

10

**STANDING COMMITTEE
ON FINANCE
(1998-99)**

TWELFTH LOK SABHA

**MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)**

**THE NARCOTIC DRUGS AND PSYCHOTROPIC
SUBSTANCES (AMENDMENT) BILL, 1998**

TENTH REPORT



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**LOK SABHA SECRETARIAT
NEW DELHI**

November, 1998/Agrahayana, 1920 (Saka)

TENTH REPORT
STANDING COMMITTEE ON FINANCE
(1998-99)

(TWELFTH LOK SABHA)

MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

THE NARCOTIC DRUGS AND PSYCHOTROPIC
SUBSTANCES (AMENDMENT) BILL, 1998

Presented to Lok Sabha on 2 December, 1998

Laid in Rajya Sabha on 30 November, 1998



LOK SABHA SECRETARIAT
NEW DELHI

November, 1998/Agrahayana, 1920 (Saka)

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Tenth Report of the Committee on the Narcotic Drugs and
Psychotropic Substances (Amendment) Bill, 1988.

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COMPOSITION OF THE STANDING COMMITTEE ON FINANCE
(1998-99)

Shri Murli Deora — *Chairman*

MEMBERS

Lok Sabha

2. Shri Dhirendra Agarwal
3. Shri Mohanbhai Sanjibhai Delkar
4. Shri Haribhai Parathibhai Chaudhary
5. Shri Uttam Singh Pawar
6. Shri Girdhari Lal Bhargava
7. Shri Chetan Chauhan
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14. Shri Prithviraj D. Chavan
15. Shri R. L. Jalappa
16. Shri Magunta Sreenivasulu Reddy
17. Shri Rupchand Pal
18. Shri Varkala Radhakrishnan
19. Shri Beni Prasad Verma
20. Shri S. Murugesan
21. Shri M. Sahabuddin
22. Dr. S. Venugopalachary
23. Shri Tathagata Satpathy

24. Kum. Kim Gangte
25. Dr. Bikram Sarkar
26. Shri S. Jaipal Reddy
27. Shri Joachim Baxla
28. Shri P. Chidambaram
29. Shri Buta Singh
30. Shri Ch. Vidyasagar Rao

Rajya Sabha

31. Dr. Manmohan Singh
32. Shri Krishna Kumar Birla
33. Shri N.K.P. Salve
34. Shri M. Rajsekara Murthy
35. Shri Narendra Mohan
36. Shri O. P. Kohli
37. Shri Raghavji
38. Dr. Biplab Dasgupta
39. Shri C. Ramachandraiah
40. Shri Amar Singh
41. Shri Prem Chand Gupta
42. Shri R. K. Kumar
43. Shri Gurudas Das Gupta
44. Shri Satishchandra Sitaram Pradhan
45. Shri Suresh A. Keswani

SECRETARIAT

1. Dr. A. K. Pandey — *Additional Secretary*
2. Dr. (Smt.) P. K. Sandhu — *Director*
3. Shri N.S. Hooda — *Assistant Director*

INTRODUCTION

1. I, the Chairman, Standing Committee on Finance (1998-99) having been authorised by the Committee to submit the Report on their behalf present this Tenth Report on The Narcotic Drugs and Psychotropic Substances (Amendment) Bill, 1998.

2. The Narcotic Drugs and Psychotropic Substances (Amendment) Bill, 1998 was introduced in Rajya Sabha on 9 July, 1998. The Bill was later referred to the Committee on 29 July, 1998 for examination and report thereon by the Hon'ble Speaker, Lok Sabha under Rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. To have better understanding on provision of the Bill the Committee sought views/Memoranda from several experts in the field. The points raised by them were considered by the Committee. The Committee took the oral evidence of representatives of (i) Ministries of (a) Home Affairs (b) Health and Family Welfare (c) Social Justice and Empowerment (d) Finance (Deptt. of Revenue) and (e) Law (Deptt. of Legal Affairs); (ii) Law enforcement and investigating agencies namely CBI, BSF, CRPF, Narcotics Control Bureau (NCB) and (iii) Representatives of opium cultivators on 11 and 12 September, 1998 and sought clarifications on the provisions of the Bill. The Committee considered and adopted the draft Report at their sitting held on 20 November, 1998.

4. The Committee wish to express their thanks to the experts who submitted their views/memoranda to the Committee. The Committee also wish to express their thanks to the Officers of the Ministries of Home Affairs, Health and Family Welfare, Social Justice and Empowerment, Law and Finance for placing before the Committee the information in connection with the examination of the Bill.

5. The Committee would like to place on record their appreciation for the valuable assistance rendered to them by the officials of the Lok Sabha Secretariat attached to the Committee.

6. For facility of reference, the observations/recommendations of the Committee have been printed in thick type in the body of the Report.

NEW DELHI;
November 20, 1998
Kartika 29, 1920 (Saka)

MURLI DEORA,
Chairman,
Standing Committee on Finance.

REPORT

Background

1. Drug addiction is a curse which not only threatens public health but also results in dissolution of human personality whose serious consequences result in producing and spreading crime and lawlessness in the society. A close link between illicit traffic in narcotic drugs and psychotropic substances and other related organized criminal activities which undermine the legitimate political and economic fibres and threaten the stability, security and sovereignty of a country hardly need to be overemphasized. The concern regarding the magnitude of this problem has all through been expressed from time to time in various International Bodies. However, with the passage of time and the developments in the field of illicit traffic and drug abuse at national and international level, many deficiencies in the existing laws have been noticed and efforts have been made to make the law as effective as possible.

2. In India, the Law relating to Narcotic Drugs was earlier administered through three Central Acts namely (a) Opium Act, 1857 (b) Opium Act, 1878 and (c) Dangerous Drugs Act, 1930. As these three Acts were found to be not sufficiently deterrent to overcome the increasing menace of drug addictions and operation of organised gangs of smugglers, the Parliament enacted the Narcotic Drugs and Psychotropic Substances Act in 1985 in order to effectively tackle the twin challenge of drug trafficking and drug abuse. The principal Act was amended for the first time in 1989 to provide for tracing, seizing and forfeiture of illegally acquired property.

3. The present Bill i.e. the Narcotic Drugs and Psychotropic Substances (Amendment) Bill, 1998 (Appendix V) was introduced in Rajya Sabha on 9 July, 1998 and was referred to the Standing Committee on Finance by Hon'ble Speaker under Rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha for examination and report thereon. The Narcotic Drugs and Psychotropic Substances Act, 1985, hereinafter referred to as the principal Act,

provides deterrent punishment for various offences relating to illicit trafficking in narcotic drugs and psychotropic substances. Most of the offences under this Act invite uniform punishment of a minimum ten years rigorous imprisonment which may extend upto 20 years. The fact that over a period of time many deficiencies were noticed in the implementation of the present Act including tardy trial and unduly harsh bail provisions which resulted in making the offenders languish in jails for a number of years necessitated certain amendments in the present Act. The Narcotic Drugs and Psychotropic Substances (Amendment) Bill, 1998 proposes to rationalise 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. It has also been proposed to restructure the application of bail provisions to those offenders who indulge in serious offences.

4. The Bill also aims to rectify certain deficiencies with regard to certain procedural aspects like search and seizure due to which efforts of the law enforcing agencies against illicit drug trafficking have not borne much fruit. Powers of entry, search, seizure, etc. in respect of offences relating to Controlled Substances and for tracing, freezing, seizing and forfeiture of illegally acquired property have, therefore, now been conferred upon the empowered officers. The Bill also seeks to meet certain obligations particularly in respect of the concept of "Controlled Delivery" arising from the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 to which India acceded.

5. With a view to have expert opinion of the provisions of the Bill, the Committee sought memoranda from several experts and also invited them for tendering the evidence before the Committee for seeking clarifications on the provisions of the Bill. The Committee also took evidence of the representatives of the Ministry of Health and Family Welfare, Ministry of Social Justice and Empowerment and Ministry of Home Affairs on 11.9.98 and Ministry of Finance (Department of Revenue) on 12.9.98. The Committee examined in depth clause-wise provisions of the Bill. After having been convinced of the need and the objectives of the Bill, the Committee approve the same for enactment by the Parliament with certain modifications which are enumerated in the succeeding paragraphs of the Report.

Recommendations of the Committee

Clause 4 of the Bill

6. Under Clause 4 in Section 7A of the principal Act, for Sub-sections (2) and (3), the following sub-sections shall be substituted, namely:—

- “(2) The Fund shall be applied by the Central Government to meet the expenditure incurred in connection with the measures taken for—
- (a) combating illicit traffic in narcotic drugs, psychotropic substances or controlled substances;
 - (b) controlling the abuse of narcotic drugs and psychotropic substances;
 - (c) identifying, treating, rehabilitating addicts;
 - (d) preventing drug abuse;
 - (e) educating public against drug abuse;
 - (f) supplying drugs to addicts where such supply is a medical necessity.
- (3) The Central Government may constitute a Governing Body as it thinks fit to advise the Government and to sanction money out of the said Fund subject to the limit notified by the Central Government in the Official Gazette.”

7. As is evident from above under Section 7A(3), the Central Government is empowered to constitute the Governing Body, to advise the Government and to sanction the money out of national fund for control of drug abuse.

8. The Committee are of the opinion that the word ‘may’ in the said clause provides the Government with sufficient discretion to defer the constitution of the Governing Body; hence, recommended that the word ‘may’ be substituted with ‘shall’ in order to make the constitution of the Governing Body a permanent feature.

Clause 6 of the Bill

9. Under Clause 6 Sections 15 to 18 of the principal Act stand amended with a view to rationalise the sentence structure so that graded punishment is given on the basis of different quantities of drugs involved. In all the cases, where the contravention involves quantity lesser than commercial quantity but greater than small quantity, the punishment prescribed is rigorous imprisonment for a term which may extend to ten years and fine under Sub-clause (b). The Committee, however, note that in Section 18, there is a little divergence i.e. the punishment in the case of such contravention finds place under Section 18(c) instead which reads as follows:—

“18(c) in any other case, with rigorous imprisonment which may extend to ten years and with fine.”

10. In order to provide uniformity; the Committee recommend that sub-clause 18(c) may be omitted and instead the following sub-clause 18(b) be substituted.

“Where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine.”

In view of the aforesaid change, the sub-clause 18(b) may be relettered as 18(c).

Clause 7 of the Bill

11. Section 20 of the Principal Act provides for punishment for contravention in relation to cannabis plant and cannabis. For section 20(b) (ii) of the Principal Act, a new Section i.e. 20(c) has been substituted. However, the Committee note that under this sub-section proviso which was there in the Principal Act has been excluded. In order to make this provision uniform with respect to the similar provisions as contained under Sections 15, 17 and 18 of the amending Bill, the Committee desire that the following proviso may be added:—

“Provided that the Court may, for reasons to be recorded in the judgement impose a fine exceeding two lakh rupees”.

Clause 10 of the Bill

12. Clause 10 of the Bill substitutes a new section for Section 27 of the principal Act under which punishment for consumption of any narcotic drug or psychotropic substance has been provided. It states as under:—

- “(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, 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, or with both”.

13. Keeping in view the fact that the rural population of greater part of Uttar Pradesh, Bihar and parts of Orissa consume cannabis on special occasions such as Holi and other family functions, the Committee are of the opinion that the punishment stipulated under Section 27(b) is on the higher side.

14. They, therefore, recommend that 27(b) may be amended as under:—

“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 3 months or fine upto Rs. 5,000.”

Clause 14 of the Bill

15. Under Clause 14, a new section 32B has been added, in order to enable the Courts to take into account other additional factors for imposing punishment higher than the minimum term of imprisonment or amount of fine prescribed. The Section reads as under:—

“32B. Where a minimum term of imprisonment or amount of fine is prescribed for any offence committed under this Act, the court may,

in addition to such factors as it may deem fit, take into account the following factors for imposing a punishment higher than the minimum term of imprisonment or amount of fine, namely:—

- (a) the use or threat of use of violence or arms by the offender;
- (b) the fact that the offender holds a public office and that he has taken advantage of that office in committing the offence;
- (c) the fact that the minors are affected by the offence or the minors are used for the commission of an offence; and
- (d) the fact that the offence is committed in an educational institution or social service facility or in their immediate vicinity of such institution or faculty or in other place to which school children and students resort for educational, sports and social activities.”

16. The provisions under this section flow from sub-clause 5 of Article 3 of the 1998 UN convention against illicit traffic. The Committee, however, note that out of eight clauses mentioned in the Declaration, only five have been included and the following clauses as reproduced below have not been dealt with :—

- (a) The involvement in the offence of an organised criminal group to which the offender belongs;
- (b) The involvement of the offender in other international organised criminal activities; and
- (c) The involvement of the offender in other illegal activities facilitated by commission of the offence.

17. After having taken into account the fact that the clauses mentioned above are equally important, the Committee recommend that after sub-clause (d), new sub-clauses (e) and (f) may be added which may read as under :—

- “(e) the fact that the offender belongs to organized international or any other criminal group which is involved in the commission of the offence.”
- (f) The fact that the offender is involved in other illegal activities facilitated by commission of the offence.”

Clause 15 of the Bill

18. Under Clause 15 of the proposed Bill, Section 36-A stands amended and sub-section 36A (1) (a) states as under:

“(a) all offences under this Act which are punishable with imprisonment for a term of more than three years shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the Government;”

sub-section 36A (5) further reads as follows:

“Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offences punishable under this Act with imprisonment for a term of less than three years may be tried summarily”

19. Though sub-sections 36A(a), provides that all offences which are punishable with imprisonment for a term of more than three years are to be tried by the Special Court and sub-section 36A (5) speaks that all offences punishable under the Act with imprisonment for a term of less than three years may be tried summarily, but nowhere in the proposed Bill a punishment of three years has been provided.

20. The Committee apprehend that in the absence of such specific provisions the implementation of these provisions will pose problems since the Courts cannot prejudge the punishment which may be inflicted on an offender.

21. The Committee, therefore, recommend that in sub-section 36A (a) for the words “three years” the words “six months” may be substituted.

Similarly, sub-section 36A (5), may be amended as under :

“Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offences punishable under this Act with imprisonment for a term which may extend to six months may be tried summarily.”

22. Under the same clause 15, in section 36A of the principal Act, a new sub-section (4) has been added which reads as under:—

“(4) in respect of persons accused of an offence punishable under section 19 or section 24 or section 27A or for offences involving commercial quantity the references in sub-section (2) of section 167 of the Code of Criminal Procedure, 1973 thereof to “ninety days”, where they occur, shall be construed as reference to “one hundred and eighty days”.

Provided that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Special Court shall extend the said period up to one year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days.

23. The limit of ninety days as specified in Section 167 (2) of the Code of Criminal Procedure has been proposed to be enhanced to 180 days in respect of the person, who are involved in most serious offences which stand specified under Sections 19, 24 and 27-A and also for offences relating to the commercial quantity, where minimum punishment of ten years is enforced. In case of non-completion of an investigation, the period can be further got extended upto one year. The main reason adduced in support of this amendment is that cases involving commercial quantities, financing and external dealings often take longer than ninety days. Besides, checks have also been provided in the proposed provision in as much as the Courts are to be informed about the progress of investigation and of special reasons for detention beyond 180 days.

24. Though the Committee are in agreement with the grounds which have necessitated the aforementioned amendment, but they are of the view that in the Proviso to sub-section (4), for the word “shall”, the word “may” should be substituted so that the Courts are allowed to exercise their discretion so far as grant of bail is concerned and it is not made a mandatory condition anymore.

Clause 19 of the Bill

25. Under clause 19 of the Bill, amendments have been made for sections 41 to 43 of the Principal Act and powers have been conferred

on such officers who are empowered by a general or special Order by the Central and State Governments of entering, search, seizure and arrest without warrant or authorization. Section 42(2) further reads as under:

“(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 within a reasonable time send a copy thereof to his immediate official superior.”

26. The Committee are of the opinion that the word “within a reasonable time” may give unnecessary liberty to an officer who may not exercise due diligence in sending the required information to his immediate official superior, with a sense of urgency, so it is recommended that the words “within reasonable time” be substituted with the words “within 72 hours”.

Clause 22 of the Bill

27. Under Clause 22 two new sub-sections namely (5) and (6) have been added in Section 50 of the Principal Act. Sub-sections (5) and (6) read as under:

“(5) When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973.

(6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within a reasonable time send a copy thereof to his immediate official superior.”

28. As suggested above, the Committee recommend that in sub-section (6) above the words “within a reasonable time” be substituted with the words “within 72 hours.”

Clause 31 of the Bill

29. Section 68A of the principal Act has been amended. The word "five" has been substituted with the word "ten". This Sub-section reads as follows:

"(i) in clause (a), for the word "five", the word "ten" shall be substituted."

30. The proposed amendment suggests that the provisions which relate to forfeiture of property derived from or used in illicit traffic will henceforth be made applicable in respect of only those persons who have been convicted of an offence punishable under the Act with imprisonment for a term of minimum 10 years or more and persons who have been convicted of punishment of less than 10 years will remain outside the purview of Chapter V-A.

31. The Committee are however, of the opinion that since the provisions under this Chapter relate to convicts as against the arrested or charged persons and since preventive detainees, detained for a much shorter period are also subjected to identical provisions, it does not seem necessary to amend this sub-section.

32. The Committee, therefore, recommend that existing provisions of 5 years may be retained.

Clause 39 of the Bill

33. Section 76 of the Principal Act empowers the Central Government to make rules for carrying out the purposes of the Narcotic Drugs and Psychotropic Substances Act. Under Clause 39 of the proposed Bill, in Section 76 of the principal Act, in sub-section (2), after clause (c), the following clause shall be inserted namely—

"(ca) the manner in which "controlled delivery" under Section 50A is to be undertaken".

34. The Committee are of the view that in view of the very fact that controlled delivery is a secret operation, there is no need to make Rules in this regard. They therefore, desire that Clause 39 in the proposed Bill may be deleted.

35. The Committee are of the view that though the amendments as proposed in the Narcotic Drugs and Psychotropic Substances Act have been prudently conceived, but there are certain other issues which exercise a sinister effect and if left unaddressed will continue to pose a serious threat to the ever increasing menace of drug abuse. They, therefore, suggest that some of these existing infirmities which are mentioned below should be addressed in the right earnest by the Government either by incorporating suitable provisions in the Act itself or by taking other appropriate measures.

36. The Committee has been informed that under Article 17 of the Vienna Convention, 1961, the Members of the family of a diplomatic agent forming part of his household shall if they are not nationals of the receiving State, enjoy the privileges and immunities specified in the Convention. Under Article 41, all persons enjoying such privileges and immunities, including diplomatic agents are obliged to respect the laws and regulations of the receiving State. If such a person indulges in any criminal activity, two options are available. First, such person may be declared as persona-non-grata and asked to leave India or secondly, even the prosecution of such person may be considered if on the request of the receiving State, the immunity of such person is waived by the sending State.

37. The Committee, however, take a serious note of some of the sporadic incidents which took place in the past in which relatives of diplomats misused the diplomatic immunity to carry narcotic drugs. They fail to understand that when some western countries can employ methods like sniffing by dogs and use of electronic means for the detection of narcotic substances, why in India such methods should also not be used.

38. They, therefore, recommend that with a view to stop the misuse of the provisions of the Convention, a suitable provision in consonance with the spirit of Vienna Convention may be included in the Narcotic Drugs and Psychotropic Substances Act itself.

39. Section 36 of the Narcotic Drugs and Psychotropic Substances Act provides for establishment of special Courts for the trial of the cases under the Act and Government may for the purposes of providing

speedy trial constitute as many special Courts as may be necessary by way of Notification. The Committee, however, note that although the said Section was inserted by the Amendment Act No. 2 of 1989 yet even after the lapse of nine years, most of the State Governments have yet not constituted the special Courts thereby making the provision redundant.

40. The Committee are of the view that unless and until earnest efforts are made to set up these expeditiously, timely justice shall continue to be denied to the majority of person who may get caught and implicated under the various provisions of this Act.

41. The Committee, therefore, desire that Section 36 (1) of the principal Act may be amended as under:

“The Government shall within 90 days of the date of commencement of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1998, constitute for the purpose of providing speedy trial of the offences under this Act, by Notification in the official Gazette as many special Courts as may be necessary for such areas as may be specified in the Notification.”

42. The Committee were apprised that on many occasions due to the tendency of bilateral agreements, it is not possible to demand extradition of the drug peddlers and no action can be taken against them by the enforcement agencies.

43. The Committee, therefore, recommend that this area needs an urgent attention and therefore, desire that all efforts should be made with a view to finalise such agreements in a time bound manner.

44. The Committee observe that the failure on the part of the Government to provide realistic procurement price for the opium yield is the main reason which encourages farmers to embezzle opium at the production stage.

45. The Committee, therefore, recommend that the Government should fix adequate price after taking into account all the relevant

factors so that the farmers are properly compensated and they are not lured to sell their produce through illegal channels.

46. The Committee note that there is not only a paucity of quality control centres for testing the quality of opium but these are also outdated as a result of which the examination still continues to be done by "Hand-Parakh" by the department officials. The Committee were informed that trials are being conducted to replace the age-old Hand-Parakh system with electric ovens to determine the accurate consistency of opium at the weighment centres itself.

47. The Committee desire that sufficient centres equipped with scientifically updated testing facilities should be expeditiously set up with a view to minimise the harassment of the cultivators.

48. Narcotics Control Bureau has been vested with the powers to coordinate actions of various officers, State Governments and other authorities under the principal Act, the Customs Act 1962 and the Drugs and Cosmetics Act, 1940. The Committee have been informed that people often procure some of the medicines containing some components of drugs from the retail chemists and there is no check for such misuse which is causing a health hazard.

49. Though the Drugs and Cosmetics Act is being administered directly by the Drug Controller of India and State Drug Controllers yet Narcotics Control Bureau being the nodal agency in this regard should take all necessary steps to minimise such misuse in coordination with the Ministry of Health.

50. The Committee are of the firm opinion that no law, howsoever, stringent can help control the drug menace, unless the same is implemented in an effective manner by the Enforcement Agencies. Though the Committee were informed during evidence that all necessary steps are taken for enforcing the various provisions contained in the Act and close coordination and liaison is maintained with all other Departments, yet after having taken into account the low figures of conviction and high rate of acquittals over a period of last five years and also the low figures of seizure of different types of serious drugs like Opium, Morphine, Heroin and Cocaine during this period particularly by the main Department *i.e.* Narcotics

Control Bureau, leaves the Committee with the impression that there is still room for improvement in the performance of various law enforcing agencies.

51. They, therefore, desire that a regular review of all the cases should invariably be done at the level of the Secretary, Revenue twice in a month and the meetings of the Committee of Secretaries should be held at least once in a month with a view to suggest removal of any bottlenecks that might be posing serious problems in the implementation of the Act.

NEW DELHI;
November 20, 1998
Kartika 29, 1920 (Saka)

MURLI DEORA,
Chairman,
Standing Committee on Finance.

APPENDIX I

MINUTES OF THE THIRTEENTH SITTING OF THE STANDING COMMITTEE ON FINANCE HELD ON 25 AUGUST, 1998

The Committee sat on Tuesday, 25 August, 1998 from 1500 hrs. to 1645 hrs.

PRESENT

Shri Murli Deora — *Chairman*

MEMBERS

Lok Sabha

2. Shri Girdhari Lal Bhargava
3. Shri Bhagwan Shanker Rawat
4. Shri Rayapati Sambasiva Rao
5. Shri Kavuru Sambasiva Rao
6. Shri Prithviraj D. Chavan
7. Shri Magunta Sreenivasulu Reddy
8. Shri Rupchand Pal
9. Shri Varkala Radhakrishnan
10. Shri Tathagata Satpathy
11. Dr. Bikram Sarkar
12. Shri Joachim Baxla
13. Shri Buta Singh

Rajya Sabha

14. Dr. Manmohan Singh
15. Shri N.K.P. Salve
16. Shri M. Rajsekara Murthy

17. Shri O.P. Kohli
18. Shri Raghavji
19. Dr. Biplab Dasgupta
20. Shri C. Ramachandraiah
21. Shri Prem Chand Gupta
22. Shri R.K. Kumar
23. Shri Gurudas Das Gupta
24. Shri Suresh A. Keswani

SECRETARIAT

1. Dr. (Smt.) P.K. Sandhu — *Director*
2. Shri S.B. Arora — *Under Secretary*
3. Shri N.S. Hooda — *Assistant Director*

2. At the outset the Chairman welcomed the Members to the sitting of the Committee and invited their suggestions with regard to the modalities to be adopted for examining the Bills referred to the Committee for detailed examination. He further informed the Members that so far as Narcotic Drugs and Psychotropic Substances (Amendment) Bill, 1998 was concerned, the Hon'ble Speaker had directed the Committee to present the Report to the Parliament on the first day of the next Session.

3. The Committee after deliberations; desired that since each of the Bills referred to the Committee required in-depth examination, detailed preliminary/background material may be procured from the respective Ministries. With regard to the Narcotic Drugs and Psychotropic Substances (Amendment) Bill, 1998 as well as the other two Bills *i.e.* (i) The Prevention of Money Laundering Bill, 1998 and (ii) The Foreign Exchange Management Bill, 1998; the Committee desired that the details of the legal provisions which are prevalent in different countries may also be procured from the Ministry of Finance for the use of the Committee. They further desired that deliberations which have taken place from time to

time in the United Nations convention against illicit traffic in Narcotic Drugs and Psychotropic Substances should also be made available to the Committee. In order to have the benefit of wide ranging views on various provisions of (i) The Foreign Exchange Management Bill, 1998, (ii) The Prevention of Money Laundering Bill, 1998 and (iii) The Securities Contracts (Regulation) Amendment Bill, 1998, the Committee decided to issue a Press Communique for inviting suggestions/views/memoranda from the public, experts, Chambers of Industry and interested Organisations/parties/individuals on these Bills. It was also decided that in order to save time the Members of the Committee desirous of giving their suggestions with regard to the provisions of the Bill may send the same to the Secretariat.

4. In view of the time schedule specified in respect of the Narcotic Drugs and Psychotropic Substances (Amendment) Bill, 1998, the Committee decided to take up this Bill on priority. They also decided to invite the representatives of Border Security Force, CRPF, CBI, Ministry of Home Affairs, Ministry of Finance (Department of Revenue), Narcotics Control Bureau, Central Board of Excise and Customs, Ministry of Health and Family Welfare, former Chairmen of Appellate Tribunals for Forfeited Property, Directorate of Revenue Intelligence, representatives of the States which are growing opium etc. and different experts including the Members of Parliament for oral evidence on 11 and 12 September, 1998. The Committee also decided to take oral evidence of the representatives of Chambers of Business and Commerce, professional bodies such as the Institute of Chartered Accountants of India, experts and representatives of Ministry of Finance on (i) The Foreign Exchange Management Bill, 1998 and (ii) The Prevention of Money Laundering Bill, 1998. It was decided to convene a meeting for examining these Bills on 22 and 23 September, 1998.

5. The Committee decided unanimously that so far as the examination of (i) Narcotic Drugs and Psychotropic Substances (Amendment) Bill, 1998, (ii) The Foreign Exchange Management Bill, 1998 and (iii) The Prevention of Money Laundering Bill, 1998

are concerned, these should be examined by the entire Committee. However, for the other two Bills they were of the view that Sub-Committees might be constituted. The Chairman, however, apprised the Members that in view of the shortage of the staff in the Secretariat which is assisting this Committee it will not be feasible to constitute the Sub-Committees.

6.	*	*	*	*	*	*	*
7.	*	*	*	*	*	*	*

The Committee then adjourned.

APPENDIX II

MINUTES OF THE FOURTEENTH SITTING OF THE STANDING COMMITTEE ON FINANCE

The Committee sat on Friday, 11 September, 1998 from 1030 hrs. to 1400 hrs. and again from 1515 hrs. to 1745 hrs.

PRESENT

Shri Murli Deora — *Chairman*

MEMBERS

Lok Sabha

2. Shri Dhirendra Agarwal
3. Shri Uttam Singh Pawar
4. Shri Girdhari Lal Bhargava
5. Shri Chetan Chauhan
6. Shri Bhagwan Shanker Rawat
7. Shri Rayapati Sambasiva Rao
8. Shri Kavuru Sambasiva Rao
9. Shri Sandipan Bhagwan Thorat
10. Shri Prithviraj D. Chavan
11. Shri R.L. Jalappa
12. Shri Rupchand Pal
13. Shri Varkala Radhakrishnan
14. Shri Beni Prasad Verma
15. Shri Tathagata Satpathy
16. Dr. Bikram Sarkar
17. Shri S. Jaipal Reddy
18. Shri Joachim Baxla
19. Shri Buta Singh

Rajya Sabha

20. Dr. Manmohan Singh
21. Shri N.K.P. Salve
22. Shri M. Rajsekara Murthy
23. Shri Narendra Mohan
24. Shri O.P. Kohli
25. Shri Raghavji
26. Shri C. Ramchandraiah
27. Shri Prem Chand Gupta
28. Shri R.K. Kumar
29. Shri Satish Pradhan
30. Shri Suresh A. Keswani

SECRETARIAT

1. Dr. Ashok Kumar Pandey — *Additional Secretary*
2. Shri S.B. Arora — *Under Secretary*
3. Shri N.S. Hooda — *Assistant Director*

WITNESSES

I. Ministry of Home Affairs (At 1030 hrs.)

1. Shri Nikhil Kumar — *Special Secretary (IS&P)*
2. Shri M.N. Sabharwal — *Director General, CRPF*
3. Shri E.N. Rammohan — *Director General, BSF*
4. Shri V.N. Rai — *Inspector General, BSF*

Ministry of Personnel, Public Grievances and Pension

1. Shri T.N. Mishra — *Director, CBI*
2. Shri P.C. Sharma — *Addl. Director, CBI*

III. Ministry of Health and Family Welfare (At 15.15 hrs.)

- | | | | |
|----|------------------------|---|---|
| 1. | Shri K.K. Bakshi | — | Secretary |
| 2. | Shri J.V.R. Prasad Rao | — | Addl. Secretary |
| 3. | Dr. P. Dasgupta | — | Drugs Controller General of India |
| 4. | Dr. D. Mohan | — | Head Deptt. of Phychiatry and Incharge Drug Deaddiction Centre, AIIMS, New Delhi. |

IV. Ministry of Social Justice and Empowerment

- | | | | |
|----|---------------------|---|-----------------|
| 1. | Shri D.K. Manavalan | — | Secretary |
| 2. | Shri D.K. Biswas | — | Addl. Secretary |
| 3. | Shri Anand Bordia | — | Joint Secretary |

At 1600 hrs.

- | | | | |
|----|----------------------------|---|----------------------|
| 1. | Shri Joginder Singh | — | Former Director, NCB |
| 2. | Shri Bal Kavi Bairagi | — | M.P. |
| 3. | Shri Udai Lal Ajna | — | M.P. |
| 4. | Dr. Lakshmi Narayan Pandey | — | M.P. |

Opium Cultivators from Neemuch, Mandasaur (Madhya Pradesh) and, Chittorgarh (Rajasthan)

- (i) Shri Ramchand Nagara
- (ii) Shri Padam Singh Chauhan
- (iii) Shri Dinesh Sharma
- (iv) Shri Kishin Lal Nagara
- (v) Shri Jagannath Patil
- (vi) Shri Ram Raj Patil
- (vii) Shri Bharan Singh Rajput

PART I

2. At the outset, the Chairman welcomed the representatives of the Ministry of Home Affairs, Director, Central Bureau of Investigation (CBI) and their colleagues to the sitting of the Standing Committee on Finance and invited their attention to the provisions of Direction 55 of the Directions by the Speaker.

3. The Committee then took oral evidence of the representatives of Ministry of Home Affairs alongwith Directors General of Border Security Force and Central Reserve Police Force and Director, CBI on The Narcotic Drugs and Psychotropic Substances (Amendment) Bill, 1998.

The evidence was concluded.

A verbatim record of the proceedings was kept.

(The witnesses then withdrew)

The Committee then adjourned to meet again at 1500 hrs.

PART II

2. The Committee resumed their sitting at 1515 hrs. to take oral evidence of the representatives of Ministries of (i) Health and Family Welfare and (ii) Social Justice and Empowerment and Dr. D. Mohan, Head of Deptt. of Psychiatry, AIIMS on The Narcotic Drugs and Psychotropic Substances (Amendment) Bill, 1998.

3. The Chairman welcomed the representatives of Ministries of (i) Health and Family Welfare and (ii) Social Justice and Empowerment and Dr. D. Mohan to the sitting of the Committee and invited their attention to Direction 55 of Directions by the Speaker, Lok Sabha.

4. The Committee then took the oral evidence of the representatives of the above mentioned official witnesses on the Narcotic Drugs and Psychotropic Substances(Amendment) Bill, 1998.

The evidence was concluded.

A verbatim record of the proceedings was kept.

(The witnesses then withdrew).

PART III

2. The Chairman after welcoming S/Sh. Bal Kavi Bairagi, MP, Udai Lal Ajna, MP, Dr. Lakshmi Narayan Pandey, MP, Shri Joginder Singh, former Director, Narcotics Control Bureau and representatives of Opium cultivators of Neemuch, Mandsaur (MP) and Chittorgarh (Rajasthan) to the sitting of the Committee, invited their attention to Direction 55 of Directions by the Speaker, Lok Sabha.

3. The Committee then heard the views of Hon'ble MPs and Shri Joginder Singh, alongwith the representatives of opium cultivators on The Narcotic Drugs and Psychotropic Substances (Amendment) Bill, 1998.

The evidence was concluded.

A verbatim record of the proceedings was kept.

(The witnesses then withdrew).

*The Committee then adjourned to meet again at
1030 hrs. on 12 September, 1998.*

APPENDIX III

MINUTES OF THE FIFTEENTH SITTING OF THE STANDING COMMITTEE ON FINANCE

The Committee sat on Saturday, 12 September, 1998 from 1045 hrs. to 1200 hrs. and again from 1500 hrs. to 1715 hrs.

PRESENT

Shri Murli Deora — *Chairman*

MEMBERS

Lok Sabha

2. Shri Uttam Singh Pawar
3. Shri Girdhari Lal Bhargava
4. Shri Chetan Chauhan
5. Shri Bhagwan Shanker Rawat
6. Shri Rayapati Sambasiva Rao
7. Shri T. Subbarami Reddy
8. Shri Sandipan Bhagwan Thorat
9. Shri Prithviraj D. Chavan
10. Shri R.L. Jalappa
11. Shri Varkala Radhakrishnan
12. Shri Beni Prasad Verma
13. Shri M. Sahabuddin
14. Shri S. Jaipal Reddy
15. Shri Joachim Baxla

Rajya Sabha

16. Dr. Manmohan Singh
17. Shri M. Rajsekara Murthy
18. Shri Raghavji

19. Shri C. Ramchandraiah
20. Dr. Biplab Dasgupta
21. Shri R.K. Kumar
22. Shri Gurudas Das Gupta
23. Shri Satish Pradhan
24. Shri Suresh A. Keswani

SECRETARIAT

1. Shri S.B. Arora — *Under Secretary*
2. Shri N.S. Hooda — *Assistant Director*

WITNESSES

At 1045 hrs.

Justice D.R. Khanna — *Ex-Chairman of Appellate
Tribunal for Forfeited
Property (ATFP)*

Ministry of Finance (Department of Revenue) At 1500 hrs.

1. Shri J.A. Choudhary — *Secretary*
2. Shri S.D. Mohile — *Chairman, CBEC*
3. Shri Sukumar Sankar — *Member, CBEC*
4. Smt. Reva Nayyar — *Joint Secretary*
5. Shri Vinit Kumar — *Director (NC)*

Narcotics Control Bureau

1. Shri H.P. Kumar — *DG (NCB)*
2. Shri Devendra Dutt — *DDG(E)*
3. Shri Rakesh Mishra — *DD(I&I)*
4. Shri Karan K. Sharma — *DD(Admn)*
5. Shri Mukesh Khullar — *Director (DLO)*

Narcotic Commissioner of India, Gwalior

1. Shri R. Bhattacharya — Narcotic Commissioner
2. Shri Bijay Kumar — Dy. Narcotic Commissioner

Chief Controller of Factories

1. Shri V.K. Sharma — CCF
2. Shri A.K. Sarma — General Manager
(Commercial)

Ministry of Law (Deptt. of Legal Affairs)

1. Sh. R.L. Meena — Secretary
2. Shri T.K. Vishwanathan — Addl. Secretary
3. Shri A. Sinha — JS & LA

Other-Ministries/Agencies

1. Shri A.K. Pande — DG, DRI
2. Shri Joginder Singh — ADG, DRI
3. Shri R.K. Tiwari — Commissioner
(Adjudication)
4. Shri C. Chakraborty — Member, INCB
5. Dr. D. Mohan — Head of Deptt. of
Psychiatry, AIIMS.

Part I

2. At the outset, the Chairman welcomed Justice D.R. Khanna to the sitting of the Committee and invited his attention to Direction 55 of Directions by the Speaker, Lok Sabha.

3. The Committee then heard the presentation made by Justice D.R. Khanna on The Narcotic Drugs and Psychotropic Substances (Amendment) Bill, 1998.

The evidence was concluded.

A verbatim record of the proceedings was kept.

(The witness then withdrew).

The Committee then adjourned to meet again at 1500 hrs.

Part II

2. The Committee resumed the meeting at 1500 hrs. to take the oral evidence of representatives of Ministry of Finance (Deptt. of Revenue), Narcotics Control Bureau, Central Board of Excise and Customs (CBEC) and other allied enforcement agencies involved in the implementation of NDPS Act and Ministry of Law.

3. The Chairman then welcomed the representatives of Ministry of Finance (Deptt. of Revenue), Narcotics Control Bureau, Central Board of Excise and Customs (CBEC) and other allied enforcement agencies and Ministry of Law to the sitting of Committee and invited their attention to Direction 55 of the Directions by the Speaker, Lok Sabha.

4. The Committee then took the oral evidence of the representatives of above mentioned Ministries and other allied organisations on the Narcotic Drugs and Psychotropic Substances (Amendment) Bill, 1998.

The evidence was concluded.

A verbatim record of the proceedings was kept.

(The witnesses then withdrew).

The Committee then adjourned.

APPENDIX IV

MINUTES OF THE TWENTY-FIRST SITTING OF THE STANDING COMMITTEE ON FINANCE (1998-99)

The Committee sat on Friday 20 November, 1998 from 1530 hrs. to 1630 hrs.

PRESENT

Shri Murli Deora — *Chairman*

MEMBERS

Lok Sabha

2. Shri Uttam Singh Pawar
3. Shri Girdhari Lal Bhargava
4. Shri Chetan Chauhan
5. Shri Bhagwan Shanker Rawat
6. Shri Rayapati Sambasiva Rao
7. Shri Kavuru Sambasiva Rao
8. Shri Praful Manoharbhair Patel
9. Shri Prithviraj D. Chavan
10. Shri Rupchand Pal
11. Shri Varkala Radhakrishnan
12. Kum. Kim Gangte
13. Dr. Bikram Sarkar
14. Shri Joachim Baxla
15. Shri P. Chidambaram

Rajya Sabha

16. Dr. Manmohan Singh
17. Shri N.K.P. Salve
18. Shri Narendra Mohan
19. Shri Prem Chand Gupta
20. Shri R.K. Kumar
21. Shri Suresh A. Keswani

SECRETARIAT

1. Dr. (Smt.) P.K. Sandhu — *Director*
2. Shri N.S. Hooda — *Assistant Director*

2. The Committee took up for consideration the draft Report on the Narcotic Drugs and Psychotropic Substances (Amendment) Bill, 1998. The Committee after deliberations adopted the Report with certain modifications as shown in the *Annexure*.

3. The Committee then authorised the Chairman to finalise the Report and present the same to the Parliament.

The Committee then adjourned.

Modifications/Amendments made by the Standing Committee on Finance in their Draft Report on the Narcotic Drugs and Psychotropic Substances (Amendment) Bill at their sitting held on 20 November, 1998.

(i) *New Para*

After Para 10, add a new para

Clause 7 of the Bill

11. Section 20 of the Principal Act provides for punishment for contravention in relation to cannabis plant and cannabis. For section 20(b)(ii) of the Principal Act, a new Section *i.e.* 20(C) has been substituted. However, the Committee note that under this sub-section proviso which was there in the Principal Act has been excluded. In order to make this provision uniform with respect to the similar provisions as contained under Sections 15, 17 and 18 of the Amending Bill, the Committee desire that the following proviso may be added:

“Provided that the Court may, for reasons to be recorded in the judgement, impose a fine exceeding two lakh rupees.”

(ii) *Clause 39*

After para 33, para 34 may be substituted by the following text:

“34. The Committee are of the view that in view of the very fact that controlled delivery is a secret operation, there is no need to make Rules in this regard. They therefore, desire that Clause 39 in the proposed Bill may be deleted”.

(iii) *Substitute para 41 by the following text:*

“41. The Committee, therefore, desire that Section 36 (1) of the principal Act may be amended as under:

“The Government shall ‘within 90 days of the date of commencement of The Narcotic Drugs and Psychotropic

Substances (Amendment) Act, 1998, constitute, for the purpose of providing speedy trial of the offences under this Act, by Notification in the official Gazette, as many special Courts as may be necessary for such areas as may be specified in the Notification.”

(iv) *Para 44* may be modified as under:

“The Committee observe that the failure on the part of the Government to provide realistic procurement price for the opium yield is the main reason which encourages farmers to embezzle opium at the production stage.”

(vi) *Para 50*

Para 50, line 10—after the words: over a period of last five years;

Read “and also the low figures of seizure of different types of serious drugs likely Opium, Morthine, Heroin and Cocaine during this period particularly by the main Department *i.e.* Narcotics Control Bureau, leaves the Committee with the impression that there is still room for improvement in the performance of various law enforcing agencies”.

APPENDIX V

AS INTRODUCED IN THE RAJYA SABHA

Bill No. XIV of 1998

THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (AMENDMENT) BILL, 1998

A

BILL

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

BE it enacted by Parliament in the
Forty-ninth year of the Republic of
India as follows:—

Short title and
commencement.

1. (1) This Act may be called the
Narcotic Drugs and Psychotropic
Substances (Amendment) Act, 1998.

(2) It shall come into force on such
date as the Central Government may,
by notification in the Official Gazette,
appoint; and different dates may be
appointed for different provisions of
this Act, and any reference in any
provision to the commencement of this
Act shall be construed as a reference
to the coming into force of that
provision.

Amendment of
section 1.

2. In the Narcotic Drugs and Psychotropic Substances Act, 1985 61 of 1985.
(hereinafter referred to as the principal
Act), in section 1, in sub-section (2),

after the words "whole of India", the following shall be inserted, namely:—

"and it applied also—

(a) to all citizens of India outside India;

(b) to all persons on ships and aircrafts registered in India,

wherever they may be".

3. In section 2 of the principal Act.— Amendment of section 2.

(a) for clause (i), the following clause shall be substituted, namely:—

'(i) "addict" means a person who has dependence on any narcotic drug or psychotropic substance;':

(b) clause (viii) shall be relettered as clause (viiid) and before clause (viiid) as so relettered, the following clauses shall be inserted, namely:—

(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;

(viiib) "controlled delivery" means the technique of allowing illicit or suspect consignments of narcotic drugs, psychotropic substances, controlled substances or substances substituted for them to pass out of, or through or into the territory of India with the knowledge and under the supervision

with a view to identifying the persons involved in the commission of an offence under this Act;

(viiic) "corresponding law" means any law corresponding to the provisions of this Act;';

(c) after clause (xxiii), the following clause shall be inserted, namely:—

'(xxiiiia) "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.'

Amendment of
section 7A.

4. In section 7A of the principal Act, for sub-sections (2) and (3), the following sub-sections shall be substituted, namely:—

"(2) The Fund shall be applied by the Central Government to meet the expenditure incurred in connection with the measures taken for—

(a) combating illicit traffic in narcotic drugs, psychotropic substances or controlled substances;

(b) controlling the abuse of narcotic drugs and psychotropic substances;

(c) identifying, treating, rehabilitating addicts;

(d) preventing drug abuse;

(e) educating public against drug abuse;

(f) supplying drugs to addicts where such supply is a medical necessity.

(3) The Central Government may constitute a Governing Body as it thinks fit to advise that Government and to sanction money out of the said Fund subject to the limit notified by the Central Government in the Official Gazette.”.

5. After section 8 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 8A.

‘8A. No person shall—

Prohibition of certain activities relating to property derived from offence.

(a) convert or transfer any property knowing that such property is derived from an offence committed under this Act or under any other corresponding law of any other country or from an act of participation in such offence, for the purpose of concealing or disguising the illicit origin of the property or to assist any person in the commission of an offence or to evade the legal consequences; or

(b) conceal or disguise the true nature, source, location, disposition of any property knowing that such property is derived from an offence committed under this Act or under any other corresponding law of any other country; or

(c) knowingly acquire, possess or use any property which was derived from an offence committed under this Act or under any other corresponding law of any other country.’.

Substitution of
new sections
for sections
15 to 18.

6. For sections 15 to 18 the principal Act, the following sections shall be substituted, namely:—

Punishment for
contravention
in relation to
poppy straw.

“15. Whoever, in contravention of any provisions of this Act or any rule or order made or condition of a licence granted thereunder, produces, possesses, transports, imports inter-State, exports inter-State, sells, purchases, uses or omits to warehouse poppy straw or removes or does any act in respect of warehoused poppy straw shall be punishable,—

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine, or with both;

(b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine;

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees::

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

16. Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, cultivates any coca plant or gathers any portion of a coca plant or produces, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses coca leaves shall be punishable with rigorous imprisonment for a term which may extend to ten years, or with fine, or with both.

Punishment for contravention in relation to coca plant and coca leaves.

17. Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses prepared opium shall be punishable,—

Punishment for contravention in relation to prepared opium.

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine, or with both; or

(b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine; or

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgement, impose a fine exceeding two lakh rupees.

Punishment for contravention in relation to opium poppy and opium.

18. Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, cultivates the opium poppy or produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports, inter-State or uses opium shall be punishable,—

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine, or with both;

(b) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees;

(c) in any other case, with rigorous imprisonment which may extend to ten years and with fine."

Amendment of section 20.

7. In section 20 of the principal Act, in clause (b), for sub-clauses (i) and (ii),

the following sub-clauses shall be substituted, namely:—

“(i) where such contravention relates to clause (a) with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine; and

(ii) where such contravention relates to sub-clause (b),—

(A) and involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine, or with both;

(B) and involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine;

(C) and involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees and which may extend to two lakh rupees.”

8. For sections 21 to 23 of the principal Act, the following sections shall be substituted, namely:—

Substitution of new sections for sections 21 to 23.

“21. Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any manufactured drug or any

Punishment for contravention of relation to manufactured drugs and preparations.

preparation containing any manufactured drug shall be punishable,—

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine, or with both;

(b) where the contravention involves quantity, lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine;

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

Punishment for contravention in relation to psychotropic substances.

22. Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any psychotropic substance shall be punishable,—

(a) where the contravention involves small quantity, with rigorous

imprisonment for a term which may extend to six months, or with fine, or with both;

(b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine;

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

23. Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence or permit granted or certificate or authorisation issued thereunder, imports into India or exports from India or tranships any narcotic drug or psychotropic substance shall be punishable,—

Punishment for illegal import into India, export from India or transshipment of narcotic drugs and psychotropic substances

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine, or with both;

(b) where the contravention involves quantity lesser than

commercial quantity but greater than small quantity with rigorous imprisonment for a term which may extend to ten years and with fine;

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees."

Substitution of new section for section 25.

9. For section 25 of the principal Act, the following section shall be substituted, namely:—

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

"25. Whoever, being the owner or occupier or having the control or use of any house, room, enclosure, space, place, animal or conveyance, knowingly permits it to be used for the commission by any other person of an offence punishable under any provision of this Act, shall be punishable with the punishment provided for the offence."

Substitution of new section for section 27.

10. For section 27 of the principal Act, the following section shall be substituted, namely:—

Punishment for consumption of any narcotic drug or psychotropic substance.

"27. Whoever consumes any narcotic drug or psychotropic substance shall be punishable,—

(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, 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, or with both."

11. In section 30 of the principal Act, for the words, figures and brackets "section 15 to section 25 (both inclusive) and from the circumstances of the case", the words, figures and letter "sections 19, 24 and 27A and for offences involving commercial quantity of any narcotic drug or psychotropic substance and from the circumstances of the case" shall be substituted.

Amendment of section 30.

12. For section 31 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 31.

"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

Enhanced punishment for offences after previous conviction.

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.

(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.

(3) Where any person is convicted by a competent court of criminal jurisdiction outside India under any corresponding law, such person, in respect of such conviction, shall be dealt with for the purposes of sub-sections (1) and (2) as if he had been convicted by a court in India."

Amendment of
section 31A.

13. In section 31A of the principal Act,—

(a) in sub-section (1),—

(i) for the words, figures brackets and letter "section 15 to section 25 (both inclusive) or section 27A", the words, figures and letter "section 19, section 24, section 27A and for offences

involving commercial quantity of any narcotic drug or psychotropic substance" shall be substituted;

(ii) in sub-clause (a), in the Table, in column (2), against entry (viii), for the figures and word "1,500 grams", the words "lesser of the quantity between the quantities given against the respective narcotic drugs or psychotropic substances mentioned above forming part of the mixture" shall be substituted;

(b) in sub-section (2), for the words, figures, brackets and letter "section 15 to section 25 (both inclusive), section 27A, section 28 or section 29", the words, figures and letter "section 19, section 24 or section 27A and for offences involving commercial quantity of any narcotic drug or psychotropic substance" shall be substituted.

14. After section 32A of the principal Act of following section shall be inserted, namely:—

Insertion of new section 32B.

"32B. Where a minimum term of imprisonment or amount of fine is prescribed for any offence committed under this Act, the court may, in addition to such factors as it may deem fit, take into account the following factors for imposing a punishment higher than the minimum term of imprisonment or amount of fine, namely:—

Factors to be taken into account for imposing higher than the minimum punishment.

(a) the use or threat of use of violence or arms by the offender;

(b) the fact that the offender holds a public office and that he has taken advantage of that office in committing the offence;

(c) the fact that the minors are affected by the offence or the minors are used for the commission of an offence; and

(d) the fact that the offence is committed in an educational institution or social service facility or in their immediate vicinity of such institution or faculty or in other place to which school children and students resort for educational, sports and social activities.”.

Substitution of new section for section 36A.

15. For section 36A of the principal Act, the following section shall be substituted, namely:—

Offences triable by Special Courts.

‘36A. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—

2 of 1974.

(a) all offences under this Act which are punishable with imprisonment for a term of more than three years shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the Government;

(b) where a person accused of or suspected of the commission of an offence under this Act is forwarded to a magistrate under sub-section (2) or sub-section (2A) of section 167 of the Code of Criminal procedure, 1973, such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding

2 of 1974.

fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate:

2 of 1974.

Provided that in cases which are triable by the Special Court where such Magistrate considers—

(i) when such person is forwarded to him as aforesaid; or

(ii) upon or at any time before the expiry of the period of detention authorised by him,

2 of 1989.

that the detention of such person is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction;

2 of 1974.

(c) the Special Court may exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code of Criminal Procedure, 1973, in relation to an accused person in such case who has been forwarded to him under that section;

2 of 1989.

2 of 1974.

(d) a Special Court may, upon perusal of police report of the facts constituting an offence under this Act or upon complaint made by an officer of the Central Government or a State Government authorised in his behalf, take cognizance of that offence without the accused being committed to it for trial.

2 of 1974.

(2) When trying an offence under this Act, a Special Court may also try

(b) the fact that the offender holds a public office and that he has taken advantage of that office in committing the offence;

(c) the fact that the minors are affected by the offence or the minors are used for the commission of an offence; and

(d) the fact that the offence is committed in an educational institution or social service facility or in their immediate vicinity of such institution or faculty or in other place to which school children and students resort for educational, sports and social activities.”.

Substitution of new section for section 36A.

Offences triable by Special Courts.

15. For section 36A of the principal Act, the following section shall be substituted, namely:—

‘36A. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—

2 of 1974.

(a) all offences under this Act which are punishable with imprisonment for a term of more than three years shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the Government;

(b) where a person accused of or suspected of the commission of an offence under this Act is forwarded to a magistrate under sub-section (2) or sub-section (2A) of section 167 of the Code of Criminal procedure, 1973, such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding

2 of 1974.

fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate:

2 of 1974.

Provided that in cases which are triable by the Special Court where such Magistrate considers—

(i) when such person is forwarded to him as aforesaid; or

(ii) upon or at any time before the expiry of the period of detention authorised by him,

2 of 1989.

that the detention of such person is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction;

2 of 1974.

(c) the Special Court may exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code of Criminal Procedure, 1973, in relation to an accused person in such case who has been forwarded to him under that section;

2 of 1989.

2 of 1974.

(d) a Special Court may, upon perusal of police report of the facts constituting an offence under this Act or upon complaint made by an officer of the Central Government or a State Government authorised in his behalf, take cognizance of that offence without the accused being committed to it for trial.

2 of 1974.

(2) When trying an offence under this Act, a Special Court may also try

an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial. 2 of 1974.

(3) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973, and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section included also a reference to a "Special Court" constituted under section 36. 2 of 1974.

(4) In respect of persons accused of an offence punishable under section 19 or section 24 or section 27A or for offences involving commercial quantity the references in sub-section (2) of section 167 of the Code of Criminal Procedure, 1973 thereof to "ninety days", where they occur, shall be construed as reference to "one hundred and eighty days": 2 of 1974.

Provided that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Special Court shall extend the said period up to one year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days.

(5) Notwithstanding anything contained in the Code of Criminal

Procedure, 1973, the offences punishable under this Act with imprisonment for a term of less than three years may be tried summarily.’

16. For section 36D of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 36D.

“36D. (1) Any offence committed under this Act on or after the commencement of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1988, which is triable by a Special Court, shall, until a Special Court is constituted under section 36, notwithstanding anything contained in the Code of Criminal Procedure, 1973, be tried by a Court of Session.

Transitional provisions.

(2) Where any proceedings in relation to any offence committed under this Act on or after the commencement of the Narcotic Drugs and Psychotropic Substances (amendment) Act, 1988 are pending before a Court of Session, then, notwithstanding anything contained in sub-section (1), such proceeding shall be heard and disposed of by the Court of Session:

Provided that nothing contained in this sub-section shall affect the power of the High Court under section 407 of the Code of Criminal Procedure, 1973, to transfer any case or class of cases taken cognizance by a Court of Session under sub-section (1).”

17. In section 37 of the principal Act, in sub-section (1), in clause (b), for the words ‘a term of imprisonment of

Amendment of section 37.

five years or more under this Act", the words, figures and letter "offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity" shall be substituted.

Amendment of section 39.

18. In section 39 of the principal Act, in sub-section (1), after the words and figures "under section 27", the words "or for offences relating to small quantity of any narcotic drug or psychotropic substance" shall be inserted.

Power of seizure and arrest in public place.

Substitution of new sections for sections 41 to 43.

19. For sections 41 to 43 of the principal Act, the following section shall be substituted, namely:—

Power to issue warrant and authorisation.

'41. (1) A Metropolitan Magistrate or a Magistrate of the first class or any Magistrate of the second class specially empowered by the State Government in this behalf, may issue a warrant for the arrest of any person whom he has reason to believe to have committed any offence punishable under this Act, or for the search, whether by day or by night, of any building, conveyance or place in which he has reason to believe any narcotic drug or psychotropic substance or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or

forfeiture under Chapter VA of this Act is kept or concealed.

(2) Any such officer of gazetted rank of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including the para-military forces or the armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government if he has reason to believe from personal knowledge or information given by any person and taken in writing that any person has committed an offence punishable under this Act or that any narcotic drug or psychotropic substance or controlled substance in respect of which any offence under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or place, may authorise any officer subordinate to him but superior in rank to a peon, sepoy or a constable to arrest such a person or search a building, conveyance or place whether by day or by night or himself arrest

such a person or search a building, conveyance or place.

(3) The officer to whom a warrant under sub-section (1) is addressed and the officer who authorised the arrest or search or the officer who is so authorised under sub-section (2) shall have all the powers of an officer acting under section 42.

Power to entry, search, seizure and arrest without warrant or authorisation.

42. (1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing

or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,—

(a) enter into and search any such building, conveyance or place;

(b) in case of residence, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

Provided that if such officer has reason to believe that a search warrant or authorisation 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, conveyance 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 subsection (1) or records grounds for his belief under the proviso thereto, he shall within a reasonable time send a copy thereof to his immediate official superior.

43. Any officer of any of the departments mentioned in section 42 may—

(a) seize in any public place or in transit, any narcotic drug or psychotropic substance or controlled substance in respect of which he has reason to believe an offence punishable under this Act has been committed, and, along with such drug or substance, any animal or conveyance or article liable to confiscation under this Act, any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act;

(b) detain and search any person whom he has reason to believe to have committed an offence punishable under this Act, and if such person has any narcotic drug or psychotropic substance or controlled substance in his possession and such possession appears to him to be unlawful, arrest him and any other person in his company.

Explanation.—For the purposes of this section, the expression “public place” includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to the public.

20. In section 44 of the principal Act, after the words “psychotropic substance”, the words “or controlled substance” shall be inserted. Amendment of section 44.

21. In section 49 of the principal Act, after the words “psychotropic substance” the words “or controlled substance” shall be inserted. Amendment of section 49.

22. In section 50 of the principal Act, after sub-section (4), the following sub-sections shall be inserted, namely:— Amendment of section 50.

“(5) When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973.

(6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within a reasonable time send a copy thereof to his immediate official superior.”

Insertion of new section 50A.

23. After section 50 of the principal Act, the following section shall be inserted, namely:—

Power to undertake controlled delivery.

“50A. The Director General of Narcotics Control Bureau Constituted under sub-section (3) of section 4 or any other officer authorised by him in this behalf, may, notwithstanding anything contained in this Act, undertake controlled delivery of any consignment to—

(a) any destination in India;

(b) a foreign country, in consultation with the competent authority of such foreign country to which such consignment is destined, in such manner as may be prescribed.”

Amendment of section 53.

24. In section 53 of the principal Act,—

(a) in sub-section (1), for the words “or Border Security Force”, the words “or any other department of the Central Government including para-military forces or armed forces” shall be substituted;

(b) in sub-section (2), after the word “excise” the words “or any other department” shall be inserted.

Substitution of new section for section 54.

25. For section 54 of the principal Act, the following section shall be substituted, namely:—

Presumption from possession of illicit articles.

“54. In trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has

committed an offence under this Act in respect of—

(a) any narcotic drug or psychotropic substance or controlled substance;

(b) any opium poppy, cannabis plant or coca plant growing on any land which he has cultivated;

(c) any apparatus specially designed or any group of utensils specially adopted for the manufacture of any narcotic drug or psychotropic substance or controlled substance; or;

(d) any materials which have undergone any process towards the manufacture of a narcotic drug or psychotropic substance or controlled substance, or any residue left of the materials from which any narcotic drug or psychotropic substance or controlled substance has been manufactured, for the possession of which he fails to account satisfactorily.”.

26. In section 60 of the principal Act,—

Amendment of section 60.

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

“(1) Wherever any offence punishable under this Act has been committed, the narcotic drug, psychotropic substance, controlled substance, opium poppy, coca plant, cannabis plant, materials, apparatus and

utensils in respect of which or by means of which such offence has been committed, shall be liable to confiscation."

(b) in sub-sections (2) and (3), after the words "psychotropic substances", wherever they occur, the words "or controlled substances" shall be inserted.

Amendment of section 61.

27. In section 61 of the principal Act, for the words "narcotic drug or psychotropic substance", the words "narcotic drug, psychotropic substance or controlled substance" shall be substituted.

Amendment of section 62.

28. In section 62 of the principal Act, for the words "narcotic drug or psychotropic substance", the words "narcotic drug, psychotropic substance or controlled substance" shall be substituted.

Amendment of section 63.

29. In section 63 of the principal Act,—

(a) in sub-section (2), in the second proviso, after the words "psychotropic substance" the words, "controlled substance" shall be inserted;

(b) sub-section (3) shall be omitted.

Substitution of new section for section 64A.

30. For section 64A of the principal Act, the following section shall be submitted, namely:—

Immunity from prosecution to addicts volunteering for treatment.

"64A. Any addict, who is charged with an offence punishable under section 27 or with offences involving small quantity of narcotic drugs or

psychotropic substances, who voluntarily seeks to undergo medical treatment for de-addiction from a hospital or an institution maintained or recognised by the Government or a local authority and undergoes such treatment shall not be liable to prosecution under section 27 or under any other section for offences involving small quantity of narcotic drugs or psychotropic substances:

Provided that the said immunity for prosecution may be withdrawn if the addict does not undergo the complete treatment for de-addiction."

31. In section 68A of the principal Act, in sub-section (2),—

Amendment of section 68A.

(i) in clause (a), for the word "five", the word "ten" shall be substituted;

(ii) after clause (c), the following clause shall be inserted, namely:—

"(cc) every person who has been arrested or against whom a warrant or authorisation of arrest has been issued for the commission of an offence punishable under this Act with imprisonment for a term of ten years or more, and every person who has been arrested or against whom a warrant or authorisation of arrest has been issued for the commission of a similar offence under any corresponding law of any other country;"

(iii) in clauses (d), (e) and (f), after the word, brackets and letter "clause

(c)", the words, brackets and letters "or clause (cc)" shall be inserted.

Amendment of section 68B.

32. In section 68B of the principal Act, in clause (g), in sub-clause (i), for the words "illicit traffic", the words "the contravention of any provisions of this Act" shall be substituted.

Amendment of section 68C.

33. In section 68C of the principal Act, in sub-section (2), for the proviso, the following proviso shall be substituted, namely:—

"Provided that no property shall be forfeited under this Chapter if such property was acquired, by a person to whom this Act applies, before a period of six years from the date he was arrested or against whom a warrant of authorisation of arrest has been issued for the commission of an offence punishable under this Act or from the date the order or detention was issued, as the case may be."

Amendment of section 68E.

34. In section 68E of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) Every officer empowered under section 53 and every officer-in-charge of a police station shall, on receipt of information is satisfied that any person to whom this Chapter applies holds any illegally acquired property, he may, after recording reasons for doing so, proceed to take all steps necessary for tracing and identifying such property."

Amendment of section 68H.

35. In section 68H of the principal Act, in sub-section (2), the following

proviso shall be inserted at the end, namely:—

“Provided that no notice for forfeiture shall be served upon any person referred to in clause (cc) of such-section (2) of section 68A or relative of a person referred to in that clause or associate of a person referred to in that clause or holder of any property which was at any time previously held by a person referred to in that clause.”.

36. In section 68-I of the principal Act, after sub-section (3), the following proviso shall be inserted at the end, namely:—

Amendment of section 68-I.

“Provided that no illegally acquired property of any person who is referred to in clause (cc) of sub-section (2) of section 68A or relative of a person referred to in that clause or associate of a person referred to in that clause or holder of any property which was at any time previously held by a person referred to in that clause shall stand forfeited.”

37. In section 68-O of the principal Act, in sub-section (1), for the words “Any person aggrieved by an order of the competent authority”, the words, brackets, figures and letter “Any officer referred to in sub-section (1) of section 68E or any person aggrieved by an order of the competent authority” shall be substituted.

Amendment of section 68-O.

38. After section 68Y of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 68Z.

Release of
property in
certain cases.

“68Z. (1) Where the detention order of a detenu is set aside or withdrawn, properties seized or frozen under this Chapter shall stand released.

(2) Where any person referred to in clause (a) or clause (b) or clause (cc) of sub-section (2) of section 68A has been acquitted or discharged from the charges under this Act or any other corresponding law of any other country and the acquittal was not appealed against or when appealed against, the appeal was disposed of as a consequence of which such property could not be forfeited or warrant of arrest or authorisation of arrest issued against such person has been withdrawn, then, property seized or frozen under this Chapter shall stand released.”

Amendment of
section 76.

39. In section 76 of the principal Act, in sub-section (2), after clause (c), the following clause shall be inserted, namely:—

‘(ca) the manner in which “controlled delivery” under section 50A is to be undertaken;’.

Amendment of
section 77.

40. In section 77 of the principal Act, for the portion beginning with the words “Every rule made under this Act” and ending with “shall be laid, as soon as may be, after it is made or issued”, the following shall be substituted, namely:—

“Every rule made under this Act by the Central Government and every notification or order issued under clause (viii), clause (xi), clause (xiiiia)

of section 2, section 3, section 7A, section 9A and clause (a) of section 27 shall be laid, as soon as may be after it is made or issued".

41. (1) Notwithstanding anything contained in sub-section (2) of section I, all cases pending before the courts or under investigation at the commencement of this Act shall be disposed of in accordance with the provisions of the principal Act as amended by this Act and accordingly, any person found guilty of any offence punishable under the principal Act, as it stood immediately before such commencement, shall be liable for a punishment which is lesser than the punishment for which he is otherwise liable at the date of the commission of such offence:

Application of this Act to pending cases.

Provided that nothing in this section shall apply to cases pending on appeal.

(2) For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this Act has not come into force.

STATEMENT OF OBJECTS AND REASONS

The Narcotic Drugs and Psychotropic Substances Act, 1985 provides deterrent punishment for various offences relating to illicit trafficking in narcotic drugs and psychotropic substances. Most of the offences invite uniform punishment of a minimum ten years rigorous imprisonment which may extend up to twenty years. While the Act envisages severe punishments for drug traffickers, it envisages reformatory approach towards addicts. In view of the general delay in trial it has been found that the addicts prefer not to invoke the provisions of the Act. The strict bail provisions under the Act add to their misery. Therefore, it is proposed to rationalise 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. This requires rationalisation of the sentence structure provided under the Act. It is also proposed to restrict the application of strict bail provisions to those offenders who indulge in serious offences.

2. The Act was amended in 1989, *inter alia*, to provide for tracing, seizing and forfeiture of illegally acquired property. The experience gained over the years reveals that the provisions have certain inadequacies due to which the implementation of the provisions has been tardy. Certain other inadequacies in the various provisions of the Act have been noticed. In order to remove those inadequacies it is necessary to amend the relevant provisions.

3. The provisions relating to certain procedural aspects like search and seizure have certain deficiencies due to which the law enforcement efforts against illicit drug trafficking have not proved very effective. A need has also been felt to confer powers of entry, search, seizure, etc., in respect of offences relating to Controlled Substances and for tracing, freezing, seizing and forfeiture of illegally acquired property upon the empowered officers.

4. Certain obligations, specially in respect of the concept of "Controlled Delivery" arising from the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 to which India acceded, also require to be addressed by incorporating suitable provisions in the Act.

5. This Bill seeks to achieve the above objects.

NEW DELHI;
The 25th June 1998.

YASHWANT SINHA

Notes on clauses

Clause 2.—This clause seeks amendment section 1 of the principal Act to make it applicable to all citizens who are outside the territory of India and to all the persons on ships and aircraft's registered in India, wherever they may be. These are requirements under the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.

Clause 3.—This clause seeks to replace the definition of 'addict' and to define the expression 'commercial quantity', 'controlled delivery' and 'small quantity'. The term 'controlled delivery' as defined in the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances is an investigative technique by which suspected drug consignments wholly or substituted are permitted to reach their destinations with a view to bring the entire gang of offenders and to punish him.

Clause 4.—This clause seeks to enlarge the purposes for which the National Fund for Control of Drug Abuse shall be applied. It also seeks to confer power on the Governing Body to sanction money out of the Fund.

Clause 5.—This clause seeks to insert a new section 8A to provide that certain activities relating to conversion, etc., of property derived from drug trafficking shall be an offence.

Clause 6.—This clause seeks to substitute section 15 to 18 of the principal Act to rationalise sentence prescribed in respect of the offences relating to poppy straw, coca plant and coca leaves, prepared opium and in respect of cultivation of opium poppy and production, etc.

Clause 7.—This clause seeks to rationalise the sentence prescribed in respect of offences relating to cannabis.

Clause 8.—This clause seeks to substitute section 20 to 22 of the principal Act to rationalise sentences prescribed in respect of offences relating to manufactured drugs and preparation containing manufactured drugs, psychotropic substances, illegal import or export of narcotic drugs and psychotropic substances.

Clause 9.—This clause seeks to remove the existing anomaly in respect of the offence of allowing premises, etc., to be used for commission of an offence. The proposed amendment would ensure that the person who allows the premises, etc., for commission of offences is not given the punishment higher than the one prescribed for the person who uses the premises, etc., for commission of offence.

Clause 10.—This clause seeks to substitute section 27 of the principal Act to rationalise the punishment for consumption of any narcotic drug or psychotropic substances.

Clause 11.—This clause seeks to restrict preparation as an offence only in respect of the offences under sections 19 (embezzlement of opium by licensed cultivators), 24 (external dealings), 27A (financing illicit trafficking) and offences relating to commercial quantities of drugs.

Clause 12.—This clause seeks to provide for enhanced punishment to every offender who has been previously convicted of the offence punishable under this Act.

Clause 13.—This clause seeks to abolish mandatory death sentence in respect of certain offences.

Clause 14.—The UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, requires that certain factors are to be considered for imposing higher punishment to drug offenders. This clause seeks to provide for the same, by insertion of new section 32B.

Clause 15.—This clause provides for trial of offenders who are charged with offences punishable with sentence up to three years by the Court of Magistrate and for summary trial of such offenders. This clause also provides for remand of accused charged with serious offences up to one year without filing challan/complaint.

Clause 16.—This clause seeks to provide transitional provisions for trial of the cases and for transfer of cases taken cognizance by the Sessions Court to Special Court by the respective High Courts.

Clause 17.—This clause seeks to liberalise bail provisions in respect of certain offences.

Clause 18.—This clause is proposed to ensure that addicts who are charged with lesser offences get the benefit of release on probation.

Clause 19.—This clause seeks to substitute sections 41 to 43 of the principal Act to extend powers of the Central Government and State Government to authorise subordinate officers for search, seizure, etc., and to simplify the procedure for seizure, detention and search of persons.

Clause 20.—This clause seeks to widen the scope of the Act as to include controlled substances.

Clause 21.—This clause provides for the power to stop and search conveyance in respect of controlled substances.

Clause 22.—This clause provides for search of a person by the empowered officers without taking him to the nearest Gazetted Officer or Magistrate if there is reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of contraband. The officer shall record such reasons after the search is over and send a copy of it within a reasonable time to his immediate official superior.

Clause 23.—This clause empowers the Director General, Narcotics Control Bureau to authorise the undertaking of 'controlled delivery'.

Clause 24.—This clause provides for empowering officers of other Departments the powers of an officer incharge of a police station by the Central and State Governments.

Clause 25.—This clause extends the presumption of guilt in certain circumstances in respect of controlled substances also.

Clause 26.—This clause seeks to amend section 50 of the principal Act to make liable of illicit articles and conveyance to confiscation in respect of controlled substances also.

Clause 27.—This clause seeks to amend section 67 of the principal Act to make liable for confiscation of goods used for concealing illicit articles in respect of controlled substances also.

Clause 28.—This clause proposes to make liable for confiscation in respect of sale proceeds of controlled substances also.

Clause 29.—This clause seeks to remove the anomaly of appeal lying to the same court by omitting sub-section (3) of section 63 of the principal Act.

Clause 30.—This clause seeks to ensure that the addicts who are charged with small quantity offences involving small quantity and volunteer for treatment get the benefit of immunity from prosecution.

Clause 31.—This clause seeks to apply the provisions of Chapter VA of the Act relating to tracing, freezing and seizure of illegally acquired property to a person who has been arrested or against whom warrant or authorisation of arrest has been issued for commission of offence punishable under the Act with imprisonment of ten years or more.

Clause 32.—This clause seeks to enlarge the scope of the term 'illegally acquired property'.

Clause 33.—This clause provides that the embargo of prohibition of forfeiture of the illegally acquired property of an offender is reckoned as six years before the date he was arrested or authorisation of arrest was issued against him. This clause also extends such embargo of prohibition to the property acquired by a person before six years from the date or order of detention was issued.

Clause 34.—This clause enables tracing and identifying illegally acquired property of a person as soon as he has been arrested or warrant or authorisation of arrest has been issued against him.

Clause 35 and 36.—These clauses are intended to ensure that the illegally acquired property seized or frozen is forfeited only after a person has been convicted.

Clause 37.—This clause provides for appeal by departmental officers against the order of the Competent Authority.

Clause 38.—This clause provides for automatic release of the property frozen or seized when the person is acquitted of the charges against him or when a detention order is set aside or withdrawn.

Clause 39.—This clause provides for the Central Government's power to make rules in respect of controlled delivery.

Clause 40.—This clause provides for laying before the Parliament notifications or orders made in respect of controlled substances.

Clause 41.—This clause provides for extending the benefit of liberal provisions of this Bill to those offenders who have committed the offences before the date the provisions of this Bill come into force and the trial has not yet concluded.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clauses (b) and (c) of the Bill empower the Central Government to specify in the Official Gazette the commercial quantity and small quantity of the narcotic drugs and psychotropic substances respectively.

2. Clause 4 of the Bill confers powers to the Central Government to notify in the Official Gazette the limit within which the Governing Body to be constituted under this clause may sanction the fund out of National Fund for Control of Drug Abuse.

3. Clause 23 of the Bill empowers the Central Government to prescribe the manner in which the "controlled delivery" of the narcotic drugs, psychotropic substances and controlled substances shall be undertaken.

4. The matters with respect which the rules may be made are matters of procedures and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

EXTRACTS FROM THE NARCOTIC DRUGS AND PSYCHOTROPIC
SUBSTANCES ACT, 1985

(61 OF 1985)

* * * * *

CHAPTER I

PRELIMINARY

Short title,
extent and
commencement.

1. (1) * * * * *

(2) It extends to the whole of India.

* * * * *

Definitions.

2. In this Act, unless the context
otherwise requires,—

(i) "addict" means a person
addicted to any narcotic drug or
psychotropic substance;

* * * * *

CHAPTER IIA

NATIONAL FUND FOR CONTROL OF DRUG
ABUSE

National Fund
for Control of
Drug Abuse.

7A. (1) * * * * *

(2) The Fund shall be applied by
the Central Government to meet the
expenditure incurred in connection with
the measures taken for combating illicit
traffic in, or controlling abuse of,
narcotic drugs and psychotropic

substances for all or any of the purposes specified in sub-section (1) of section 71.

(3) The Central Government may constitute a Governing Body as it thinks fit to advise that Government in regard to the application of the Fund.

* * * * *

CHAPTER IV

OFFENCES AND PENALTIES

15. Whoever, in contravention of any provision of this Act or any rule or order made or condition of a licence granted thereunder, produces, possesses, transports, imports inter-State, exports inter-State, sells, purchases, uses or omits to warehouse poppy straw or removes or does any act in respect of warehoused poppy straw, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Punishment for contravention in relation to poppy straw.

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

16. Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, cultivates any coca plant or gathers any portion of a coca plant or produces, possesses, sells,

Punishment for contravention in relation to coca plant and coca leaves.

purchases, transports, imports inter-State, exports inter-State or uses coca leaves, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

Punishment for contravention in relation to prepared opium.

17. Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses prepared opium shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

Punishment for contravention in relation to opium poppy and popium.

18. Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, cultivates the opium poppy or produces, manufactures, possesses, sells,

purchases, transports, imports inter-State, exports inter-State or uses opium shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

* * * * *

20. Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder,—

Punishment for contravention in relation to cannabis plant and cannabis.

* * * * *

(b) produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis,

shall be punishable,—

(i) where such contravention relates to *ganja* or the cultivation of cannabis plant, with rigorous imprisonment for a term which may extend to five years and shall also be liable to fine which may extend to fifty thousand rupees;

(ii) where such contravention relates to cannabis other than *ganja*, with rigorous imprisonment for a term which shall not be less than ten years but which may extend twenty years

and shall also be liable to fine which shall not be less than one lakh rupees and which may extend to two lakh rupees:

* * * * *

Punishment for
contravention in
relation to
manufactured
drugs and
preparations.

21. Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any manufactured drug or any preparation containing any manufactured drug shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

Punishment for
contravention in
relation to
psychotropic
substances.

22. Whoever, in contravention of any provision of this Act, or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any psychotropic substance shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees,

23. Whoever, in contravention of any provision of this Act, or any rule or order made or condition of licence granted or certificate or authorisation issued thereunder, imports into India or exports from India or tranships any narcotic drug or psychotropic substance shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Punishment for illegal import into India, export from India or transshipment of narcotic drugs and psychotropic substances.

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

* * * * *

25. Whoever, being the owner or occupier or having the control or use of any house, room, enclosure, space, place, animal or conveyance, knowingly permits it to be used for the commission by any other person of an offence punishable under any provision of this Act, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

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

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

* * * * *

Punishment for illegal possession in small quantity for personal consumption of any narcotic drug or psychotropic substance or consumption of such drug or substance.

27. Whoever, in contravention of any provision of this Act, or any rule or order made or permit issued thereunder, possesses in a small quantity, any narcotic drug or psychotropic substance, which is proved to have been intended for his personal consumption and not for sale or distribution, or consumes any narcotic drug or psychotropic substance, shall, notwithstanding anything contained in this Chapter, be punishable,—

(a) where the narcotic drug or psychotropic substance possessed or 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 imprisonment for a term which may extend to one year or with fine or with both; and

(b) where the narcotic drug or psychotropic substance possessed or 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 or with both.

Explanation.—(1) For the purposes of this section “small quantity” means such quantity as may be specified by the Central Government by notification in the Official Gazette.

(2) Where a person is shown to have been in possession of a small quantity of a narcotic drug or psychotropic substance, the burden of proving that it was intended for the personal consumption of such person and not for sale or distribution, shall lie on such person.

* * * * *

30. If any person makes preparation to do or omits to do anything which constitutes an offence punishable under any of the provisions of section 15 to section 25 (both inclusive) and from the circumstances of the case it may be reasonably inferred that he was determined to carry out his intention to commit the offence but had been prevented by circumstances independent of his will, he shall be punishable with rigorous imprisonment for a term which shall not be less than one-half of the minimum term (if any), but which may extend to one-half of the maximum term, of imprisonment with which he would have been punishable in the event of his having committed such offence, and also with fine which shall not be less than one-half of the minimum amount (if any), of fine with which he would have been punishable, but which may extend to one-half of the maximum amount of fine with which he would have ordinarily (that is to say in the absence or special reasons) been punishable, in the event aforesaid:

Preparation.

Provided that the court may, for reasons to be recorded in the judgment, impose a higher fine.

Enhanced
punishment
for certain
offences after
previous
conviction.

31. (1) If any person who has been convicted of the commission of, or attempt to commit, or abatement of, or criminal conspiracy to commit, any of the offences punishable under section 15 to section 25 (both inclusive) is subsequently convicted of the commission of, or attempt to commit, or abatement of, or criminal conspiracy to commit, an offence punishable under—

(a) section 15 to section 19, clause (ii) of section 20 and section 21 to section 25 (both inclusive), he shall be punished for the second and every subsequent offence with rigorous imprisonment for a term which shall not be less than fifteen years but which may extend to thirty years and shall also be liable to fine which shall not be less than one lakh fifty thousand rupees but which may extend to three lakh rupees;

(b) clause (i) of section 20, he shall be punished for the second and every subsequent offence for a term which may extend to ten years and shall also be liable to fine which may extend to one lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose,—

(i) in a case falling under clause (a) a fine exceeding three lakh rupees; and

(ii) in a case falling under clause (b), a fine exceeding one lakh rupees.

(2) Where any person is convicted by a competent court of criminal jurisdiction outside India under any law corresponding to the provisions of section 15 to section 25 (both inclusive), section 28 and section 29, such person, in respect of such conviction, shall be dealt with for the purposes of sub-section (1) as if he had been convicted by a court in India.

31A. (1) Notwithstanding anything contained in section 31, if any person who has been convicted of the commission of, or attempt to commit, or abatement of, or criminal conspiracy to commit, any of the offences punishable under section 15 to section 25 (both inclusive) or section 27A, is subsequently convicted of the commission of, or attempt to commit, or abatement of, or criminal conspiracy to commit, an offence relating to,—

Death penalty for certain offences after previous conviction.

(a) engaging in the production, manufacture, possession, transportation, import into India, export from India or transshipment, of the narcotic drugs or psychotropic substances specified under column (1) of the Table below and involving the quantity which is equal to or more than the quantity indicated against each such drug or substance, as specified in column (2) of the said Table:

TABLE

Particulars of narcotic drugs/ psychotropic substances	Quantity
1	2
* * * * *	

(viii) Any mixture with or without any neutral material of any of the above drugs. 1,500 grams

* * * * *

(2) Where any person is convicted by a competent court of criminal jurisdiction outside India under any law corresponding to the provisions of section 15 to section 25 (both inclusive), section 27A, section 28 or section 29, such person, in respect of such conviction, shall be dealt with for the purposes of sub-section (1) as if he had been convicted by a court in India.

* * * * *

Offences triable by Special Courts.

36A. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,— 2 of 1974.

(a) all offences under this Act shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the Government;

(b) where a person accused of or suspected of the commission of an offence under this Act is forwarded to a Magistrate under sub-section (2) or sub-section (2A) of section 167 of the Code of Criminal Procedure, 1973, such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such 2 of 1974.

Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate:

Provided that where such Magistrate considers—

(i) when such person is forwarded to him as aforesaid; or

(ii) upon or at any time before the expiry of the period of detention authorised by him, that the detention of such person is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction;

(c) the Special Court may exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code of Criminal Procedure, 1973, in relation to an accused person in such case who has been forwarded to him under that section;

2 of 1974.

(b) a Special Court may, upon perusal of police report of the facts constituting an offence under this Act or upon a complaint made by an officer of the Central Government or a State Government authorised in his behalf, take cognizance of that offence without the accused being committed to it for trial.

(2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act, with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.

2 of 1974.

(3) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973, and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section included also a reference to a "Special Court" constituted under section 36. 2 of 1974.

* * * * *

Transitional provisions.

36D. (1) Any offence committed under this Act on or after the commencement of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1988, until a Special Court is constituted under section 36, shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973, be tried by a Court of Session: 2 of 1989. 2 of 1974.

Provided that offences punishable under sections 26, 27 and 32 may be tried summarily.

(2) Nothing in sub-section (1) shall be construed to require the transfer to a Special Court of any proceedings in relation to an offence taken cognizance of by a court of Session under the said sub-section (1) and the same shall be heard and disposed of by the Court of Session.

Offences to be cognizable and non-bailable.

37. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,— 2 of 1974.

* * * * *

(b) no person accused of an offence punishable for a term of imprisonment of five years or more under this Act shall be released on bail or on his own bond unless—

* * * * *

39. (1) When any addict is found guilty of an offence punishable under section 27 and if the court by which he is found guilty is of the opinion, regard being had to the age, character, antecedents or physical or mental condition of the offender, that it is expedient so to do, then, notwithstanding anything contained in this Act or any other law for the time being in force, the court may, instead of sentencing him at once to any imprisonment, with his consent, direct that he be released for undergoing medical treatment for de-toxification or de-addiction from a hospital or an institution maintained or recognised by Government and on his entering into a bond in the form prescribed by the Central Government, with or without sureties, to appear and furnish before the court within a period not exceeding one year, a report regarding the result of his medical treatment and, in the meantime, to abstain from the commission of any offence under Chapter IV.

Power of court to release certain offenders on probation.

* * * * *

CHAPTER V

PROCEDURE

41. (1) A Metropolitan Magistrate or a Magistrate of the first class or any

Power to issue warrant and authorisation.

Magistrate of the second class specially empowered by the State Government in this behalf, may issue a warrant for the arrest of any person whom he has reason to believe to have committed any offence punishable under Chapter IV, or for the search, whether by day or by night, of any building, conveyance or place in which he has reason to believe any narcotic drug or psychotropic substance in respect of which an offence punishable under Chapter IV has been committed or any document or other article which may furnish evidence of the commission of such offence is kept or concealed.

(2) Any such officer of gazetted rank of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government or of the Border Security Force as is empowered in this behalf by general or special order by the Central Government, or any such officer of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government if he has reason to believe from personal knowledge or information given by any person and taken in writing that any person has committed an offence punishable under Chapter IV or that any narcotic drug, or psychotropic substance in respect of which any offence punishable under Chapter IV has been committed or any document or other article which may furnish evidence of the commission of such offence has been kept or concealed

in any building, conveyance or place, may authorise any officer subordinate to him but superior in rank to a peon, sepoy, or a constable, to arrest such a person or search a building, conveyance or place whether by day or by night or himself arrest a person or search a building, conveyance or place.

(3) The officer to whom a warrant under sub-section (1) is addressed and the officer who authorised the arrest or search or the officer who is so authorised under sub-section (2) shall have all the powers of an officer acting under section 42.

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

42. (1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government or of the Border Security Force as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing, that any narcotic drug, or psychotropic substance, in respect of which an offence punishable under Chapter IV has been committed or any document or other article which may furnish evidence of the commission of such offence is kept

or concealed in any building, conveyance or enclosed place, may, between sunrise and sunset,—

(a) enter into and search any such building, conveyance or place:

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Chapter IV relating to such drug or substance; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under Chapter IV relating to such drug or substance:

Provided that if such officer has reason to believe that a search warrant or authorisation 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, conveyance 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.

43. Any officer of any of the departments mentioned in section 42 may—

Power of seizure and arrest in public places.

(a) seize, in any public place or in transit, any narcotic drug or psychotropic substance in respect of which he has reason to believe an offence punishable under Chapter IV has been committed, and alongwith such drug or substance, any animal or conveyance or article liable to confiscation under this Act, any document or other article which he has reason to believe may furnish evidence of commission of an offence punishable under Chapter IV relating to such drug or substance;

(b) detain and search any person whom he has reason to believe to have committed an offence punishable under Chapter IV and, if such person has any narcotic drug or psychotropic substance in his possession and such possession appear to him to be unlawful, arrest him and any other person in his company.

Explanation—For the purposes of this section, the expression “public place” includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to the public.

Power of entry, search, seizure and arrest in offences relating to coca plant, opium poppy and cannabis plant.

44. The provisions of sections 41, 42 and 43, shall so far as may be, apply in relation to the offences punishable under Chapter IV and relating to coca plant, the opium poppy or cannabis plant and for this purpose references in those sections to narcotic drugs, or psychotropic substance, shall be construed as including references to coca plant, the opium poppy and cannabis plant.

* * * * *

Power to stop and search conveyance.

49. Any officer authorised under section 42, may, if he has reason to suspect that any animal or conveyance is, or is about to be, used for the transport of any narcotic drug or psychotropic substance, in respect of which he suspects that any provision of this Act has been, or is being, or is about to be, contravened at any time, stop such animal or conveyance, or, in the case of an aircraft, compel it to land and—

* * * * *

Power to invest officers of certain department with powers of an officer in-charge of police station.

53. (1) The Central Government, after consultation with the State Government, may, by notification published in the Official Gazette, invest any officer of the department of central excise, narcotics, customs, revenue intelligence or Border Security Force or any class of such officers with the powers of an officer-in-charge of a police station for the investigation of the offences under this Act.

(2) The State Government may, by notification published in the Official Gazette, invest any officer of the department of drugs control, revenue or excise 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.

* * * * *

54. In trial under this Act, it may be presumed, unless and until the country is proved, that the accused has committed an offence under Chapter IV in respect of—

Presumption from possession of illicit articles.

(a) any narcotic drug or psychotropic substance;

(b) any opium poppy, cannabis plant or coca plant growing on any land which he has cultivated;

(c) any apparatus specially designed or any group of utensils specially adopted for the manufacture of any narcotic drug or psychotropic substance; or

(d) any materials which have undergone any process towards the manufacture of narcotic drug or psychotropic substance, or any residue left of the materials from which any narcotic drug or psychotropic substance has been manufactured,

for the possession of which he fails to account satisfactorily.

* * * * *

Liability of illicit
drugs,
substances,
plants, articles
and
conveyances
to confiscation.

60. (1) Whenever any offence punishable under Chapter IV has been committed, the narcotic drug, psychotropic substance, the opium poppy, coca plant, cannabis plant, 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 narcotic drug or psychotropic substance lawfully produced, imported inter-State, exported inter-State, imported into India, transported, manufactured, possessed, used, purchased or sold along with, or in addition to any narcotic drug or psychotropic substance which is liable to confiscation under sub-section (1) and the receptacles, packages and coverings in which any narcotic drug or psychotropic substance, materials, apparatus or utensils liable to confiscation under sub-section (1) is found, and the other contents, if any, of such receptacles or packages shall likewise be liable to confiscation.

(3) Any animal or conveyance used in carrying any narcotic drug or psychotropic substance, or any article liable to confiscation under sub-section (1) or sub-section (2) shall be liable to confiscation, unless the owner of the animal or conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person-in-charge of the animal or conveyance and that each of them had taken all reasonable precautions against such use.

61. Any goods used for concealing any narcotic drug or psychotropic substance which is liable to confiscation under this Act shall also be liable to confiscation.

Confiscation of goods used for concealing illicit drugs or substances.

Explanation.—In this section “goods” does not include conveyance as a means of transport.

62. Where any narcotic drug or psychotropic substance is sold by a person having knowledge or reason to believe that the drug or substance is liable to confiscation under this Act, the sale proceeds thereof shall also be liable to confiscation.

Confiscation of sale proceeds of illicit drugs or substances.

63. (1) * * * * *

Procedure in making confiscations.

(2) Where any article or thing seized under this Act appears to be liable to confiscation under section 60 or section 61 or section 62, but the person who committed the offence in connection therewith is not known or cannot be found, the court may inquire into and decide such liability, and may order confiscation accordingly:

Provided that no order of confiscation of an article or thing 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 or thing, other than a narcotic drug, psychotropic substance, the

opium poppy, coca plant or cannabis plant is liable to speedy and natural decay, or if the court is of opinion that its sale would be for the benefit of its owner, it may at any time direct it to be sold; and the provisions of this subsection 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.

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Immunity from prosecution to addicts volunteering for treatment.

64A. Any addict, who is not charged with any offence punishable under section 15 to 25 (both inclusive) or section 27A, who voluntarily seeks to undergo medical treatment for detoxification or de-addiction from a hospital or an institution maintained or recognised by the Government or a local authority and undergoes such treatment shall not liable to prosecution under section 27 once in his lifetime:

Provided that the said immunity from prosecution may be withdrawn if the addict does not undergo the complete treatment for de-toxification or de-addiction.

CHAPTER VA

FORFEITURE OF PROPERTY DERIVED FROM OR
USED IN ILLICIT TRAFFIC

68A. (1) * * * * * Application.

(2) The persons referred to in subsection (1) are the following, namely:—

(a) every person who has been convicted of an offence punishable under this Act with imprisonment for a term of five years or more;

* * * * *

(d) every persons who is a relative of person referred to in clause (a) or clause (b) or clause (c);

(e) every associate of a person referred to in clause (a) or clause (b) or clause (c);

(f) any holder (hereafter in this clause referred to as the "present holder") of any property which was at any time previously held by a person referred to in clause (a) or clause (b) or clause (c) unless the present holder or, as the case may be, any one who held such property after such person and before the present holder, is or was a transferee in good faith for adequate consideration.

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

* * * * *

(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 illicit traffic; or

Prohibition of holding illegally acquired property.

68C. (1) * * * * *

(2) Where any person holds any illegally acquired property in contravention of the provisions of subsection (1), such property shall be liable to be forfeited to the Central Government in accordance with the provisions of this Chapter:

Provided that no property shall be forfeited under this Chapter if such property was acquired by a person to whom this Act applies before a period of six years from the date on which he was charged for an offence relating to illicit traffic.

* * * * *

Identifying illegally acquired property.

68E. (1) Every officer empowered under section 53 and every officer-in-charge of a police station, shall, on receipt of information that any person to whom this Chapter applies has been charged with any offence punishable under this Act, whether committed in India or outside, proceed to take all steps necessary for tracing and identifying any property illegally acquired by such person.

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68H. (1) * * * * * Notice of forfeiture of property.

(2) Where a notice under sub-section (1) to any person specifies any property as being held on behalf of such person by any other person, a copy of the notice shall also be served upon such other person.

68-I. (1) * * * * * Forfeiture of property in certain cases.

(3) Where the competent authority records a finding under this section to the effect that any property is illegally acquired property, it shall declare that such property shall, subject to the provisions of this Chapter, stand forfeited to the Central Government free from all encumbrances.

* * * * *

68-O. (1) Any person aggrieved by an order of the competent authority made under section 68F, section 68-I, sub-section (1) of section 68K or section 68L, may, within forty-five days from the date on which the order is served on him, prefer an appeal to the Appellate Tribunal:

Provided that the Appellate Tribunal may entertain an appeal after the said period of forty-five days, but not after sixty days, from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

* * * * *

77. Every rule made under this Act by the Central Government and every notification issued under clause (xi) of section 2, section 3 and clause (a) of Rules and notifications to be laid before Parliament.

and *Explanation* (1) to, section 27 shall be laid, as soon as may be, after it is made or issued, before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule or notification should not be made or issued, the rule or the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

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RAJYA SABHA

BILL

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

(Shri Yashwant Sinha, Minister of Finance.)