

04-2139

ODISHA ACT 2 OF 1939

THE OPIUM (ODISHA AMENDMENT) ACT, 1939

(2nd June 1939)

AN ACT TO AMEND THE OPIUM ACT, 1878, IN ITS APPLICATION TO THE PROVINCE OF ODISHA

WHEREAS it is expedient to amend the Opium Act, 1878, in its application to the Province of Orissa in the manner hereinafter appearing;

It is hereby enacted as follows:—

Short title, extent and commencement.

1. (1) This Act may be called the Opium (Orissa Amendment) Act, 1939.

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

(3) It shall come into force throughout the whole or any part of the Province on such date or dates as the Provincial Government may by notification appoint and different dates may be so appointed for different areas.

Substitution of new sections for section 20 of Act I of 1878.

2. For section 20 of the Opium Act, 1878, the following sections shall be substituted, namely:—

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

“20. (1) The Provincial Government may, by notification in the Gazette, authorize any class of officers of the Excise or Police Department to investigate offences, and to grant bail to persons arrested, under this Act.

Power to determine
form of bail bond.

(2) The Provincial Government may, from time to time, determine the form of the bail bond to be used.

Persons arrested or
article seized
how to be dealt
with.

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 or Police 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 or Police Department, he shall forthwith forward the person arrested or the thing seized to the nearest officer of the Excise or Police Department empowered under section 20 and having jurisdiction in the case.

(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 reason 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.

Power of
investigating officer
to summon
witnesses or
examine them
otherwise.

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 investigation.

(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. It shall also be lawful for such officer to examine any person who may appear before him to give evidence or to produce any document necessary for the purposes of the investigation, although the said person appears voluntarily and no summons has been issued to him.

(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 investigation put to him by such officer other than questions the answers 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 Code of Criminal Procedure 1898, V of 1898. shall apply to the statements made by any person under this section. No oaths shall be administered to any such person.

Power of
investigating
officer to release
accused when
evidence deficient.

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.

20D. When any officer of the Excise or Police Department, not below such rank as may be prescribed by the Provincial Government by notification in the 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 of
witnesses, etc.,
how to be made.

20E. The provisions of the 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 or Police Department, empowered to issue a summons under this Act. V of 1898.

Procedure in case
of forfeiture of
bond.

20F. When it appears to an officer of the Excise or Police 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 Code of Criminal Procedure, 1898, for the forfeiture of bonds for appearance before his own Court. V of 1898.

Jurisdiction of
Magistrate on
receipt of report
from Excise officer
or Police officer.

20G. When an officer of the Excise or Police 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 (1) of section 190 of the Code of Criminal Procedure, 1898. V of 1898.

Attendance of witness
before Magistrate.

20H. An officer of the Excise or Police Department acting under the provisions of section 20G shall have all the powers conferred by the 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. V of 1898.

Police to take
charge of the article
seized.

20I. 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 or Police 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."

For
investigating
officer
act
evidence

For
officer
superior
police

For
with
him