



The Opium (Madhya Pradesh Amendment) Act, 1955

Act 15 of 1955

Keyword(s):

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THE OPIUM (MADHYA PRADESH AMENDMENT)
ACT, 1955

(No. 15 of 1955)

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THE OPIUM (MADHYA PRADESH [AMENDMENT])
ACT, 1955

(No. 15 of 1955)

(Having been reserved by the Rajpramukh under Article 254 (2) of the Constitution of India, for the consideration of the President, received his assent on 5th June, 1955.)

An Act to amend the Opium Act, 1878 (No. 1 of 1878) hereinafter referred to as the Principal Act in its application to the State of [Madhya Pradesh].¹

Be it enacted in the sixth year of the Republic of India as follows:—

Title, extent and commencement.

1. (1) This Act may be called the Opium ([Madhya Pradesh]¹ Amendment) Act, 1955.

(2) It extends to the whole of [Madhya Pradesh].¹

(3) It shall come in to force immediately on its publication in the Gazette.

Amendment of section 5.

2. In section 5 of the Principal Act in clause (a) after the word "possession" insert "or use",.

Amendment of section 9.

3. (1) In section 9 of the Principal Act in clause (a) after the word "possess" the words "or use" shall be inserted.

(2) In section 9 of the Principal Act for the words "one year or with fine which may extend to one thousand rupees or with both", the words "two years or with fine which may extend to two thousand rupees or with both" provided that, in the absence of special reasons to the contrary mentioned in the judgment of the Court, such imprisonment shall not be less than three months and fine shall not be less than Rs. 500 shall be substituted.

(3) To section 9 of the Principal Act, the following Explanation shall be added, namely :—

"Explanation.—The possession of a railway receipt or a postal receipt relating to an undelivered parcel of opium lying in a railway or post 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 of its possession".

Insertion of new sections 9-A, 9-B, 9-C 9-D, 9-E, 9-F, 9-G, 9-H, 9-I and 9-J.

4. After section 9 of the Principal Act, the following new sections 9—A, 9—B, 9—C, 9—D, 9—E, 9—F, 9—G, 9—H, 9—I, and 9—J shall be added.

1. Subs. by M.P. Act 23 of 1958, S. 3 (4). for "Madhya Bharat".

SECTIONS 9—A to 9—j

“9—A. (1) When opium is imported, exported, transported, sold or possessed by any person on account of 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 opium 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 opium.

9—B. When any offence punishable under section 9 is committed by any person in the employ and acting on behalf of the holder of a licence, 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 dues and reasonable precautions were exercised by him to prevent the commission of such offence.

Criminal liability of licensee for acts of servants.

9—C. If the holder of any licence, 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 licence, permit or pass on the demand of any officer empowered by the State Government by notification in the 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 licence, 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.

9—D. 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 there he shall be furnished with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees or with both.

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

Penalty for allowing premises to be used for commission of offence.

9—E. 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 section 9 on conviction be punishable with imprisonment for a term which may extend to two years or with fine which may extend to two thousand rupees or with both.

Penalty for attempting or abetting offence.

9—F. (1) Whoever attempts to commit an offence punishable under this Act, or to cause such an offence to be committed and in such attempt does any act towards the commission of the offence, shall on conviction, be punishable with punishment provided for the offence.

(2) 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 116 of the Indian Penal Code, on conviction, be punishable with the imprisonment provided for the offence.

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

Penalty attempting or abetting offence outside [Madhya Pradesh]¹

9—G. Any person who in [Madhya Pradesh]¹ attempts or abets the commission in any place outside [Madhya Pradesh] of any offence punishable under this Act or under the provision of any corresponding law in force in that place, or does any act preparatory to, or in furtherance by any act which, if committed in Madhya Pradesh¹, would constitute an offence under this Act, shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees or with both.

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

Enhanced punishment after previous conviction.

9—H. Whoever, having been convicted of an offence punishable under sections 9, 9—A, 9—B, 9—C, 9—D, 9—E, 9—F and 9—G, [is again convicted]² of any offence punishable under any of those sections, shall be liable for each 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 Code of Criminal Procedure, 1898³ from being so tried.

1. Subs. by M.P. A.O. 1956, for “Madhya Bharat”.

2. Subs. by M.P. Act 23 of 1958, S. 3 (3), Sch Part B, item 4, for “shall be guilty”.

3. See now Chapter XXI of the Code of Criminal Procedure, 1973 (2 of 1974)

9—I. Notwithstanding any thing contained in section 32 of the Code of Criminal Procedure, 1898¹ it shall be lawful for any Magistrate of the first class to pass a sentence of fine exceeding one thousand rupees on any person convicted of contravening the provisions of section 9 to 9—G.

Special provision regarding fine

9-J. (1) Whenever any person is convicted of any offence punishable under section 9 to 9 G and the Magistrate convicting him is of opinion that it is necessary to require such person to execute a bond for abstaining from the commission of offence punishable under those section, the Magistrate 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 offences during such period not exceeding three years. The Magistrate shall, in his order, also specify the term of imprisonment the accused shall serve in the event of his failure to execute bond, such term not exceeding one year in any case.

Security for abstaining from commission of certain offences.

(2) The bond shall be in the form contained in the Schedule hereto annexed, and the provisions of the Code of Criminal Procedure, 1898¹ shall, in so far as may be, 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 the said Code.

(3) If the conviction be set aside on appeal or in revision the bond so executed shall become void.

(4) An order under this section may also be made by an appellate court or by the High Court when exercising its powers of revision."

5. For section 11 of the Principal Act, the following section 11 shall be substituted, namely :—

Amendment of section 11.

11. In any case in which an offence under section 9, 9-A, 9-B, 9-C, 9-E, 9-F and 9-G, has been committed, the property detailed herein below shall be confiscated :—

Confiscation of opium.

- (a) the opium in respect of which any offence has been committed;
- (b) Where, in the case of an offence 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 he is transporting, importing or exporting;
- (c) where, in the case of an offence 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;

1. See now the Code of Criminal Procedure, 1973 (2 of 1974).

- (d) the receptacles, packages, and coverings in which any opium liable to confiscation under this section is found, and the other contents (if any) of the receptacle or package in which such opium may be concealed, and the animals, carts, vassels, rafts and conveyances used in carrying it."

Amendment of section 12.

6. In section 12 of the principal Act the first and the second paragraphs shall be deleted.

Insertion of new section 13-A,

7. After section 13 of the principal Act the following new section 13-A shall be inserted, namely :—

Power to obtain information,

"13-A. (1) The State Government, or any officer specially empowered by it in this behalf, may by order require any person to furnish to any specified authority or person any such information in his possession concerning any opium as may be specified in the order.

(2) If any person fails to furnish any information in compliance with the order made under sub-section (1) or furnishes false information, he shall on conviction be punishable with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees".

Amendment of section 14.

8. In section 14 of the Principal Act,—

(1) For the words "any officer of any of the Department of Excise, Police, Customs, Salt, Opium or Revenue superior in rank to a peon or a constable", the following shall be substituted, namely:—

"any officer not below the rank of a Sub-Inspector of the Department of Excise, Customs, Police, or Opium and any officer, not below the rank of a Naib Tahsildar, of the Revenue Department".

(2) For the words "between sunrise and sunset" the words "at any time by day or night" shall be substituted; and

(3) In clause (c) after the words "relating to opium" the following shall be inserted, namely:—

"and also any other thing or document which throws or is likely to throw any light on the alleged offence;"

Amendment of section 15.

9. To clause (a) of section 15 of the Principal Act, the following shall be added, namely.—

"and also any other thing or document which throws or is likely to throw any light on the alleged offence. and".

Amendment of section 17.

10. In section 17 of the Principal Act, for the words "the officers of the several departments mentioned in section 14" the words "officers referred to in sections 14 and 15" shall be substituted.

11. For section 20 of the Principal Act, the following sections shall be substituted, namely.—

“20. Every officer of the Department of Excise not below the rank of a Sub-Inspector or any other officer of the Customs, Police or Revenue Department specially empowered in this behalf by the State Government under a notification in the Official Gazette shall investigate offences and grant bail to the persons arrested under this Act.

Amendment of section 20.
Powers of certain officers of Excise Department, with regard to offences.,

20-A. (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 Customs, Police or Revenue Department, forthwith forward the person arrested or the thing seized to the nearest officer of the Excise Department empowered under section 20, unless he is himself so empowered.

(2) When any person is brought in custody before an officer empowered under section 20, or when such officer had him arrested or procured the appearance by summons under section 20-D of any person, he shall make such investigation as seem 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 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 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.

(3) 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 reason therefor, authorise 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.

20-B. (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 summon to proceed to the residence of any person whom by reason of sickness or other infirmity or by reason of rank of sex

it may not seem proper to summon, and may require him to answer such question as may be necessary for the purpose of the investigation.

(4) Any person examined in accordance with the provision 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 criminal charge or to a penalty or forfeiture.

(5) The provision of section 162 of the 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.

Power of investigating officer to release accused when evidence deficient.

20-C. If upon an investigation under this Act it appears to the officer in charge of such investigation that there is no 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 having jurisdiction.

Power of certain officer to summon suspected persons.

20-D. When any officer of the Excise Department empowered under section 20 to investigate offences has reasonable grounds for believing that any person has committed an offence under this Act, he may after recording his reason in writing and either with or without previous investigation, summon such person to appear before him.

Summoning of witnesses, etc., how to be made.

20-E. The provisions of the Code of Criminal Procedure, 1898¹ relating to summons 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 empowered to issue a summons under this Act.

Procedure in case of forfeiture of bond.

20-F. When it appears to an officer empowered under section 20 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 together with a report in writing giving the reasons for his belief and the relevant document and the Magistrate shall deal with the matter in the manner provided by the Code of Criminal Procedure, 1898,¹ for the forfeiture of bonds for appearance before his own court.

Jurisdiction on Magistrate on receipt of report from Excise Officer.

20-G. When an officer empowered under section 20 to investigate offences or grant bail 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

1. See now the Code of Criminal Procedure, 1973; (2 of 1974).

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 there of in like manner as if such report is a report in writing made by a police officer under clause (b) of sub-section (1) of section 190 of the Code of Criminal Procedure, 1898¹.

20-H. An officer acting under the provisions of section 20-G shall have all the powers conferred by the Code of Criminal Procedure, 1898¹ 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.

20-I. All officers-in-charge of Police Station shall take charge of and keep in safe custody, pending the order of Magistrate or an investigating officer, 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 sample shall be signed by the accused or his agent, if he is available."

Police to take charge of
articles seized.

1. See now the Code of Criminal Procedure, 1973 (2 of 1974).

SCHEDULE

Bond to abstain from the commission of offences under the
Opium Act, 1878

[See section 9-J (2)]

Whereas I (name)
inhabitant of (place)
have been called upon to enter in to a bond to abstain from the
commission of offences under sections 9 to 9-G of the Opium
Act, 1878 for a term of
I hereby bind myself not to commit any such offence during
the said term, and, in case of my making default therein I hereby
bind myself to forfeit to [Governor of Madhya Pradesh] the
sum of Rs.

Date this day of 19

Signature

(Where a bond with sureties is to be executed, add)

We do hereby declare ourselves sureties for the above
named that he shall abstain from the
commission of offences under sections 9 to 9-G of the Opium
Act, 1978, during the said term and in case of his making default
there in we bind ourselves jointly and severally, to forfeit to
[Governor of Madhya Pradesh]¹ the sum of Rs.

Date this day of 19

Signature

1. Subs. by M.P. Act 23 of 1958, S. 3 (3), Sch, Part B, item 4, for "Rajpramukh
of Madhya Bharat".