

THE DANGEROUS DRUGS ACT.

[INDIA ACT II, 1930.]

(1st February, 1931.)

Preamble.

WHEREAS India participated in the Second International Opium Conference, which was convoked in accordance with the resolution of the Assembly of the League of Nations, dated the 27th day of September, 1923, met at Geneva on the 17th day of November, 1924, and on the 19th day of February, 1925, adopted the Convention relating to Dangerous Drugs (hereinafter referred to as the Geneva Convention):

AND WHEREAS India was a State signatory to the said Geneva Convention;

AND WHEREAS the Contracting Parties to the said Geneva Convention resolved to take further measures to suppress the contraband traffic in and abuse of Dangerous Drugs, especially those derived from opium, Indian hemp and coca leaf, such measures being more particularly set forth in the Articles of the said Geneva Convention;

AND WHEREAS for the effective carrying out of the said measures it is expedient that the control of certain operations relating to Dangerous Drugs should be centralized and vested in the President of the Union;

AND WHEREAS it is also expedient that the penalties for certain offences relating to Dangerous Drugs should be increased, and that all penalties relating to certain operations should be rendered uniform throughout the Union of Burma:

It is hereby enacted as follows:-

CHAPTER I.

PRELIMINARY.

1. * * * *

Definitions.

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

(a) "coca leaf" means-

(i) the leaf and young twigs of any coca plant, that is, of the *Erythroxylon coca*(Lamk.) and the *Erythroxylon novogranatense* (Hiern.) and their varieties, and of any other species of this genus which the President of the Union may, by notification in the Gazette, declare to be coca plants for the purpose of this Act; and

(ii) any mixture thereof, with or without neutral materials; but does not include any preparation containing not more than 0.1 per cent. of cocaine;

(b) "coca derivative" means-

- (i) crude cocaine, that is, any extract of coca leaf which can be used, directly or indirectly, for the manufacture of cocaine;
- (ii) ecgonine, that is, laevo-ecognine having the chemical formula $C_9H_{15}NO_8 \cdot H_2O$, and all the derivatives of laevo-ecognine from which it can be recovered;
- (iii) cocaine, that is, methyl-benzoyl-laevo-ecognine having the chemical formula $C_{17}H_{21}NO_4$, and its salts; and
- (iv) all preparations officinal and non-officinal, containing more than 0.1 per cent. of cocaine;

(c) "hemp" means-

- (i) the leaves, small stalks and flowering or fruiting tops of the Indian hemp plant (*Cannabis sativa* L.), including all forms known as bhang, siddhi, or ganja;
- (ii) charas, that is, the resin obtained from the Indian hemp plant, which has not been submitted to any manipulations other than those necessary for packing and transport; and
- (iii) any mixture, with or without neutral materials, of any of the above forms of hemp or any drink prepared therefrom;

(d) "medicinal hemp" means any extract or tincture of hemp;

(e) "opium" means-

- (i) the capsules of the poppy (*Papaver somniferum* L.);
 - (ii) the spontaneously coagulated juice of such capsules which has not been submitted to any manipulations other than those necessary for packing and transport; and
 - (iii) any mixture, with or without neutral materials, of any of the above forms of opium;
- but does not include any preparation containing not more than 0.2 per cent. of inorphine;

(f) "opium derivative" means-

- (i) medicinal opium, that is, opium which has undergone the processes necessary to adapt it for medicinal use in accordance with the requirements of the British Pharmacopoeia, whether in powder form or granulated or otherwise mixed with neutral materials;
 - (ii) prepared opium, that is, 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;
 - (iii) morphine, that is, the principal alkaloid of opium having the chemical formula $C_{17}H_{19}NO_8$, and its salts;
 - (iv) diacetylmorphine, that is, the alkaloid, also known as diamor phine or heroin, having the chemical formula $C_{21}H_{23}NO_5$, and its salts;
- and
- (v) all preparations, officinal and non-officinal, containing more than 0.2 per cent. of morphine, or containing any diacetylmorphine;

(ff) "opium-smoking establishment" means a building, house, room, shop or any other place kept or used as a resort for persons desiring to smoke opium;

(g) "manufactured drug" includes-

(i) all coca derivatives, medicinal hemp and opium derivatives; and

(ii) any other narcotic substance which the President of the Union may, by notification in the Gazette made in pursuance of a

recommendation under Article 10 of the Geneva Convention or in pursuance of any international convention supplementing the Geneva Convention, declare to be a manufactured drug;

but does not include any preparation which the President of the Union may, by notification in the Gazette made in pursuance of a finding

under Article 8 of the Geneva Convention, declare not to be a manufacture drug;

(h) "dangerous drug" includes coca leaf, hemp and opium, and all manufactured drugs;

(i) "to import into the Union of Burma" means to bring into the Union of Burma by land, sea or air;

(j) * * * *

(k) "to export from the Union of Burma" means to take out of the Union of Burma by land, sea or air;

(l) * * * *

(m) "to transport" means to take from one place to another in the Union of Burma.

Calculation of percent ages in liquid preparations.

3. The President of the Union may make rules prescribing the method by which percentages in the case of liquid preparations shall be calculated for the purposes of caluses (a), (b), (e) and (f) of section 2:

Provided that, unless and until such rules are made, such percentages shall be calculated on the basis that a preparation containing one per cent. of a substance means a preparation in which one gramme of the substance, if a solid, or one millilitre of the substance, if a liquid, is contained in every one hundred millilitres of the preparation, and so in proportion for any greater or less percentage.

CHAPTER II.

PROHIBITION AND CONTROL.

Prohibition of certain operations.

4. (1) No one shall-

(a) cultivate any coca plant, or gather any portion of a coca plant,

(b) manufacture or possess prepared opium, unless it is prepared from opium lawfully possessed for the consumption of the person so possessing it, or

(c) import into the Union of Burma, export from the Union of Burma, tranship or sell prepared opium:

Provided that this section shall not apply to the cultivation of any coca plant or to the gathering of any portion thereof on behalf of Government.

- (2) The President of the Union may make rules restricting and regulating the manufacture and possession of prepared opium from opium which is lawfully possessed under clause (b) of sub-section (1).

Control of President over production and supply of opium.

5. (1) No one shall-

- (a) cultivate the poppy (*Papaver somniferum* L.), or
- (b) manufacture opium,

save in accordance with rules made under sub-section (2) and with the conditions of any licence for that purpose which he may be required to obtain under those rules.

- (2) The President of the Union may make rules permitting and regulating the cultivation of the poppy (*Papaver somniferum* L.) and the manufacture of opium, and such rules may prescribe the form and conditions of licences for such cultivation and manufacture, the authorities by which such licences may be granted, the fees that may be charged therefor, and any other matter requisite to render effective the control of the President of the Union over such cultivation and manufacture.

- (3) The President of the Union may also make rules permitting and regulating the sale of opium from Government factories for export or to manufacturing chemists.

Control of President over manufacture of manufactured drugs.

6. (1) No one shall manufacture any manufactured drug, other than prepared opium, save in accordance with rules made under sub-section (2) and with the conditions of any licence for that purpose which he may be required to obtain under those rules.

- (2) The President of the Union may make rules permitting and regulating the manufacture of manufactured drugs, other than prepared opium, and such rules may prescribe the form and conditions of licences for such manufacture, the authorities by which such licences may be granted and the fees that may be charged therefor, and any other matter requisite to render effective the control of the President of the Union over such manufacture.

- (3) Nothing in this section shall apply to the manufacture of medicinal opium or of preparations containing morphine, diacetylmorphine or cocaine from materials which the maker is lawfully entitled to possess.

Control of President over operations at land and sea frontiers.

7. (1) No one shall-

- (a) import into the Union of Burma,
- (b) export from the Union of Burma, or
- (c) tranship

any dangerous drug other than prepared opium, save in accordance with rules made under sub-section (2) and with the conditions of any licence for that purpose which he may be required to obtain under those rules.

- (2) The President of the Union may make rules permitting and regulating the import into and export from the Union of Burma and the transshipment of dangerous drugs, other than prepared opium, and such rules may prescribe the ports or places at which any kind of dangerous drug may be imported, exported or transhipped, the form and conditions of licences for such import, export or transshipment, the authorities by which such licences may be granted, the fees that may be charged therefor, and any other matter requisite to render effective the control of the President of the Union over such import, export and transshipment.

Control of President over internal traffic in manufactured drugs and coca leaf.

8. (1) No one shall-

- (a) transport, possess or sell any manufactured drug, other than prepared opium, or coca leaf, or
 - (b) manufacture medicinal opium or any preparation containing morphine, diacetylmorphine or cocaine,
- save in accordance with rules made under sub-section (2) and with the conditions of any licence for that purpose which he may be required to obtain under those rules.

(2) The President of the Union may make rules permitting and regulating-

- (a) the transport, possession and sale of manufactured drugs, other than prepared opium, and of coca leaf; and
- (b) the manufacture of medicinal opium or of any preparation containing morphine, diacetylmorphine or cocaine from materials which the maker is lawfully entitled to possess.

Such rules may prescribe the form and conditions of licences for such transport, possession, sale and manufacture, the authorities by which such licences may be granted and the fees that may be charged therefor, and any other matters requisite to render effective the control of the President of the Union over such import, export, transport, possession, sale and manufacture.

(3) Save in so far as may be expressly provided in rules made under sub-section (2), nothing in this section shall apply to manufactured drugs which are the property and in the possession of Government:

Provided that such drugs shall not be sold or otherwise delivered to any person who, under the rules made by the President of the Union under this section, is not entitled to their possession.

Prohibition against inducing or helping a person under twenty-five years of age to use prepared opium, etc.

8A. No one shall-

- (a) induce any person under twenty-five years of age-
 - (i) to use prepared opium, or
 - (ii) to enter an opium-smoking establishment, or
 - (iii) to procure prepared opium, or
- (b) facilitate the doing by any person under twenty-five years of age of any of the acts set out in clause (a).

Control of President over external dealings in dangerous drugs.

9. No one shall engage in or control any trade whereby a dangerous drug is obtained outside the Union of Burma and supplied to any person outside the Union of Burma, save in accordance with the conditions of a licence granted by and at the discretion of the President of the Union.

CHAPTER III.

OFFENCES AND PENALTIES.

Punishment for contravention of section 4.

10. Whoever-

- (a) cultivates any coca plant or gathers any portion of a coca plant,
 - (b) manufactures or possesses prepared opium otherwise than as permitted under section 4, or
 - (c) imports into the Union of Burma, exports from the Union of Burma, tranships or sells prepared opium,
- shall be punished with imprisonment which may extend to two years, or with fine, or with both:

Provided that this section shall not apply to the cultivation of any coca plant or to the gathering of any portion thereof on behalf of Government.

Punishment for contravention of section 5.

11. Whoever, in contravention of section 5, or any rule made under that section, or of any condition of a licence granted thereunder,

- (a) cultivates the poppy, or
- (b) manufactures opium,

shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Punishment for contravention of section 6.

12. Whoever, in contravention of section 6, or any rule made under that section, or any condition of a licence granted thereunder, manufactures any manufactured drug, shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Punishment for contravention of section 7.

13. Whoever, in contravention of section 7, or any rule made under that section, or any condition of a licence granted thereunder,

- (a) imports into the Union of Burma,
- (b) exports from the Union of Burma, or
- (c) tranships

any dangerous drug, shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Punishment for contravention of section 8.

14. Whoever, in contravention of section 8, or any rule made under that section, or any condition of a licence issued thereunder,

- (a) transports, possesses or sells any manufactured drug or coca leaf, or
- (b) manufactures medicinal opium or any preparation containing morphine, diacetylmorphine or cocaine,

shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Punishment for contravention of section 8A.

14A. Whoever, in contravention of section 8A,-

(a) induces any person under twenty-five years of age-

(i) to use prepared opium, or

(ii) to enter an opium-smoking establishment, or

(iii) to procure prepared opium, or

(b) facilitates the doing by any person under twenty-five years of age of any of the acts set out in clause (a),

shall be punishable with imprisonment which may extend to two years, or with fine, or with both.

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

15. 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 10, section 12, section 13, section 14 or section 14A, shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Enhanced punishment for certain offences after previous conviction.

16. Whoever, having been convicted of an offence punishable under section 10, section 12, section 13, section 14 or section 14A, is again guilty of any offence punishable under any of those sections, shall be subject for every such subsequent offence to imprisonment which may extend to four years, or to fine, or to both.

Enhanced punishment for offence under section 15 after previous conviction.

17. Whoever, having been convicted of an offence punishable under section 15, is again guilty of an offence punishable under that section, shall be subject for every such subsequent offence to imprisonment which may extend to four years, or to fine, or to both.

Security for abstaining from commission of certain offences.

18. (1) Whenever any person is convicted of an offence punishable under section 10, section 12, section 13, section 14 or section 14A, and the Court convicting him is of opinion that it is necessary to require such persons to execute a bond for abstaining from the commission of offences punishable under those sections, 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.

(2) The bond shall be in the form contained in Schedule I, and the provisions of the Code of Criminal Procedure 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.

(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 High Court when exercising its powers of revision.

Penalty for contravention of section 9.

19. Whoever engages in or controls any trade whereby a dangerous drug is obtained outside the Union of Burma and supplied to any person outside the Union of Burma, otherwise than in accordance with the conditions of a licence granted under section 9, shall be punished with fine which may extend to one thousand rupees.

Attempts.

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

Abetments.

21. (1) Whoever abets an offence punishable under this Chapter shall, whether such offence be or be not committed in consequence of such abetment, and notwithstanding anything contained in section 116 of the Penal Code, be punished with the punishment provided for the offence.

(2) A person abets an offence within the meaning of this section who, in the Union of Burma, abets the commission of any act in a place without and beyond the Union of Burma which-

(a) would constitute an offence if committed within the Union of Burma; or

(b) under the laws of such place, is an offence relating to dangerous drugs having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it an offence punishable under this Chapter, if committed within the Union of Burma.

CHAPTER IV.

PROCEDURE.

Power to issue warrants.

22. (1) The Collector, or other officer authorized by the President of the Union in this behalf, or a Magistrate of the first class, or a Magistrate of the second class specially empowered by the President of the Union in this behalf, may issue a warrant for the arrest of any person whom he has reason to believe to have committed an offence punishable under Chapter III, or for the search, whether by day or by night, of any building, vessel or place in which he has reason to believe any dangerous drug in respect of which an offence punishable under Chapter III has been committed is kept or concealed.

(2) The officer to whom a search-warrant under sub-section (1) is addressed shall have all the powers of an officer acting under section 23.

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

23. (1) Any officer of the department of Excise, Police, Customs, Salt, Opium, or Revenue, superior in rank to a peon or constable, authorized in this behalf by the President of the Union, who has reason to believe, from personal knowledge or from information given by any person and taken

down in writing, that any dangerous drug in respect of which an offence punishable under Chapter III has been committed is kept or concealed in any building, vessel or enclosed place, may, between sunrise and sunset, -

- (a) enter into any such building, vessel or place;
- (b) in case of resistance, break open any door and remove any other obstacle to such entry;
- (c) seize such drug and all materials used in the manufacture thereof, and any other article which he has reason to believe to be liable to confiscation under section 33, and any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under Chapter III relating to such drug; and
- (d) detain and search, and, if he think proper, arrest any person whom he has reason to believe to have committed an offence punishable under Chapter III relating to such drug:

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 enter and search such building, vessel or enclosed place at any time between sunset and sunrise, after recording the grounds of his belief.

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

Power of seizure and arrest in public places.

24. Any officer of any of the departments mentioned in section 23 may-

- (a) seize, in any public place or in transit, any dangerous drug in respect of which he has reason to believe an offence punishable under Chapter III has been committed, and, along with such drug, any other article liable to confiscation under section 33, and any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under Chapter III relating to such drug;
- (b) detain and search any person whom he has reason to believe to have committed an offence punishable under Chapter III, and, if such person has any dangerous drug in his possession and such possession appears to him to be unlawful, arrest him and any other persons in his company.

Mode of making searches and arrests.

25. The provisions of the Code of Criminal Procedure shall apply, in so far as they are not inconsistent with the provisions of sections 22, 23 and 24, to all warrants issued and arrests and searches made under those sections.

Obligations on officers to assist each other.

26. All officers of the several departments mentioned in section 23 shall, upon notice given or request made, be legally bound to assist each other in carrying out the provisions of this Act.

Report of arrests and seizures.

27. Whenever any person makes any arrest or seizure under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior.

Punishment for vexatious entry, search, seizure or arrest.

28. Any person empowered under section 23 or section 24 who-

- (a) without reasonable grounds of suspicion, enters or searches, or causes to be entered or searched, any building, vessel or place;
 - (b) vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for any dangerous drug or other article liable to be confiscated under section 33, or of seizing any document or other article liable to seizure under section 23 or section 24; or
 - (c) vexatiously and unnecessarily detains, searches or arrests any person,
- shall be punished with fine which may extend to five hundred rupees.

Disposal of persons arrested and of articles seized.

29. (1) Every person arrested and article seized under a warrant issued under section 22 shall be forwarded without delay to the authority by whom the warrant was issued; and every person arrested and article seized under section 23 or section 24 shall be forwarded without delay to the officer in charge of the nearest police-station or to the nearest officer of the Excise Department empowered under section 30.

- (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.

Power to invest Excise officers with powers of an officer in charge of a police-station.

30. The President of the Union may invest any officer of the Excise Department, or any class of such officers, with the powers of an officer in charge of a police-station for the investigation of offences under this Act.

Jurisdiction to try offences.

31. No Magistrate shall try an offence under this Act unless he is a Magistrate of the first class, or a Magistrate of the second class specially empowered by the President of the Union in this behalf.

Presumption from possession of illicit articles.

32. In trials under this Act it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under Chapter III in respect of-

- (a) any dangerous drug;
 - (b) any poppy or coca plant growing on any land which he has cultivated;
 - (c) any apparatus specially designed or any group of utensils specially adapted for the manufacture of any dangerous drug; or
 - (d) any materials which have undergone any process towards the manufacture of a dangerous drug, or any residue left of the materials from which a dangerous drug has been manufactured,
- for the possession of which he fails to account satisfactorily.

Liability of illicit articles to confiscation.

33. (1) Whenever any offence has been committed which is punishable under Chapter III, the dangerous drug, materials, apparatus and utensils in respect of which or by means of which such offence has been committed shall be liable to confiscation.
- (2) Any dangerous drug lawfully imported, transported, manufactured, possessed, or sold along with, or in addition to, any dangerous drug which is liable to confiscation under sub-section (1), and the receptacles, packages and coverings in which any dangerous drug, materials, apparatus or utensils liable to confiscation under sub-section (1) is found, and the other contents, if any, of such receptacles or packages, and the animals, vehicles, vessels and other conveniences used in carrying the same, shall likewise be liable to confiscation:

Provided that no animal, vehicle, vessel or other conveyance shall be liable to confiscation unless it is proved that the owner thereof knew that the offence was being, or was to be or was likely to be, committed.

Procedure in making confiscation.

34. (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 Chapter is liable to confiscation under section 33; and, if it decides that the article is so liable, it may order confiscation accordingly.
- (2) Where any article seized under this Chapter appears to be liable to confiscation under section 33, but the person who committed the offence in connection therewith is not known or cannot be found, the Collector, or other officer authorized by the President of the Union 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 respect of his claim:

Provided further that, if any such article, other than a dangerous drug, 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.

Power to make rules regulating disposal of confiscated articles and rewards.

35. The President of the Union may make rules to regulate-
- (a) the disposal of all articles confiscated under this Act; and
- (b) the rewards to be paid to officers, informers and other persons out of the proceeds of fines and confiscations under this Act.

CHAPTER V.

MISCELLANEOUS.

Provisions regarding rules.

36. All rules made under this Act shall be subject to the condition of previous publication and, when made, shall be published in the Gazette.

Recovery of sums due to Government.

37. (1) Any arrear of any licence fee chargeable by any rule made under this Act may be recovered from the person primarily liable to pay the same or from his surety(if any) as if it were an arrear of land-revenue.

(2) When any person, in compliance with any rule made under this Act, gives a bond (other than a bond under section 18) for the performance of any act, or for his abstention from any act, such performance or abstention shall be deemed to be a public duty, within the meaning of section 74 of the Contract Act; and, upon breach of the conditions of such bond by him, the whole sum named therein as the amount to be paid in case of such breach may be recovered from him or from his surety(if any) as if it were an arrear of land-revenue.

Application of the Sea Customs Act.

38. All prohibitions and restrictions imposed by or under this Act on the import into the Union of Burma, the export from the Union of Burma, and the transshipment of dangerous drugs, shall be deemed to be prohibitions and restrictions imposed under section 19 or section 134 of the Sea Customs Act, and the provisions of that Act shall apply accordingly:

Provided that, where the doing of any thing is an offence punishable under that Act and under this Act, nothing in that Act or in this section shall prevent the offender from being punished under this Act.