

ASSAM ACT XXIII OF 1947

† THE ASSAM OPIUM PROHIBITION ACT, 1947

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An Act to prohibit consumption (except for medicinal purposes) and smuggling of opium in the Province of Assam

Preamble.—Whereas it is expedient to prohibit consumption (except for medicinal purposes) and smuggling of opium in the Province of Assam ; and whereas it is necessary to enlist non-official support to exercise an effective control over the smuggling of opium to achieve the aforesaid object ;

It is hereby enacted as follows :—

CHAPTER I

Preliminary

1. **Short title, extent and commencement.**—(1) This Act may be called the Assam Opium (Prohibition) Act, 1947.

(2) It extends to the whole of Assam.

(3) It shall come into force on such ††date as the *[State] Government may, by notification in the official Gazette, appoint.

2. **Definitions.**—In this Act, unless there is anything repugnant in the subject or context,

(a) “buy”, with all its grammatical variations, means any receipt for price paid in cash or kind, and also any receipt by gift, loan or otherwise ;

(b) “Commissioner” means the person appointed under section 30 ;

(c) “excise opium” means opium issued from a Government Treasury in the **[State] ;

(d) “export” means to take out of the **[State] otherwise than across customs frontiers ;

(e) “import” means to bring into the **[State] otherwise than across customs frontiers ;

(f) “opium” means and includes opium as defined in section 3 of the Opium Act, 1878 (Act I of 1878), and in clause (a) of section 2 of the Assam Opium Smoking Act, 1927 (Assam Act III of 1927), and also any other substance or preparation containing morphine in any proportion whatsoever ;

(g) “prescribed” means prescribed by rules framed under this Act ;

(h) “Prohibition officer” means a person appointed under section 31 ;

(i) “[State]” means the **[State] of Assam ;

(j) “section” means a section of this Act ;

(k) “sell”, with all its grammatical variations, means any transfer, including a gift or a loan or otherwise ;

†For statement of objects and reasons see *Assam Gazette*, 1947, Part V, page 22.

††First April 1948, see Notification No.MEX.167/47/174, dated 21st February 1948. Extended to Abor Hills—Notification No.EX/SFT/135/48a-Ad., dated 27th September 1949 and to Khasi States including Administered Areas by Notification No.SK/101/49/5, dated 12th October 1949.

*Substituted by A.O., 1950 for “Provincial”.

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- (l) "smuggler" means a person who brings any opium into the **[State] otherwise than across customs frontiers in contravention of the provisions of this Act, or of any other law; and
- (m) "transport" means to take from one place to another within the **[State].

CHAPTER II

Prohibition

3. **Prohibition.**—No person shall—

- (a) import, export, transport or possess opium;
- (b) sell or buy opium;
- (c) consume opium;
- (d) use or keep any material, utensil, implement or apparatus whatsoever for—
 - (i) the manufacture of any opium smoking preparation or any drink containing opium,
 - (ii) smoking opium,
 - (iii) weighing opium, or
 - (iv) preserving opium.

CHAPTER III

Exemptions

4. **Exemptions.**—(1) The provisions of this Act shall not apply to any shop or place licensed for the sale of opium for medicinal purposes, or to any person who buys opium from any place or shop as aforesaid under a prescription from a Registered Medical Practitioner, or to any hospital or dispensary, or to the import, export, transport, possession, sale or purchase of excise opium.

(2) The provisions of this Act shall not apply to any Registered Medical Practitioner who acquires, possesses, prescribes or dispenses opium in any form in due fulfilment of his medical duties.

CHAPTER IV

Offences and Penalties

5. **Punishment for contravention.**—Whoever, in contravention of the provisions of this Act or the Rules made thereunder—

- (a) imports, exports, transports or possesses opium, or
- (b) sells or buys opium, or
- (c) consumes opium, or
- (d) uses or keeps any material, utensil, implement or apparatus whatsoever for—
 - (i) the manufacture of any opium smoking preparations or any drink containing opium,
 - (ii) smoking opium, shall be punished with imprisonment of either description for a term which may extend to six years, and with fine which may extend to five thousand rupees,

**Substituted by the A.O., 1950 for "Province".

‡[(iii) weighing opium, or

(iv) preserving opium].

‡‡[Provided that an accused, who is found on evidence to be a smuggler of opium or a seller of opium, shall not receive a sentence of less than two years' rigorous imprisonment and fine.]

6. Punishment for allowing premises to be used for the commission of an offence.—Whoever, being the owner or occupier or having the use of any house, room, enclosure, space, vessel, vehicle or place, knowingly permits it to be used for the commission, by any other person, of an offence punishable under this Act or the rules made thereunder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine which may extend to two thousand rupees, or with both.

7. Enhanced punishment for certain offences after previous conviction.—Whenever any person, having been convicted of an offence under clause (a) or clause (b) of section 5, is again convicted of an offence under either of the afore-said clauses, the imprisonment with which he shall be punished shall be rigorous imprisonment for a term which may extend to ten years ‡‡[and fine].

‡‡[Provided that an accused who is found on evidence to be a smuggler of opium or a seller of opium shall not receive a sentence of less than three years' rigorous imprisonment and fine.]

8. Security for abstaining from commission of offences.—(1) Whenever any person is convicted of an offence punishable under section 5 or under section 6, and the Court convicting him is of opinion that it is necessary to require such person to execute a bond for abstaining from the commission of such offence, the Court, may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties, for abstaining from the commission of such offence during such period, not exceeding three years, as it thinks fit to fix.

(2) The bond shall be in the prescribed form, and the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), shall, in so far as they are applicable, apply to all matters connected with such bond as if it were a bond to keep the peace ordered to be executed under section 106 of that Code.

(3) If the conviction is set aside on appeal or otherwise, the bond executed shall become void.

(4) Any order under this section may also be made by an Appellate Court, or by the High Court when exercising its powers of revision.

9. Attempts.—Whoever attempts to commit an offence punishable under section 5, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence or towards the causing of its commission, shall be punished with the punishment provided for the offence.

10. Abetments.—Whoever abets an offence punishable under section 5 or section 6 shall, whether such offence be or be not committed in consequence of such abetment, be punished with the punishment provided for the offence.

‡‡[Whoever, knowing or having reason to believe that an offence has been committed under this Act, causes any evidence of the commission of that offence to disappear or gives any information respecting the offence with the intention of screening the offender from punishment under the Act, or with that intention gives any information respecting the offence which he knows or believes to be false, shall be punished with the punishment provided for the offence.]

‡Inserted by the Assam Opium Prohibition (Third Amendment) Act, 1951 (Act X of 1951).

‡‡Inserted by the Assam Opium Prohibition (Second Amendment) Act, 1949 (Act I of 1949).

CHAPTER V

Security from habitual offenders to desist from committing offences

11. Security for desisting from committing offences.—(1) Whenever a District Magistrate or a Subdivisional Magistrate of the first class specially empowered by the [State] Government in this behalf receives information that any person within the limits of his jurisdiction habitually :—

(a) commits offences under section 5 or section 6, or

(b) protects or harbours smugglers, receivers or sellers of opium, or opium eaters, such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, to desist from committing any offence mentioned in this sub-section for such period, not exceeding three years, as the Magistrate thinks fit to fix.

(2) **Order to be made.**—When a Magistrate acting under sub-section (1) deems it necessary to require any person to show cause under it, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties required.

(3) **Procedure in respect of persons present in Court.**—If the person, in respect of whom such order is made, is present in Court, it shall be read over to him or, if he so desires, the substance thereof shall be explained to him.

(4) **Procedure in respect of persons not present in Court.**—If such is not present in Court, the Magistrate shall issue a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is, to bring him before the Court ;

Provided that whenever it appears to such Magistrate, upon a report or upon other information (the substance whereof to be recorded), that there is reason to apprehend that any person against whom proceedings under this section have been initiated is likely to abscond and his presence before the Magistrate cannot be secured unless a warrant of arrest be issued against such person, the Magistrate may issue a warrant of arrest accordingly.

(5) **Processes how served.**—Every summons or warrant issued under sub-section (4) shall be accompanied by a copy of the order made under sub-section (2), and such copy shall be delivered by the officer serving or executing such summons or warrant to the person against whom the order is made.

(6) **Inquiry as to truth of information.**—(i) When an order under sub-section (2) has been read and explained to a person present in Court under sub-section (3) or where any person appears or is brought before a Magistrate in compliance with, or in execution of, a summon or warrant issued under sub-section (4), the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken and to take such evidence as may appear necessary.

(ii) Such inquiry shall be made as nearly as may be practicable according to the procedure prescribed for the trial of warrant cases in the Criminal Procedure Code, 1898, (Act V of 1898), except that no charge need be framed.

(iii) If the Magistrate considers that immediate measures are necessary for the prevention of the commission of any offence under this Act, pending the conclusion of the inquiry under clause (i), he may, for reasons to be recorded, direct the person in respect of whom the order under sub-section (2) has been made, to execute a bond with sureties to desist from committing any offence mentioned in sub-section (1) until the conclusion of the inquiry and may detain him in custody until such bond is executed, or, in default of execution, until the inquiry is concluded.

(7) **Evidence of general repute.**—For the purposes of this section, [and section 16]¹ the fact that a person is a habitual offender within the meaning of sub-section (1) may be proved by evidence of general repute or otherwise.

(8) **Joinder of inquiries.**—When two or more persons are alleged to have been associated together in the matter under inquiry, they may be dealt with in the same or separate proceedings as the Magistrate shall think just.

(9) **Order to give security.**—If upon such inquiry, the Magistrate is satisfied that it is necessary that the person, in respect of whom the inquiry is made, should execute a bond with sureties to desist from committing the offences specified, the Magistrate shall make an order accordingly ;

Provided—

Firstly, that no person shall be ordered to give surety of a nature different from or for an amount larger than or for a period longer than that specified in the order made under sub-section (2) ;

Secondly, that the amount of such bond shall be fixed with due regard to the circumstances of the case ; and

Thirdly, that when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his surety.

(10) **Discharge of person proceeded against.**—If upon such inquiry the Magistrate is not satisfied that it is necessary that the person in respect of whom the inquiry is made should execute a bond, the Magistrate shall make an entry on the record to that effect, and if such person is in custody only for the purposes of the inquiry shall release him, or, if such person is not in custody, shall discharge him.

12. **Proceedings subsequent to the order to furnish security.**—(1) If any person in respect of whom an order requiring security is made under sub-section (9) of section 11 is, at the time when such order is made, sentenced to or undergoing a sentence of imprisonment, the period for which security is required shall commence on the expiration of such sentence.

(2) In all other cases, such period shall commence on the date of such order, unless the Magistrate, for sufficient reason, fixes a later date.

13. **Contents of the bond.**—The bond to be executed by such person shall bind him to desist from committing any of the acts mentioned in sub-section (1) of section 11, and shall be in the prescribed form.

14. **Power to reject security.**—A Magistrate may refuse to accept any security offered or may reject any security previously accepted by him or by his predecessor under this Chapter on the ground that such surety is an unfit person for the purposes of the bond :

Provided that before so refusing to accept or rejecting any such surety, he shall afford the person bound down and the surety an opportunity to show cause against the proposed order, and either himself hold an inquiry into the fitness of the surety or cause such inquiry to be held and report to be made thereon by a Magistrate subordinate to him.

15. **Imprisonment in default of security.**—(1) If any person ordered to give security under sub-section (9) of section 11 does not give such security on or before the date of the commencement of the period for which such security is to be given, or if the security of any person previously accepted is rejected under the provisions of section 14, he shall be committed to prison, or, if he is already in prison, be detained in prison until the date of expiry of such period or any earlier date on which he gives security as ordered.

(2) If the security is tendered to the officer-in-charge of the Jail, he shall forthwith refer the matter to the Magistrate who made the order and shall await the orders of such Magistrate.

¹ Inserted by the Assam Opium Prohibition (Amendment) Act, 1952, S.2.

(3) Imprisonment for failure to furnish security under this Chapter shall be rigorous.

CHAPTER VI

Externment of Habitual Smugglers

16. **Externment of habitual smugglers.**—Whenever a District Magistrate or a Subdivisional Magistrate or a Magistrate of the first class specially empowered by the [State]* Government in this behalf receives information that any person within the limits of his jurisdiction is by habit a smuggler of opium [or a seller or stockist of opium]† such Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be externed from the [State]** or from any part thereof for such period as the Magistrate may deem fit.

17. **Procedure of externment.**—(1) The provisions in Chapter V of this Act shall, in so far as they are applicable, apply to all proceedings under section 16, and if upon such inquiry the Magistrate is satisfied that it is necessary to extern the person in respect of whom the inquiry is made, he shall make an order accordingly.

(2) The Magistrate making the order under sub-section (1) shall direct the person concerned to leave the Province within such time, by such route or routes and for such period as may be stated in the order.

(3) Any person against whom an order has been made under sub-section (1) may appeal to the Court of Session, whose decision shall be final.

18. **Punishment for non-compliance.**—When any person, against whom an order has been made or confirmed in appeal, as the case may be, under section 17—

- (a) fails to comply with such order within the time specified therein, or
 - (b) after complying with the said order returns to or remains in the area from which he was externed before the expiry of the period stated in the order,
- he shall be punished with rigorous imprisonment for a term which may extend to ten years, and with fine which extend to five thousand rupees.

CHAPTER VII

Procedure

19. **Power to issue warrants.**—(1) A District Magistrate or a Subdivisional Magistrate or a Magistrate of the first class, or an officer of the Excise Department not below the rank of a Superintendent specially empowered by the [State]* Government in this behalf, may issue a warrant for the arrest of any person whom he has reason to believe to have committed an offence punishable under this Act or the rules thereunder, or for the search, whether by day or by night, of any building, vessel or place in which he has reason to believe any opium, material, utensil, implement or apparatus, in respect of which an offence punishable under this Act has been committed, is kept or concealed.

(2) The officers to whom a search warrant under sub-section (1) is addressed shall have all the powers of an officer under section 20.

*Substituted by A.O., 1950 for "Provincial".

**Substituted by A.O., 1950 for "Province".

† Inserted by the Assam Opium Prohibition (Second Amendment) Act, 1949 (Act I of 1949).

20. **Power of entry, search, seizure and arrest without warrant.**—(1) Any officer of the Department of Excise not below the rank of Jamadar, any police officer not below the rank of Assistant Sub-Inspector, any officer of the Department of Revenue not below the rank of Sub-Deputy Collector, and any Prohibition officer authorised in this behalf by the [State]* Government, who has reason to believe, from personal knowledge or from information received from any person and taken down in writing and attested by the informant, that any opium, material, utensil, implement or apparatus in respect of which an offence punishable under this Act or the rules thereunder has been committed 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, material, utensil, implement or apparatus, and any other article liable to confiscation under section 29, and any document or other article which may furnish evidence of the commission of the offence ; and

(d) detain, search and arrest any person whom he has reason to believe to have committed an offence against this Act relating to such opium, material, utensil, implement or apparatus :

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, after recording the ground of his belief, enter and search such building, vessel or enclosed place at any time between sunset and sunrise.

(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 immediate official superior.

21. **Power of seizure and arrest in public places.**—Any officer of any of the Departments referred to in section 20 or any Prohibition officer may—

(a) seize, in any public place or in transit, any opium, material, utensil, implement or apparatus in respect of which he has reason to believe an offence punishable under this Act or the rules thereunder has been committed, and, along with it, any other articles liable to confiscation under section 29, and any document or other article which may furnish evidence of the commission of the offence ; and

(b) detain, search and arrest any person whom he has reason to believe to have committed an offence against this Act relating to such opium, material, utensil, implement or apparatus.

22. **Mode of executing warrants and of making searches and arrests.**—The provisions of the Code of Criminal Procedure, 1898, Act V of 1898, shall, in so far as they are applicable, apply to the execution of warrants and making of searches and arrests under this Act.

23. **Obligation to assist.**—(1) Any person shall, upon notice being given or request made, be legally bound to assist an officer acting under this Chapter in carrying out the provisions of this Act.

(2) Any person contravening the provisions of sub-section (1) shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

24. **Report of arrest and seizure.**—Any officer making an arrest or seizure under this Act shall, within 24 hours after such seizure and arrest, make a full report of all the particulars of such arrest or seizure to his immediate official superior.

*Substituted by the A.O., 1950 for "Provincial".

25. Disposal of persons arrested and articles seized.—(1) Every person arrested and article seized under a warrant issued under section 19 shall be produced within 24 hours of such arrest and seizure, exclusive of the time for actual transit, before the authority by whom the warrant was issued.

(2) Every person arrested and article seized under section 20 or 21 shall be produced within 24 hours of such arrest and seizure, exclusive of the time for actual transit, before the officer-in-charge of the nearest Police Station or the nearest officer of the Excise Department empowered under section 26.

(3) The officer to whom any person or article 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 article.

26. Power to invest Excise officers.—The [State]* Government may invest any officer of the Excise Department, not below the rank of Sub-Inspector, with the powers of an officer-in-charge of a Police Station for the investigation of offences under this Act.

27. Jurisdiction to try offences.—Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), the [State]* Government may invest any District Magistrate, Subdivisional Magistrate or Magistrate of the first class with power to try as a Magistrate all, or any specified, offences arising in his jurisdiction under section 5, [section 6,]† section 7, section 9, section 10 or section 18, and every Court of a Magistrate so empowered may pass any sentence authorised by the aforesaid sections respectively.

28. Presumptions.—(1) In trials under clauses (a) to (c) of section 5, it shall be presumed, unless and until the contrary is proved, that the accused has committed the offence with which he is charged in respect of the opium for the possession of which he fails to account satisfactorily.

(2) In trials under clause (d) of section 5, it shall be presumed, unless and until the contrary is proved, that the accused has committed the offence with which he is charged in respect of the material, utensil, implement or apparatus for the possession of which he cannot account satisfactorily.

29. Things liable to confiscation.—When, in the opinion of the Court, an offence has been committed against this Act, the opium, material, utensil, implement or apparatus in respect of, or by means of, which the offence was committed shall be confiscated (whether or not any person has been put on trial or convicted) along with all receptacles, packages, vessels, coverings, animals, carts or other vehicles used or employed to contain or carry the same, unless, for sufficient reasons to be recorded in writing, the Court directs otherwise;

Provided that any person having a lawful claim to any such commodity, article, animal, or other thing mentioned above, may file, before the Court, a claim in respect thereof within 30 days of such order of confiscation, and if the claim is made out to the satisfaction of the Court, the order of confiscation shall be cancelled and the opium or other thing shall be returned to such claimant.

CHAPTER VIII

Prohibition Authorities

30. Prohibition Commissioner.—For the purposes of this Chapter, the *[State] Government may, by notification in the official Gazette, appoint any non-official person to be the Prohibition Commissioner.

*Substituted by the A.O., 1950 for "Provincial".

†Inserted by the Assam Opium Prohibition (Amendment) Act (Act V of 1948).