

Uttar Pradesh Opium Smoking Act, 1934

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Uttar Pradesh Opium Smoking Act, 1934

An Act to amend the law relating to Opium Smoking in the United Provinces Whereas it is expedient to amend the law relating to opium smoking in the United Provinces with a view to make provision for the registration of persons who are opium smokers and to secure the ultimate prohibition of opium smoking in the United Provinces; And whereas the previous sanction of the Governor-General has been obtained under sub-section (3) of Section 80-A of the Government of India Act to the passing of this Act; It is hereby enacted as follows: 1. Received the assent of the Governor on 17th March, 1934, and the Governor-General on 19th April, 1934 and was published under Section 81 of the Government of India Act on May 5, 1934. See Gazette, 1934, Pt. II, pp. 30-33. [See Notification No. U. O. 718/ XVII, dated Oct. 30, 1952, in Gaz., Extra., dated Oct. 30, 1952].

CHAPTER 1 PRELIMINARY

1. Short Title, Extent And Commencement :-

- (1) This Act may be called the United Provinces Opium Smoking Act, 1934.
- (2) It extends to the whole of Uttar Pradesh.
- (3) It shall come into force on such date, as the State Government may by notification, appoint on this behalf, and on and from that date the United Provinces Opium Smoking Act, 1925, shall be repealed.

2. Definitions :-

In this Act, unless there is anything repugnant in the subject or context,--

- (1) "Opium" has the same meaning as in the Opium Act, 1878;
- (2) "Prepared opium" means any product 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;
- (3) "Place" includes a building, house, shop, booth, tent, vessel,

raft and vehicle and any part thereof;

(4) "Collector" means the chief/officer-in-charge of the revenue administration of a district, and includes a Deputy Commissioner and the Superintendent, Dehra Dun;

(5) "Magistrate" means a Magistrate of the first class or a Magistrate of the 2nd class specially empowered by the State Government to try cases under this Act;

(6) "Excise Commissioner" means the officer appointed under Section 10 (2) (a) of the United Provinces Excise Act, 1910;

(7) "Officer of the Excise Department" means the Excise Commissioner or an officer appointed under Section 10 (2) (d) of the United Provinces Excise Act, 1910, and includes an officer or person empowered under Section 10 (2) (e) of that Act;

(8) "Notification" means a notification published in the Official Gazette; and

(9) "Registered smoker" means a person registered under the provisions of this Act as smoker of prepared opium.

CHAPTER 2

PROHIBITION AND CONTROL

3. Register Of Smokers :-

(1) The State Government shall cause a register to be prepared of persons who are not under the age of twenty-five years and who in the habit of smoking prepared opium.

(2) Such register shall be prepared by such authority and in such manner as the State Government may by rules made under this Act, prescribe, and shall contain such particulars and shall be in such form as the Excise Commissioner may by notification prescribe.

(3) Such register shall be closed on a date to be fixed and notified in the Official Gazette by the State Government and subject to such executions as the State Government may by notification prescribe, no fresh entry shall be made therein after such date.

(4) All persons who are eligible for being registered under this Act as smoker of prepared opium shall, up to the date fixed for closing the entries in the register be considered as registered smoker, whether their names are actually entered in the register or not.

4. Smoking Prepared Opium By Unregistered Smoker :-

(1) No person, not being a registered smoker, shall smoke or manufacture or possess prepared opium in any quantity

whatsoever.

(2) Manufacture and possession by registered smoker.--No registered smoker shall have in his possession, or shall manufacture, at any one time prepared opium in excess of half a tola in weight or such other lesser quantity as the State Government may by rules make under this Act, prescribe:

Provided that in no case shall a registered smoker manufacture any prepared opium from opium obtained otherwise than in accordance with rules made under Section 5 of the Opium Act, 1878 and no registered smoker shall have in his possession any quantity of prepared opium so manufactured.

(3) Assistance in the manufacture of prepared opium.--No person shall assist another, whether a registered opium smoker or not, in the manufacture of prepared opium.

5. Presumption Of Smoking Prepared Opium In Certain Cases :-

If any person not being a registered smoker, is found in possession of prepared opium or any apparatus used for the smoking of, or in the manufacture of prepared opium, it shall be presumed, until the contrary is proved, that such person smokes prepared opium.

6. Sale Of Prepared Opium :-

No person shall sell, expose or offer for sale or attempt to sell, prepared opium.

7. Opium Smoking Assembly :-

An assembly of two or more persons, whether registered smokers or not, is designated an opium smoking assembly if the common object of such persons is to smoke or manufacture prepared opium. Explanation.--An assembly which was not an opium smoking assembly when it assembled may subsequently become as assembly.

8. Member Of Opium Smoking Assembly :-

Whoever being aware of facts which render an assembly an opium smoking assembly, joins that assembly or continues therein, is said to be member of that assembly.

9. Presumption Raised By Presence Of Opium And Opium

Smoking Apparatus :-

The presence of any prepared opium or of any pipes or apparatus for smoking of the prepared opium or any apparatus used in the manufacture of prepared opium in any place where two or more persons, persons whether registered smokers or not are assembled shall be held sufficient to raise a presumption that such persons have assembled at such place with the common object of smoking or of manufacturing prepared opium.

10. Power To Make Rules :-

(1) The 1[State Government] may by notification, make rule for the purpose of carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the power conferred by sub-section (1), such rules may--

(a) prescribe the authority by whom, and the manner in which the register referred to in Section 3 shall be prepared and maintained;

(b) regulate the conditions and restrictions subject to which a registered smoker may manufacture, possess or smoke prepared opium;

(c) prescribe the conditions under which and the authority by whom the name of a registered smoker may be removed from the register;

(d) regulate the disposal of things confiscated under this Act; and

(e) prescribe and regulate the payment of rewards out of fines imposed under this Act.

(3) The power conferred by this section for making rules is subject to the conditions that the rules be made after previous publication: Provided that any such rules may be made without previous publication if the 1[State Government] considers that they should be brought into force at once.

1. Substituted by the A.O. 1950 for Provl. Govt. which had been Substituted by the A.O. 1937 for L.G.

11. Liability Of A Registered Smoker To The Removal Of His Name From The Register Of Smokers :-

Any registered smoker who does not comply with the conditions and observe the restrictions prescribed by rule made under this Act, shall, in addition to the penalties hereinafter prescribed, be liable to have his name removed from the register of smokers.

12. For Smoking By Unregistered Smokers :-

Whoever, not being a registered smoker, smokes prepared opium shall be punished with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees, or with both.

13. For Unauthorised Manufacture Or Possession Of Prepared Opium :-

Whoever in contravention of Section 4, manufactures or has in his possession prepared opium or assists any other person in the manufacture of prepared opium, shall be punished with imprisonment which may extend to one year or with fine which may extend to one thousand rupees, or with both.

14. For Being Member Of An Opium Smoking Assembly :-

Whoever is a member of an opium smoking assembly shall be punished with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees, or with both.

15. For Keeping Or Having Charge Of Place Used For Smoking Prepared Opium :-

Whoever opens, keeps or uses any place or permits any place to be opened, kept or used for the purposes of an opium smoking assembly, or has the care or management of, or in any way assists in conducting the business of, any place used or kept for the purposes aforesaid, shall be punished with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees, or with both.

16. For Selling Prepared Opium :-

Whoever sells, exposes or offers for sale, or attempts to sell, prepared opium shall be punished with imprisonment which may extend to one year or with fine which may extend to one thousand rupees or with both.

17. For Abetment Of Offences :-

Whoever abets an offence punishable under this Act shall, whether such offence be or be not committed in consequence of such abetment, and notwithstanding anything contained in Section 16 of the Indian Penal Code be punished with the punishment provided for such offence.

18. Enhanced Punishment After Previous Conviction :-

Whoever, having been previously convicted of an offence under this Act, is again convicted of an offence under this Act, shall be liable for such subsequent offence to twice the punishment which might be imposed on a first conviction:

Provided that in the case of a third or subsequent conviction, the offender shall be sentenced to imprisonment with or without fine.

CHAPTER 4 PROCEDURE

19. Search Warrant And Power To Search :-

If a Magistrate upon information received and after such enquiry (if any) as he considers necessary, has reason to believe that any place is used for the commission of an offence under this Act, he may issue a warrant to an officer of the Excise Department not below such rank as the 1[State Government] may prescribe authorising him--

(a) to enter such place by day or by night with any persons whose assistance such officer may consider necessary;

(b) to search all or parts of such place in which such officer has reason to believe that any prepared opium or any apparatus for the manufacture of prepared opium or for smoking prepared opium is concealed and all or any persons when he may find in such place;

(c) to arrest any person found in such place whom he has reason to believe to be guilty of an offence under this Act; and

(d) to seize all prepared opium, apparatus for smoking prepared opium or for the manufacture of prepared opium and any other articles used for the commission of an offence under this Act, which may be found in such place.

1. Substituted by the A.O. 1950 for Prov. Govt. which had been Substituted by the A.O. 1937 for L.G.

19A. Power To Search :-

1[Whenever the Collector or any officer of the Excise Department authorised in that behalf by the State Government, or a police officer not below the rank of an officer-in-charge of a police station has reasonable grounds for believing that an offence punishable under this Act has been or is being committed in any place and anything necessary for purposes of investigation into the offence may be found in any place within the limits of his territorial jurisdiction and that such a thing cannot, in his opinion be, otherwise obtained without undue delay, he may after recording in writing the grounds of his belief cause search to be made of any such place.

1. Inserted by U.P. Act XXV of 1953.

20. Section 20 :-

(1) The provisions of the Code of Criminal Procedure, 1898, including provisions as to searches contained in Sections 102 and 103 thereof, shall in so far as not inconsistent with the provisions of this Act, apply to the execution of warrants for arrests and to search made under this Act.

(2) Where a search is made under Section 19-A copies of any record made under this section shall forthwith be sent to the nearest Magistrate empowered to take cognizance of the offence and the owner or occupier of the place of search shall on application be furnished with a copy of the same by the Magistrate:

Provided that he shall pay for the same unless the Magistrate for some special reason thinks fit to furnish is free of costs.

21. Report To Be Made In Case Of Arrest Or Seizure :-

Whenever any officer makes any arrest or seizure under this, Act, he shall within twenty-four hours next after such arrest or seizure, make a full report of all particulars thereof to his immediate official superior; and every person arrested and every article seized shall be forwarded without delay to the officer by whom the warrant was issued or to the nearest police station.

22. Bail And Security :-

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

23. Aid To Officers Of Excise Department :-

Every officer of the Police and Land Revenue Departments, every 1[Pradhan and a Secretary of a Gaon Sabha] and every village Chaukidar shall, upon notice given or request made to him be bound to give reasonable aid to any officer of the Excise

Department in carrying out the provisions of this Act.

1. Substituted by U.P. Act No. XXIII of 1961.

24. Confiscation And Destruction Of Prepared Opium And Things Seized :-

On the conviction of any person for an offence under this Act, the Court may order that any prepared opium or any instrument or apparatus in respect of, or by means of which such offence has been committed or any receptacle, package or covering in which such prepared opium, instrument or apparatus was found and any other contents of such receptacle, package or covering shall be confiscated or destroyed.

25. Cognizance Of Offences :-

No Magistrate shall take cognizance of an offence punishable under this Act except on the complaint or report of the Collector or an officer of the Excise Department not below the rank of an Excise Inspector.

CHAPTER 5

MISCELLANEOUS

26. Bar Of Certain Suits :-

No suit shall lie in any Civil Court against the 1[Government] or a Collector or 2[any officers of the Excise, Police or Land Revenue Departments, Pradhan or Secretary of a Gaon Sabha or village Chaukidar] for damages for any act in good faith done or ordered to be done in pursuance of this Act.

1. Substituted by the A.O. 1950 for "Crown" which has been Substituted by A.O. 1937 for "Secy. of State for India in Council".

27. Limitation Of Suit And Prosecution :-

No Civil Court shall try any suit against the 1[Government] or a Collector or 2[any officers of the Excise, Police or Land Revenue Department, Pradhan or Secretary of a Gaon Sabha or village Chaukidar] in respect of anything done in pursuance of this Act and except with the previous sanction of the 1[State Government] no Magistrate shall take cognizance of any charge made against any person under this Act, unless the suit or prosecution is instituted within six months after the date of the act complained of.

1 . Substituted by the A.O. 1950 for "Crown" which has been

Substituted by A.O. 1937 for "Secy. of State for India in Council".

2. Substituted by U.P. Act No. XXIII of 1961.

28. Tender Of Pardon To Accused Person Turning Approver

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(1) Whenever two or more persons are prosecuted for any offence under this Act, the Magistrate may, if for reasons to be recorded by him, he thinks fit, tender to any such person a pardon or condition of his making a full and true disclosures of all facts connected with the offence.

(2) Such person shall become a competent witness in the case and will not be liable to punishment for such offence so long as such pardon remains.

29. Saving Of Dangerous Drugs Act, 1930 :-

Nothing in this Act or in the Rules, made under this Act shall affect the validity of the Dangerous Drugs Act, 1930, or of any rules made thereunder which imposes any restriction not imposed by or under this Act, or impose a restriction greater in degree than a corresponding restriction imposed by, or under, this Act, on the consumption of, or traffic in, prepared opium within1[* * *] [India].

1. The word "British" omitted by the A.O. 1950.