

TO BE INTRODUCED IN LOK SABHA

AS INTRODUCED IN LOK SABHA

Bill No. 78 of 2011

THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES
(AMENDMENT) BILL, 2011

A

BILL

further to amend the Narcotic Drugs and Psychotropic Substances Act, 1985.

BE it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2011. Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

61 of 1985. 2. In section 2 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the principal Act),— Amendment of section 2.

(a) after clause (iv), the following clause shall be inserted, namely:—

10 '(iva) "Central Government factories" means factories owned by the Central Government or factories owned by any company in which the Central Government holds at least fifty-one per cent. of the paid-up share capital;';

(b) for clause (viiia), the following clause shall be substituted, namely:—

'(viiia) "commercial quantity", in relation to a narcotic drug, psychotropic substance or any preparation of such drug or such substance, means any quantity

of such drug, substance or preparation of such drug or substance greater than the quantity specified, in terms of the pure drug content or otherwise, by the Central Government by notification in the Official Gazette;'

(c) for clause (xxiii), the following clause shall be substituted, namely:—

'(xxiii) "small quantity", in relation to a narcotic drug, psychotropic substance or any preparation of such drug or such substance, means any quantity of such drug, substance or preparation of such drug or substance lesser than the quantity specified, in terms of the pure drug content or otherwise, by the Central Government by notification in the Official Gazette;'

Amendment of section 9. **3.** In section 9 of the principal Act, in sub-section (1), in clause (a), after sub-clause (iii), the following sub-clause shall be inserted, namely:— 10

“(iii) the possession, transport, import inter-State, export inter-State, warehousing, sale, purchase, consumption and use of poppy straw produced from plants from which no juice has been extracted through lancing;”.

Amendment of section 10. **4.** In section 10 of the principal Act, in sub-section (1), in clause (a), in sub-clause (i), after the words “poppy straw”, the words “except poppy straw produced from plants from which no juice has been extracted through lancing” shall be inserted. 15

Substitution of new section for section 27. **5.** For section 27 of the principal Act, the following section shall be substituted, namely:—

“27. Whoever consumes any narcotic drug or psychotropic substance in contravention of any provision of this Act or any rule or order made thereunder shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to ten thousand rupees or with both.”. 20

Insertion of new section 27B. **6.** After section 27A of the principal Act, the following section shall be inserted, namely:— 25

"27B. Whoever contravenes the provision of section 8A shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to ten years and shall also be liable to fine."

Punishment for contravention of section 8A. Amendment of section 31. **7.** In section 31 of the principal Act,—

(a) in sub-section (1),— 30

(i) for the words "one-half of the maximum term", the words "one and one-half times of the maximum term" shall be substituted;

(ii) for the words "one-half of the maximum amount", the words "one and one-half times of the maximum amount" shall be substituted;

(b) in sub-section (2),— 35

(i) for the words "one-half of the minimum term", the words "one and one-half times of the minimum term" shall be substituted;

(ii) for the words "one-half of the minimum amount", the words "one and one-half times of the minimum amount" shall be substituted.

Amendment of section 52A. **8.** In section 52A of the principal Act,— 40

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) The Central Government may, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any

other relevant consideration, in respect of any narcotic drugs, psychotropic substances, controlled substances or conveyances, by notification in the Official Gazette, specify such narcotic drugs, psychotropic substances, controlled substances or conveyance or class of narcotic drugs, class of psychotropic substances, class of controlled substances or conveyances, which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may, from time to time, determine after following the procedure hereinafter specified.";

(b) in sub-section (2),—

(i) for the words "narcotic drug or psychotropic substance" and "narcotic drugs or psychotropic substances", wherever they occur, the words "narcotic drugs, psychotropic substances, controlled substances or conveyances" shall be substituted;

(ii) in clause (b), for the words "such drugs or substances", the words "such drugs, substances or conveyances" shall be substituted;

(c) in sub-section (4), for the words "narcotic drugs or psychotropic substances", the words "narcotic drugs, psychotropic substances, controlled substances or conveyances" shall be substituted.

9. After section 57 of the principal Act, the following section shall be inserted, namely:—

"57A. Whenever any officer notified under section 53 makes an arrest or seizure under this Act, and the provisions of Chapter VA apply to any person involved in the case of such arrest or seizure, the officer shall make a report of the illegally acquired properties of such person to the jurisdictional competent authority within one hundred and eighty days of the arrest or seizure."

10. In Chapter VA of the principal Act, for the heading "FORFEITURE OF PROPERTY DERIVED FROM, OR USED IN ILLICIT TRAFFIC", the heading "FORFEITURE OF ILLEGALLY ACQUIRED PROPERTY" shall be substituted.

11. In section 68B of the principal Act,—

(a) in clause (g),—

(i) in sub-clause (i), for the words "of this Act; or", the words "of this Act or the equivalent value of such property; or" shall be substituted;

(ii) in sub-clause (ii), for the words "such property,", the words "such property or the equivalent value of such property; or" shall be substituted;

(iii) after sub-clause (ii), the following sub-clause shall be inserted, namely:—

"(iii) any property acquired by such person, whether before or after the commencement of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2011, wholly or partly out of or by means of any income, earnings or assets the source of which cannot be proved, or the equivalent value of such property";

(b) for clause (h), the following clause shall be substituted, namely:—

'(h) "property" means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible, wherever located and includes deeds and instruments evidencing title to, or interest in, such property or assets;'

12. In section 68D of the principal Act, in sub-section (1), for the words "any Collector of Customs or Collector of Central Excise", the words "any Commissioner of Customs or Commissioner of Central Excise" shall be substituted.

Insertion of new section 57A.

Report of seizure of property of the person arrested by the notified officer.

Substitution of new heading for heading of Chapter VA.

Amendment of section 68B.

Amendment of section 68D.

- Amendment of section 68H. **13.** In section 68H of the principal Act, the following *Explanation* shall be inserted at the end, namely:—
- "Explanation.*—For the removal of doubts, it is hereby declared that in a case where the provisions of section 68J are applicable, no notice under this section shall be invalid merely on the ground that it fails to mention the evidence relied upon or it fails to establish a direct nexus between the property sought to be forfeited and any activity in contravention of the provisions of this Act."
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- Amendment of section 68-O. **14.** In section 68-O of the principal Act, in sub-section (4), after the proviso, the following proviso shall be inserted, namely:—
- "Provided further that if the office of the Chairman is vacant by reason of his death, resignation or otherwise, or if the Chairman is unable to discharge his duties owing to absence, illness or any other cause, the Central Government may, by order, nominate any member to act as the Chairman until a new Chairman is appointed and assumes charge or, as the case may be, resumes his duties.
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- Amendment of section 71. **15.** In section 71 of the principal Act, in sub-section (1), after the words "identification, treatment", the word "management," shall be inserted.
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STATEMENT OF OBJECTS AND REASONS

The Narcotic Drugs and Psychotropic Substances Act, 1985 was enacted consolidating and amending the provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances under the Opium Act, 1857, Opium Act, 1878 and the Dangerous Drugs Act, 1930. This Act was amended once in 1989 and subsequently in 2001. During the implementation of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2001 certain anomalies have been noticed. It is proposed to rectify those anomalies and make certain further changes to strengthen the provisions of the Act.

2. The amending Act of 2001 rationalised the sentence structure so as to ensure that while drug traffickers who traffic in significant quantities of drugs are punished with deterrent sentences, the addicts and those who commit less serious offences are sentenced to less severe punishment. Such provisions have sometimes been misinterpreted to imply that in determining quantities, only the pure drug content in the quantum of drug seized should be reckoned. Since the Act duly provides for punishment for preparations of drugs also, this amendment seeks to clarify the legislative intent to take the entire quantity of drug seized in a case for determining the quantum of punishment and not the pure drug content.

3. Provisions for tracing and seizing of illegally acquired properties pursuant to drug trafficking activity were introduced in the Principal Act by way of amendment in 1989 and were further strengthened in the amending Act of 2001. The need for further expanding the scope of such provisions and to broad base the definition of illegally acquired property so that it becomes more difficult for drug traffickers to enjoy the fruits of drug trafficking activity, has been experienced. It is proposed to do so by way of certain amendments.

4. The amendments also seek to put in place the enabling provisions for the introduction of an alternate method of obtaining alkaloids of opium through production of Concentrate of Poppy Straw instead of production and processing of opium, in the country. Besides, some other amendments seeking to address the anomalies arising out of the amendments made in 2001 are sought to be introduced along with measures to further strengthen the provisions of the Act.

5. The Bill seeks to achieve the above objects.

NEW DELHI;
The 6th September, 2011.

PRANAB MUKHERJEE.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 3 of the Bill seeks to amend section 9 of the Narcotic Drugs and Psychotropic Substances Act, 1985. By way of this amendment, it is proposed to confer on the Central Government the power to permit and regulate, by making rules, the possession, transport, import inter-State, export inter-State, warehousing, sale, purchase, consumption and use of poppy straw produced from plants from which no juice has been extracted through lancing.

2. The rules as may be made by the Central Government are required to be laid before the Parliament. The matters in respect of which rules may be made by the Central Government in accordance with the provisions of the said Act are matters of procedure and administrative details and it is not practical to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

ANNEXURE

EXTRACTS FROM THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985

(61 OF 1985)

*	*	*	*	*	
2.	In this Act, unless the context otherwise requires,—				Definitions.
*	*	*	*	*	
	(viiia) "commercial quantity", in relation to narcotic drugs and psychotropic substances, means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette;				
*	*	*	*	*	
	(xxiiia) "small quantity", in relation to narcotic drugs and psychotropic substances, means any quantity lesser than the quantity specified by the Central Government by notification in the Official Gazette;				
*	*	*	*	*	
9.	(1) Subject to the provisions of section 8, the Central Government may, by rules—				Power of Central Government to permit, control and regulate.
	(a) permit and regulate—				
*	*	*	*	*	
10.	(1) Subject to the provisions of section 8, the State Government may, by rules—				Power of State Government to permit, control and regulate.
	(a) permit and regulate—				
	(i) the possession, transport, import inter-State, export inter-State, warehousing, sale, purchase, consumption and use of poppy straw;				
*	*	*	*	*	
27.	Whoever consumes any narcotic drug or psychotropic substance shall be punishable,—				Punishment for consumption of any narcotic drug or psychotropic substance.
	(a) where the narcotic drug or psychotropic substance consumed is cocaine, morphine, diacetyl-morphine or any other narcotic drug or any psychotropic substance as may be specified in this behalf by the Central Government by notification in the Official Gazette, with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both; and				
	(b) where the narcotic drug or psychotropic substance consumed is other than those specified in or under clause (a), with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.				
*	*	*	*	*	
31.	(1) If any person who has been convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, any of the offences punishable under this Act is subsequently convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, an offence punishable under this Act with the same amount of punishment shall be punished for the second and every subsequent offence with rigorous imprisonment for a term which may extend to one-half of the maximum term of imprisonment, and also be liable to fine which shall extend to one-half of the maximum amount of fine.				Enhanced punishment for offences after previous conviction.
	(2) Where the person referred to in sub-section (1) is liable to be punished with a minimum term of imprisonment and to a minimum amount of fine, the minimum punishment				

for such person shall be one-half of the minimum term of imprisonment and one-half of the minimum amount of fine:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding the fine for which a person is liable.

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Disposal of seized narcotic drugs and psychotropic substances.

52A. (1) The Central Government may, having regard to the hazardous nature of any narcotic drugs or psychotropic substances, their vulnerability to theft, substitution, constraints of proper storage space or any other relevant considerations, by notification published in the Official Gazette, specify such narcotic drugs or psychotropic substances or class of narcotic drugs or class of psychotropic substances which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may from time to time, determine after following the procedure hereinafter specified.

(2) Where any narcotic drug or psychotropic substance has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, the officer referred to in sub-section (1) shall prepare an inventory of such narcotic drugs or psychotropic substances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs or psychotropic substances or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the narcotic drugs or psychotropic substances in any proceedings under this Act and make an application, to any Magistrate for the purpose of—

* * * * *

(b) taking, in the presence of such Magistrate, photographs of such drugs or substances and certifying such photographs as true; or

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(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 or the Code of Criminal Procedure, 1973, every court trying an offence under this Act, shall treat the inventory, the photographs of narcotic drugs or psychotropic substances and any list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence.

1 of 1872.
2 of 1974.

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CHAPTER VA

FORFEITURE OF PROPERTY DERIVED FROM, OR USED IN ILLICIT TRAFFIC

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Definitions.

68B. In this Chapter, unless the context otherwise requires,—

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(g) "illegally acquired property", in relation to any person to whom this Chapter applies, means,—

(i) any property acquired by such person, whether before or after the commencement of this Chapter, wholly or partly out of or by means of any income, earnings or assets derived or obtained from or attributable to the contravention of any provisions of this Act; or

(ii) any property acquired by such person, whether before or after the commencement of this Chapter, for a consideration, or by any means wholly or partly traceable to any property referred to in sub-clause (i) or the income or earning from such property,

and includes—

(A) any property held by such person which would have been, in relation to any previous holder thereof, illegally acquired property under this clause if such previous holder had not ceased to hold it, unless such person or any other person who held the property at any time after such previous holder or, where there are two or more such previous holders, the last of such previous holders is or was a transferee in good faith for adequate consideration;

(B) any property acquired by such person, whether before or after the commencement of this Chapter, for a consideration, or by any means, wholly or partly traceable to any property falling under item (A), or the income or earnings therefrom;

(h) "property" means property and assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and deeds and instruments evidencing title to, or interest in, such property or assets, derived from, or used in, the illicit traffic;

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68D. (1) The Central Government may, by order published in the Official Gazette, authorise any Collector of Customs or Collector of Central Excise or Commissioner of Income-tax or any other officer of the Central Government of equivalent rank to perform the functions of the competent authority under this Chapter.

Competent authority.

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68-O. (1) * * * * *

Appeals.

(4) Notwithstanding anything contained in sub-section (3), where the Chairman considers it necessary so to do for the expeditious disposal of appeals under this section, he may constitute a Bench of two members and a Bench so constituted may exercise and discharge the powers and functions of the Appellate Tribunal:

Provided that if the members of a Bench so constituted differ on any point or points, they shall state the point or points on which they differ and refer the same to a third member (to be specified by the Chairman) for hearing of such point or points and such point or points shall be decided according to the opinion of that member.

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71. (1) The Government may, in its discretion, establish as many centres as it thinks fit for identification, treatment, education, after-care, rehabilitation, social re-integration of addicts and for supply, subject to such conditions and in such manner as may be prescribed, by the concerned Government of any narcotic drugs and psychotropic substances to the addicts registered with the Government and to others where such supply is a medical necessity.

Power of Government to establish centres for identification, treatment, etc., of addicts and for supply of narcotic drugs and psychotropic substances.

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further to amend the Narcotic Drugs and Psychotropic Substances Act, 1985.

(Shri Pranab Mukherjee, Minister of Finance)