



## The Opium Act, 1878

Act 1 of 1878

**Keyword(s):**

**Opium, Magistrate, Customs Frontiers, Import and Export, Transport, Sale**

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## Act I of 1878

### (The Opium Act, 1878.)

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# Act I of 1878

## (The Opium Act, 1878.)<sup>1</sup>

AMENDED	...	...	Act II of 1930. Act XXXIII of 1950. Act LII of 1957. Ben. Act V of 1933.
REPEALED IN PART	...	...	Act IV of 1894.
REPEALED IN PART AND AMENDED.	...	...	Act XII of 1891. Act XXXVIII of 1920.
ADAPTED	...	...	(a) The Government of India (Adaptation of Indian Laws) Order, 1937. (b) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948. (c) The Adaptation of Laws Order, 1950.

(9th January, 1878.)

### An Act to amend the law relating to opium.

WHEREAS it is expedient to amend the law relating to opium; It is hereby enacted as follows :—

1. This Act may be called the Opium Act, 1878.

<sup>2</sup>[It extends to the whole of India except the State of Jammu and Kashmir.]

2. [Repeal and amendment of enactments.]—Rep. partly by s. 2 and Schedule I, Part I, of the Amending Act, 1891 (XII of 1891), and partly by s. 2 and Schedule I of the Amending Act, 1894 (IV of 1894).

Preamble.

Short title and extent.

<sup>1</sup>For the Statement of Objects and Reasons, see the *Gazette of India*, 1887, Part V, page 645; for Proceedings in Council, see *ibid.*, Supplement, pages 3015 and 3030; *ibid.*, 1878, pages 53 and 80.

For the Statement of Objects and Reasons of the Opium (Bengal Amendment) Bill, 1932, see the *Calcutta Gazette* of 1932, pt. IV, pages 1-3; for Report of the Select Committee, see *ibid.*, 1932, pt. IV, pages 13-21; and for Proceedings in Council, see the Proceedings of the Bengal Legislative Council, Vol. XXXVIII, No. 1, pages 365-367; *ibid.*, Vol. XXXIX, No. 2, pages 50-62; *ibid.*, Vol. XLI, No. 2, pages 37 and 38.

It has been extended by notification in the *Gazette of India* to Bengal from 21st August, see the *Gazette of India* of 1878, Pt. I, page 526.

This Act and all Rules and Orders made under this Act extend to, and shall be in force in, the rest of India except the State of Jammu and Kashmir. See s. 2 of Act 33 of 1950.

<sup>2</sup>These words were substituted for the original words by s. 2 and Schedule of the Opium and Revenue Laws (Extension of Application) Act, 1950 (XXXIII of 1950).

## (Sections 3, 4.)

Interpretation.

3. In this Act, unless there be something repugnant in the subject or context,—

<sup>1</sup>“opium” means—

- <sup>2</sup>(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,

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;)

II of 1930.

“Magistrate” means, in the Presidency-towns, a Presidency Magistrate, and elsewhere, a Magistrate of the first class or (when specially empowered by the <sup>3</sup>[State Government] to try cases under this Act) a Magistrate of the second class;

<sup>4</sup>“customs frontiers” means any of the customs frontiers of India as defined by the Central Government under section 3A of the <sup>5</sup>Sea Customs Act, 1878 (VIII of 1878);

<sup>4</sup>“import” and “export” mean respectively to bring into, or take out of, a State otherwise than across any customs frontiers;

<sup>4</sup>“transport” means to remove from one place to another within the same State;

<sup>4</sup>“sale” does not include sale for export across customs frontiers, and “sell” shall be construed accordingly.

4. 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—

6\* \* \* \* \*

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

<sup>1</sup>This definition was substituted by s. 40 and Sch. II of the Dangerous Drugs Act, 1930 (II of 1930).

<sup>2</sup>Substituted for the former clause by s. 2 of the Opium Laws (Amendment) Act, 1957 (LII of 1957).

<sup>3</sup>The words “Provincial Government” were first substituted for the words “Local Government” by paragraph 4 (i) of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word “State” was substituted for the word “Provincial” by paragraph 4 (i) of the the Adaptation of Laws Order, 1950.

<sup>4</sup>These definitions were substituted by s. 2(2) and the Sch. to the Opium and Revenue Laws (Extension of Application) Act, 1950 (XXXIII of 1950).

<sup>5</sup>The Sea Customs Act, 1878 (VIII of 1878) has been repealed and re-enacted by the Customs Act, 1962 (LII of 1962).

<sup>6</sup>Original clauses (a) and (b) were omitted by s. 40 and Schedule II of the Dangerous Drugs Act, 1930 (II of 1930).

of 1878.]

(Sections 5—7.)

- <sup>1</sup>{(a)} possess opium ;
- <sup>1</sup>{(b)} transport opium ;
- <sup>1</sup>{(c)} import or export opium ; or
- <sup>1</sup>{(d)} sell opium.

5. The <sup>2</sup>{State Government}, <sup>3</sup>\* \* \* \* \* may, from time to time, by notification in the <sup>4</sup>{*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 :—

Power to make rules to permit such matters.

- 5\* \* \* \* \*
- <sup>6</sup>{(a)} the possession of opium ;
  - <sup>6</sup>{(b)} the transport of opium ;
  - <sup>6</sup>{(c)} the importation or exportation of opium ; and
  - <sup>7</sup>{(d)} the sale of opium and the form of taxation leviable on such sale :

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<sup>8</sup> for the time being in force or under

II of 1930. <sup>9</sup>{the Dangerous Drugs Act, 1930}.

6. [*Duty on opium imported by land.*]—*Rep. by s. 40 and Schedule II of the Dangerous Drugs Act, 1930 (II of 1930).*

<sup>10</sup>7. The <sup>2</sup>{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 that Government, or into any specified part thereof, and intended to be exported thence.

Warehousing opium.

<sup>1</sup>Original clauses (c), (d), (e) and (f) were re-lettered by s. 40 and Schedule II of the Dangerous Drugs Act, 1930 (II of 1930).

<sup>2</sup>See foot-note 3 on page 354, *ante*.

<sup>3</sup>The words "subject to the control of the Governor General in Council," were omitted by s. 3(f) of the Opium (Bengal Amendment) Act, 1933 (Ben. Act V of 1933).

<sup>4</sup>These words were substituted for the words "Local Gazette" by paragraph 4(j) of the Government of India (Adaptation of Indian Laws) Order, 1937.

<sup>5</sup>Original clauses (a) and (b) were omitted by s. 40 and Sch. II of the Dangerous Drugs Act, 1930 (II of 1930).

<sup>6</sup>Original clauses (c), (d), (e) and (f) were re-lettered, *ibid*.

<sup>7</sup>Clause (d) was substituted for former clause (d) by s. 3(2) of the Opium (Bengal Amendment) Act, 1933 (Ben. Act V of 1933).

<sup>8</sup>See the Customs Act, 1962 (LII of 1962).

<sup>9</sup>These words and figures were substituted for the word and figure "section 6" by s. 40 and Sch. II of the Dangerous Drugs Act, 1930 (II of 1930).

<sup>10</sup>Section 7 was substituted for the original section by para. 3 and the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

## (Sections 8, 9.)

So long as the declaration remains in force, the owner of all such opium shall be bound to deposit it in that warehouse.

Power to make rules relating to warehouses.

8. The <sup>1</sup>[State Government], <sup>2</sup>\* \* \* may, from time to time, by notification in the <sup>3</sup>[*Official Gazette*], make rules consistent with this Act to regulate the safe custody of opium warehoused 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.

Penalty for illegal cultivation of poppy, etc.

9. Any person who, in contravention of this Act, or of rules made and notified under section 5 or section 8,—

<sup>4</sup>\* \* \* \* \*

<sup>5</sup>[(a)] possesses opium, or

<sup>5</sup>[(b)] transports opium, or

<sup>5</sup>[(c)] imports or exports opium, or

<sup>5</sup>[(d)] sells opium, or

<sup>5</sup>[(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, (shall, on conviction before a <sup>6</sup>[Court], be punished for each such offence with imprisonment for a term which may extend to <sup>7</sup>[two years or with fine], or with both ;)<sup>8</sup>

and, where a fine is imposed, the convicting <sup>6</sup>[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.

*Explanation.*—The possession of a railway receipt or a steamer or mate's receipt relating to an undelivered parcel of opium lying in a railway or steamer office *prima facie* constitutes possession of the opium within the meaning of clause (a) of section 9, unless the accused person is able to give a satisfactory explanation for its possession.

<sup>1</sup>See foot-note 3 on page 354, *ante*.

<sup>2</sup>The words "subject to the control of the Governor General in Council," were omitted by para. 3 and the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

<sup>3</sup>See foot-note 4 on page 355, *ante*.

<sup>4</sup>Original clauses (a) and (b) were omitted by s. 40 and Sch. II of the Dangerous Drugs Act, 1930 (II of 1930).

<sup>5</sup>Original clauses (c), (d), (e), (f) and (g) were re-lettered, *ibid*.

<sup>6</sup>This word was substituted for the word "Magistrate" by s. 4(2) of the Opium (Bengal Amendment) Act, 1933 (Ben. Act V of 1933).

<sup>7</sup>These words were substituted for the words "one year, or with fine which may extend to one thousand rupees" by s. 4(1), *ibid*.

<sup>8</sup>The corresponding portion (commencing with the words "shall, on conviction" and ending with the words "or with both") of the Central Act, as amended by s. 3 of the Opium Laws (Amendment) Act, 1957 (LII of 1957), reads as follows, namely :—"shall, on conviction before a Magistrate, be punishable for each such offence with imprisonment which may extend to three years, with or without fine;"

of 1878.]

(Sections 9A—9D.)

<sup>1</sup>9A. (1) When opium is imported, exported, transported, sold or possessed by any person on account of any other person, and such other person knows or has reason to believe that such import, export, transport, sale or possession is on his account, the article shall, for the purposes of this Act, be deemed to be imported, exported, transported, sold or possessed by such other person.

Import, export, transport, sale or possession by one person on account of another.

(2) Nothing in sub-section (1) shall absolve any person who imports, exports, transports, sells or possesses opium on account of another person from liability to any punishment under this Act, for the unlawful import, export, transport, sale or possession of such article.

<sup>1</sup>9B. When any offence punishable under section 9 is committed by any person in the employ and acting on behalf of the holder of a license, permit or pass granted under this Act, such holder shall also be punishable as if he had himself committed the offence unless he establishes that all due and reasonable precautions were exercised by him to prevent the commission of such offence.

Criminal liability of licensee for acts of servant.

<sup>1</sup>9C. If the holder of any license, permit or pass granted under this Act or any person in his employ and acting on his behalf—

Penalty for certain acts by licensee or his servant.

(a) fails to produce without satisfactory explanation such license, permit or pass on the demand of any officer empowered by the <sup>2</sup>[State Government] by notification in the <sup>3</sup>[*Official Gazette*] to make such demand, or

(b) in any case not provided for by section 9, wilfully contravenes any rule made under section 5 or section 8, or

(c) wilfully and knowingly does any act in breach of any of the conditions of the license, permit or pass, for which a penalty is not prescribed elsewhere in this Act,

he shall, for every such offence, be punished with fine which may extend to five hundred rupees.

<sup>1</sup>9D. If any person without lawful authority has in his possession any quantity of opium knowing the same to have been unlawfully imported, transported, or manufactured or knowing that the prescribed duty has not been paid thereon, he shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

Penalty for possession of opium in respect of which an offence has been committed.

<sup>1</sup>Sections 9A to 9G were inserted by s. 5 of the Opium (Bengal Amendment) Act, 1933 (Ben. Act V of 1933).

<sup>2</sup>See foot-note 3 on page 354, *ante*.

<sup>3</sup>See foot-note 4 on page 355, *ante*.



## (Sections 9E—11.)

Penalty for attempting or abetting offence.

<sup>1</sup>9E. Whoever attempts to commit or abets the commission of an offence punishable under this Act, shall be punished with the punishment provided for such offence.

*Explanation.*—The word “abets” as used in this section and in section 9F has the same meaning as in section 107 of the Indian Penal Code.

Act XLV  
of 1860.

Penalty for attempting or abetting offence outside West Bengal.

<sup>1</sup>9F. Any person who in <sup>2</sup>[West Bengal] attempts or abets the commission, in any place outside <sup>2</sup>[West Bengal], of any offence punishable under this Act or under the provisions of any corresponding law in force in that place, or does any act preparatory to, or in furtherance of, any act which, if committed in <sup>2</sup>[West Bengal], would constitute an offence against this Act, shall be punished with imprisonment for a term which may extend to five years, or with fine, or with both.

*Explanation.*—The offences referred to in this section are independent of the existence, location, possession, origin, destination or other attribute of the opium to which they relate.

Enhanced punishment after previous conviction.

<sup>1</sup>9G. Whoever, having been convicted of an offence punishable under section 9, 9A, 9B, 9C, 9D, 9E, or 9F, shall be guilty of any offence punishable under any of these sections, shall be liable for each such subsequent offence to twice the punishment which might be imposed on a first conviction under this Act :

Provided that nothing in this section shall prevent any offence, which might otherwise have been tried summarily under Chapter XXII of the <sup>3</sup>Code of Criminal Procedure, 1898, from being so tried.

Act V of  
1898.

Presumption in prosecutions under section 9.

10. 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.

Confiscation of opium.

11. In any case in which an offence <sup>4</sup>[under sections 9, 9A, 9B, 9C, 9D, 9E, 9F, or 9G] has been committed,—

5\* \* \* \* \*

<sup>6</sup>[(a)] the opium in respect of which any offence <sup>7</sup>\* \*  
\* has been committed,

<sup>1</sup>See foot-note 1 on page 357, *ante*.

<sup>2</sup>Substituted for the word “Bengal” by para. 3(2) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

<sup>3</sup>See now the Code of Criminal Procedure, 1973 (2 of 1974).

<sup>4</sup>These words, figures and letters were substituted for the words and figure “under section 9” by s. 6(1) of the Opium (Bengal Amendment) Act, 1933 (Ben. Act V of 1933).

<sup>5</sup>Original clause (a) was omitted, by s. 40 and Sch. II of the Dangerous Drugs Act, 1930 (II of 1930).

<sup>6</sup>Original clauses (b), (c) and (d) were re-lettered, *ibid*.

<sup>7</sup>The words “under the same section” were omitted by s. 6(2) of the Opium (Bengal Amendment) Act, 1933 (Ben. Act V of 1933).

of 1878.]

## (Section 12.)

<sup>1</sup>[(b)] Where, in the case of an offence <sup>2</sup>[relating to the transport, import or export of opium], 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,

<sup>1</sup>[(c)] where, in the case of an offence <sup>3</sup>[relating to the sale of opium], 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 <sup>4</sup>[receptacles], packages and coverings in which any opium liable to confiscation under this section is found, and the other contents (if any) of the <sup>5</sup>[receptacle] or package in which such opium may be concealed, and the animals, <sup>6</sup>[carts, vessels, rafts] and conveyances used in carrying it, shall likewise be liable to confiscation.

12. When the offender is convicted, or when the person charged with an offence in respect of any opium is acquitted, but the <sup>7</sup>[Court] decides that the opium is liable to confiscation, such confiscation may be ordered by the <sup>7</sup>[Court].

Order of confiscation  
by whom to be made.

Whenever confiscation is authorised 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 authorised by the <sup>8</sup>[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 (if any) which they produce in support of their claims.

<sup>1</sup>See foot-notes 5 and 6 on page 358, *ante*.

<sup>2</sup>These words were substituted for the words "under clause (b) or (c) of the same section" by s. 6(3) of the Opium (Bengal Amendment) Act, 1933 (Ben. Act V of 1933).

<sup>3</sup>These words were substituted for the words "under clause (d) of the same section" by s. 6(4), *ibid*.

<sup>4</sup>This word was substituted for the word "vessels" by s. 6(5), *ibid*.

<sup>5</sup>This word was substituted for the word "vessel" by s. 6(5), *ibid*.

<sup>6</sup>These words were inserted by s. 6(5), *ibid*.

<sup>7</sup>This word was substituted for the word "Magistrate" by s. 7, *ibid*.

<sup>8</sup>See foot-note 3 on page 354, *ante*.

(Sections 13, 14.)

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

13. The <sup>1</sup>[State Government] may, <sup>2</sup>\* \* \* \* from time to time, by notification in the <sup>3</sup>[Official Gazette] make rules 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 <sup>4</sup>\* \* \* .

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

14. <sup>5</sup>[Any officer not below the rank of a sub-inspector of the Department of Excise, Police and any officer of the Customs, Salt or Revenue Departments], who may in right of his office be authorised by the <sup>1</sup>[State Government] in this behalf, and <sup>6</sup>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 <sup>7</sup>\* \* \* kept or concealed in any building, vessel or enclosed place, may, <sup>8</sup>[at any time by day or night],—

- (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 <sup>9</sup>\* \* \* \* .

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 <sup>10</sup>[and also any other thing or document which throws or is likely to throw any light on the alleged offence] ; and

<sup>1</sup>See foot-note 3 on page 354, *ante*.

<sup>2</sup>The words "with the previous sanction of the Governor General in Council" which were repealed by s. 2 and Sch. I, Part I of the Devolution Act, 1920 (XXXVIII of 1920), are omitted.

<sup>3</sup>See foot-note 4 on page 355, *ante*.

<sup>4</sup>The words "out of the proceeds of fines and confiscations under this Act" were omitted by para. 3 and the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937.

<sup>5</sup>These words were substituted for the words "Any officer of any of the Departments of Excise, Police, Customs, Salt, Opium or Revenue superior in rank to a peon or a constable" by s. 8 (1) of the Opium (Bengal Amendment) Act, 1933 (Ben. Act V of 1933).

<sup>6</sup>The corresponding portion (commencing with the words "Any officer not below" and ending with the words "in this behalf, and") of the Central Act, as amended by s. 4 of the Opium Laws (Amendment) Act, 1957 (LII of 1957), reads as follows, namely :—

"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".

<sup>7</sup>The word "manufactured" was omitted by s. 40 and Sch. II of the Dangerous Drugs Act, 1930 (II of 1930).

<sup>8</sup>These words were substituted for the words "between sunrise and sunset" by s. 8(2) of the Opium (Bengal Amendment) Act, 1933 (Ben. Act V of 1933).

<sup>9</sup>The words "and all materials used in the manufacture thereof" were omitted by s. 40 and Sch. II of the Dangerous Drugs Act, 1930 (II of 1930).

<sup>10</sup>These words were inserted by s. 8(3) of the Opium (Bengal Amendment) Act, 1933 (Ben. Act V of 1933).

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(Sections 15—18.)

(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.

15. Any officer of any of the said departments <sup>1</sup>(or any officer of the Department of Posts and Telegraphs or of any railway or steamer administration controlled by <sup>2</sup>[the Federal Railway Authority or any Government] or by a railway or steamship company, such officer being duly authorised in this behalf by the <sup>3</sup>[State Government]) may—

Power to seize opium in open places.

(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 <sup>4</sup>[and also any other thing or document which throws or is likely to throw any light on the alleged offence ; and]

(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.

Power to detain, search and arrest.

16. All searches under section 14 or section 15 shall be made in accordance with the provisions of the <sup>5</sup>Code of Criminal Procedure, 1898.

Searches how made.

17. <sup>6</sup>[The officers referred to in sections 14 and 15] shall, upon notice given or request made, be legally bound to assist each other in carrying out the provisions of this Act.

Officers to assist each other.

18. <sup>7</sup>[If any of the said officers], without reasonable ground of suspicion, enters or searches, or causes to be entered or searched, any building, vessel or place,

Vexatious entries, searches, seizures and arrests.

<sup>1</sup>These words were inserted by s. 9(2) of the Opium (Bengal Amendment) Act, 1933 (Ben. Act V of 1933).

<sup>2</sup>The words "the Federal Railway Authority or any Government" were substituted for the words "the Government" by the Opium (Bengal Amendment) Act, 1933 (Ben. Act V of 1933), as adapted by para. 3 and Sch. IV of the Government of India (Adaptation of Indian Laws) Order, 1937.

<sup>3</sup>See foot-note 3 on page 354, *ante*.

<sup>4</sup>These words were inserted by s. 9(2) of the Opium (Bengal Amendment) Act, 1933 (Ben. Act V of 1933).

<sup>5</sup>See now the Code of Criminal Procedure, 1973 (II of 1974).

<sup>6</sup>These words were substituted for the words "The officers of the several departments mentioned in section 14" by s. 10 of the Opium (Bengal Amendment) Act, 1933 (Ben. Act V of 1933).

<sup>7</sup>These words were substituted for the words "Any officer of any of the said departments who" by s. 11(1), *ibid*.

## (Sections 19—20A.)

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,

<sup>1</sup>[he] shall, for every such offence, be punished with fine not exceeding five hundred rupees.

Issue of warrants.

19. The Collector of the district, Deputy Commissioner or other officer authorised by the <sup>2</sup>[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.

Act V of 1898.

All warrants issued under this section shall be executed in accordance with the provisions of the <sup>3</sup>Code of Criminal Procedure, 1898.

Power of State Government to authorize officers to investigate offences and grant bail.

<sup>4</sup>20. (1) The <sup>2</sup>[State Government] may, by notification in the <sup>5</sup>[Official Gazette], authorised any class of officers of the Excise, Police or Customs Department to investigate offences, and to grant bail to persons arrested, under this Act.

(2) The <sup>2</sup>[State Government] may, from time to time, determine the form of the bail bond to be used.

Persons arrested how to be dealt with.

<sup>6</sup>20A. (1) When any person is arrested or any opium or other thing is seized under the provisions of this Act, the person making the arrest or seizure shall, if he is an officer of the Excise, Police or Customs Department, forthwith forward the person arrested or the thing seized to the nearest officer of his department empowered under section 20 unless he is himself so empowered.

(2) When such arrest or seizure is made by any officer referred to in section 14 or section 15 other than an officer of the Excise, Police or Customs Department, he shall forthwith forward the person arrested or the thing seized to the nearest officer of the Excise, Police or Customs Department empowered under section 20 and having jurisdiction in the case.

<sup>1</sup>This word was inserted by s. 11(2) of the Opium (Bengal Amendment) Act, 1933 (Ben. Act V of 1933).

<sup>2</sup>See foot-note 3 on page 354, *ante*.

<sup>3</sup>See foot-note 5 on page 361, *ante*.

<sup>4</sup>Sections 20 to 20 J were substituted for the original section 20 by s. 12 of the Opium (Bengal Amendment) Act, 1933 (Ben. Act V of 1933).

<sup>5</sup>See foot-note 4 on page 355, *ante*.

of 1878.]

(Section 20B.)

(3) When any person is brought in custody before an officer empowered under section 20, or when such officer has himself arrested or procured the appearance by summons under section 20D of any person, he shall make such investigation as seems to him necessary, and shall either release such person or admit him to bail to appear, or if bail is not given, produce him or cause the officer-in-charge of the nearest police-station to produce him before a Magistrate having jurisdiction in the case :

Provided that if the investigation is not completed within twenty-four hours of the arrest, the said officer may take bail with or without security from the person arrested to appear on any subsequent date before himself and shall, if such bail is not given, forthwith forward the arrested person to the nearest Magistrate with a report of the case, and a request to detain him in custody for such period not exceeding fourteen days as may be necessary to complete the investigation and to order his production before the said officer when necessary for such investigation.

(4) The Magistrate to whom an arrested person is so forwarded, whether he has or has not jurisdiction to try the case, may, by order in writing stating the reasons therefor, authorize the detention of the arrested person in default of bail in such custody as he thinks fit for a term not exceeding fourteen days in the whole.

<sup>1</sup>20B. (1) An officer empowered under section 20 may summon any person to appear before himself to give evidence, or to produce any document, necessary for the purposes of an investigation.

Power of investigating officer to summon witnesses.

(2) Such summons shall state whether the person summoned is required to give evidence or to produce a document or both, and shall specify a time and place for appearance.

(3) It shall be lawful for such officer instead of issuing a summons to proceed to the residence of any person whom by reason of sickness or other infirmity or by reason of rank or sex it may not seem proper to summon, and there require him to answer such questions as may be necessary for the purposes of the investigation.

(4) Any person examined in accordance with the provisions of sub-section (1) or sub-section (3) shall be bound to answer all questions relating to the investigations put to him by such officer other than questions the answer to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(5) The provisions of section 162 of the <sup>2</sup>Code of Criminal Procedure, 1898, shall apply to the statements made by any person under this section.

(6) No oaths shall be administered to any such person.

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<sup>1</sup>See foot-note 4 on page 362, *ante*.

<sup>2</sup>See foot-note 5 on page 361, *ante*.

## (Sections 20C—20G.)

Power of investigating officer to release accused when evidence deficient.

<sup>1</sup>20C. If upon an investigation under this Act it appears to the officer-in-charge of such investigation that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate for trial.

Power of certain officers to summon suspected persons.

<sup>1</sup>20D. When any officer of the Excise, Police or Customs Department, not below such rank as may be prescribed by the <sup>2</sup>[State Government] by notification in the <sup>3</sup>[*Official Gazette*], has reasonable grounds for believing that any person has committed an offence under this Act, he may, after recording his reasons in writing, and either with or without previous investigation, summon such person to appear before him.

Summoning witnesses, etc., how to be made.

<sup>1</sup>20E. The provisions of the <sup>4</sup>Code of Criminal Procedure, 1898, relating to summonses and compelling the appearance of persons summoned and the production of documents shall apply, as far as may be, in the case of any summons issued by an officer of the Excise, Police or Customs Department, empowered to issue a summons under this Act.

Act V  
of 1898.

Procedure in case of forfeiture of bond.

<sup>1</sup>20F. When it appears to an officer of the Excise, Police or Customs Department that a bond for appearance before himself has been forfeited, he shall forward the bond to the Magistrate having jurisdiction to try the offence of which the person bailed was accused, and the Magistrate shall deal with the matter in the manner provided by the <sup>4</sup>Code of Criminal Procedure, 1898, for the forfeiture of bonds for appearance before his own Court.

Jurisdiction of Magistrate on receipt of report from Excise Officer, etc.

<sup>1</sup>20G. When an officer of the Excise, Police or Customs Department forwards in custody any person accused of an offence under this Act to the Magistrate having jurisdiction to try the case or admits any such person to bail to appear before such Magistrate, he shall submit a report setting forth the name of the accused person and the nature of the offence with which he was charged and the names of the persons who appear to be acquainted with the circumstances of the case, and shall send to such Magistrate any article which it may be necessary to produce before him. Upon receipt of such report the Magistrate, shall inquire into such offence and try the person accused thereof in like manner as if such report is a report in writing made by a police officer under clause (b) of sub-section (J) of section 190 of the <sup>4</sup>Code of Criminal Procedure, 1898.

<sup>1</sup>See foot-note 4 on page 362, *ante*.

<sup>2</sup>See foot-note 3 on page 354, *ante*.

<sup>3</sup>See foot-note 4 on page 355, *ante*.

<sup>4</sup>See foot-note 5 on page 361, *ante*.

of 1878.]

(Sections 20H—23.)

Act V  
of 1898.

<sup>1</sup>20H. An officer of the Excise, Police or Customs Department acting under the provisions of section 20G shall have all the powers conferred by the <sup>2</sup>Code of Criminal Procedure, 1898, on an officer in charge of a police-station for the purpose of causing the appearance before the Magistrate of persons acquainted with the circumstances of the case.

Attendance of witnesses before Magistrate.

<sup>1</sup>20L. All officers in charge of police-stations shall take charge of and keep in safe custody, pending the orders of a Magistrate or an investigating officer of the Excise, Police or Customs Department, all articles seized under this Act which may be delivered to them, and shall allow any investigating officer who may accompany such articles to the police-station or who may be deputed for the purpose by his superior officer, to affix his seal to such articles and to take samples of and from them. All samples so taken shall also be sealed with the seal of the officer-in-charge of the police-station and with the seal of the accused or his agent if he is available. All such packets of samples shall be signed by the accused or his agent if he is available.

Police to take charge of articles seized.

<sup>1</sup>20J. (1) Every Excise, Police or Customs officer making an investigation under this Act shall, day by day, enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him and a statement of the circumstances ascertained from day to day until the investigation is closed.

Diary of proceedings in investigation.

(2) The provisions of sub-section (2) of section 172 of the <sup>2</sup>Code of Criminal Procedure, 1898, shall apply in the case of every such diary.

21. Whenever any officer makes any arrest or seizure under this Act, he shall, within <sup>3</sup>[twenty-four hours] next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior.

Report of arrests and seizures.

22. [*Procedure in cases of illegal poppy cultivation.*—*Rep. by s. 40 and Schedule II of the Dangerous Drugs Act, 1930 (II of 1930).*]

23. Any arrear of any fee or duty imposed under this Act or any rule made hereunder,

Recovery of arrears of fees, duties, etc.

and any arrear due from any farmer of opium-revenue <sup>4</sup>[or any person licensed in this behalf under this Act],

<sup>1</sup>See foot-note 4 on page 362, *ante*.

<sup>2</sup>See foot-note 5 on page 361, *ante*.

<sup>3</sup>These words were substituted for the words "forty-eight hours" by s. 13 of the Opium (Bengal Amendment) Act, 1933 (Ben. Act V of 1933).

<sup>4</sup>These words were inserted by s. 14, *ibid*.



[Act I of 1878.]

(Sections 24, 25 and Schedule.)

may be recovered from the person primarily liable to pay the same to the <sup>1</sup>[State Government] or from his surety (if any) as if it were an arrear of land-revenue.

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

24. When any amount is due to a farmer of opium-revenue from his licensee, in respect of a license, such farmer may make an application to the Collector of the district, Deputy Commissioner or other officer authorized by the <sup>1</sup>[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, <sup>2</sup>[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 further 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.

Recovery of penalties due under bond.

25. 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.

Act IX of 1872.

## SCHEDULE.

[ENACTMENTS REPEALED.]

*Repealed by s. 2 and Schedule I, Part I of the Amending Act, 1891 (XII of 1891).*

<sup>1</sup>The words "Provincial Government" were first substituted for the word "Government" by para. 3 and the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937, and thereafter the word "State" was substituted for the word "Provincial" by paragraph 4(I) of the Adaptation of Laws Order, 1950.

<sup>2</sup>These words were substituted for the words "Deputy Collector" by s. 2 and Schedule II, Part I, of the Amending Act, 1891 (XII of 1891).