

SIND ACT No. XX OF 1940¹.

[THE SIND OPIUM SMOKING ACT, 1940.]

[23rd January, 1941]

An Act to provide for the prohibition of opium smoking.

WHEREAS it is expedient to prohibit the smoking of opium;
It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Sind Opium Smoking Act, 1940. Short title,
extent and
commence-
ment.

(2) It extends to the whole of the Province of Sind.

(3) It shall come into force on such date² as the Provincial Government may, by notification in the *Official Gazette*, appoint.

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

(a) "opium" has the same meaning as is assigned to it in the Opium Act, 1878, and includes prepared opium as also *chandni*, *madat*, *buffa*, opium dross or scrappings from the opium pipe and every other preparation or admixture of opium which may be used for smoking;

(b) "prepared opium" means any product of opium obtained by any series of operations designed to transform opium into an extract suitable for smoking and the dross or other residue remaining after opium is smoked;

(c) "place" includes a building, house, enclosure, shop, booth, tent, vessel, raft and vehicle, and any part thereof;

¹ For Statement of Objects and Reasons, see S. G. G., 1940, Pt. IV, p. 509; and for proceedings in Assembly, see S. L. A. Debates, 1941, Vol. XII—Book No. 2, pp. 48—55.

² Came into force w. e. f. 1st February, 1942. vide G. N., K. D., No. 201-B., dated the 27th December, 1941, see S. G. G., 1942, Pt. I, p. 3.

(d) "Collector" means the Chief Officer in charge of the revenue administration of a district, and includes any officer whom the Provincial Government may, by notification, declare or appoint to be a Collector for the purposes of this Act ;

¹(e) * * * * *

(f) "duly empowered" means duly empowered by the Provincial Government by a general or special order ;

(g) "instrument of smoking" means any pipe or apparatus used for the purpose of smoking or preparing opium for smoking purposes.

CHAPTER II.

OFFENCES AND PENALTIES.

Penalty for smoking opium or possessing an instrument of smoking.

3. ²* Except as hereinafter provided any person smoking opium or possessing an instrument of smoking shall be punished with fine which may extend to fifty rupees or imprisonment of either description for a term which may extend to one month, or with both.

3* * * * *

Penalty for smoking opium in company.

4. If two or more persons smoke opium in company, each of them shall be punished with imprisonment of either description for a term which may extend to one month or with fine which may extend to fifty rupees or with both.

Explanation.—A man and his wife smoking opium together shall not be deemed to be smoking in company within the meaning of this section.

Opium-smoking assembly.

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

¹ Cl. (a) rep. by the Sind Laws (Adaptation, Revision, Repeal and Declaration) Ordinance, 1955 (Sind 5 of 1955), s. 6, Sch. II.

² The brackets and figure (1) omitted by Sind 17 of 1950, s. 2 (a).

³ Sub-section (2) omitted *ibid*, s. 2 (b).

Explanation 2.—A man and his wife shall not be deemed to be an opium-smoking assembly within the meaning of this section, even if their common object be to smoke opium or to prepare opium for smoking purposes.

6. Whoever being aware of facts which render an assembly an opium-smoking assembly intentionally joins that assembly for the purpose of smoking opium, or of preparing opium for smoking or continues therein for that purpose shall be deemed to be a member of that assembly. Member of opium-smoking assembly.

7. The presence of any opium and of any instrument of smoking in any place where two or more persons are assembled shall be held sufficient to raise a presumption that such persons have assembled at such place for the purpose of smoking opium or of preparing opium for smoking purposes. Presumption raised by presence of opium and opium-smoking apparatus.

8. Whoever is a member of an opium-smoking assembly shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both. Penalty for being member of opium-smoking assembly.

9. Whoever opens, keeps or uses any place or permits any place to be opened, kept or used for the purposes of an opium-smoking assembly, or has the care or management of, or in any way assists in conducting the business of, any place used or kept for the purposes aforesaid shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. Penalty for opening, keeping or having charge of place used for such assembly.

10. Whoever having been previously convicted of an offence under section 3, or section 8 or section 9 is again convicted of an offence under any of these sections, shall be liable to twice the punishment which might be imposed on a first conviction. Enhancement of punishment on second conviction.

11. (1) Whenever any person is convicted of an offence punishable under this Chapter, 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 offences punishable under this Chapter, 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 offences during such period, not exceeding three years, as it thinks fit to fix. Security for abstaining from offences.

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(2) The bond shall be in the form contained in the Schedule annexed to this Act and the provisions of the Code of Criminal Procedure, 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. ^{v of 1898.}

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

(4) An order under this section may also be made by an Appellate Court or by the Chief Court of Sind when exercising its power of revision.

CHAPTER III.

PROCEDURE.

Power to
issue war-
rants.

12. The ¹[Revenue Commissioner], Collector or any officer of the Excise Department duly empowered or a Magistrate authorised under section 26 to take cognizance of offences under this Act may issue a warrant for the arrest of any person whom he has reason to believe, to have committed an offence under this Act, or for the search, whether by day or by night, of any place in which he has reason to believe that an offence under this Act has been, or is being or is likely to be committed, or in which opium or an instrument of smoking is kept or concealed.

Power of
entry, search
and arrest
by certain
officers.

13. The ¹[Revenue Commissioner], Collector or any officer duly empowered, who has reason to believe that an offence under Chapter II has been, or is being or is likely to be, committed in any place, may—

(a) enter such place by day or by night with any person whose assistance he may consider necessary;

(b) search any such place in which he has reason to believe that any opium or instrument of smoking is kept or concealed;

(c) detain and search, and, if he thinks proper, arrest any person found in such place or whom he has reason to believe to have committed an offence punishable under Chapter II; and

(d) seize all opium and instruments of smoking which may be found in such place or on or about such person.

¹ Subs. by the Sind Laws (Adaptation, Revision, Repeal and Declaration) Ordinance, 1955 (Sind 5 of 1955), s. 13, for "Commissioner".

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1898.

14. (1) The provisions of the Code of Criminal Procedure, 1898, shall apply, so far as they are not inconsistent with the provisions of this Act, to all warrants issued and arrests and searches made under this Act. Mode of making searches and arrests.

(2) All such warrants shall be executed by a police officer, or an officer of the Excise Department duly empowered in this behalf or if the officer issuing the warrant deems fit by any other person.

15. The [Revenue Commissioner], Collector or any officer duly empowered may arrest without an order from a Magistrate and without warrant any person who obstructs him in the execution of his duty under this Act, or who has escaped or attempts to escape from custody in which he has been or is lawfully detained under this Act. Arrest of persons obstructing officers in execution of duties under the Act.

16. (1) Every person arrested and articles seized under a warrant issued under section 12 shall be forwarded without delay to the authority by whom the warrant was issued and every person arrested and article seized under section 13 or section 15 shall be forwarded without delay to— Disposal of persons arrested and of articles seized.

(a) the nearest officer of the Excise Department empowered under section 18, or

(b) the officer in charge of the nearest police station within the meaning of the Code of Criminal Procedure, 1898.

V of
1898.

(2) The authority or 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.

17. (1) When any person who, in the presence of any officer of such rank as the Provincial Government may, by general or special order, specify in this behalf, has committed or has been accused of committing an offence under this Act, refuses on demand of such officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false he may be arrested by such officer in order that his name and residence may be ascertained. Refusal to give name and residence.

(2) When the correct name and residence of such person have been ascertained, he shall be released on his executing a bond, with or without sureties, to appear before a Magistrate if so required :

1 Subs. by the Sind Laws (Adaptation, Revision, Repeal and Declaration) Ordinance, 1955 (Sind 5 of 1955), s. 13, for "Commissioner".

Provided that if such person is not resident in ¹[Pakistan] the bond shall be secured by a surety or sureties residing in ¹[Pakistan].

(3) Should the correct name and residence of such person not be ascertained within 24 hours from the time of arrest, and should he fail to execute the bond, or, if he is so required, to furnish sufficient sureties, he shall be forthwith forwarded to the nearest Magistrate having jurisdiction.

Certain officers empowered to investigate offences under the Act.

18. (1) The ²[Revenue Commissioner], Collector and any officer of the Excise Department duly empowered in this behalf shall, within the area for which he is appointed, have power to investigate all offences punishable under this Act.

(2) Every such officer shall in the conduct of such investigation exercise the powers conferred by the Code of Criminal Procedure, 1898, upon an officer in charge of a police station for the investigation of a cognisable offence :

V of 1898.

Provided that—

(a) if such officer is of opinion that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of an accused to a Magistrate or that the person arrested may be discharged with a warning, such officer shall release him on his executing a bond, with or without sureties, to appear if and when so required, before a Magistrate and shall make a full report of the case to his superior officer, if any, and be guided by the order which he shall receive on such report;

(b) the powers of such officer other than the ²[Revenue Commissioner] or Collector shall be subject to such further modifications or restrictions as the Provincial Government may determine.

Bail and security.

19. 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.

¹ Subs. by the Sind Laws (Adaptation, Revision, Repeal and Declaration) Ordinance, 1955 (Sind 5 of 1955), s. 3 (ii) (b) (w. e. f. 30th May, 1951), for "British India".

² Subs. *ibid.* s. 13, for "Commissioner".

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20. All village officers * * * * and all officers of the Police, Forest and Revenue Departments shall be bound— Aid to excise officers.

(a) to give immediate information to an Excise Officer of the commission of any offence, and of the intention or preparation to commit any offence under this Act which may come to their knowledge;

(b) to take all reasonable measures in their power to prevent the commission of any such offence which they may know or have reason to believe is about to be committed;

(c) to assist any Excise Officer in carrying out the provisions of the Act.

21. Every owner or occupier of a place and the agent of any such owner or occupier in which there shall be any preparation or admixture of opium which may be used for smoking shall in the absence of reasonable excuse be bound to give notice of the same to a Magistrate or to an officer of the Departments referred to in the foregoing section immediately the same shall have come to his knowledge. Duty of owners and occupiers of land to report offences.

22. Any officer or person mentioned in sections 20 and 21 who without lawful excuse neglects or refuses to give information or to take preventive measures or to give assistance or to give notice to any of the officers mentioned in section 20 or section 21 in the manner required by those sections shall, on conviction, be punished with fine which may extend to Rs. 500. Penalty for neglecting to assist officers acting under the Act.

23. Any officer empowered under this Act who—

(a) without reasonable ground of suspicion, enters or searches, or causes to be searched any place, or

(b) vexatiously and unnecessarily seizes the property of any person on the pretext of seizing or searching for anything liable to confiscation under this Act, or

(c) vexatiously and unnecessarily detains, searches or arrests any person

Penalty for vexatious search or arrest.

shall, on conviction, be punishable with imprisonment of either description for a term which may extend to one month ²[or] with fine which may extend to rupees five hundred or with both.

¹ The words "all village servants" rep. by the Sind Laws (Adaptation, Revision, Repeal and Declaration) Ordinance, 1955 (Sind 5 of 1955), s. 6, Sch. II.

² Ins. *ibid*, s. 7, Sch. III.

Things
liable to con-
fiscation.

24. Whenever any offence under this Act has been committed, all opium and instruments of smoking found in the place or with the persons forming an opium-smoking assembly, together with the receptacles, packages or coverings, shall be liable to confiscation.

Procedure in
making con-
fiscation.

25. (1) In the trial of offences under this Act, whether the accused is convicted or acquitted, the court shall decide whether any article seized under this Act is liable to confiscation under the preceding section, and if it decides that the article is so liable, it may order its confiscation accordingly.

(2) When any article seized under this Act appears liable to confiscation under the preceding section but the person who committed the offence in connection therewith is not known or cannot be found, the Collector or other officer duly empowered in this behalf may inquire into and decide such liability and may order confiscation accordingly :

Provided that no order of confiscation of an article shall be made until the expiry of one month from the date of seizure or without hearing any person who may claim any right thereto and the evidence, if any, which he produces in support of his claim :

Provided further that if any such article, other than opium is liable to speedy and natural decay, or if the Collector or other officer is of opinion that its sale would be for the benefit of its owner, he may at any time direct it to be sold, and the provisions of this sub-section shall, as nearly as may be practicable, apply to the net proceeds of the sale.

(3) Any person not convicted who claims any right to property which has been confiscated under this section may appeal to the Court of Session against the order of confiscation.

Cognizance
of offences.

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

CHAPTER IV.

MISCELLANEOUS.

Bar of cer-
tain suits.

27. No suit shall lie in any civil court against the Province of Sind or any Collector or officer of the Excise or Police Department for damages for anything in good faith done or ordered to be done in pursuance of this Act or the rules made thereunder.

28. No suit shall be instituted against the Province of Sind and no prosecution or suit shall lie against any officer in respect of anything done or alleged to have been done in pursuance of this Act, unless such suit or prosecution has been instituted within six months of the date of the act complained of :

Limitations
to suits and
prosecutions.

Provided that nothing herein contained shall apply to any prosecution instituted by or under the order of the Provincial Government or to any complaint made under section 476 or section 476A or section 476B of the Code of Criminal Procedure, 1898.

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1898.

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

Tender of
pardon to
accused per-
son turned
approver.

(b) 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.

30. The powers conferred on the '[Revenue Commissioner] or Collector under this Act may, subject to the general or special orders of the Provincial Government, be delegated by the '[Revenue Commissioner] or Collector, in whole or in part, to any subordinate officer.

Delegation
of powers.

31. (1) The Provincial Government may make rules² to carry out the objects of this Act.

Powers to
make rules.

(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
3* * * * *

(c) provide for any other matter for which there is no provision or there is insufficient provision in this Act and for which provision is, in the opinion of the Provincial Government, necessary for giving effect to the provisions of this Act.

(3) All rules made under this section shall be subject to the conditions of being made after previous publication.

¹ Subs. by the Sind Laws (Adaptation, Revision, Repeal and Declaration) Ordinance, 1955 (Sind 5 of 1955), s. 13, for "Commissioner".

² For Rules under Cl. (a) of sub-section (2), see S. L. R. and O.

³ The words "out of fines imposed under this Act" deleted by Sind 7 of 1943, s. 2.

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(4) Rules made under this section shall be laid upon the table of the Sind Legislative Assembly at the session of the said Assembly next following and shall be liable to be modified or rescinded by a resolution of the said Assembly and the modification or rescission so made shall, after publication by notification in the *Official Gazette*, be deemed to have come into force.

Certain officers to be public servants.

32. All officers empowered under this Act shall be deemed to be public servants within the meaning of section 21 of the ¹[Pak- XLV 1860
istan] Penal Code.

SCHEDULE.

BOND TO ABSTAIN FROM THE COMMISSION ON OFFENCES UNDER THE SIND OPIUM SMOKING ACT, 1940.

(Section II.)

Whereas I (name) in-
habitant of (place) have
been called upon to enter into a bond to abstain from the com-
mission of offences under sections 3, 4, 5, 6, 7, 8, 9 and 10 of the Sind
Opium Smoking Act, 1940, for the 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 ²[Government of Sind] the sum of rupees

Dated this day of 19 .

(Signature.)

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

We do hereby declare ourselves sureties for the abovementioned
that he will abstain from the commission of offence under
sections 3, 4, 5, 6, 7, 8, 9 and 10 of the Sind Opium Smoking Act,
1940, during the said term; and, in case of his making default
therein, we bind ourselves, jointly and severally, to forfeit to
²[Government of Sind] the sum of rupees

Dated this day of 19 .

(Signature.)

¹ Subs. by the Sind Laws (Adaptation, Revision, Repeal and Declaration) Ordinance, 1955
(Sind 5 of 1955), s. 4 (w. e. f. 30th May 1955), for "Indian."

² Subs. *ibid*, s. 7, Sch. III, for "His Majesty the King-Emperor of India".