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**STANDING COMMITTEE  
ON FINANCE  
(2011-2012)**

**FIFTEENTH LOK SABHA**

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

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

**FIFTIETH REPORT**



**LOK SABHA SECRETARIAT  
NEW DELHI**

*March, 2012 / Phalgun, 1933 (Saka)*

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*Presented to Lok Sabha on 21 March, 2012*  
*Laid in Rajya Sabha on 21 March, 2012*



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NEW DELHI  
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## CONTENTS

	PAGE No.
COMPOSITION OF THE COMMITTEE .....	(iii)
INTRODUCTION .....	(v)

### REPORT

I. Background .....	1
A. Salient features of the Narcotic Drugs and Psychotropic Substances (Amendment) Bill, 2011 .....	2
B. Reasons for delay in bringing out the amendment Bill ....	6
C. Issues pertaining to bringing out comprehensive and broad based legislation etc. ....	7
II. Clause 2 – Amendment of Clause [vii(a)] & [xxiii(a)] Section 2 .....	10
III. Clause 5 – Amendment of Section 27 of NDPS Act, 1985 – Punishment for consumption of any narcotic drug or psychotropic substance .....	15
IV. Clause 7 – Amendment of Sub-sections (1) & (2) of Section 31 of the NDPS Act, 1985 – Enhanced punishment for offences after previous conviction .....	19
V. Clause 9 – Insertion of new Section 57A – Report of seizure of property of the person arrested by the notified officer .....	21
VI. Clause 15 – Amendment of Sub-section (1) of Section 71 – Power of Government to establish centres for identification, treatment, etc., of addicts and supply of narcotic drugs and psychotropic substances .....	23
VII. Clause (b) of Sub-section (1) of Section 31 A – Death penalty for certain offence after previous conviction .....	26

APPENDICES

I. Minutes of the sittings of the Committee held on 4 November, 2011, 9 January, 2012 and 19 March, 2012 ..	30
II. The Narcotic Drugs and Psychotropic Substances (Amendment) Bill, 2011 .....	38

COMPOSITION OF STANDING COMMITTEE ON FINANCE  
(2011-2012)

Shri Yashwant Sinha — *Chairman*

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SECRETARIAT

1. Shri A.K. Singh — *Joint Secretary*
2. Shri R.K. Jain — *Director*
3. Shri Kulmohan Singh Arora — *Under Secretary*

## INTRODUCTION

1. I, the Chairman of the Standing Committee on Finance, having been authorized by the Committee, present this Fiftieth Report on the Narcotic Drugs and Psychotropic Substances (Amendment) Bill, 2011.

2. The Narcotic Drugs and Psychotropic Substances (Amendment) Bill, 2011 introduced in Lok Sabha on 8 September, 2011, was referred to the Committee on 13 September, 2011 for examination and report thereon, by the Speaker, Lok Sabha under rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee obtained written information on various provisions contained in the aforesaid Bill from the Ministry of Finance (Department of Revenue).

4. Written views/memoranda were received from the Lawyers Collective, New Delhi; Amnesty International, London, U.K.; Indian Harm Reduction Network, New Delhi; Indian Chemical Council, New Delhi; Bulk Drug Manufacturers' Association (India); Organisation of Pharmaceutical Producers of India, Mumbai Indian Drug Manufacturers' Association, Mumbai.

5. The Committee, at their sitting held on 04 November, 2011 took evidence of the representatives of the Ministry of Finance (Department of Revenue) and on 09 January, 2012, heard the expert views of the representatives of Lawyers Collective.

6. The Committee, at their sitting held on 09 March, 2012 considered and adopted the draft report and authorized the Chairman to finalise the same and present it to the Parliament.

7. The Committee wish to express their thanks to the officials of the Ministry of Finance (Department of Revenue) and the representatives of Lawyers Collective for appearing before the Committee and furnishing the requisite material and information which were desired in connection with the examination of the Bill.

8. The Committee also wish to express their thanks to the Lawyers Collective, New Delhi; Amnesty International, London, U.K.; Indian Harm Reduction Network, New Delhi; Indian Chemical Council, New Delhi;



Bulk Drug Manufacturers' Association (India); Organisation of Pharmaceutical Producers of India, Mumbai Indian Drug Manufacturers' Association, Mumbai for placing before them their considered views on the Bill in the form of memoranda.

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

NEW DELHI;  
20 March, 2012  
30 Phalgun, 1933 (Saka)

YASHWANT SINHA,  
*Chairman,*  
*Standing Committee on Finance.*

## REPORT

### I. Background

Narcotic Drugs and Psychotropic Substances continue to have several medical and scientific uses. Their permissible use worldwide is for medical and scientific purposes only. At the same time, these drugs and substances have tremendous potential for abuse. In fact, these are abused and trafficked worldwide. India's approach towards Narcotic Drugs and Psychotropic Substances is enshrined in Article 47 of the Constitution of India which mandates that the '*State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health*'. The same principle of preventing use of drugs except for medicinal use was also adopted in the three international conventions on drug related matters, viz., **Single Convention on Narcotic Drugs, 1954, Convention on Psychotropic Substances, 1971 and the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988**. India has signed and ratified these three conventions. India's commitment to prevention of drug abuse and trafficking predates the coming into force of the three conventions.

2. The statutory control over narcotic drugs is exercised in India through a number of Central and State enactments. The principal Central Acts, namely, the Opium Act, 1857. The Opium Act, 1878 and the Dangerous Drugs Act, 1930 were enacted long time ago. With passage of time and the developments in the field of illicit drug traffic and drug abuse at the national and international level, many deficiencies in the laws that have come into force under the aforesaid Acts. As a result to provide a comprehensive legislation on narcotic drugs and psychotropic substances which, *inter alia*, should consolidate and amend the then existing laws relating to narcotic drugs, make provisions for exercising effective control over psychotropic substances, make provisions for the implementation of international conventions relating to narcotic drugs and psychotropic substances, the Narcotic Drugs and Psychotropic Substances Bill 1985 was enacted on 16th September, 1985, and the Act is popularly known as (NDPS Act). The NDPS Act prohibits, except for medical and scientific purposes, the manufacture, production, possession, sale, purchase, transport, warehouse, use, consumption, import inter-State, export inter-State, import into India, export from India, or

transshipment of narcotic drugs and psychotropic substances. The NDPS Act, 1985 has been amended twice since then viz. the NDPS (Amendment) Act, 1989 and the NDPS (Amendment) Act, 2001.

3. The amending Act of 2001 rationalised the sentence structure so as to ensure that while drug traffickers who traffic in significant quantities of drugs are punished with deterrent sentences, the addicts and those who commit less serious offences are sentenced to less severe punishment. Such provisions have sometimes been misinterpreted to imply that in determining quantities, only the pure drug content in the quantum of drug seized should be reckoned. Since the Act duly provides for punishment for preparations of drugs also, this amendment seeks to clarify the legislative intent to take the entire quantity of drug seized in a case for determining the quantum of punishment and not the pure drug content. Provisions for tracing and seizing of illegally acquired properties pursuant to drug trafficking activity were introduced in the Principal Act by way of amendment in 1989 and were further strengthened in the amending Act of 2001. The need for further expanding the scope of such provisions and to broad base the definition of illegally acquired property so that it becomes more difficult for drug traffickers to enjoy the fruits of drug trafficking activity, has been experienced. It is proposed to do so by way of certain amendments.

4. During the implementation of the Act, some anomalies have been noticed in the amendments effected in 2001. Accordingly the Narcotic Drugs and Psychotropic Substance (Amendment) Bill, 2011 aims at rectifying those anomalies and also making certain further changes to strengthen the provisions of the Act.

#### **A. Salient features of the Narcotic Drugs and Psychotropic Substance (Amendment) Bill, 2011**

5. Salient features of the Narcotic Drugs and Psychotropic Substance (Amendment) Bill, 2011 are given below:—

- i. **Defining ‘Central Government Factories’ [new entry in Section 2]:** Even though the term ‘Central Government Factories’ is mentioned in certain Sections of the Act, till now it has not been defined in the Act. It is proposed to define ‘Central Government Factories’ on the lines of the definition of ‘Government Company’ under the Companies Act, so as to allow the Central Government the flexibility to restructure the Government Opium and Alkaloid Works without diluting the control over them.

- ii. **Changing the definition of ‘commercial quantity’ and ‘small quantity’ [Section 2 (viiia) and (xxiiia)]:** NDPS Act follows a graded system of punishment – the quantum of punishment varies depending on whether the quantity of drug involved in a case is ‘small’ or ‘commercial’ or more than ‘small’ but less than ‘commercial’. It has been held by the Hon’ble Supreme Court that while determining whether the quantum of drug involved in a particular case is small/commercial, etc., it is the pure drug content and not the quantity of drug seized, which has to be taken into account. Since the drug is almost never seized in the pure form and ‘small’ and ‘commercial’ quantities have been notified for preparations also, it is proposed to empower the Government to notify quantities in respect of preparations of drugs and psychotropic substances also.
- iii. **Transferring the power of regulating poppy straw from unlanced crop from State Government to the Central Government [Sections 9 and 10]:** Apart from the traditional method of extraction of opium from the poppy plant and using the same to produce alkaloids which is presently in vogue in the country, there is an alternative modern method of production of Concentrate of Poppy Straw (CPS) through crushing of the poppy capsule and producing alkaloids from CPS. This is a more efficient method of producing alkaloids and all other countries of the world, engaged in licit poppy cultivation, have already switched to this alternative route. In India too, an expression of interest has been invited for companies to produce CPS and manufacture alkaloids therefrom. However, presently the NDPS Act empowers the State Governments to regulate poppy straw, after opium has been extracted from the poppy capsule. Since under CPS method, the poppy capsule will not be lanced at all, if purchase of poppy straw is regulated by the State Governments, it will create an anomalous situation in which the Central Government will have to obtain a licence from the State Government for possession, transport, use etc. of poppy straw from which no juice has been extracted. Therefore, it is proposed to vest the power to regulate the poppy straw from which no juice has been extracted with the Central Government. The proposed amendment will not affect the powers currently being exercised by the State Governments in regulating poppy straw from which opium has been extracted.

- iv. **Rationalising the punishment for consumption of morphine, cocaine and heroin [Section 27]:** Presently, the consumption of these drugs involves a maximum punishment of 1 year while trafficking of small quantities of the same attracts maximum punishment of 6 months only. This anomaly is proposed to be rectified, by reducing the maximum punishment for consumption of drugs to 6 months.
- v. **Providing for punishment for laundering proceeds of drug related offences on the lines of punishment for similar offences under the Prevention of Money Laundering Act, 2002 [new entry Section 27B]:** The NDPS Act provides for forfeiture of properties derived from drug trafficking. Certain activities relating to property derived from drug offences such as converting or transferring such property, concealing/disguising the true nature of the property or knowingly acquiring, possessing and using such property have been prohibited through section 8A introduced in the Act through the amendment in 2001. However, no specific punishment was provided for violation of Section 8A. This gap is proposed to be bridged by introduction of a Section 27B with penal provisions on the lines of the PMLA. This is also one of the commitments given to Financial Action Task Force (FATF), of which India is a Member.
- vi. **Removing the anomaly in punishment for repeat offences that has been noticed after the amendment to the NDPS Act, 1985 in 2001 [Section 31]:** Repeat offences under the NDPS Act invite a punishment of one and one half times (1.5 times) of the punishment for the first offence. However, this provision has been erroneously worded as 'one-half' of the penalty for the first offence, instead of 'one and one half times'. This anomaly is proposed to be rectified.
- vii. **Providing for pre-trial disposal of precursors and conveyances [Section 52A]:** While section 52A of the Act provides for disposal of drugs during trial after due certification of the inventories of the same by the competent Magistrate, it does not do so for 'precursors' used in the manufacture of drugs, which are also liable for seizure under the Act or for conveyances seized. The amendment proposes to allow for pre-trial disposal of precursors and conveyances also.

- viii. **Making it mandatory for investigating officers to look into and report illegally acquired properties of drug traffickers, their relatives and associates to the Competent Authority for seizing, freezing and forfeiture [new entry Section 57A]:** Presently, no time limit is prescribed for the investigating officer to look into the illegally acquired properties of trafficking and report the same to the Competent Authority. Consequently financial investigations in drug cases have been receiving low priority. It is proposed to make it mandatory for the investigating officer to make a report of the illegally acquired properties of the person involved in drug trafficking, to the jurisdictional competent authority within one hundred and eighty days of the arrest or seizure.
- ix. **Enlarging the definition of illegally acquired property to include the equivalent value of the property and also include properties of drug traffickers and their relatives derived out of income and assets whose source cannot be proved[Section 68B (g) and (h)].** The Hon'ble Supreme Court has interpreted the present provisions of Chapter VA (including Section 68B) and held that it is necessary to establish a direct nexus between the properties sought to be forfeited and the offence committed. It is nearly impossible to prove such a nexus as the drug traffickers do not keep records of the drugs they sell and the manner in which they invests the sale proceeds. Further, one of the binding commitments that India has made to the Financial Action Task Force (FATF), membership to which was contingent upon such commitments, is that NDPS Act will be amended to include provisions for confiscation of property of corresponding value. It is, therefore, proposed to define properties belonging to traffickers, their relatives and associates, the source of which cannot be proved and the property of equivalent value, as illegally acquired properties by amending section 68B clause (g).
- x. **Change of nomenclature from 'Collector' to 'Commissioner' [Section 68D(1)]:** 'Collector' of Customs and Central Excise is now known as 'Commissioner'. Enabling provisions are being made so that the Central Government may authorize Commissioner of Customs and Commissioner of Central Excise, who were *hitherto* known as 'Collector of Customs' and 'Collector of Central Excise', to perform the functions of the Competent Authority.

- xi. **Insertion of Explanation to Section 68H regarding validity of notice:** Section 68H deals with the issue of a notice for forfeiture of property. As stated above, the Hon'ble Supreme Court has held that it is necessary to establish a direct nexus between the properties sought to be forfeited and the offence committed, which is not practically possible. In order to address this situation, it is proposed to insert an 'Explanation' to section 68H stating that the notice for forfeiture would not be invalid merely on the ground of failure to establish a nexus between the property sought to be forfeited and any activity in contravention of the provisions of this Act (drug trafficking activity).
- xii. **Enabling provision to nominate Member, ATFP as Chairman, ATFP [Section 68O]:** Appeals against the orders of the Competent Authorities are filed with the Appellate Tribunal for Forfeiture of Property (ATFP). It is proposed to add enabling provision to enable the Government to nominate any member of the ATFP to act as the Chairman if the post of Chairman is vacant or if the Chairman is unable to discharge his duties.
- xiii. **Legal basis for measures to manage injecting drug users [Section 71]:** Drugs are abused through a variety of ways including injecting. Injecting drug users often share needles and syringes, which makes them vulnerable to HIV AIDS. To minimize risk to HIV, measures such as 'needle-syringe exchange' and 'oral substitution' are followed. These measures aim at management of addicts and cannot be strictly called 'treatment'. It is proposed to include the word 'management' in section 71 so as to provide a firm legal basis to such measures.

## **B. Reasons for delay in bringing out the amendment Bill (2011)**

6. On being asked the reasons as to why has it taken so long a period to correct the anomalies noticed in the NDPS Act, 2001, the Ministry of Finance (Department of Revenue), *inter alia*, furnished their reply as stated under:—

“Proposal to amend the Act to correct the anomalies commenced soon after the previous amendments. However, since Act amendment cannot be carried out frequently, proposals were invited from all concerned Ministries/Agencies in the country. Then, because of change of Government at the Centre, fresh inter-ministerial

consultations were necessitated. In the meanwhile, certain additional amendments were felt necessary because of certain judgments of the Hon'ble Supreme Court. The Law Ministry had to be consulted each time. All this was time consuming."

**C. Issues pertaining to bringing out comprehensive and broad based legislation etc.**

7. Responding to a query whether this opportunity to amend the NDPS Act should be capitalized to bring in a comprehensive and broad based legislation for updated statutory control over narcotic drugs and psychotropic substance, the Ministry of Finance (Department of Revenue) *inter alia* furnished their reply as stated under:—

"The present amendments have been proposed based on the experience of different agencies in the country, since the last amendments were carried out. It is felt that these amendments shall make the NDPS Act, 1985 more comprehensive."

8. However, representations received from stakeholders namely Organisation of Pharmaceutical Procedures of India (OPPI), Indian Drug Manufacturers' Association (IDMA), Indian Chemical Council (ICC) and Bulk Drug Manufacturers Association India (BDMAI) have in unison advocated for amendments which were not covered in the provisions of the Bill. The representations received as such proposed the following:—

- (i) Amending of Sections 21, 22, 25-A, 26 of the NDPS Act, 1985 by incorporating provisions to enable compounding of unintended or inadvertent non-compliances or procedural lapses.
- (ii) Amending of sub-sections (1) and (2) of Section 42 by providing suitable provisions to provide protection to legally authorized manufacturers, dealers, traders etc. of Narcotic Psychotropic and Controlled substances from undue harassment during investigations or enforcement of laws/rules pertaining to the controlled substances.

9. The Ministry of Finance (Department of Revenue) on being asked to give comments on the issue raised by the above stakeholders in the representations, *inter-alia*, furnished the following reply as stated under:—

"In summary, it is felt that the issues raised by the industry associations are administrative in nature which can be addressed by better enforcement of the Act and not by amending the Act



itself..... Accordingly, the Ministry of Finance (Department of Revenue) does not support the amendments in the NDPS Act, 1985 suggested by the aforesaid industry bodies.”

**10. The Narcotic Drugs and Psychotropic Substances Act, 1985 prohibits, except for the medical and scientific purposes, the manufacture, production, possession, sale, purchase, transport, warehouse, use, consumption, import inter-state, export inter-state, import into India, export from India, or transshipment of narcotic drugs and psychotropic substances. The NDPS Act, 1985 has been amended twice since then in 1989 and 2001. The NDPS Bill, 2011 mainly aims at rectifying anomalies noticed during implementation of the amendments effected in 2001 on the principal Act. The Bill also proposes further changes to strengthen the provisions of the Act. The Committee are constrained to note that the Government has taken ten long years to rectify the anomalies noticed in the amendments effected in 2001. The Committee are not convinced by the reasons adduced by the Ministry of Finance (Department of Revenue) for the delay in bringing out the amendments which include change of Government at the Centre, fresh inter-ministerial consultations, additional amendments being necessitated because of certain judgments of the Hon'ble Supreme Court etc. While expressing agreement about the necessity of the amendments proposed in the Bill, the Committee, in the course of examination of the Bill, felt the need for having a more comprehensive and broad-based legislation on the issues pertaining to the control over the narcotic and psychotropic substances. The Committee also find it pertinent to point out that the issues raised by the stakeholders viz., OPPI, IDMAI, ICC and BDMAI, in their representations pertaining to amendments to Section 21, 22, 25-A, 26 of the NDPS Act, 1985 to enable compounding of unintended or inadvertent non-compliances or procedural lapses, and amending of sub-sections (1) and (2) of Section 42 to address undue harassment faced by legally authorized manufacturers, dealers traders etc. of Narcotic, Psychotropic and controlled substances during investigations and enforcement of laws/rules pertaining to the substances are genuine. The Ministry of Finance (Department of Revenue) assertion that “slight amendments in NDPS Rules” would suffice to address the issues raised by stakeholders does not satisfy the Committee. The Committee are of the opinion that the issues raised as such by the stakeholders merit serious consideration from the Ministry/Government though they are not covered in the provisions of the Bill currently under examination. The Committee, therefore, expect the Government to incorporate these provisions by way of amendments in the present Bill itself.**

**11. The Committee, having dwelt upon the various provisions of the Bill, recommend for enactment of the Bill, with modifications as recommended in the succeeding paragraphs.**

**II. Clause 2 – Amendment of Clause [vii(a)] and [xxiii(a)] Section 2 – Commercial quantity [Section 2 (viiia)] and Small quantity [Section 2 (xxiii a)]**

12. Section 2 (viiia) of the NDPS (Amendment) Act, 1985 reads as:—

“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.

13. Section 2(xxiii a) of the NDPS (Amendment) Act, 1985 reads as:—

“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.

14. The NDPS Bill, 2011 proposes the following amendments in Section 2:—

For clause (vii a) the following clause shall be substituted, namely:—

“commercial quantity”, in relation to a narcotic drug, psychotropic substance or any preparation of such drug or such substance, means any quantity of such drug, substance or preparation of such drug or substance greater than the quantity specified, in terms of the pure drug content or otherwise, by the Central Government by notification in the Official Gazette;”

For clause (xxiii a), the following clause shall be substituted, namely:—

“small quantity”, in relation to a narcotic drug, psychotropic substance or any preparation of such drug or such substance, means any quantity of such drug, substance or preparation of such drug or substance lesser than the quantity specified, in terms of the pure drug content or otherwise, by the Central Government by notification in the Official Gazette.”

15. On being asked why the terms of quantities are not specified in the Act itself, the Ministry of Finance (Department of Revenue) *inter alia* furnished their reply as stated under:—

“If small and commercial quantities were to be specified in the Act itself, it would mean that every time a new substance gets

included in the list of narcotic drugs or psychotropic substances and 'small' and 'commercial' quantities in respect of the same are to be specified, it would require an amendment in the Act itself. Since amending the Act is a long process, traffickers of such newly included narcotic drug or psychotropic substance, would get relief from the Courts during the period such quantities remain unspecified. In UK, the Home Secretary can list new drugs and upgrade, downgrade or delist previously controlled drugs without the need for passing an Act through both Houses of Parliament.”

16. Views and suggestions on the issue submitted to the Committee by an Organization include the following points:—

“The NDPS (Amendment) Bill, 2011 seeks to modify the definitions of the ‘commercial quantity’ ‘and small quantity’, which will affect the penalties imposed under the NDPS Act. The Lawyers Collective is particularly concerned that the proposed amendments may weaken the rationalized penalty structure introduced by the 2001 Amendment to the NDPS Act, wherein persons involved in minor drug offences were subject to lesser punishment while traffickers attracted stringent sentences.

Clause 2:— Sub-clauses 2(b) and 2(c) seek to insert the word “*preparation*” in the definitions of commercial and small quantity, as well as add the phrase “*in terms of the pure drug content or otherwise.*”

### **Proportionate Sentencing based on quantity**

The 2001 Amendment was a watershed development in the history of the NDPS Act that sought to make a distinction between drug users/persons committing minor offences and drug traffickers, by rationalizing punishment on the basis of the quantity of drugs involved. The Act classified narcotic drugs and psychotropic substances into ‘small’ and ‘commercial’ quantities and brought in notification S.O. 1055(E), dated 19th October 2001 (hereinafter “2001 notification”) that specified quantity thresholds for 239 entries (238 drugs + 1 entry for mixture of one or more drugs). Note 2 of the 2001 Notification made it clear that the stipulated quantities applied to the preparations of drugs and substances also. Thus, quantity of drugs involved in the offence became the basis to distinguish drug traffickers from less serious offenders.

## **Determination of Drug Quantity by Courts**

Prior to 2001, in cases pertaining to drug users, the Supreme Court, took into account the actual drug content in calculating quantity and not the entire quantity seized. After the 2001 notification, the penalties were determined by the quantity of drugs involved, but the NDPS Act did not provide any guidance of ascertaining the quantity of narcotic drugs or psychotropic substances. Consequently, some Courts relied on definitions of certain drugs that referred to a numerical percentage, like

- ‘*coca leaf*’ includes leaf of the coca plant, mixture of the same and all preparations containing more than 0.1% cocaine [Section 2(vi)]
- ‘*opium*’ consists of coagulated juice of opium poppy; mixture of opium poppy juice including preparations with 0.2% morphine [Section 2(xv)]
- ‘*opium derivatives*’ includes medicinal opium, prepared opium, heroin, morphine, codeine, thebaine and preparations containing more than 0.2% morphine or containing any diacetylmorphine [Section 2(vi)] to calculate the quantity of drugs involved.

This resulted in several inconsistencies. In many cases, the Courts relied on the definitions of drugs to calculate the total quantity of drugs involved<sup>iv</sup>, while in other cases including those relating to preparations of diacetylmorphine, the Courts ignored the definitions and looked at the percentage of diacetylmorphine, in contrast to the definition in S.2(vi) that includes preparations containing any diacetylmorphine<sup>v</sup>. The inconsistency became more pronounced when the drug was a preparation or a mixture inclusive of neutral materials, wherein some Courts included neutral materials in calculating the total quantity of drugs involved while others excluded neutral materials<sup>vi</sup>.

### **E. Michael Raj’s Case**

*In 2008, the Supreme Court in E. Michael Raj v. Intelligence Officer, Narcotic Control Bureau<sup>vii</sup> held that in the mixture of a narcotic drug or a psychotropic substance with one or more neutral substance/s, the quantity of the neutral substance/s is not to be taken into consideration while determining the small quantity or commercial quantity of a narcotic drug or psychotropic substance. It is only*

the actual content by weight of the narcotic drug which is relevant for the purposes of determining whether it would constitute small quantity or commercial quantity.”

Despite the above decision, the confusion in determination of drug quantity did not cease. Some Courts sought to limit the application of Michael Raj decision only to cases of heroin or opium derivatives. Opium/Cannabis cases were distinguished from the rest and held to be inclusive of neutral materials<sup>viii</sup>.

### **2009 Notification**

In 2009, the Central Government brought in a new notification, through S.O. 2941 (E), dated 18 November 2009 (“2009 Notification” hereinafter), wherein the quantities shown as small and commercial, apply to the entire mixture or solution of the narcotic drug or psychotropic substance and not just its pure drug content<sup>ix</sup>. It must be noted that the 2009 notification makes the entire quantity of narcotic drugs or psychotropic substances liable, irrespective of pure drug content. It is contended that the relation between the 2009 notification and the proposed amendment, which brings in the terms ‘*pure drug content or otherwise*’ to the definitions of commercial and small quantity, is unclear and will further compound the confusion and result in arbitrary interpretation of the Act.

### **Penal Statutes can’t be vague**

It is a cardinal principle of penal law that what constitutes an offence must be clear and not vague. It is argued that preparations are already included in the definition of narcotic drugs and psychotropic substances under the present Act as well as in the 2001 notification. It is unclear what the addition of the expression “preparation” to the definitions of commercial and small quantities would achieve. Further, the term ‘*otherwise*’ in the proposed amendment is vague and imprecise and can result in arbitrary interpretation. The fact that the Act also prescribes the death penalty for repeat offences involving specified quantity of drugs, underscores the importance of due diligence in ascertaining the quantity of drug involved in the offence.

It is submitted that apart from capricious sentencing, arbitrariness in the determination of quantity would have other significant implications, since quantity is a determinant factor *vis-a-vis* i) jurisdiction of courts, that is, if the accused to be tried before

the Magistrate or the Special Court, ii) grant of bail and iii) the duration of pre-trial detention.

**17. The Committee are given to understand that the proposed amendments on Clause (viia) and (xxiiia) of Section 2 are intended to remove ambiguity in respect of narcotic drugs and psychotropic substances to determine the consequential penalty for the illegal consumption, possession, trafficking etc. of the drugs and substances. The Committee, however, note that meanings denoted by the terms/expressions 'preparation' and 'otherwise' in proposed amendments are vague and unspecific. Such ambiguity in the clause would lead to arbitrariness in the interpretation of the law and may weaken the rationalized penalty structure introduced by the 2001 Amendment to the NDPS Act. The Committee feel that if the proposed amendments intend to provide specific provisions for considering the pure drug content of a recovery to determine the consequential penalty/punishment for an offender, no word/term/clause with ambiguous meaning should be used in the provisions. In the opinion of the Committee, this will enable the Courts/law enforcement agencies to award punishment commensurate with the seriousness of the crime committed under the NDPS Act. The Committee desire that the Clauses (viia) and (xxiiia) of Section 2 may be amended suitably so as to spell out in clear terms and measure the difference of 'small quantity' and 'commercial quantity'.**

**III. Clause 5 – Amendment of Section 27 of NDPS Act, 1985 – Punishment for consumption of any narcotic drug or psychotropic substance**

18. Section 27 of NDPS Act, 1985 reads as under:—

- “(a) where the narcotic drug or psychotropic substance consumed is cocaine, morphine, diacetylmorphine or any other narcotic drug or any psychotropic substance as may be specified in this behalf by the Central Government by notification in the Official Gazette, with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to twenty thousand rupees; or with both; and
- (b) where the narcotic drug or psychotropic substance consumed is other than those specified in or under clause (a), with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees or with both.”

19. The NDPS (Amendment) Bill, 2011 proposes the following amendment of Section 27 of the NDPS Act, 1985:—

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

20. On being asked during oral evidence, that whether increasing the penal provision for trafficking drugs in small quantity to one year imprisonment from the existing 6 months imprisonment instead of reducing the penal provision for consumption of drugs from one year imprisonment to 6 months, the Ministry in their post evidence reply furnished the following written submission as below:—

“The background of this proposal is the amendment carried out in the Act in 2001. Prior to 2001, there was a uniform punishment of 10 – 20 years along with financial penalty for all offences under the Act, irrespective of the quantum of drug involved. The 2001 amendment introduced a system of graded punishment with the offences involving trafficking of ‘small’ quantities attracting punishment of only upto 6 months. However, the consumption of drugs like heroine and cocaine attracts 1 year punishment which is more than the punishment for traffickers. This is an anomalous situation which was sought to be corrected by bringing down the



punishment for consumption also to the level of traffickers of 'small' quantities. The other alternative could have been to increase the level of punishment in respect of traffickers also to 1 year. However, this was not proposed on account of the following reasons:—

- (a) After having obtained Parliament's approval for reduction of punishment in respect of traffickers of small quantity from 10 years to a maximum of 6 months, there appeared to be no justification for seeking enhancement of the punishment again,
- (b) Punishment for traffickers is contained in several sections of the NDPS Act, 1985 viz. Sections 15, 16, 17, 18, 20, 21, 22 and 23 and there appeared to be no justification for enhancing punishment in respect of offences listed under all these sections.

However, in view of observations of the Standing Committee on Finance, the Ministry will have no objection to revising the proposal.”

21. In a written submission received by the Committee from an NGO it has been stated that Section 27 of the principal Act may altogether be deleted and penal action against drug dependency is inappropriate and unjust for the following reasons:—

- Persons who use drugs need support and assistance. Punishment is not an appropriate sanction for drug use and dependence. It has to be understood that once a person becomes dependent on drugs, she/he cannot give up without medical help. Punishing a patient is not only inappropriate but also unhelpful and unjust.
- Punishment is also not an appropriate sanction for experimental or occasional use of drugs. First time or occasional users will benefit more from education on the harms of continued use, rather than prosecution and jail. Counseling and social support is also more likely to dissuade future use.
- Imprisoning persons who consume drugs will not address the problem of consumption or addiction. On the contrary, incarceration will aid drug users' exposure to and contact with other criminal offenders, and likely to entrench them in a life of more and serious crime.

- The NDPS Act itself seeks to provide education, identification, treatment, rehabilitation and social reintegration for persons dependent on drugs. Criminal records diminish chances of reintegration including opportunities for education and employment. Section 27 thus contradicts the legislative intent, which is to treat and assimilate persons who use or are dependent on drugs in society.
- Section 27 is inconsistent with other provisions of the NDPS Act. The Act itself empowers the State Government to supply opium to registered addicts for his/her personal consumption [Section 10(1)(a)(vi)] while Section 71 authorizes the Government to establish treatment centres for addicts. Treatment in these de-addiction centres don't require prior criminal prosecution, thereby indicating that the Government itself acknowledges that drug dependence is a medical condition, requiring treatment and support and not incarceration.
- Also, the World Health Organisation (WHO) recognizes drug dependence as a “multi-factorial health disorder that often follows the course of a relapsing and remitting chronic disease.” Imposing criminal penalties for a medical condition is illogical and unfair.
- The NDPS Act is modeled on International Drug Conventions, namely, the Single Convention on Narcotic Drugs, 1961, as amended by the Protocol Amending the Single Convention on Narcotic Drugs, 1972, the Convention on Psychotropic Substances, 1971 and the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988. None of these Conventions require State Parties to make consumption of drugs a punishable offence.
- Evidence from European Union (EU) countries, where consumption is decriminalized or depenalised, shows that it has not resulted in higher drug use or dependence. In fact, removing criminal sanctions for drug consumption has led to improved access to medical and social services and reduction in petty crimes. Similarly, there is no proof that criminalisation of drug use or prohibitionist drug policies have deterred people from consuming illicit drugs.
- In 2001, Portugal decriminalized consumption, possession and acquisition of narcotic and psychotropic drugs for personal

use. Addicts are supported through medical facilities while occasional users receive admonition. Ten years later, several studies show that there has been significant decline in petty crimes related to drug consumption like theft, because of availability of methadone treatment, decrease in HIV incidence amongst injecting drug users, along with reduction in recidivist crimes.

**22. The proposed amendment intends to rationalize the punishment for consumption of morphine, cocaine and heroine by reducing it to 6 months from the existing 1 year in the light of the provision entailing maximum 6 months imprisonment for trafficking of small quantities. In view of the menace of drug abuse rampant in the society, the Committee are not inclined to accept the suggestion forwarded by an NGO that Section 27 of the NDPS Act, prescribing punishment for abusing drugs, be deleted altogether as drug dependents/addicts are considered as patients who need help and treatment rather than imprisonment. However, the Committee feel that the medical maxim of 'prevention is better than cure' is applicable to the fight against the menace of drug abuse/addiction in the society as well. The Committee are of the considered view that legislation prescribing deterrent punishment for consumption of narcotic drugs or psychotropic substances is needed, as part of multi-pronged approach to curb the drug menace. The Committee, therefore, recommend that contrary to the proposal in the Bill, *status quo* should be maintained in respect of punishment for consumption of morphine, cocaine and heroine *i.e.* 1 year jail term and that the punishment for trafficking in "small quantity" should rather be enhanced to 1 year jail term from the existing 6 months jail term in the NDPS Act.**

**IV. Clause 7 – Amendment of sub-sections (1) and (2) of Section 31 of the NDPS Act, 1985 – Enhanced punishment for offences after previous conviction**

23. Sub-sections (1) and (2) of Section 31 reads as under:—

“If any person who has been convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, any of the offences punishable under this Act is subsequently convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, an offence punishable under this Act with the same amount of punishment shall be punished for the second and every subsequent offence with rigorous imprisonment for a term which may extend to one-half of the maximum term of imprisonment and also be liable to fine which shall extend to one-half of the maximum amount of fine.

(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.”

24. The NDPS (Amendment) Bill, 2011 proposes to the following amendments/substitutions in sub-section (1) and (2) of section 2 of the NDPS Act, 1985 as below:—

“(a) in sub-section (1),—

- (i) for the words “one-half of the maximum term”, the words “one and one half times of the maximum term” shall be substituted;
- (ii) for the words “one-half of the maximum amount”, the words “one and one-half times of the maximum amount” shall be substituted;

(b) in sub-section (2),—

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

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

**25. Repeated offences under the NDPS Act invite a punishment of one and one half times the quantum of punishment for the first offence, which however has been erroneously worded as ‘one-half’ of the penalty for the first offence instead of ‘one and one half times’. Such an error must have come in the way of commensurate punishment for crimes committed under sub-sections (1) and (2) of Section 31 of the NDPS Act. The Committee are constrained to note the lack of seriousness on the part of the Government in letting the error linger for one decade and urge the Government to rectify the aforesaid error as proposed in the Bill without delay.**

**V. Clause 9 – Insertion of new section 57A – Report of seizure of property of the person arrested by the notified officer –**

26. The NDPS (Amendment) Bill proposes to insert new section 57A, after section 57 of the principal Act, which reads as:—

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

27. The Committee feel that the stipulated 180 days for reporting the illegally acquired property of the person arrested is too long a period. On being asked whether the number of days for reporting of the seizure can be reduced to two to three months, the Ministry of Finance (Department of Revenue) *inter alia* furnished the following written reply as stated below:—

“The initial proposal was for a time of 2 months only for making a report of illegally acquired property. However, during inter-ministerial consultations, certain enforcement agencies like the CBEC requested for enhancement of this limit in this new Section proposed in the Act to 6 months, as the complaint in the seizure case is required to be filed within 6 months and because it would be difficult to complete the investigation relating to illegally acquired property in 60 days time. For this very reason, CBN argued against introduction of the provision itself. The Government of Himachal Pradesh was also against the introduction of this provision as it will place extra burden on the investigation officers and act as a disincentive to police officers to investigate such cases. In view of such comments received from various agencies, it was decided to provide for 6 months’ for reporting upon illegally acquired properties in this new Section in the Act.”

**28. The Committee are in agreement with the proposal to insert a new section 57A in respect of report of seizure of property of the person arrested by the notified officer. However, stipulating 180 days for reporting the illegally acquired property of the person arrested is too long a period. The Ministry has stated that 180 days stipulation has been made in view of comments received from various agencies expressing that it will not be possible to complete investigations relating to illegally acquired property in 60 days, and that stipulating shorter days will act as a disincentive to police officers investigating such**

**cases. The Committee are not convinced by the reasons advanced by the Ministry for putting such a proposal. The Committee are of the view that stipulation of such a long period (180 days) would entice and enable for manipulation/distortion of facts about the seized property in question. The Committee, therefore, recommend that the limit may be reduced to 90 days.**

**VI. Clause 15 – Amendment of Sub-section (1) of Section 71 – Power of Government to establish centres for identification, treatment, etc., of addicts and supply of narcotic drugs and psychotropic substances—**

29. Sub-section (1) and (2) of Section 71 of the NDPS Act, 1985 reads as under:—

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

(2) The Government may make rules consistent with this Act providing for the establishment, appointment, maintenance, management and superintendence of, and for supply of narcotic drugs and psychotropic substances from, the centres referred to in sub-section (1) and for the appointment, training, powers, duties and persons employed in such centres.”

30. The NDPS (Amendment) Bill, 2011 proposes the following amendment as below:—

“In section 71 of the principal Act, in sub-section (1), after the words “identification, treatment”, the word “management,” shall be inserted.”

31. During evidence before the Committee, the Ministry of Finance (Department of Revenue) were asked to comment on the view that the word ‘may’ in Section 71 be substituted with ‘shall’ to make mandatory for the Government to establish centres for treatment for drug dependent persons in the country. The Ministry in their post evidence reply have stated the following:—

“Such a change may not be practical. Further, the section provides for establishment of treatment centres by the Government ‘in its discretion’. Thus even if the word ‘may’ used in this section is replaced with the word ‘shall’ the number of centres to be established shall remain the discretion of the Government. No material purpose will thus be served by making this change. Moreover, the problem of drug abuse doesn’t exist in all parts of the country. In such a scenario, it should be at the discretion of



the Government to decide where such centers should be set up on the basis of need.”

32. Regarding the rationale and objective for inserting ‘management’ in Section 71(1), the Ministry of Finance (Department of Revenue) submitted the following as stated under:—

“The ‘treatment’ of drug-addicts presently being carried out at the treatment centres very commonly involve ‘Opioid Substitution Therapy’ wherein the patient is put on a less harmful dose of opioid, other than the drug to which he/she is addicted. This is more in the nature of ‘management’ of the addicts. The insertion of the word ‘management’ would therefore provide a firm legal basis to such measures.”

33. On this issue views/comments received from a non-profit Organization stated the following as below:—

“..the proposed insertion of the term ‘management’ after the words treatment, identification in Section 71 of the Act, .. is a more accurate description of clinical care for drug dependence. At the same time, we would like to suggest the following change to the said section:—

The words The ‘Government may, in its discretion, establish’ to be replaced by The Government may establish, recognize or approve as many centres as it thinks fit, The above changes are being proposed because existing Government facilities for treatment and rehabilitation are sparse. Consequently, many private centres have come up, which are not subject to rules under Section 71(2). In the absence of State oversight, many such centres are fleecing addicts and their families, subjecting them to coercion, abuse and torture. Some drug users have reportedly died because of physical torture and/or lack of timely medical attention. There is an urgent need to increase the number of Government institutions providing drug dependence treatment as well as to regulate private facilities purporting to provide such services.”

**34. The Committee agree, with the proposed amendment for insertion of the word ‘management’ after the words ‘identification, treatment’ in sub-section (1) of Section 71 so as to give a firm legal basis for treatment of drug addicts carried out at treatment centres where patient/addicts are put on a less harmful dose of opioid under the ‘Opioid substitution therapy’. The Committee desire the**

**Government to incorporate further changes in the Section so as to enable the Government to be more proactive in establishing, recognizing and approving more rehabilitation/management centres for persons with drug addiction.**

**VII. Clause (b) of Sub-section (1) of Section 31 A – Death penalty for certain offence after previous conviction—**

35. That reads as below:—

“Notwithstanding anything contained in section 31, 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 3 sections[section 19, section 24, section 27A and for offences involving commercial quantity of any narcotic drug, or psychotropic substance] is subsequently convicted of the commission of, or attempt to commit, or abetment of, criminal conspiracy to commit, an offence relating to—

(a) .....

(b) financing, directly or indirectly, any of the activities specified in clause (a), shall be punishable with death.”

36. Responding to a specific query on the death penalty under Section 31A of the NDPS Act with reference to Michael Raj case, the Ministry of Finance (Department of Revenue) *inter alia* furnished the following written submission as stated below:—

“The judgment of the Supreme Court in the case of E. Micheal Raj, does not recommend review of mandatory death penalty. However, Section 31A of the NDPS Act, which provides for mandatory death penalty in certain cases, was challenged in CWP No. 1784/2010 in the High Court of Judicature at Bombay – Indian Harm Reduction Network Vs. Union of India and Others. In the judgment dated June 2011, the Hon’ble High Court observed as under in this case:

*“To conclude, we hold that Section 31-A of the NDPS Act is violative of Article 21 of the Constitution of India, as it provides for mandatory death penalty. We, however, reject the challenge to the said provision on the stated grounds, being violative of Article 14 of the Constitution of India. **Further, instead of declaring Section 31-A as unconstitutional, and void ab initio, we accede to the alternative argument of the respondents that the said provision be construed as directory by reading down the expression ‘shall be punishable with death’ as ‘may be punishable with death’ in relation to the offences covered under Section 31-A of the Act. Thus, the Court will have discretion to impose punishment specified in Section 31 of the Act for offences covered by Section 31-A of the Act. But, in appropriate cases, the Court can award death penalty***

*for the offences covered by Section 31-A, upon recording reasons therefor.'*

It would be apparent from the above that the Hon'ble Court did not declare the Section 31-A of the NDPS Act as unconstitutional. However, the said judgment has been examined in the Ministry and the approval of the Finance Minister has been obtained to amend Section 31-A to remove the mandatory nature of the death penalty provided therein. However, by that time the proposal to carry out the other amendments to the NDPS Act, which are presently under consideration of the Standing Committee on Finance, had already been sent to the Union Cabinet after a detailed process involving inter-ministerial consultation and vetting by Law Ministry. **In view of observations of the Standing Committee on Finance in respect of Section 31-A, the amendment to the same may be included in the present set of amendments being carried out, if the Standing Committee so recommends."**

37. Comments/views received from a non-profit Organization further stated that:—

"Section 31A of the NDPS Act imposes mandatory death penalty for certain repeat crimes involving a large quantity of drugs. The death sentence is mandatory in that there is no punishment laid down in Section 31A other than death. Under Section 31A, the first conviction must be for offences under Sections 19/24/27A and for offences involving commercial quantity. And the second conviction has to be for offences relating to production, manufacture, possession, transportation, export from India or trans-shipment, of the narcotic drugs or psychotropic substances specified in the table in Section 31A(1)(a), *e.g.*, Opium (10kgs), Heroin (1kg), Cannabis (20kgs), etc.

Section 31A applies to repeat offenders who are subsequently convicted with specific quantities, which being greater than commercial quantities, are still commercial quantity within the meaning of Section 2(viia) of the Act, while Section 31 of the Act provides for enhanced punishment for offences after previous conviction. In order to attract Section 31, the subsequent offence must be an offence punishable under the NDPS Act with the same amount of punishment as the first offence. It is submitted that the classification between repeat offenders under Section 31 and under Section 31A is unreasonable and arbitrary. No substantial difference exists between the two, except the quantity of drugs, which too is notional, since Section 31A quantities themselves fall in the category of commercial quantities.

Further, following the 2009 notification, quantity of drug is to be determined on the basis of the entire amount of the mixture or solution and not the pure drug content. As noted above, making pure drug content irrelevant and taking neutral materials in account will result in patently unjust consequences, especially in the context of S.31A. For example “if X was convicted for 1 kg substance (including 500 grams heroin and 500 grams powdered sugar) while Y was convicted for 900 grams substance (constituting 800 grams heroin and 100 grams powdered sugar), still, X would get death for 1 kg heroin under s.31A while Y would be imprisoned under s.31 for 900 grams, even though the actual amount of heroin is higher in Y’s case. The legislature must avoid such unjust consequences, especially in matters of life and death.

The NDPS Act has been enacted pursuant to the International Drug Conventions, which do not mandate imposition of death penalty, much less mandatory death penalty for drug offences. On the contrary, penal measures referred to in the Conventions are in the nature of ‘imprisonment or other forms of deprivation of liberty’, and not deprivation of life.

More importantly, Section 31A contravenes settled principles of international human rights law and constitutional jurisprudence on death penalty. Article 6(2) of the International Covenant on Civil and Political Rights (ICCPR) restricts imposition of death penalty to ‘most serious crimes’, which has been interpreted to mean crimes that involve intentional taking of life, and drug offences do not fall in the category of ‘most serious crimes’. It is pertinent to point out that United Nations Office on Drugs and Crime (UNODC), the UN agency responsible for drug control, itself is of the opinion that drug offences do not meet the threshold of ‘most serious crimes’ and advocates ‘the abolition of the death penalty for drug offences’. The Standing Committee may also note that the UN Human Rights Committee has asked India to limit the number of offences carrying the death penalty to the most serious crimes.

In India, death penalty is reserved for the ‘rarest of rare’ cases, which has also been held to be ‘the internationally accepted standard in cases of death penalty’. The Supreme Court has never imposed or upheld death penalty in any case that did not involve taking of life. It is submitted that imposing capital sentence for drug crimes that do not involve homicide is not consistent with the constitutional principles of India.

In addition, in *Mithu vs. State of Punjab*, the Supreme Court had declared mandatory capital punishment as unconstitutional. In a

recent decision, the Bombay High Court applied the same principle and held Section 31A of the NDPS Act to be violative of Article 21 of the Constitution. The High Court observed that 'the use of wise and beneficent discretion by the Court in a matter of life and death after reckoning the circumstances in which the offence was committed and that of the offender is indispensable; and divesting the Court of the use of such discretion and scrutiny before pronouncing the preordained death sentence cannot but be regarded as harsh, unjust and unfair'. The said decision has not been appealed against by the Government till date."

**38. From the reply furnished to Committee in response to specific query on death penalty under Section 31A of the NDPS Act, 1985, the Committee are given to understand that the Government is agreeable to amend the said section to remove the mandatory nature of the death penalty provided therein. The Committee also understand that in India death penalty is reserved for the 'rarest of rare cases'. The Committee find that the NDPS Act had been enacted pursuant to the International Drug Conventions, which do not mandate imposition of death penalty. The Committee, therefore, recommend that clause (b) of sub-section (1) of Section 31A may be amended appropriately to read as 'may be punishable with death' in place of 'shall be punishable with death'.**

NEW DELHI;  
20 March, 2012  

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30 Phalguna, 1933 (Saka)

YASHWANT SINHA,  
Chairman,  
Standing Committee on Finance.

MINUTES OF THE THIRD SITTING OF THE STANDING  
COMMITTEE ON FINANCE (2011-12)

The Committee sat on Friday, the 4th November, 2011 from  
1130 hrs. to 1400 hrs.

PRESENT

Shri Yashwant Sinha — *Chairman*

MEMBERS

*Lok Sabha*

2. Shri Bhakta Charan Das
3. Shri Gurudas Dasgupta
4. Shri Chandrakant Khaire
5. Shri Bhartruhari Mahtab
6. Dr. Kavuru Sambasiva Rao
7. Shri Sarvey Sathynarayana
8. Shri G.M. Siddeswara
9. Shri N. Dharam Singh
10. Shri Manicka Tagore
11. Shri R. Thamaraiselvan
12. Shri M. Thambidurai

*Rajya Sabha*

13. Shri S.S. Ahluwalia
14. Shri Raashid Alvi
15. Shri Moinul Hassan
16. Shri Mahendra Mohan
17. Dr. K.V.P. Ramachandra Rao

SECRETARIAT

1. Shri R.K. Jain — *Director*
2. Shri Ramkumar Suryanarayanan — *Deputy Secretary*
3. Shri Kulmohan Singh Arora — *Under Secretary*

WITNESSES

**Ministry of Finance (Department of Revenue)**

1. Shri R.S. Gujral, Finance Secretary and Revenue Secretary
2. Shri S.K. Goel, Chairman, Central Board of Excise and Customs (CBEC)
3. Shri Anoop Kumar Srivastava, Joint Secretary
4. Smt. Jagjit Pavadia, Narcotics Commissioner
5. Shri Rajesh Nandan Srivastava, Director (Narcotics Control)

**Ministry of Home Affairs**

1. Shri R.R. Jha, Joint Secretary (FFR), Ministry of Home Affairs
2. Shri O.P.S. Malik, Director General, Narcotics Control Bureau (NCB)
3. Shri A.K. Jaiswal, Deputy Director General (HQ), Narcotics Control Bureau (NCB)
4. Shri B.B. Mishra, Deputy Director General (Ops.), Narcotics Control Bureau (NCB)

2. At the outset, the Chairman welcomed the Members and the representatives of Ministry of Finance (Department of Revenue), Ministry of Home Affairs and Narcotics Control Bureau to the sitting. The representatives of Ministry of Finance (Department of Revenue) made a power-point presentation on the proposed amendments to the Narcotic Drugs and Psychotropic Substances (Amendment) Bill, 2011. Major issues discussed included the definitions of small, commercial and pure quantity of narcotic drugs, reducing of the punishment for consumption of certain narcotic drugs, punishment for money laundering offences, expanding the definition of illegally acquired property for forfeiture, issuance of licences for poppy cultivation, and illegal cultivation of poppy. The Chairman then directed the representatives of the Ministry of Finance (Department of Revenue) that instead of bringing amendments to the Narcotic Drugs and Psychotropic Substances Act, 1985 in piecemeal, the Ministry should comprehensively review the Narcotic Drugs and Psychotropic Substances Act, 1985 in context with the International laws and conventions and also anomalies noticed in the Narcotic Drugs and



Psychotropic Substances Act and accordingly bring amendments to the NDPS Act, 1985. The Chairman also directed them to furnish a detailed background note to the Committee at the earliest in this regard.

3. The Committee decided to hear the views of individuals/experts/ organisations on the proposed amendments to the NDPS Act, 1985.

*The witnesses then withdrew.*

A verbatim record of the proceedings was kept.

*The Committee then adjourned.*

MINUTES OF THE EIGHTH SITTING OF THE STANDING  
COMMITTEE ON FINANCE (2011-12)

The Committee sat on Monday, the 9th January, 2012 from  
1130 hrs. to 1430 hrs.

PRESENT

Shri Yashwant Sinha — *Chairman*

MEMBERS

*Lok Sabha*

2. Shri Shivkumar Udasi
3. Shri Bhakta Charan Das
4. Shri Chandrakant Khaire
5. Shri Bhartruhari Mahtab
6. Shri Prem Das Rai
7. Dr. Kavuru Sambasiva Rao
8. Shri Rayapati S. Rao
9. Shri Magunta Sreenivasulu Reddy
10. Shri Yashvir Singh
11. Shri Manicka Tagore
12. Shri R. Thamaraiselvan
13. Shri M. Thambidurai

*Rajya Sabha*

14. Shri S.S. Ahluwalia
15. Shri Raashid Alvi

16. Shri Moinul Hassan
17. Dr. Mahendra Prasad
18. Dr. K.V.P. Ramachandra Rao

SECRETARIAT

1. Shri A.K. Singh — *Joint Secretary*
2. Smt. Meenakshi Sharma — *Deputy Secretary*
3. Shri Kulmohan Singh Arora — *Under Secretary*

PART I

(1130 hrs. to 1250 hrs.)

WITNESSES

**Lawyers Collective**

1. Shri Anand Grover, Senior Advocate and Director
2. Shri Tripti Tandon, Advocate
3. Ms. Amritananda Chakravorty, Advocate

2. The Committee heard the views of the representatives of Lawyers Collective on the provisions of the Narcotic Drugs and Psychotropic Substances Bill, 2011. The major issues discussed during the sitting broadly related to quantities and purity of drug content, treatment facilities for addicts, availability of opiates for medical use, immunity provision on death penalty under Section 31(a) of NDPS Act, deterrent provisions for drug abuse among the youths, cultivations of poppy etc. The Chairman directed the representation of Lawyers Collective to furnish replies to the points raised by the Members during the discussion within a fortnight.

*The witnesses then withdrew.*

A verbatim record of the proceedings was kept.

Part II  
(1250 hrs. to 1425 hrs.)

WITNESSES

3. \*\*\*                   \*\*\*                   \*\*\*                   \*\*\*                   \*\*\*

A verbatim record of the proceedings was kept.

*The witnesses then withdrew.*

*The Committee then adjourned*

MINUTES OF THE FOURTEENTH SITTING OF THE STANDING  
COMMITTEE ON FINANCE (2011-12)

The Committee sat on Monday, the 19th March, 2012 from  
1500 hrs. to 1530 hrs.

PRESENT

Shri Yashwant Sinha — *Chairman*

MEMBERS

*Lok Sabha*

2. Shri Bhakta Charan Das
3. Shri Nishikant Dubey
4. Shri Bhartruhari Mahtab
5. Shri Anjan Kumar Yadav M.
6. Shri Prem Das Rai
7. Dr. Kavuru Sambasiva Rao
8. Shri Rayapati S. Rao
9. Shri Magunta Sreenivasulu Reddy
10. Shri R. Thamaraiselvan
11. Shri M. Thambidurai

*Rajya Sabha*

12. Shri Satish Chandra Misra
13. Shri Mahendra Mohan
14. Shri Y.P. Trivedi

SECRETARIAT

1. Shri A.K. Singh — *Joint Secretary*
2. Shri R.K. Jain — *Director*
3. Shri Ramkumar Suryanarayanan — *Deputy Secretary*

2. The Committee took up the draft Report on Narcotic Drugs and Psychotropic Substances (Amendment) Bill, 2011 for consideration and adoption.

3. The Committee adopted the above draft report with some minor modifications/changes as suggested by Members. The Committee authorised the Chairman to finalise the report in the light of the modification suggested and present the Report to Speaker/Parliament.

*The Committee then adjourned.*

**Bill No. 78 of 2011**

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

A

BILL

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

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

Short title  
and  
commence-  
ment.

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

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

Amendment  
of section 2.

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

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

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

(b) for clause (vii*a*), the following clause shall be substituted, namely:—

‘(vii*a*) “commercial quantity”, in relation to a narcotic drug, psychotropic substance or any preparation of such drug or such substance, means any quantity of such drug, substance or preparation of such drug or substance greater than the quantity specified, in terms of the pure drug content or otherwise, by the Central Government by notification in the Official Gazette;’;

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

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

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

Amendment  
of section 9.

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

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

Amendment  
of section 10.



Substitution of new section for section 27.

Punishment for consumption of any narcotic drug or psychotropic substance.

Insertion of new section 27B.

Punishment for contravention of section 8A.

Amendment of section 31.

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

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

6. After section 27A of the principal Act, the following section shall be inserted, namely:—

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

7. In section 31 of the principal Act,—

(a) in sub-section (1),—

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

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

(b) in sub-section (2),—

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

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

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

Amendment  
of section  
52A.

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

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

(b) in sub-section (2),—

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

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

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

Insertion of new section 57A.

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

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

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

Substitution of new heading for heading of Chapter VA.

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

Amendment of section 68B.

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

(a) in clause (g),—

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

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

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

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

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

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

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

Amendment  
of section  
68D.

**13.** In section 68H of the principal Act, the following *Explanation* shall be inserted at the end, namely:—

Amendment  
of section  
68H.

“*Explanation.*—For the removal of doubts, it is hereby declared that in a case where the provisions of section 68J are applicable, no notice under this section shall be invalid merely on the ground that it fails to mention the evidence relied upon or it fails to establish a direct nexus between the property sought to be forfeited and any activity in contravention of the provisions of this Act.”.

**14.** In section 68-O of the principal Act, in sub-section (4), after the proviso, the following proviso shall be inserted, namely:—

Amendment  
of section  
68-O.

“Provided further that if the office of the Chairman is vacant by reason of his death, resignation or otherwise, or if the Chairman is unable to discharge his duties owing to absence, illness or any other cause, the Central Government may, by order, nominate any member to act as the Chairman until a new Chairman is appointed and assumes

charge or, as the case may be, resumes his duties.

Amendment  
of section  
71.

**15.** In section 71 of the principal Act, in subsection (1), after the words “identification, treatment”, the word “management,” shall be inserted.

## STATEMENT OF OBJECTS AND REASONS

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

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

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

**4.** The amendments also seek to put in place the enabling provisions for the introduction of an alternate method of obtaining alkaloids of opium through production of Concentrate of Poppy Straw instead of production and processing of opium, in the country. Besides, some other amendments seeking to address the anomalies arising out of the

amendments made in 2001 are sought to be introduced alongwith measures to further strengthen the provisions of the Act.

5. The Bill seeks to achieve the above objects.

NEW DELHI;  
*The 6th September, 2011.*

PRANAB MUKHERJEE.

## MEMORANDUM REGARDING DELEGATED LEGISLATION

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

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



ANNEXURE

EXTRACTS FROM THE NARCOTIC DRUGS AND  
PSYCHOTROPIC SUBSTANCES ACT, 1985  
(61 OF 1985)

\* \* \* \* \*

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

\* \* \* \* \*

(*vii*) “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;

\* \* \* \* \*

(*xxiii*) “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;

\* \* \* \* \*

Power of Central Government to permit, control and regulate. **9.** (*1*) Subject to the provisions of section 8, the Central Government may, by rules— (a) permit and regulate—

\* \* \* \* \*

Power of State Government to permit, control and regulate. **10.** (*1*) Subject to the provisions of section 8, the State Government may, by rules—

(a) permit and regulate—

(i) the possession, transport, import inter-State, export inter-State, warehousing, sale, purchase, consumption and use of poppy straw;

\* \* \* \* \*

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

Punishment for consumption of any narcotic drug or psychotropic substance.

(a) where the narcotic drug or psychotropic substance consumed is cocaine, morphine, diacetyl-morphine or any other narcotic drug or any psychotropic substance as may be specified in this behalf by the Central Government by notification in the Official Gazette, with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both; and

(b) where the narcotic drug or psychotropic substance consumed is other than those specified in or under clause (a), with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.

\* \* \* \* \*

**31.** (1) If any person who has been convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, any of the offences punishable under this Act is subsequently convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, an offence punishable under this Act with the same amount of punishment shall be punished for the second and every subsequent offence with rigorous imprisonment for a term which may extend to one-half of the maximum term of imprisonment, and also be liable to fine which shall extend to one-half of the maximum amount of fine.

Enhanced punishment for offences after previous conviction.

(2) Where the person referred to in sub-section (1) is liable to be punished with a minimum term of imprisonment and to a minimum amount of fine, the minimum punishment for such person shall be one-half of the minimum term of imprisonment and one-half of the minimum amount of fine:

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

\* \* \* \* \*

Disposal of seized narcotic drugs and psychotropic substances.

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

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

may consider relevant to the identity of the narcotic drugs or psychotropic substances in any proceedings under this Act and make an application, to any Magistrate for the purpose of—

\* \* \* \* \*

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

\* \* \* \* \*

1 of 1872.  
2 of 1974.

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

\* \* \* \* \*

## CHAPTER VA

### FORFEITURE OF PROPERTY DERIVED FROM, OR USED IN ILLICIT TRAFFIC

\* \* \* \* \*

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

\* \* \* \* \*

(g) “illegally acquired property”, in relation to any person to whom this Chapter

applies, means,—

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

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

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

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

(h) “property” means property and assets of every description, whether

corporeal or incorporeal, movable or immovable, tangible or intangible and deeds and instruments evidencing title to, or interest in, such property or assets, derived from, or used in, the illicit traffic;

\* \* \* \* \* Competent authority.

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

\* \* \* \* \*

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

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

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

\* \* \* \* \*

**71.** (1) The Government may, in its discretion, establish as many centres as it thinks fit for identification, treatment, education, after-care, rehabilitation, social re-integration of addicts and

Power of Government to establish centres for identification,

treatment,  
etc., of  
addicts and  
for supply  
of narcotic  
drugs and  
psychotro-  
pic  
substances.

for supply, subject to such conditions and in such  
manner as may be prescribed, by the concerned  
Government of any narcotic drugs and  
psychotropic substances to the addicts registered  
with the Government and to others where such  
supply is a medical necessity.

\* \* \* \* \*

LOK SABHA

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A

BILL

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

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*(Shri Pranab Mukherjee, Minister of Finance)*



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