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ASSAM OPIUM PROHIBITION ACT, 1947*

(Assam Act XXIII of 1947)

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*Published in the Assam Gazette of the 24th December, 1947.

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

Preamble.

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

It is hereby enacted as follows:

CHAPTER I

Preliminary

1. Short title, extent and commencement.

- (1) This Act may be called the Assam Opium (Prohibition) Act, 1947.
- (2) It extends to the whole of Assam.
- (3) It shall come into force on such date as the State Government may, by notification in the official Gazette, appoint.

COMMENTS

This Act was made in force *vide* Notification No. MEX-167/47/174, dated the 21st February, 1948.

This Act was extended to Abor Hills *vide* Notification No. EX/SFT/135/48-a-Ad, dated the 27th September, 1949 and to Khasi States including administered areas by Notification No. SK/101/49/5, dated the 12th October, 1949.

Section 1-

Whether there is any repugnancy between Assam Opium Prohibition Act, 1947 and Opium Act, 1878. The Assam Act punishes abetment; provides for security from, and internment of, habitual offenders; enlists non-official support- all of which are missing in the Central Act. There is thus sufficient force in the contention that the two Acts in question namely, the Opium Act. 1878 and the Assam Act, 1947 are not totally inconsistent in the sense that the Assam Act operates on a wider field than that carved out by the Central Act. The question as to when an enactment can be regarded as repugnant to the other. The decision which may first be noted is in *Megh Raj v. Allah Rakhia* [AIR 1942 FC 27] which has held that where the paramount law does not purport to be exhaustive or unqualified, but itself permits or recognizes other law to qualify or restrict the general provisions, another law doing so cannot be regarded as repugnant to the paramount law. As in the instant case, the Central Act cannot be said to be all pervading, or taking care of all situations relating to prohibition of consumption etc., there is sufficient force in the contention of the other side that the two Acts may not be regarded as repugnant. [*Padmeshwar Barueh v. State of Assam*, (1984) 2 GLR 300 at pp. 310-311].

2. Definitions.

In this Act, unless there is anything repugnant in the subject or context-

- (a) **“buy”** with all its grammatical variations, means any receipt for price paid in cash or kind, and also any receipt by gift, loan or otherwise;
- (b) **“State Prohibition Council”** means the body of non-official residents of the State as may be constituted by the State Government by the notification in the official Gazette;
- (c) **“excise opium”** means opium issued from a Government Treasury in the State;
- (d) **“exports”** means to take out of the State otherwise than across customs frontiers;
- (e) **“import”** means to bring into the State otherwise than across customs frontiers;
- (f) **“opium”** means and includes opium as defined in S. 3 of the Opium Act, 1878 (Act I of 1878), and in Cl. (a) of S. 2 of the Assam Opium Smoking Act, 1927 (Assam Act III of 1927), and also any other substance or preparation containing morphine in any proportion whatsoever;

- (g) **“prescribed”** means prescribed by rules framed under this Act;
- (h) **“Prohibition Officer”** means a person appointed under S. 31;
- (i) **“State”** means that State of Assam;
- (j) **“section”** means a section of this Act;
- (k) **“sell”** with all its grammatical variations, means any transfer, including a gift as a loan or otherwise;
- (l) **“smuggler”** means a person who brings any opium into the State otherwise than across customs frontiers in contravention of the provisions of this Act, or any other law; and
- (m) **“transport”** means to take from one place to another within the State.

COMMENTS

Section 2.

Sub-section (b) was substituted *vide* Assam Act No. VI of 1974, published in the Assam Gazette, dated 11-2-1974 to come into force on the 1st day of April, 1974.

CHAPTER II

Prohibition

3. Prohibition.

No person shall -

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

CHAPTER III

Exemptions

4. Exemptions.

- (1) The provisions of this Act shall not apply to any shop or place licensed for the sale of opium for medicinal purposes, or to any person who buy opium from any place or shop as aforesaid under a prescription from a registered medical practitioner, or to any hospital or dispensary, or to the import, export, transport, possession, sale or purchase of excise opium.
- (2) The provisions of this Act shall not apply to any registered medical practitioner who acquires, possesses, prescribes or dispenses opium in any form in due fulfillment of his medical duties.

CHAPTER IV

Offences and penalties

5. Punishment for contravention.

Whoever, in contravention of the provisions of this Act or rules made thereunder-

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

(iv) preserving opium.

COMMENTS

Section 5.

In sub-S. (d) the Cls. (iii) and (iv) were inserted *vide* Assam Opium Prohibition (Third Amendment) Act. 1951 (Act X of 1951). The provision was earlier inserted *vide* Assam Act I of 1949.

Where one of the accused persons was convicted on the uncorroborated confession of a co-accused, it was held in the case of *Mukharam Singh v. The State* [AIR 1949 Assam 60], that it is against the consistent practice of the Courts in this country to convict an accused simply on an uncorroborated confession of a co-accused, which cannot be checked in any way.

Possession of opium within the meaning of Cl. (a) of this section imply knowledge. It must be conscious possession making some kind of control possible, or in other words, there must be *mens rea* or guilty knowledge before a person can be convicted of an offence for possessing opium. [*Abdul Ali v. The State*, AIR 1950 Assam 152; *see also Dular Kumar v. The State*, AIR 1952 Assam 26].

Where a Provincial law with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier Dominion Law or existing law with respect to that matter, then, if the Provincial Law, having been reserved for the consideration of the Governor-General, and has received the assent the Provincial Law shall in that Province prevail. Hence it was held in the case of *Prem Chand Roy v. The State* [AIR 1960 Assam 37], that even though there may have been some conflict between S. 9 of the Central Act and this section of the Act as to the measure of punishment, it is the latter Act which will prevail so far as this State is concerned.

It was also held by their Lordships in the same case that this section does not violate the provisions of Article 14 of the Constitution of India.

It was held in the case of *Abdul Samad v. The State* [AIR 1951 Assam 124], that where the opium seized from the accused was 15 seers, it suggests that the importing is on a large scale and hence the sentence of rigorous imprisonment for five years and a fine of Rs. 2,000 was not excessive.

Section 5 (a)- Possession of opium- Search and Seizure- Conviction-Legality. In *Radha Kishan v. State of U.P.* [AIR 1963 SC 822] it was stated that only two consequences follow where a search is in contravention of Ss. 103 and 165 of the Criminal Procedure Code (old), whose parallel sections in the Criminal Procedure Code (new) are Ss. 100 (4) to 100

(8) and 165. The consequences were said to be that where the search is in contravention of the provision, the same could be resisted by the person whose premises are sought to be searched; and secondly, the Court in such a situation may be inclined to examine carefully the evidence regarding the seizure. It was made clear by the Bench of the 3 Judges of Gauhati High Court that beyond these two consequences, no further consequence ensues and the seizure of the article is not vitiated. Of course, it was emphasized that these provision are not meant to be disregarded.

It was held that even an illegal search would not make the evidence relating to recovery inadmissible unless there be some specific provision in any statute to the contrary which is found missing in the Act. It is a different matter if the search be illegal, the person whose premises is being searched may obstruct the same and in so doing he would not commit an offence as stated in *State of Rajasthan v. Rahman* [AIR 1960 SC 210]. Here also, it may be pointed out that the person conducting search cannot be compelled to do acts contrary to their violation as held in *Shyamlal v. State of M.P.* [AIR 1972 SC 886].

This being the position in law, the trail cannot be said to be vitiated because of any irregularity or even illegality, in the search conducted by PW 3.

There is no infirmity in the conviction because of any irregularity or illegality in the search. [*Shri Premadhar*

Rajbansi v. The State of Assam, (1984) 1 Gau LR 459 at pp. 462-466].

Section 5 (a) and 6-Opium Act, 1878 - Whether Section 5 (a) of the Assam Opium Prohibition Act, 1947 repealed by Opium Act, 1878 as amended by Opium Laws (Amendment) Act, 1957. As the Assam Act was enacted in 1947, by virtue of what has been stated on Article 254 of the Constitution, no provision of this Act can be declared as void, even if the same be repugnant to any law made by the parliament, in as much as the Assam Act cannot be said to be enactment made by the Legislature of a State, and has to be regarded as an existing law. There is no doubt that Article 254 does not deal with the clash between an existing law and Central law.

Even if the law in question may or may not be within the legislative competence of the appropriate authority under the Constitution, the law would still prevail if it be not against the provisions of the Constitution. The article thus posits the continuance of the pre-existing law made by the competent authority notwithstanding the repeal of the enactments mentioned in Article 395. Of course, as clearly mentioned in Article 372, the existing law continues in force until altered or repealed or amended by a competent Legislature. If, therefore, a subject-matter falls in the Concurrent List of the Constitution and the Parliament makes a law on it, and if any of its provisions be repugnant to the existing law, the same can stand impliedly repealed, if not done so expressly. [See *A. K. Jain v. Union of India*, AIR 1970 SC 267, which

was followed in *S. K. G. Sugar Ltd. v. State of Bihar*, AIR 1974 SC 1533]. The law-making power given by Article 246 (2) would otherwise be rendered lame to a great extent. It may be pointed out that the law-making - power of the Parliament with respect to any of the matters enumerated in the Concurrent List, has not been restricted in any way by what is mentioned in Article 254, which rather deals with the restrictions in this regard on the power of a State Legislature.

Even if it is conceded that by virtue of 1957 amendment to the Central Act, Section 5 (a) of the Assam Act had stood repealed in as much as the later law prescribed a different punishment, the trial cannot be held to have been rendered void in as much as the 1957 Amendment had reduced the punishment and had not enhanced it. The repeal of S. 5 (a) of the Assam Act, even if conceded, has thus no effect of the jurisdiction of the trial Court. [*Padmeshwar Baruah v. State of Assam*, (1984) 2 GLR 300 at pp. 308-311].

Section 5 (a), 21, 22, 23, 24 and 25-Seizure of opium-Testimony of witnesses-Acceptance or rejection of such evidences by the Court- Few tests to be applied. [See Sri Umashankar Upadhaya v. State of Assam, (1983) I GLR (NOC) 30].

6. Punishment for allowing premises to be used for the commission of an offence.

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

COMMENTS

Section 6. Before an owner or driver of any vehicle can be convicted under this section, he must knowingly permit the vehicle to be used for the commission by any other person of an offence punishable under the Act or the rules made thereunder. Reason to suspect or reason to believe, is not enough for the purposes of a conviction under this section; existence of knowledge alone, and not something less than knowledge, can justify a conviction under this section. [*Anwar Hussain v. The State*, AIR 1952 Assam 47].

7. Enhanced punishment for certain offences after previous conviction.

Whenever, any person, having been convicted of an offence under Cl. (a) or Cl. (b) of S.5, is again convicted of an offence under either of the aforesaid clauses, the imprisonment with which he shall be punished shall be rigorous imprisonment for a term which may extend to ten years and fine:

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

8. Security for abstaining from commission of offences.

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

- (2) The bond shall be in the prescribed form, and the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), shall, in so far as they are applicable, apply to all matters connected with such bond as if it were bond to keep the peace ordered to be executed under S 106 of that Code.
- (3) If the conviction is set aside on appeal or otherwise, the bond executed shall become void.
- (4) Any order under this section may also be made by an Appellate Court or by the High Court when exercising its powers of revision.

9. Attempts.

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

10. Abetments.

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

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

COMMENTS

Section 10.

Mere knowledge of existence of opium vaguely somewhere and knowledge that some persons were indulging in smuggling activities would nor furnish the ingredient necessary for constituting abetment under this section. Abetment though not defined in the Act, must be at least be of like nature defined under S. 107 of the Indian Penal Code. [*Ahmed Noor Khan v. State Of Assam*, AIR 1972 Gau 7].

CHAPTER V

Security from habitual offenders to desist from committing offences

11. Security for desisting from committing offences.

(1) Whenever a District Magistrate or a Sub-divisional Magistrate of the first class specially empowered by the State Government in this behalf receives information that any person within the limits of his jurisdiction habitually-

- (a) commits offences under S.5 or S. 6, or
- (b) protects or harbours smugglers, receives or sellers of opium, or opium eaters,

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, to desist from committing any offence mentioned in this subsection for such period, not exceeding three years, as the Magistrate thinks fit to fix.

(2) *Order to be made.*

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

(3) *Procedure in respect of persons present in Court.*

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

(4) *Procedure in respect of persons not present in Court.*

If such person is not present in Court, the Magistrate shall issue a summons requiring him to appear, or, when such person is in custody a warrant directing the officer in whose custody he is, to bring him before the Court:

Provided that whatever it appears to such Magistrate, upon a report or upon other information (the substance whereof to be recorded) that there is reason

to apprehend that any person against whom proceedings under this section have been initiated is likely to abscond and his presence before the Magistrate cannot be secured unless a warrant of arrest be issued against such person, the Magistrate may issue a warrant of arrest accordingly.

(5) *Processes how served.*

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

(6) *Inquiry as to truth of information.*

(i) When an order under sub-S (2) has been read and explained to a person present in Court under sub-S (3) or where any person appears or is brought before a Magistrate shall proceed to inquire into the truth of the information upon which action has been taken and to take such evidence as may appear necessary.

(ii) Such inquiry shall be made as nearly as may be practicable according to the procedure prescribed for the trial of warrant cases in the

Criminal Procedure Code, 1898 (Act of 1898), except that no charge need be framed.

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

(7) *Evidence of general repute.*

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

(8) *Joinder of inquiries.*

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

(9) Order to give security.

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

Provided -

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

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

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

(10) Discharge of person proceeded against.

If upon such inquiry, the Magistrate is not satisfied that it is necessary that the person in respect of whom the inquiry is made should execute a bond, the Magistrate shall make an entry on the record to that effect, and if such person is in

custody only for the purposes of the inquiry shall release him, or if such person is not in custody, shall discharge him.

COMMENTS

Section 11.

In sub-S (7) the words “and S.16”, were inserted *vide* Assam Amendment Act of 1952.

12. Proceedings subsequent to the order to furnish security.

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

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

13. Contents of the bond.

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

14. Power to reject security.

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

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

15. Imprisonment in default of security.

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

(2) If the security is tendered to the officer-in-charge of the jail, he shall forthwith refer the matter to the

Magistrate who made the order and shall await the orders of such Magistrate.

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

CHAPTER VI

Externment of habitual smugglers

16. Externment of habitual smugglers.

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

COMMENTS

Section 16.

Where a proceeding under this section was at its appellate stage when the Constitution came into force, it was held in the case of *The State v. Judhabir Chetri* [AIR 1953 Assam 35], that the appellate order became final under S. 17 (3) of the Act and it was not open to challenge under Art.227 of the Constitution.

In this section the words “or a seller or stockist of opium” were inserted *vide* Assam Act No. 1 of 1949.

17. Procedure of externment.

- (1) The provisions in Chapter V of this Act shall, in so far as they are applicable, apply to all proceedings under S. 16 and if upon such inquiry the Magistrate is satisfied that it is necessary to extern the person in respect of whom the inquiry is made, he shall make an order accordingly.
- (2) The Magistrate making the order under sub-S. (1) shall direct the person concerned to leave the Province within such time, by such route or routes and for such period as may be stated in the order.
- (3) Any person against who, an order has been made under sub-S. (1) may appeal to the Court of Session, whose decision shall be final.

COMMENTS

Section 17.

The sub-S. (3) of this section has the effect to exclude the revisional jurisdiction of the Court at least by necessary implication, if not in express terms, for otherwise this provision will lose all significance and meaning. [*Israil Khan v. The State*, AIR 1951 Assam 106]. The attribute of finality

which the law attaches to the order will also prevent the Court from exercising its inherent jurisdiction under S. 561-A of Cr. P. C. But such a provision cannot curtail the powers of High Court under Art.227 of the Constitution.

18. Punishment for non-compliance.

When any person, against whom an order has been made or confirmed in appeal as the case may be under sub-S. 17-

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

CHAPTER VII

Procedure

19. Power to issue warrants

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

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

COMMENTS

Section 19.

In sub-S. (1) for the word “Superintendent”, the words “Deputy Superintendent” were inserted, *vide* Assam Act No. XXIV of 1954, published in the Assam Gazette dated 8-9-1954 to come into force at once.

20. Power of entry, search, seizure and arrest without warrant.

(1) Any officer of the Department of Excise not below the rank of Jamadar, any police officer not below the rank of Assistant Sub-Inspector, any officer of the Department of Revenue not below the rank of Sub-Deputy Collector, and the Inspecting Officer and Intelligence Officers of the Narcotics Intelligence Bureau, Government of India, and any Prohibition Officer authorized in this behalf by the State Government who has reason to believe, from personal knowledge or from information received from any person, and taken down in writing and attested by the informant that any opium, material, utensil, implement or apparatus in respect of which a offence punishable under this Act or the rules thereunder has been committed is kept or concealed in any building, vessel or enclosed place, may, between sunrise and sunset -

- (a) enter into such building, vessel or place:
- (b) in case of resistance, break open any door and remove any other obstacle to such entry;
- (c) seize such opium, material, utensil, implement or apparatus, and any other article liable to confiscation under S. 29, and any document or other article may furnish evidence of the commission of the offence; and
- (e) detain, search and arrest any person whom he has reason to believe to have committed an offence against this Act relating to such opium, material, utensil, implement or apparatus:

Provided that if such officer has reason to believe that a search warrant cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may, after recording the ground of his belief enter and search such building, vessel or enclosed place at any time between sunset and sunrise.

- (2) Where an officer takes down any information in writing under sub-S (1), or records grounds for his belief under the provision thereto, he shall forthwith send a copy thereof to his immediate official superior.

COMMENTS

Section 20.

In sub-S (1) the words “any Inspecting Officer or any Intelligence Officers of the Narcotics Intelligence Bureau, Government of India” were inserted *vide* Assam Act XXIV of 1954, published in the Assam Gazette dated 8-9-1954 to come into force at once.

21. Power of seizure and arrest in public places.

Any officer of any of the departments referred to in S. 20 or any Prohibition Officer may-

- (a) seize, in any public place or in transit, any opium, material, utensil, implement or apparatus in respect of which he has reason to believe an offence punishable under this Act or the rules thereunder has been committed, and along with it, any other articles liable to confiscation under S. 29, and any document or other article which may furnish evidence of the commission of the offence; and
- (b) detain, search and arrest any person whom he has reason to believe to have committed an offence against this Act relating to such opium, material, utensil, implement or apparatus.

22. Mode of executing warrants and of making searches and arrests.

The provision of the Code of Criminal Procedure, 1898 (Act V of 1898) shall, in so far as they are applicable, apply to execution of warrants and making of searches and arrests under this Act.

COMMENTS

Section 22.

The report of Excise Officer for purposes of investigating the offences is not a police report, although he is invested with powers of a Police Officer. The procedure to be followed is laid down in the Code of Criminal Procedure. [*Nireswar Gogoi v. State of Assam* AIR 1969 A & N 36].

23. Obligation to assist.

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

(2) Any person contravening the provisions of sub-S. (1) shall be punished with simple imprisonment for a term

which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

24. Report of arrest and seizure.

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

25. Disposal of persons arrested and articles seized.

- (1) Every person arrested and article seized under a warrant issued under S. 19 shall be produced within 24 hours of such arrest and seizure, exclusive of the time for actual transit, before the authority by whom the warrant was issued.
- (2) Every person arrested and article seized under S. 20 or 21 shall be produced within 24 hours of such arrest and seizure, exclusive of the time for actual transit, before the officer-in-charge of the nearest police-station or the nearest officer of the Excise Department under S. 26.
- (3) The officer whom any person or article is forwarded under this section shall, with all convenient dispatch, take such measures as may be necessary for the disposal, according to law, of such person or article.

26. Power to invest Excise Officer.

The State Government may invest any officer of the Excise Department, not below the rank of Sub-Inspector, and the Inspecting Officers of the Narcotics Intelligence Bureau, Government of India, with the Powers of an Officer-in-charge of a police station for the Investigation of offences under this Act.

COMMENTS

Section 26.

In this section, the words “and the Investigating Officer...Government of India” were added *vide* Assam Act No. XXIV of 1954, published in the Assam Gazette dated 8-9-1954 to come into force at once.

27. Jurisdiction to try offences.

Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), the State Government may invest any District Magistrate, Sub-divisional Magistrate or Magistrate of the first class with power to try as a Magistrate all or any specified offences arising in his jurisdiction under S. 5, S. 6, S. 7, S. 8, S. 9, S. 10 or S. 18, and every Court of a Magistrate so empowered may pass any sentence authorized by the aforesaid sections respectively.

COMMENTS

Section 27.

In this section the figure and word “S. 26” were inserted *vide* Assam Act No. V of 1948.

Section 26-

Criminal Procedure Code, 1973-Section 162-Excise Officer-If not Police Officer. The primary test for determining whether an officer is a police officer is to see if the concerned officer has been invested with all the powers exercisable by an officer-in-charge of a police station, including the power to initiate prosecution by submitting charge-sheet. The Excise Officers do not exercise all the powers of an officer-in-charge of a police station. [*Padmeswar Baruah v. State of Assam*, 1984 Cr LJ 1661 at p. 1664 (Gau HC):(1984) 2 GLR 300].

28. Presumption.

- (1) In trials under Cls. (a) to (c) of S. 5, it shall be presumed, unless and until the contrary is proved, that the accused has committed the offence with which he is charged in respect of the opium for the possession of which he fails to account satisfactorily.
- (2) In trials under Cl. (d) of S. 5, it shall be presumed, unless and until the contrary is proved, that the

accused has committed the offence with which he is charged in respect of the material, utensil, implement or apparatus for the possession of which he cannot account satisfactorily.

COMMENTS

Section 28.

The burden of proving conscious possession on the part of the accused remains on the prosecution and that burden is not shifted to the accused by anything that is contained in this section. [*Abdul Majid v. State*, AIR 1950 Assam 152].

29. Things liable to confiscation.

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

Provided that any person having a lawful claim to any such commodity, article, animal, or other thing mentioned above, may file, before the Court, a claim in respect thereof within

30 days of such order of confiscation, and if the claim is made out to the satisfaction of the Court, the order of confiscation shall be cancelled and the opium or other thing shall be returned to such claimant.

CHAPTER VIII

- 30.** For the purposes of this Chapter, the State Government may, by notification in the official Gazette, constitute for the State and for such period as it may deem fit a State prohibition Council consisting two or more non-official residents of the State as may be prescribed by the State Government. The State Government may also, by like notification, dissolve or reconstitute any such Council.

COMMENTS

Section 30.

This section was substituted vide Assam Act No. VI of 1974 published in the Assam Gazette dated 11-2-1974, to come into force on the 1st day of April, 1974. This section was earlier substituted *vide* Assam Act No. XI of 1961.

31. Prohibition Officers.

For the purposes of Ss. 20 and 21 of this Act, the State Government may, by notification in the official Gazette, appoint any member of a Prohibition Committee, by virtue of office or otherwise, to be a Prohibition Officer; and the relation of officers so appointed to the State Prohibition Council shall be such as may be prescribed.

COMMENTS

Section 31.

In this section for the word "Commissioner" the words "State Prohibition Council" were substituted vide Assam Act No. VI of 1974, published in the Assam Gazette dated 11-2-1974 to come into force from 1-4-1974.

- 32.** 1) The State Prohibition Council may, by notification in the official Gazette, constitute for any district or part thereof and for such period as it may deem fit, Prohibition Committees each consisting of two or more non-official residents of the district. The State Prohibition Council may also, by notification, dissolve or reconstitute such Prohibition Committees.
- (2) The duties to be performed by the State Prohibition Council and the Prohibition Committees and the relation between the Council and the Committees and the relation of such Committees to the Council shall be such as may be prescribed.

COMMENTS

Section 32.

This section was substituted vide Assam Act No. VI of 1974, published in the Assam Gazette, dated 11-2-1974 to come into force from 1-4-1974. The sub-S. (1) to this section was earlier substituted vide Assam Act No. XI of 1961.

CHAPTER IX

Miscellaneous

33. Punishment for vexatious entry, search, seizure or arrest, etc.

Any person acting under the powers given by S. 20 or S. 21 who -

- (a) without reasonable grounds of suspicion, enters or searches, or causes to be entered or searched, any building, vessel or place; or
- (b) vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for any opium or other article liable to be confiscated under S. 29, or of seizing any document or other article to seizure under S. 20 or 21; or
- (c) vexatiously and unnecessarily detains, searches or arrests any person, or fails to produce, within the time specified in S. 25, the person arrested or the article seized before the proper authority shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to five hundred rupees, or with both.

34. Punishment for unlawful release, etc.

Any person acting under the powers given by S. 20 or S. 21 who -

- (a) unlawfully releases any person arrested under either of those sections; or
- (b) abets the unlawful escape of such a person.

shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to five hundred rupees, or with both.

35. Punishment for malicious information.

Any person who maliciously and falsely lays information leading to a search, seizure, detention or arrest shall be punished with imprisonment of either description for a term which may extend six months, or with fine which may extend to five hundred rupees, or with both.

36. Obligation to give information.

- (1) Every person shall be bound to give immediate information to any of the nearest officers referred to in Ss. 20 and 21 of any breach of any of the provisions of this Act or the rules made thereunder.

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

37. Indemnity.

No action shall lie against any officer for damages in any Civil Court *bona fide* done or ordered to be done in pursuance of this Act or the Rules thereunder.

38. Power to make rules.

- (1) The State Government may, subject to the condition of previous publication, make rules for carrying out the provisions of this Act.
- (2) In particular and without prejudice to the generality of the foregoing power, such Rules may prescribe-
 - (a) the relation of the Prohibition Officers to the State Prohibition Council;
 - (b) the duties to be performed by a Prohibition Committee and its relation to the State Prohibition Council and other Committees;

- (c) the procedure for disposal of articles confiscated and proceeds thereof;
 - (d) the licensing of a shop or place under sub-S (1) of S. 4; and
 - (e) any other matter as may, or require to be prescribed.
- (3) In making rules under this section, the State Government may attach a penalty for the breach of any particular rule.

COMMENTS

Section 38.

In sub-Cls. (a) and (b) for the word “Commissioner” the words “State Prohibition Council “ were substituted *vide* Assam Act No. VI of 1974, published in the Assam Gazette dated 11-2-1974 to come into force from 1-4-1974.

Applicability of the Act in the State of Meghalaya :

This Act has been adapted for its application in the State of Meghalaya *vide* Adaptation of Laws Order (No. 4) 1971, the appointed day thereof being the 2nd day of April , 1970, whereby in S. 1 the sub-Ss. (2) and (3) were omitted. In S. 2, for Cl. (i) the following was substituted :

“(i) ‘State’ means the Autonomous State of Meghalaya”.

Vide Meghalaya Adaptation Laws Order (No. 3) 1973 to come into force on the appointed day i.e. , 21-1-1972.

Applicability in Nagaland :

This Act was applied to be in force in Kohima and Mokokchung districts *vide* Regulation XVI of 1951.
