium, or removes or does any act in respect of warehoused opium, and any person who otherwise, contravenes any such rule, ⁶ [shall, on conviction before a Magistrate, 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 Magistrate 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 lie may have been sentenced.

1. Sub-clauses (a) and (b), relating to the cultivation of poppy and the manufacture of opium, were omitted and the subsequent, sub-clauses relettered, by the Dangerous Drugs Act, 1930 (II of 1930), Section 40 and Schedule II.

6. Substituted for the words "shall, on conviction before a Magistrate, be punished for each such offence with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees, or with both," by the Opium Laws (Amendment) Act, 1957 (LII of 1957), Section 3 (21-12-1957).

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,-

1[* * * *]

1[(a)] the opium in respect of which any offence under the same section has been committed,

1[(b)] where in the case of an offence under clause **4**[(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 he is transporting, importing or exporting,

1[(c)] where, in the case of an offence under clause **6** [(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 other 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.

1. Sub-clause (a), which read, '(a) the poppy so cultivated' was omitted and the subsequent sub-clauses were relettered, by the Dangerous Drugs Act, 1930 (II of 1930), Section 40 and Schedule II.

4. Substituted for '(d) or (e)', Sub-clause (a), which read, '(a) the poppy so cultivated' was omitted and the subsequent sub-clauses

were relettered, by the Dangerous Drugs Act, 1930 (II of 1930), Section 40 and Schedule II.

6. Substituted for '(f)', Substituted for '(d) or (e)', Sub-clause (a), which read, '(a) the poppy so cultivated' was omitted and the subsequent sub-clauses were relettered, by the Dangerous Drugs Act, 1930 (II of 1930), Section 40 and Schedule II.

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

When the offender is convicted, or when the person 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. When an offence against this Act has been committed but the offender is not known or cannot be found, or when opium not 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 officer authorized by the State Government in this behalf, other 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 (if any) which they produce in support of their claims.

13. Power to make rules regarding disposal of things confiscated, and re-wards :-

The ¹[State Government may, ²[* * *] from time to time, by notification in the Official Gazette, make rules³ consistent with this Act to regulate-

(a) the disposal of all things confiscated under this Act; and

(b) the rewards to be paid to officers and informers ⁴ [[* * *].

1. Substituted for 'Provincial Government' by A.L.O., 1950.

2. The words 'with the previous sanction of the Governor-General-in-Council' were omitted by the Devolution Act, 1920 (XXXVIII of 1920), Section 2 and Schedule I.

3. For rules made under this section read with Sections 5 and 8, or 5 or 8, see- (1) Kerala Opium Rules, 1960. published in Ker. Gaz., 12-4-1960, Pt. I, Sec. IV, p. 866; (2) Mysore Opium Rules, 1967, published in Mysore Gaz" 4-1-1968, Pt. IV, Section 2 (c) (i), p. II; (3) Orissa Opium Rules, 1965, published in Ori.. Gaz., 7-8-

1965, 'Extra No. 1176: (4) Tamil Nadu Opium Rules, 1969, published in Fort St. George Gazette, 25-3 1970, Pt. V, p. 237; (5) Uttar Pradesh Opium Rules, 1961, published in U. P. Gaz., 2-9-1961, Pt. I-A, page 1309; (6) West Bengal Opium Rules, 1967, published in Calcutta Gaz., 14-12-1967, Extra page 3169.

4. The words 'out of the proceeds of fines and confiscation under this Act' were omitted by A.O., 1937 (1-4-1937).

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

¹[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 ha; reason to believe, from personal knowledge or from information given by any person and taken down in writ- ing, that opium liable to confiscation under this Act is ²[* * *] kept or con- cealed 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 ob- stacle to such entry;

(c) seize such opium ³ [* * *] 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 whom he has reason to believe to be guilty of any offence relating to such opium under this or any other law for the time being in force.

1. Substituted tor the words Any officer of any of the departments of Excise, Police, Customs, Salt, Opium or Revenue superior in rank to a peon or con- stable, who may in light of his office be authorized by the State Government in this behalf, and', by the Opium Laws (Amendment) Act, 1957 (LII of 1857), Section 4(21-12-1957).

2. The word 'manufactured' was omitted by the Dangerous Drugs Act, 1880 (II of - 1930), Section 40 and Schedule II.

3. The words 'and all materials used In the manufacture thereof were omitted, The word 'manufactured' was omitted by the Dangerous Drugs Act, 1880 (II of - 1930), Section 40 and Schedule II.

15. Powpr to seize opium in open places :-

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;

Power to detain, search and arrest.

(b) 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 Code of Criminal Procedure, 1973 .

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 wrests :-

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 Commis- sioner 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 war- rant for the arrest of any person whom he has reason to believe to have com- mitted 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 issued under this section shall be executed in accordance with the provisions of Code of Criminal Procedure, 1973 .

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 15 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 convenient 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 ar- rest or seizure under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such ar- rest or seizure to his immediate official superior.

22. Procedure in caw of illegal poppy cultivation :-

Repealed by the Dangerous Drugs Act, 1930 (II of 1930), section 40 and Schedule II.]

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 ¹ [State Government] or from his surety (if any) as if it were an arrear of land revenue.

1. Substituted tor the words 'Provincial Government' by A.L.O., 1950.

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-re- venue from his licensee, in respect of a license, such farmer may make an application to the Collector of the district, Deputy Commissioner or other of- ficer authorized by the ¹[State Government] in this behalf, praying such of- ficer to recover, such amount on behalf of the applicant; and, on receiving such application, such Collector, Deputy Commissioner or other officer may in hie 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, ² [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 the amount which such 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.

1. Substituted for the words 'Provincial Government' by A.L.O., 1950,
2. Substituted for 'Deputy Collector" by the Amending Act, 18Bi (XII of 1891), Schedule II.

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 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 1

SCHEDULE

<p>.- ENACTMENTS REPEALED.- [Repealed by the \repealing and Amending Act, 1891 (XII of 1891).]</p>
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