

AMENDMENTS TO THE DANGEROUS DRUGS ACT, 1952

The *Dangerous Drugs Act 1952 (DDA)*¹ is the most important statute governing dangerous drugs in Malaysia, the others being the *Dangerous Drugs Regulations 1952 (DDR)*,² the *Drug Dependents (Treatment and Rehabilitation) Act 1983 (DDTRA)*,³ *Dangerous Drugs (Special Preventive Measures) Act 1985*,⁴ and the *Poisons Ordinance 1952*.⁵ The Act originated as the *Dangerous Drugs Ordinance 1952*⁶ and was revised in 1980, thenceforth assuming the name "Act".

The *Dangerous Drugs Act 1952* has come a very long way to be what it is today. Its immediate predecessor was the *Dangerous Drugs Ordinance, 1952*. Prior to that Ordinance were fifteen Enactments and Ordinances serving individual States or a group of States in Malaysia. The purpose of the Ordinance was "to consolidate this somewhat confusing and very unwieldy mass of legislation into one Ordinance, which will establish a uniform policy and the same methods of control and administration throughout the Federation".⁷ The Third Schedule of the DDA shows all those fifteen statutes which were repealed by the *Dangerous Drugs Ordinance 1952* together with three statutes from Sabah and Sarawak which were repealed subsequently.⁸ In the same year the Ordinance was passed, the *Dangerous Drugs Regulations 1952* were made.

From the time it was passed in 1952 to today, there have been numerous amendments to the Act. Some amendments per-

¹Act 234, Revised 1980.

²L.N. 535.

³Act 283.

⁴Act 316.

⁵No. 29.

⁶No. 30.

⁷*Proceedings of the Federal Legislative Council (Fifth Session), February 1952 to February 1953*, 320; per Member for Health, Dr. Lee Tiang Kee.

⁸See P.U.(A) 157/78.

tained to either the insertion or deletion of certain drugs or substances in the First Schedule of the Ordinance or, later, the Act, while others were more substantial. This paper looks at the more substantial and important amendments.

**1. Federal Constitution (Modification of Laws)
(Ordinances and Proclamations) Order 1958⁹**

This amendment was necessary as it provided for modifications in the terms used in the Ordinance on the attainment of Merdeka. According to section 2(1) of the Order, the modifications were necessary or expedient for the purpose of bringing the provisions of existing law into accord with the provisions of the Constitution. The *Dangerous Drugs Ordinance* was one such law specified. Hence, where formerly the words "High Commission in Council" or "High Commissioner" were used, they were now substituted with "Yang di-Pertuan Agong". Likewise, "Legislative Council" was substituted with "House of Representatives". The definition of "Minister" as "the Minister charged with the responsibility for medical and health services" was inserted, while the words "Straits Settlements" were deleted.

2. Dangerous Drugs (Amendment) Act 1966¹⁰

This Act amended section 30 of the Act and certain new provisions relating to seizure and forfeiture of dangerous drugs and other goods dealt with by the said Act were inserted under the new subsection (2) of section 30. A conveyance which is the subject of any offence under the Act shall upon conviction of the offender be forfeited. Where no claim is made in respect of any conveyance seized under the Act within one calendar month after such seizure the conveyance shall be deemed to be forfeited. Amendments were also made to section 41 to enable the Minister to make regulations under section 47 of the Act for disposal of dangerous drugs or other goods forfeited under the Act.

⁹L.N. 332/1958; w.e.f. 13.11.58.

¹⁰Act 64, w.e.f. 19.9.66.

The Amendments were thought necessary because the existing provisions relating to the forfeiture of such goods were inadequate. With the increased number of offences committed under that Act using vehicles belonging to persons other than the offender, it was thought that provisions similar to those in the then *Customs Ordinance*¹¹ should be incorporated in the Act.¹²

3. Emergency (Essential Powers) Ordinance, No. 82, 1971¹³

The amendments, except to sections 6, 9 and 10, were made so as to be in conformity with the provisions of the *Single Convention on Narcotic Drugs*, 1961 to which Malaysia is a party. Accession to the Convention took place only in 1967.

Various terms were introduced together with their definitions. They include aircraft, cannabis, cannabis resin, Commission, opium poppy, poppy straw, Protocol, and Single Convention. "Cannabis" means the flowering or fruiting tops of any plant of the genus cannabis from which the resin has not been extracted by whatever name they may be designated, whilst "cannabis resin" means the separated resin, whether crude or purified, obtained from any plant of the genus cannabis. "Opium poppy" means a plant of the species *Papaver somniferum* L or the species *Papaver setigerum* D.C. and any plant from which morphine may be produced, whilst "poppy-straw" means all parts, except the seeds of the opium poppy, after mowing.

Wherever the words "Indian hemp" appeared, they were to be deleted and replaced with "Cannabis and cannabis resin" or just "Cannabis" or "Poppy-straw and Cannabis". A new subsection (3) was inserted in section 11, whilst a new subsection (1) and subsection (2) were introduced in section 12. These provisions remain unamended till today.

The whole of the First Schedule to the Ordinance was substituted with a new one.¹⁴ The new Schedule has five Parts and the names of drugs or substances listed thereunder were

¹¹Section 114.

¹²*Parliamentary Debates*, Dewan Rakyat, 25th August 1966, 1797.

¹³P.U.(A) 67, w.e.f. 19.2.1971.

¹⁴The original Schedule had three parts with a very short list of drugs in Part III.

to be added, removed or altered *vide* numerous orders and amendments because the new section 45A introduced by this Amendment Act does allow the Minister to either add a substance to, or remove a substance from, or vary the First Schedule, if he considers it expedient or if the United Nations alters the Schedules to the *Single Convention*, or if he anticipates any addition of a substance due to a decision to be taken by the United Nations.¹⁵ With the new First Schedule, various sections of the Ordinance which cross-referred to the Schedule needed to be amended consequently.¹⁶

4. Dangerous Drugs (Amendment) Act 1972¹⁷

This Act merely repealed the whole of the *Emergency (Essential Powers) Ordinance No. 82, 1971*.¹⁸ Its Schedule amended the *Dangerous Drugs Ordinance* in the same way the *Emergency Ordinance* had. When tabling the Bill in the Dewan Rakyat, the then Honourable Minister of Health, stressed that the amendment adopting the *Emergency Ordinance* was necessary so as to bring the *Dangerous Drugs Ordinance* in accord with the *Single Convention on Narcotic Drugs 1961* of which Malaysia was a member. The Convention was passed by the United Nations in December 1962 and enforced from 1st. January 1965. Malaysia acceded to it in July 1967.¹⁹

5. Dangerous Drugs (Amendment) Act 1973²⁰

The Act was amended to provide for four things. First, to provide for reference to a Sessions Court of a claim made in respect of anything seized under the Act where there was no

¹⁵See, for examples, *Dangerous Drugs Order 1976*, P.U. (A) 321; *Dangerous Drugs Order 1974*, P.U.(A) 164; *Dangerous Drugs Order (No. 2), 1974*, P.U.(A) 233; *Dangerous Drugs (Amendment) Order 1986*, P.U.(A) 120; *Dangerous Drugs (Amendment) (No. 2) Order 1986*, P.U.(A) 225.

¹⁶See amendments to sections 11, 13, 14, 15, and 16.

¹⁷Act A112, w.e.f. 4.4.1972.

¹⁸See s. 3.

¹⁹See *Parliamentary Debates*, Dewan Rakyat, 8th February 1972, 7224 - 7225.

²⁰Act A194, w.e.f. 1.6.1973.

prosecution with respect thereto. The Court shall order forfeiture if it is proved that an offence under the Act was committed and that the thing was the subject matter or was used in the commission of such offence. Second, to provide power to the Minister to order anything seized under the Act, whether forfeited or taken or deemed to be forfeited, to be delivered to the owner or person entitled thereto on such terms and conditions as deemed fit.²¹ Third, to provide for a reward to be paid to persons who assist in the detection of offences under the Act. It must be noted that similar provisions exist in the *Excise Act* 1961²² and the *Customs Act* 1967²³ with regards to the second and third provisions. Fourth, to increase penalties for the following offences where the subject-matter of the offence was heroin or morphine of five grammes or more in weight:

- (a) importing raw opium, coca leaves, poppy straw or cannabis without authority - section 4.;
- (b) exporting raw opium, coca leaves, poppy straw or cannabis without authority - section 5.;
- (c) having in possession dangerous drugs - section 12.
- (d) keeping or using premises for unlawful administration of dangerous drugs to human beings - section 13.

For the first offence, the original punishments were a fine not exceeding ten thousand dollars or imprisonment for a term not exceeding five years or both such fine and imprisonment. It is now increased to an imprisonment for a term not exceeding five years and not less than three years. For the second offence, the punishments were the same as in the first. They have now been increased just as for the first offence. For the third offence, the original punishments available were a fine not exceeding ten thousand dollars or imprisonment for a term not exceeding three years or to both such fine and imprisonment. It is now

²¹See section 30A.

²²No. 34, ss. 66 - 67.

²³Act 235, s. 115(5) and s. 141, respectively.

punishable with a fine not exceeding twenty thousand ringgit or imprisonment for a term not exceeding five years or both. In the case of the fourth offence, the original punishments were a fine not exceeding ten thousand dollars or imprisonment not exceeding three years or both such fine and imprisonment. The present punishments are a fine not exceeding ten thousand ringgit or imprisonment for a period not exceeding five years or both.

The former section 30 provided for the mandatory forfeiture of drugs and other articles such as syringes, pipes, lamps, books and documents together with any receptacles or packages in which these articles were found. Conveyances used in the commission of drug offences were to be forfeited unless such an offence had been committed without the knowledge, consent or connivance of the owner. Problems arose in cases where conveyances could not be forfeited because the owner could show that the offence had been committed without his knowledge, consent or connivance.²⁴ Because of the rampancy of opium-smuggling cases, Parliament felt the need to allow forfeiture of all conveyances irrespective of knowledge, consent or connivance.

6. Dangerous Drugs (Amendment) Act 1975²⁵

This amendment Act introduced some important provisions into the law. The sentences available for offences under sections 4, 5 or 6 of the statute were enhanced to include whipping of not less than three strokes if the subject-matter is raw opium of more than 2 kilogrammes. This came in the form of a new section 6A.²⁶ Offences under section 9, namely, possession, custody or control of prepared opium, or importation or exportation from Malaysia of prepared opium, or manufacturing, selling or dealing in prepared opium, were made punishable with whipping of not less than three strokes if the subject-matter is prepared opium of more than 250 grammes in weight. Section 39A was amended by adding a minimum of 6 strokes of the rotan as punishment.

²⁴For examples, *Loke Tham Chuan v. PP* [1955] M.L.J. 3; *Petani Motors Co. Ltd. v. PP* [1957] M.L.J. 129; and *Eu Tong Sen Finance Ltd v. PP* [1965] 2 M.L.J. 29.

²⁵Act A293, w.e.f. 30.4.1975.

²⁶Subsequently repealed by Act A553 in 1983.

The amendment introduced a new section 37A relating to admission of statements in evidence. Whilst generally statements made to the police were inadmissible at that time, section 37A becomes one of the exceptional provisions allowing it. Thus, when an accused makes a statement to the police or the customs, that statement may be admitted and used as evidence for the prosecution or the defence, or for the purpose of impeaching the credit of that accused.

The new section 37B introduced for the first time a provision allowing for treatment of drug dependants. A Social Welfare Officer or a Police Officer not below the rank of Inspector may send any suspected person to be medically examined or observed by a Government medical officer. Should treatment be necessary, that earlier-named officer may send the suspected drug dependant to an approved institution for a specified period. The Court is also given the same power where the drug dependant had been convicted of an offence against the Ordinance. The section also provided for volunteers undergoing treatment upon application. Section 2 was amended by adding a definition for the term "drug dependant" to service this new section.

Another important addition is section 39B, providing for the offence of trafficking in dangerous drugs. The punishments were death or imprisonment for life, and/or whipping. A safeguard is provided in subsection (4) of the section in the form of the consent of the Public Prosecutor. With this section, the Act had to introduce a definition for the term "trafficking" in section 2. This section and the definition were to be amended subsequently.

7. Dangerous Drugs (Amendment) (No. 2) Act 1975²⁷

This Act improved on section 39B by deleting subsection (3) and re-numbering subsection (4) to subsection (3). A new subsection (4) was added giving facility to the Public Prosecutor to have a charge for trafficking read and explained to the accused even before the consent to the prosecution is given. The only

²⁷Act A318, w.e.f. 5.9.1975.

condition is that the accused should not be called upon to plead as yet. According to the then Minister of Law and Attorney-General, this provision would allow more time for the police to complete investigations and prepare their documents to enable the Public Prosecutor to make a decision whether prosecution should proceed or not.²⁸

A new section 41A was introduced giving the Special Sessions Court President the power to impose the full penalty other than death for any offence under the Ordinance.²⁹ This was to ease the burden of the High Court which would otherwise have to conduct the trials of these cases.³⁰

8. Dangerous Drugs (Amendment) Act 1976³¹

Section 6 of the Act was amended making the possession, custody or control of the seeds of the plants from which they may be obtained either directly or indirectly an offence. The punishment remained the same, that is, a fine of ten thousand ringgit³² or imprisonment not exceeding five years or both.

A new section 6B was introduced providing for restrictions on planting or cultivation of certain plants. The offences provided thereunder are punishable with imprisonment for life and whipping of not less than six strokes. This provision was necessary to plug an anomaly where previously the cultivation or planting of cannabis plants or poppy plants were not prohibited. Further, whereas most of the heroin that was in circulation came from abroad, a large portion of the cannabis or ganja were home-grown. The then Minister of Law and Attorney-General when tabling the Bill, cited cases of cultivation in Johore and Perak and gave figures of seizures of cannabis plants and cannabis, as follows:

²⁸Parliamentary Debates, Dewan Rakyat, 16th July 1975, 5551 - 5552.

²⁹See s. 63(3) of the Subordinate Courts Act 1948.

³⁰Op.cit. 5552.

³¹Act A330 w.e.f. 27.2.1976.

³²To be amended. See Act A659/86.

**SEIZURES OF CANNABIS AND CANNABIS PLANTS
1971 TO MID - 1975**

YEAR	GANJA	GANJA PLANTS
1971	8,440 lbs	10,190
1972	2,825 lbs	5,620
1973	2,215 lbs	47,400
1974	870 lbs	5,140
1st half of 1975	713 lbs	9,690

Source: Parliamentary Debates, Dewan Rakyat, 15th December 1975, 9322

There was, therefore, the urgent need for a provision prohibiting the cultivation of these plants. It should be noted that the punishments provided are quite serious compared to punishments for many other offences, other than trafficking.³³

9. Dangerous Drugs (Amendment) Act 1977³⁴

After about two years, the authorities concerned discovered the inadequacies in the provisions in section 37B of the Ordinance. The introduction of a whole new Part VA to the Ordinance was therefore not really surprising. It replaced the old section 37B, which was repealed. There are a number of improvements, for example, a minimum period of four months' residence in a rehabilitation centre was stipulated where previously none was provided for. The Part sets out the powers of the Court in respect of drug dependants aged below 21 years who had committed offences against the Ordinance, the powers of the Board of Visitors, voluntary admission to centres, and the establishment of

³³See *Parliamentary Debates, Dewan Rakyat, 15th December 1975, 9322 - 9323.*

³⁴Act A389 w.e.f. 15.11.1977.

private centres on the authority of the Minister of Welfare Services. With this new Part, various new definition to terms were added. This Act was not enforced until 15th November 1977.³⁵

10. Dangerous Drugs (Amendment) (No. 2) Act 1977³⁶

This Act broadened the definition of the term "trafficking" given in section 2 to include the possession of drugs.

Perhaps a significant provision introduced by this Amendment Act is section 37(da), providing for the presumption of trafficking for mere possession of 100 grammes of heroin or morphine, or 1,000 grammes of prepared opium or 5 kilogrammes of raw opium, or 200 grammes of cannabis or cannabis resin. This presumption follows from the new definition of trafficking.³⁷

Another significant addition is section 40A which recognises the use of agents provocateur. Their evidence are to be accepted without corroboration but only in relation to offences under section 39B, namely, trafficking. This section was amended subsequently³⁸ making it available to all offences.

11. Dangerous Drugs (Amendment) (No. 3) Act 1977³⁹

This Act was passed solely to amend section 25A which was introduced in an earlier amendment. It was discovered that subsection (1) was objectionable as it contravened Article 5 of the *Federal Constitution*. It will be **remembered** that it allowed the Social Welfare Officer or the Inspector or above to detain a person before a medical officer for medical examination. This detention would not comply with Article 5 which requires a person arrested or detained to be produced before a Magistrate within twenty-four hours. The new subsection (1) thus provides that the person who is detained should be brought before a Magistrate within that period of time. The Magistrate then orders medical examination if needs be.

³⁵P.U.(B) 688/77.

³⁶Act A390 w.e.f. 18.3.1977.

³⁷See *Parliamentary Debates*, Dewan Rakyat, 15th December 1976, 7343.

³⁸Sec Act A596/84.

³⁹Act A413 w.e.f. 15.11.1977.

The legislature took the opportunity to introduce new subsections (4), (5), (6), (7) and (8) to add further provisions and guidelines.

Because of the above, although Part VA was introduced some eight months before, it was not enforced until the 15th November 1977.⁴⁰

12. Dangerous Drugs (Amendment) Act 1978⁴¹

This Amendment introduced two significant provisions into the Act, namely, section 41A and section 41B. The old section 41A was substituted with the new one providing for special provisions relating to transmission of a case to, and trial by, the High Court. Henceforth, whenever the Public Prosecutor requires any case against the Ordinance to be transferred to the High Court for trial, he may do so. The accused is first to be brought before either the Magistrate's or Sessions Court and the charge read and explained to him. Thereafter the case is transmitted to the High Court. Two other exceptions to the general rule were provided, namely, there is no need for a preliminary inquiry⁴² and the trial before the High Court should be one by a Judge sitting alone, including cases punishable with death.⁴³ Subsection (4) provides that subsections (1), (2) and (3) should have effect "notwithstanding any other written laws to the contrary." This section was to be amended subsequently.⁴⁴ The *Firearms (Increased Penalties) Act 1971* was similarly amended to incorporate a similar provision.⁴⁵

Section 41B is a whole new section on bail. Prior to the introduction of this section, the law of bail which applied in drug cases is the one laid down in the *Criminal Procedure Code (CPC)* and the case-law pertaining to its provisions. The First Schedule was also relevant.⁴⁶ Section 41B became effective as

⁴⁰See *Parliamentary Debates*, Dewan Rakyat, 27th July 1977, 2835 - 2837.

⁴¹Act A426, w.e.f. 10.3.1978.

⁴²See CPC section 138 which requires a preliminary inquiry before any case is tried in the High Court.

⁴³See CPC, section 200 and section 186.

⁴⁴*Infra*, discussion on Act A553/83.

⁴⁵See Act A427, and section 11 of FIPA.

⁴⁶See Column 5.

from 10th March 1978, a few days before the case of *Che Su binti Daud v. PP*⁴⁷ appeared in the High Court. The Judge was quite unaware of it, otherwise he would not have allowed bail at all. This section, after all, applies "notwithstanding any other written law or any rule of law to the contrary."

This section introduced a new category of offences called "unbailable offences" whilst hitherto there were only "bailable offences" or "non-bailable offences". According to Wan Yahya J. in *Loy Chin Hei v. PP*⁴⁸ the offences here are absolutely unbailable no matter what the provisions of the CPC may provide. The Federal Court in *Chew Siew Luan v. PP*⁴⁹ held that the principle *generalibus specialia derogant* applies to the section and it therefore overrides the provisions in the CPC.

For three categories of drug offences, the accused persons cannot be allowed bail at all. They are offences punishable with death, offences punishable with imprisonment for more than five years, and offences punishable with imprisonment for five years or less and the Public Prosecutor certifies in writing that it is not in the public interest to grant bail to the accused person. In cases where the Public Prosecutor does not so certify, the offences remain non-bailable and are at the discretion of the Court to allow or disallow bail. It is interesting to note that when a new section 10A was introduced into the *Poisons Ordinance 1952*⁵⁰ its subsection (4) is worded similarly as section 41B of the DDA.⁵¹ Further, at the same Parliamentary sitting, Act A427 amending the *Firearms (Increased Penalties) Act 1971* included a similar provision as section 41B of the DDA. There, all offences under the Act are made unbailable.⁵²

Section 41 was substituted with a new provision allowing the Sessions Court to try all offences under the Act and to impose all punishments other than death. Subsection (2) allows the High Court to try any case at all if the Public Prosecutor requires such case to be tried by the High Court. This cross-referred to the new section 41A introduced by the same Amendment Act.

⁴⁷[1978] 2 M.L.J. 162.

⁴⁸[1981] 1 M.L.J. 31.

⁴⁹[1982] 2 M.L.J. 119.

⁵⁰F.M. 29/52.

⁵¹See Act A555/83, section 3 w.e.f. 13.5.1983.

⁵²See Section 12 of that Act.

13. **Modification of Laws (Dangerous Drugs And Poisons) (Extension And Modification) Order 1978⁵³**

This is a significant Order as it extended the then *Dangerous Drugs Ordinance* 1952 of Peninsular Malaysia to Sabah and Sarawak. Three statutes were repealed, namely, the *Poisons and Deleterious Drugs Ordinance* of Sabah, the *Dangerous Drugs Ordinance* of Sarawak, and the *Poisons Ordinance* of Sarawak. All subsidiary legislation thereunder were also repealed. Consequently, modifications to the Peninsular *Dangerous Drugs Ordinance* and *Poisons Ordinance* were made to accommodate Sabah and Sarawak.

14. **Subordinate Courts (Amendment) Act 1978⁵⁴**

This Act amends the jurisdiction of the Sessions Court and the Magistrate's Court. Magistrates of the First Class may try all offences for which the maximum term of imprisonment provided by law does not exceed ten years' imprisonment or which are punishable with fine only.⁵⁵ Presidents of Sessions Court may try all offences, except those punishable with death and may impose all punishments, except death.⁵⁶ Magistrates of the First Class may impose imprisonment of up to 5 years, a fine of up to \$10,000 and whipping of up to 12 strokes.⁵⁷

Consequent to these amendments, the *Dangerous Drugs Ordinance* 1952 had to be amended as well. It substituted section 41(1) with a new provision. The Sessions Court or Magistrate's Court shall have jurisdiction to try all cases under the Ordinance and may impose the full punishment or penalty provided for any such offence other than the death penalty in the case of the Sessions Court, and imprisonment exceeding 5 years in the case of a Magistrate's Court. This new provision gives wide

⁵³P.U.(A) 157/78 w.e.f. 1.6.1978.

⁵⁴Act A434, w.e.f. 1.7.1978.

⁵⁵Section 85. This section was to be amended subsequently in 1979 to include offences under sections 392 and 457 of the *Penal Code*; see Act A459/79.

⁵⁶See s. 64. Presidents are now known as Sessions Court Judges.

⁵⁷See s. 87(1).

powers of sentencing to both these Courts, particularly the Magistrate's Court.⁵⁸

15. Dangerous Drugs (Amendment) Act 1980⁵⁹

The significant amendment introduced by this Act was the substituted definition of the term "cannabis". The previous definition required the cannabis to be from "the flowering or fruiting tops of any plant of the genus cannabis from which the resin has not been extracted". A similar definition appeared in the English *Misuse of Drugs Act 1971* and the Court of Appeal in *R v. Goodchild*⁶⁰ interpreted that definition to actually require the prosecution to prove the cannabis material came from "the flowering or fruiting tops" of the plant. That case also showed that cannabis leaves, which are known to contain psycho-active ingredients of the plant and are commonly smoked, were not included in the definition.⁶¹

Consequently, the definition in the English statute was amended. The proposed new definition in our statute followed the English definition. Cannabis then meant any plant of the genus Cannabis or any part of any such plant but does not include cannabis resin or any of the following products after separation from the rest of the plant, namely, mature stalk of any such plant, fibre produced from mature stalk of any such plant, and seed of any such plant. This definition was to be amended again because of difficulties.⁶²

This Amendment Act also introduced a new category of officers called the *Drug Enforcement Officers*. They were the ones to be appointed under section 3 of the Ordinance. According to section 5 of this Act, every person who, immediately before the commencement of this Act, was an Inspector of Dangerous Drugs and Poisons appointed under section 3 of the Ordinance shall, as from the commencement of this Act, be deemed to be

⁵⁸See Mimi Kamariah Majid, *Criminal Procedure in Malaysia* (1987), 7 - 9.

⁵⁹Act A491, w.e.f. 30.5.1980.

⁶⁰[1977] 2 All E.R. 163.

⁶¹See Explanatory Statement to Bill.

⁶²See discussion, *infra* on Act A553/83.

a Drug Enforcement Officer appointed under the said section as amended by section 3 of this Act. Section 3 merely substituted the words "Inspectors of Dangerous Drugs and Poisons" and "Inspectors" in the section and marginal note with the words "Drug Enforcement Officers". The Inspectors of Dangerous Drugs and Poisons were persons appointed when the Central Narcotics Bureau was set up in 1972. Since 1979, when the Bureau ceased to exist, they have been absorbed as Drug Enforcement Officers. According to the then Deputy Minister of Health, when tabling the Bill in the Dewan Rakyat for Second and Third Reading, the introduction of the new term was to avoid confusion because of the previous term "Inspector". The Inspectors of Dangerous Drugs were pharmacists, and as Drug Enforcement Officers these pharmacists possess powers to enter shops and premises to check on the records and stocks dangerous drugs found in those places. Section 27 was consequently amended according these Officers wider powers to conduct investigations, for example, powers to search and seize drugs, books and documents. They have the same powers as the police and customs in these respects; the power of arrest is noticeably to be excluded.⁶³

16. Dangerous Drugs (Amendment) Act 1983⁶⁴

This Act again substituted a new definition for the term "cannabis" due to problems engendered by the previous definition.⁶⁵ Now, any part of the cannabis plant from which the resin has not been extracted falls within the meaning of "cannabis". With the dissolution of the Central Narcotics Bureau, the term "Bureau" and its definition are deleted.⁶⁶

Section 39A which provided for heavier penalties for offences involving 5 grammes or more of heroin or morphine was substituted with a new provision extending its application to prepared opium or raw opium of 250 grammes or more in weight.

⁶³See *Parliamentary Debates*, Dewan Rakyat, 26th March 1980, 915 - 916.

⁶⁴Act A553/83 w.e.f. 15.4.1983.

⁶⁵See the cases of *PP v. Puteh Nordin* [1983] 2 M.L.J. 292 and *PP v. Mohamed Ismail* [1984] 1 M.L.J. 134.

⁶⁶*Supra*.

Whereas previously the offender would only be "liable" to imprisonment for a term not exceeding fourteen years and not less than three years he shall now be punished with imprisonment for life or for a term which shall not be less than five years. The six strokes of the whip remained the same.

Because the new section 39A had included raw opium and prepared opium, section 6A and part of section 9(2) became redundant and were therefore repealed. Section 8 was amended to make any reference to prepared opium or opium to include a reference to cannabis, cannabis resin and substances of which such resin forms the base.

The meaning of the term "consume" provided in section 10(3) was extended to include "inhale, or introduce into the body in any manner or by any means whatsoever." This is an attempt to cover whatever loopholes there might have been in the definition, and to include as many possibilities there may be into the definition.

A new section 25P related to treatment and rehabilitation was introduced into Part VA. The CPC and *Subordinate Courts Act* 1948 have their rules concerning local jurisdiction of Magistrates.⁶⁷ This new section seeks to overcome difficulties in the application of those rules in treatment and rehabilitation cases.

The controversial section 27A was introduced conferring power on any police officer or officer of customs, on the authorisation of the Public Prosecutor, to intercept, detain or open any postal article in the course of transmission by post or to intercept messages transmitted or received by telecommunication or to intercept or listen to any conversation by telecommunication. This provision was thought necessary because of the sophisticated modes of communication used in trafficking activities. Checks are provided in the form of the Public Prosecutor's consent and only after sufficient evidence regarding the activities of a suspect are forwarded to him.⁶⁸

The amendments to section 31 were to facilitate the enforcement of the Act. Previously, the offences under the DDA were subjected to the First Schedule of the CPC as far as categorisation

⁶⁷See s. 76 SCA, s. 121 CPC.

⁶⁸*Parliamentary Debates*, Dewan Rakyat, 24th March 1983, 7410.

of offences as seizable or non-seizable was concerned. That Schedule states that if offences are punishable with imprisonment for three years or upwards, they shall be seizable, otherwise they are non-seizable offences. This meant that the police require warrants before they could arrest persons suspected of committing offences punishable with imprisonment of less than three years. This posed difficulties as seeking warrants might hamper enforcement efforts. Section 31 now labels all offences under the Act seizable offences for the purposes of the CPC. Henceforth no warrants of arrest are necessary to apprehend a suspect.

Two new sections in the form of section 31A and section 31B were introduced to facilitate the investigation of drug cases. The arrested suspect may be required to be medically examined so that evidence to prove the offence of which he is suspected to have committed, may be obtained. Necessary force to obtain such evidence may be used. Here, force necessarily refers to the extraction of evidence through medical means. The person to inflict such force would be medical officers, anyway.⁶⁹ Section 31B makes available, in modified form, to officers of customs, the procedures already available to police officers under section 117 of the *Criminal Procedure Code* relating to the production before a Magistrate, and detention with the Magistrate's authority, of a person arrested for an offence against the Act where the investigations cannot be completed within twenty-four hours from the time of the arrest of such person.

Paragraph (da) of section 37 dealing with the presumption of trafficking in dangerous drugs was amended, reducing the amount of drugs a person has to be in possession before the presumption applies. From 100 grammes of heroin or morphine, the amount is reduced to a mere 15 grammes. Besides the reduction, the amendment included a few other new categories of drugs, namely, a total of 15 grammes or more in weight of heroin and morphine. This meets a situation where a person may be in possession of two such drugs but less than 15 grammes in weight each. The weight of raw opium was also reduced from 5 kilogrammes to 1,000 grammes. The weights of prepared opium

⁶⁹Defined to include "any person employed by the Government or a statutory authority as a medical officer or as a chemist."

and cannabis or cannabis resin remained the same at 1,000 grammes and 200 grammes, respectively. This paragraph was to be amended again in 1984.⁷⁰

The then Deputy Prime Minister, when tabling the Bill for Second Reading, gave reasons why the amounts for heroin and morphine were reduced. According to him, heroin was the drug most prevalent in use by drug dependants in Malaysia. Each straw or tube consisted of about 0.05 or 0.06 gramme of heroin costing between \$7 to \$10 each. Each gramme of heroin in pure form could be used for 100 to 200 injections. A drug dependant required about 4 to 5 injections a day costing him between \$20 to \$40. Generally, the dependant person would not possess more than 10 tubes or straws for personal consumption, unless they were for distribution. It followed that the maximum a dependant would possess would be about 5 to 10 grammes if the drug was not for distribution. Based on the calculations, the amounts for heroin and morphine, and a combination thereof were sought to be reduced to 15 grammes for the purposes of the presumption of trafficking. In the same vein, the amount of raw opium was reduced from 5 kilogrammes to 1,000 grammes only.⁷¹

Paragraph (1) of section 37 was substituted to allow evidence of a police officer not below the rank of Sergeant or a senior customs officer that a pipe or other article is for the use in the consumption of prepared opium, cannabis, cannabis resin, or substances of which such resin forms the base or in the preparation thereof for consumption, to be sufficient evidence for the purposes of any proceedings under the Act or any regulations thereunder. This would greatly facilitate the proving of offences such as those in section 10(1) and 10(2).

A new subsection (3) was introduced to section 37A emphasising that that section is here to stay despite the opinion of the Federal Court in *Zakaria bin Isa v. PP*.⁷²

Perhaps, a most significant amendment in 1983 was the one made to section 39B for the offence of trafficking in drugs. The offence became punishable only with death. With this

⁷⁰See discussion, *infra* on Act A596/84.

⁷¹*Parliamentary Debates*, Dewan Rakyat, 24th March 1983, 7405 - 7407.

⁷²[1978] 2 M.L.J. 35.

amendment, section 41(1) needed to be amended too. It clearly disallows the Sessions Court and the Magistrate's Court from hearing an offence under section 39B. Section 41A(1) too needed an amendment. When a person is charged with an offence "triable exclusively by the High Court" there is no need for the Public Prosecutor "to require" it to be transferred to the High Court. The case will be transferred as a matter of course. But, where the offence is one not triable exclusively by the High Court, the requisition remains necessary.

According to the then Deputy Prime Minister, the death penalty was made mandatory because of the non-deterrent effect of the previous punishment of life imprisonment and whipping, as an alternative to death and the need to further stem the activities of drug traffickers and distributors.⁷³ Besides, ever since the section was introduced in 1975⁷⁴ there was inconsistency in the sentencing of drug traffickers.

17. Drug Dependants (Treatment and Rehabilitation) Act 1983 (DDTRA)⁷⁵

This Act culminates all legislative efforts at codifying the treatment and rehabilitation of drug dependants. Its purpose is to provide for the treatment and rehabilitation of drug dependants. With its introduction, the whole of Part VA of the *Dangerous Drugs Act 1952* was repealed together with a portion in the long title and the definition of certain terms relevant to treatment and rehabilitation, namely, Board of Visitors, detection centre, Director General, drug dependant, rehabilitation centre and rehabilitation committee.⁷⁶ Transitional provision is made in section 30 of the DDTRA for matters which were pending or have arisen just prior to its enforcement.⁷⁷

Section 31 of the DDTRA amended the *Dangerous Drugs Act 1952* by adding two new sections thereto. Section 38A allows the Court to either send an offender to a rehabilitation centre

⁷³*Op. cit.* 7408.

⁷⁴See Act A293.

⁷⁵Act 283, w.e.f. 15.4.1983.

⁷⁶See s. 29 of DDTRA.

⁷⁷See s. 30.

for two years or release him to be under supervision of a Rehabilitation Officer. The offence he commits must be one other than those provided in section 6B (cultivation offences) or section 39B (trafficking) or those offences punishable under section 39A. The age of the offender at the time of finding guilty must not exceed 18 years. A somewhat similar provision appeared in section 25B of the repealed Part VA of the DDA.

Section 38B relates to the offence of self-administration, an offence under section 15 of the DDA. After the offender has served his sentence for that offence, "he shall immediately ... undergo supervision by a Rehabilitation Officer ... for a period of not less than two and not more than three years". Once he undergoes such supervision, he is deemed to have been ordered under section 6(1)(b) of the DDTRA and that Act applies to him thereafter. Thus, should he not comply with the conditions of the order or breaches any part of the order, the consequences listed in the Act will follow.

18. Dangerous Drugs (Amendment) Act 1984⁷⁸

Two definitions were amended to overcome difficulties met when interpreting the previous definitions.⁷⁹ "Opium poppy" now means any plant from which morphine may be produced, while "raw opium" now means the coagulated juice obtained from any plant from which morphine may be produced, whatever its content of morphine and in whatever form the coagulated juice is, but does not include medicinal opium. Previously, "opium poppy" meant "a plant of the species *Papaver somniferum* L or the species *Papaver setigerum* D.C. and any plant from which morphine may be produced", whereas "raw opium" meant "the spontaneously coagulated juice obtained from the plant *Papaver somniferum* L., which has not undergone the process necessary to convert it to medicinal opium, whatever its content of morphine." As a result, there were difficulties in securing convictions in cases where the prosecution could not prove the type plant source. When presenting the Bill for Second

⁷⁸Act A596 w.e.f. 7.9.1984.

⁷⁹*PP v. Poh Eng Hoe* Kedah Cr. Trial No. 15 of 1982 (unreported); *Ramli bin Kechik v. PP* [1986] C.L.J. 308.

and Third Reading in the Dewan Rakyat, the then Deputy Minister of Home Affairs quoted a case from Kangar, Perlis where an accused was charged with trafficking 8,628 grammes of raw opium but was acquitted by the High Court because the prosecution had failed to prove the plant source was *Papaver somniferum* L as was required by the definition.⁸⁰ It was thus suggested that the definitions for both "opium poppy" and "raw opium" were to cover all types of poppy plants which may produce morphine.⁸¹

Paragraph (da) of section 37 was again amended by adding more categories of drugs or combination thereof. Altogether three new categories were added. They were:

- (a) 15 grammes or more in weight of monoacetylmorphines;
- (b) a total of 15 grammes or more in weight of heroin, morphine and monoacetylmorphines or a total of 15 grammes or more in weight of any two of the said dangerous drugs, and
- (c) a total of 1,000 grammes or more in weight of prepared opium and raw opium.

Monoacetylmorphine was included in the presumption of trafficking because previously a person caught with more than 15 grammes would not be punished to death although that substance is twice as potent as morphine. It is a substance used in the process of converting morphine into heroin and there were occasions in the past where raids on illegal laboratories resulted in seizures of heroin containing monoacetylmorphine. An instance was cited by the then Deputy Minister where a seizure of 51.76 grammes of heroin containing 26.98 grammes of monoacetylmorphine was made.⁸² The substance was also included in the list in Part III of the First Schedule.

Cannabis and cannabis resin have been further defined. Where previously 200 grammes or more in weight of cannabis or cannabis resin were provided for, now three new descriptions were

⁸⁰ *PP v. Poh Eng Hoe* Kedah Cr. Trial No. 15 of 1982, (unreported).

⁸¹ *Parliamentary Debates*, Dewan Rakyat, 20th July 1984, 39.

⁸² *Op. cit.* 40.

introduced, namely, 200 grammes or more in weight of cannabis, 200 grammes or more in weight of cannabis resin, and a total of 200 grammes or more in weight of cannabis and cannabis resin.

Yet another step taken to provide for as many possibilities as possible was the amendment to section 39A. Where previously only two descriptions of drugs were mentioned, now a few more were introduced. The list of drugs were:

- (a) 5 grammes or more in weight of heroin;
- (b) 5 grammes or more in weight of morphine;
- (c) 5 grammes or more in weight of monoacetylmorphines;
- (d) a total of 5 grammes or more in weight of heroin, morphine and monoacetylmorphines or a total of 5 grammes or more in weight of any two of the said dangerous drugs;
- (e) 250 grammes or more in weight of raw opium;
- (f) 250 grammes or more in weight of prepared opium, or
- (g) a total of 250 grammes or more in weight of raw opium and prepared opium.

Because monoacetylmorphine was included in the presumption of trafficking, it had to be included in section 39A, as well as in the list in Part III appearing in the First Schedule.⁸³

Section 40A relating to agents provocateur was amended by substitution with a new section. Where previously the evidence of such agents could be used in relation to the offence of trafficking or the abetment or attempt thereof, the amendment allows the evidence to be admitted even in relation to any other offence under the Act.⁸⁴ Besides that, subsection (2) allows statements made to an agent who is a police officer whatever his rank or any officer of customs to be admitted as evidence

⁸³*Supra.*

⁸⁴*Op. cit.* 41.

at the trial of the person. The statement may be oral or in writing. However, it is unclear whether the other requirements in section 37A will be totally excluded. From the views of a Member of Parliament who spoke on the Bill,⁸⁵ it is evident that the other requirements are to be complied with. The Honourable Member also commented that section 40A(2) was the direct result of the case of *PP v. Puteh Nordin*⁸⁶ which held that conversation to a detective-constable could not be admitted under section 37A because his rank was below that of the Inspector.

19. Dangerous Drugs (Amendment) Act 1986⁸⁷

This was the most recent amendment to the *Dangerous Drugs Act 1952*. Its main purpose was to increase the punishments available for certain offences and to streamline the penalties for offences of similar gravity.⁸⁸

Sections 6 and 9(2) of the DDA were amended to increase the fine from ten thousand ringgit to twenty thousand ringgit.

Section 39A was extensively amended. In the first place, a new subsection (1) was introduced making a person found guilty of any offence involving the amount or quantity of dangerous drugs listed therein punishable with imprisonment for a term which shall not be less than two years but shall not exceed five years. He shall also be punished with whipping of not less than three strokes but not more than nine strokes. The mandatory whipping was provided for the sole purpose of deterring would-be offenders and as a punishment for offenders who are actually traffickers but who are not exposed to the death penalty because of the smaller quantities they are caught in possession of.⁸⁹ The categories of drugs and their quantities are as follows:

- (a) 2 grammes or more but less than 5 grammes in weight of heroin;

⁸⁵Mr. Karpal Singh, see *op. cit.* 66 - 67.

⁸⁶[1983] 2 M.L.J. 292, 293 which was decided on 22nd March 1983.

⁸⁷Act A659, w.e.f. 1st January 1987.

⁸⁸See per Deputy Minister of Home Affairs when tabling the Bill in the Dewan Negara on 17th December 1986, *Parliamentary Debates*, Dewan Negara, p. 49.

⁸⁹See *op. cit.* 51.

- (b) 2 grammes or more but less than 5 grammes in weight of morphine;
- (c) 2 grammes or more but less than 5 grammes in weight of monoacetylmorphines;
- (d) a total of 2 grammes or more but less than 5 grammes in weight of heroin, morphine and monoacetylmorphines or a total of 2 grammes or more but less than 5 grammes in weight of any two of the said dangerous drugs;
- (e) 5 grammes or more but less than 15 grammes in weight of cocaine;
- (f) 20 grammes or more but less than 50 grammes in weight of cannabis;
- (g) 20 grammes or more but less than 50 grammes in weight of cannabis resin;
- (h) a total of 20 grammes or more but less than 50 grammes in weight of cannabis and cannabis resin;
- (i) 100 grammes or more but less than 250 grammes in weight of raw opium;
- (j) 100 grammes or more but less than 250 grammes in weight of prepared opium;
- (k) a total of 100 grammes or more but less than 250 grammes in weight of raw opium and prepared opium;
- (l) 250 grammes or more but less than 750 grammes in weight of coca leaves.

It must be noted that cocaine and coca leaves had for the first time in a long-while received attention by Parliament in this Amendment. According to the Deputy Minister of Home Affairs, studies have shown that dependancy on cocaine had increased manifold in the Western countries and Parliament have taken steps to curb or prevent its spread into this country by providing

for heavier penalties.⁹⁰

The new subsection (2) to section 39A is actually the previous section 39A of the DDA. With the introduction of the new subsection (1), subsection (2) included certain new descriptions to conform with the list in subsection (1). Five new descriptions were introduced, namely:

- (a) 15 grammes or more in weight of cocaine;
- (b) 50 grammes or more in weight of cannabis;
- (c) 50 grammes or more in weight of cannabis resin;
- (d) a total of 50 grammes or more in weight of cannabis and cannabis resin;
- (e) 750 grammes or more in weight of coca leaves.

The number of strokes of mandatory whipping had been increased from six to ten.

As a result of these new descriptions in section 39A, section 37 paragraph (da) needed amendment. Two new descriptions related to cocaine were included. Henceforth, if a person is caught in possession of 40 grammes or more in weight of cocaine or 2,000 grammes or more in weight of coca leaves the presumption of trafficking will apply to him.

Conclusion

The *Dangerous Drugs Act* 1952 have been amended numerous times and several significant amendments have altered the very nature of the Act from a regulatory statute to a formidable penal one. When tabling the Bills for the amendments, the Ministers or Deputy Ministers concerned have stressed the need for harsh provisions as the law must keep in stride with the rampancy in the commission of drug offences and the apparently non-deterrent effect of the punishments prescribed therein. The year 1983 marked an important milestone in the history of the fight

⁹⁰*Op. cit.* See also *New Straits Times*, 13th August 1986.

against drugs as in that year several important amendments were passed. Drugs became the Nations's Number One Enemy and with that came the mandatory death penalty for the offence of trafficking in drugs, the reduction of the amount of drugs which may attract the presumption of trafficking, greater investigation and enforcement powers for the police and customs officers, and the introduction of a totally new statute to cater for the treatment and rehabilitation of drug dependants. In that year too the treatment and rehabilitation of drug dependants became the concern of the Ministry of Home Affairs, not the Ministry of Welfare Services.

As the *modus operandi* of drug offenders become more sophisticated and their modes of communication with each other become complicated, the law has to meet the increasing difficulty to investigate these cases. Thus, the introduction of many new provisions to facilitate effective enforcement of the law become necessary. New powers of arrest, seizure, forfeiture, and interception of communication were introduced and improved each time difficulties arose. To assist the prosecution in proving drug offences, the law provides for special powers to obtain evidence through medical examination of the suspect's anatomy, the admissibility of statements made to any police officer notwithstanding his rank if he is an agent provocateur, and the acceptance of the agent's evidence without need of corroboration thereof.

Parliament acted quickly whenever a new difficulty arose as, for example, where definitions of certain terms in the Act hampered the successful prosecution of known drug traffickers. It acted whenever new characteristics in the drug trade and abuse became evident as, for example, when suspects were increasingly being caught with a combination of heroin and morphine but each weighing less than 15 grammes. Also, when suspects were increasingly being caught with drugs weighing just less than 5 grammes so that the harsh penalties in section 39A carrying the mandatory sentence of whipping of 6 strokes would not be applicable, or just below 15 grammes so that the life imprisonment sentence with the alternative of death and later the mandatory death sentence would not be applicable.

One thing is certain with the DDA and that is Parliament is ever so vigilant about its implementation and efficacy as a tool

to stem or curb the drug menace in the country. There may be many more amendments to come in the future judging by the trend of amendments thus far.⁹¹

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⁹¹See "Amend out-dated laws on dadah, says PM", *New Straits Times*, 23rd September 1986.

