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Orissa Act 16 Of 1947

*THE ORISSA OPIUM SMOKING ACT, 1947

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AN ACT TO PROVIDE FOR THE CONTROL OF THE PRACTICE OF OPIUM SMOKING AND TO SECURE THE ULTIMATE PROHIBITION OF OPIUM SMOKING

WHEREAS it is expedient to control the practice of opium smoking, to prevent the assembling of person for the purpose of such practice and to secure the ultimate prohibition of opium smoking :-

It is hereby enacted as follows:—

1. Short title and commencement.:- (1) This Act may be called the Orissa Opium Smoking Act, 1947.

(2) It extends to the whole of the Province of Orissa*.

(3) It shall come into force in the Nawapara Subdivision of the district of Sambalpur at once. In other areas of the Province the whole Act with the exception of section 8 shall come into force on such date as the Provincial 'Government may, by notification appoint in this behalf. At the expiration of one year after the said date-

(a) section 8 shall come into force,

(b) section 10 shall have effect as if the figure '8' were inserted after the figure '7',

(c) section 12 shall have effect as if the figure '8' were inserted after the figure '7', and

(d) sub-sections (1) and (2) of section 13 shall have effect as if the words "the smoking of opium is carried on in any place or that" were inserted after the words "has reason to believe that".

2. Repeal of enactments.:- From the date on which all or any of the

* *Extended to all the partially-excluded areas by notification No. 4902, dated the 1st July 1947 (Vide Orissa Gazette, dated the 4th July 1947, Part III, page 213).*

provisions of this Act come into force in any local area or areas, the enactment mentioned against such area or areas in the Schedule I0 this Act shall cease to be in force in such area or areas.

3. Definitions :- In this Act, unless there is anything repugnant in the subject or context-

- (a) "*Collector*" includes any officer whom the Provincial Government may, by notification, declare or appoint to be a Collector for the purpose of this Act;
- (b) "*Opium*" means chandu, madak and every preparation or admixture of opium which may be used for smoking and includes dross and other residues remaining when opium has been smoked;
- (c) "*place*" includes a building, house, shop, booth, tent, vessel, raft, vehicle and enclosure, and any part thereof;
- (d) "*prescribed*" means prescribed by rules made under this Act.

4. Opium smoking assembly :- An assembly of two or more persons is designated an 'opium smoking assembly' if the common object of the persons composing that assembly is to smoke opium or to prepare opium for smoking purposes.

Explanation - An assembly which was not an opium smoking assembly when it assembled may subsequently become such an assembly.

5. Member of the opium smoking assembly :- Whoever being aware of facts which render an assembly an opium smoking assembly intentionally joins that assembly, or continues therein is said to be a member of that assembly.

6. Presumption from the presence of opium and opium smoking apparatus :- If in any place where two or more persons are assembled, presence of there are found opium and any pipe or apparatus for the smoking opium and of opium or apparatus for the preparation of opium, a Court shall presume, unless and until the contrary is proved, that such persons have assembled at such place for the purpose of smoking ' opium or of preparing opium for smoking purposes.

7. Penalty for being the member of opium smoking assembly :- Whoever is as member of an opium smoking assembly shall be ¹[punishable with imprisonment which may extend to one year or with fine which may extend to one thousand rupees or with both.]

8. Penalty for smoking opium and for possessing of opium etc. :-

- (1) It shall be an offence for any person-
 - (a) to possess or smoke opium, or
 - (b) to possess any pipe or apparatus for the purpose of smoking opium or of preparing opium for smoking purposes.

1. *Substituted vide Orissa Act XI of 1951*

¹[(2) Any person who commits an offence under sub-section (1) shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees or with both ; and any person who abets such offences shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.]

9. Penalty for opening, keeping or having charge of place used for opium smoking assembly :- 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 ¹[punishable with imprisonment which may extend to one year or with fine which may extend to one thousand rupees or with both.]

10. Enhancement of punishment on second conviction. :- Whoever having been previously convicted of an offence punishable under section 7 or section 9 is again convicted of an offence under this Act shall be liable to be ¹[punished with imprisonment for a term which may extend to two years or with fine which may extend to one thousand rupees or with both.]

11. Penalty when owner fails to give notice of use of place for opium smoking assembly :- Whoever being the owner, occupier or in charge of any place and knowing or having reason to believe that such place is being or is about to be used for the purpose of an opium smoking assembly, intentionally omits, either himself or through his agent or manager, to give the earliest possible notice of such knowledge or belief to the nearest Magistrate or to the officer-in-charge of the nearest police-station or to an Excise Officer shall be punishable with fine which may extend to five hundred rupees.

¹[**12. Penalty in default of payment of fine :-** When fine imposed under section 7, 9 or 10, convicting Magistrate shall direct the offender to be imprisoned in default of payment of fine for a term which may extend to six months and such imprisonment shall be in excess of any other imprisonment to which may have been sentenced.]

13. Search warrants and power to search :- (1) If a Magistrate of the first or second class upon information received and after such enquiry if any as he considers necessary has reason to believe that any place is used for the purposes of an opium smoking assembly or of keeping opium, he may-

- (a) enter any such place by day or night with any persons whose assistance such officer may consider necessary;
- (b) search all parts of such place in which such officer has reason to believe that any opium or any apparatus for the preparation of opium or for opium smoking is concealed and all or any person he may find in such place;
- (c) arrest any person found in such place whom he has reason to believe to be guilty of an offence under this Act;

1. *Substituted vide Orissa Act XI of 1951*

- (d) seize all opium and apparatus for opium smoking or for preparation of opium which may be found in such place; or
- (e) give an authority by special warrant under his hand, when in his discretion he shall think it, to any Excise or Police Officer, not being below the rank of Sub-Inspector, authorising him to do any of the acts specified in clause (a), (b), (0), or (d) of this sub-section.

(2) Whenever any Excise or Police Officer, not being below the rank of a Sub-Inspector, has reason to believe that any place is used for the purposes of an opium smoking assembly or of keeping opium and that a search warrant cannot be obtained without affording the offenders an opportunity of escape or of concealing evidence of the offence, he may after recording the grounds of his belief do any of the acts specified in clause (a), (b), (c) or (d) of sub-section (1).

14. Application of the Code of Criminal Procedure, 1898, to warrants and searches. :- The provisions of the Code of Criminal Procedure, 1898, shall apply to the execution of warrants issued and searches made under section 13.

15. 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 thing seized shall be forwarded without delay to the officer by whom the warrant was issued or to the nearest police-station.

16. 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 own bond.

17. Aid to Excise Officer :- Every Revenue Officer, or Police Officer, every village head man and every village watchman shall be bound to give reasonable aid to any Excise Officer carrying out the provisions of this Act upon notice given and request made.

18. Confiscation or destruction of opium and things seized on conviction.:- On the conviction of any person for an offence under this Act the Court may order that any 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 opium, instrument or apparatus was found and any other contents of such receptacle, package or covering shall be confiscated or destroyed.

19. Confiscation or destruction of opium and things seized. :- Any opium or other thing liable to confiscation under the provisions of the Opium Act, 1878, or any other law for the time being in force relating to opium, or any apparatus for preparation of opium or for opium smoking seized in accordance with the provisions of this Act shall be confiscated or destroyed.

20. '[x x x]

21. 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 Excise Officer or a Police Officer not being below the rank of a Sub-Inspector.

1. Deleted vide Orissa Act 40 OF 1975

22. Bar of certain Suits. :- No suit shall lie in any Civil Court against the Crown or any servant of the Crown for any act in good faith done or ordered to be done in pursuance of this Act.

23. Limitation of suits and prosecutions :- No Civil Court shall try any suit against the Crown or any servant of the Crown in respect of anything done or alleged to have been done in pursuance of this Act and no Criminal Court shall take cognizance of any offence under this Act against any person unless the suit or prosecution, as the case may be, is instituted within six months from the date of the act complained of:

Provided that the Provincial Government may sanction the prosecution of any person for an offence under this Act even after the expiry of the said period of six months.

24. Tender of pardon to accused per on turning approver.:- ¹[(1) Whenever two or more persons are prosecuted for an offence under this Act, the provisions relating to tender of pardon contained in section 306 of the (Code of Criminal Procedure 1973) shall apply, notwithstanding anything to the contrary contained in the said Code.]

(2) Such accused person shall, on accepting the tender, be a competent witness in the case and shall not be liable to punishment so long as the pardon remains in force.

25. Power to make Rules :- (1) The Provincial Government may make rules to carry out the objects of this Act.

(2) In particular and without prejudice to the generality of the foregoing power such rules may -

- (a) regulate the disposal of things confiscated under this Act ;
- (b) prescribe and regulate the payment of rewards out of fines imposed under this Act.

SCHEDULE
(See section 2)

Area or areas where repealed	Enactments repealed	Extent of repeal
1	2	3
The subdivision of Nawapara in the district of Sambalpur.	The Central Provinces Opium Smoking Act, 1929 (C. P. Act IV of	Whole
The districts of Cuttack, Puri Balasore, Angul Khondmals and Sambaipur excluding Nawapara.	The Bihar and Orissa Opium Smoking Act, 1928 (B.&O. Act of 1928).	Whole

1. *Substituted vide Orissa Act 40 OF 1975*