

THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985

INTRODUCTION

The statutory control over narcotic drugs was being exercised under The Opium Act, 1857, The Opium Act, 1878 and The Dangerous Drugs Act, 1930. The provisions of these enactments were found to be inadequate because of the passage of time and developments in the field of illicit drug traffic and drug abuse at national and international level. To consolidate and to amend the existing laws relating to narcotic drugs a comprehensive legislation was considered to be necessary. Accordingly the Narcotic Drugs and Psychotropic Substances Bill was introduced in the Parliament.

STATEMENT OF OBJECTS AND REASONS

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 a long time ago. With the passage of time and the developments in the field of illicit drug traffic and drug abuse at national and international level, many deficiencies in the existing laws have come to notice, some of which are indicated below:

- (i) The scheme of penalties under the present Acts is not sufficiently deterrent to meet the challenge of well organized gangs of smugglers. The Dangerous Drugs Act, 1930 provides for a maximum term of imprisonment of 3 years with or without fine and 4 years imprisonment with or without fine for repeat offences. Further, no minimum punishment is prescribed in the present laws, as a result of which drug traffickers have been some times let off by the courts with nominal punishment. The country has for the last few years been increasingly facing the problem of transit traffic of drugs coming mainly from some of our neighboring countries and destined mainly to Western countries.
- (ii) The existing Central laws do not provide for investing the officers of a number of important Central enforcement agencies like Narcotics, Customs, Central Excise, etc., with the power of investigation of offences under the said laws.
- (iii) Since the enactment of the aforesaid three Central Acts a vast body of international law in the field of narcotics control has evolved through various international treaties and protocols. The Government of India has been a party to these treaties and conventions which entail several obligations which are not covered or are only partly covered by the present Acts.
- (iv) During recent years new drugs of addiction which have come to be known as psychotropic substances have appeared on the scene and posed serious problems to national governments. There is no

comprehensive law to enable exercise of control over psychotropic substances in India in the manner as envisaged in the Convention on Psychotropic Substances, 1971 to which India has also acceded.

2. In view of what has been stated above, there is an urgent need for the enactment of a comprehensive legislation on narcotic drugs and psychotropic substances which, *inter alia*, should consolidate and amend the existing laws relating to narcotic drugs, strengthen the existing controls over drug abuse, considerably enhance the penalties particularly for trafficking offences, make provisions for exercising effective control over psychotropic substances and make provisions for the implementation of international conventions relating to narcotic drugs and psychotropic substances to which India has become a party.

3. The Bill seeks to achieve the above objects.

ACT 61 OF 1985

The Narcotic Drugs and Psychotropic Substances Bill having been passed by both the Houses of Parliament received the assent of the President on 16th September, 1985. It came on the Statute Book as THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985 (61 of 1985) (*Came into force on 14-11-1985*).

LIST OF AMENDING ACTS

1. The Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1988 (2 of 1989) (w.e.f. 29-5-1989).
2. The Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2001 (9 of 2001) (w.e.f. 2-10-2001).
3. The Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2014 (16 of 2014) (w.e.f. 1-5-2014).

THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985

(61 of 1985)

[16th September, 1985]

An Act to consolidate and amend the law relating to narcotic drugs, to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances ¹, to provide for the forfeiture of property derived from, or used in, illicit traffic in narcotic drugs and psychotropic substances, to implement the provisions of the International Convention on Narcotic Drugs and Psychotropic Substances] and for matters connected therewith.

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

CHAPTER I PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Narcotic Drugs and Psychotropic Substances Act, 1985.

(2) It extends to the whole of India ²[and it applies 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) It shall come into force on such date³ 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 for different States and any reference in any such provision to the commencement of this Act shall be construed in relation to any State as a reference to the coming into force of that provision in that State.

COMMENTS

This is a special Act, while adopting the liberal construction of the Act, it is found that the Act has been enacted with a view to make stringent provisions for the control and regulation of operations relating to the narcotic drugs and psychotropic substances; *Gulam Mohiuddin v. State of Jammu and Kashmir*, (1994) 1 Crimes 204 (J & K).

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

⁴(i) “addict” means a person who has dependence on any narcotic drug or psychotropic substances;]

(ii) “Board” means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963);

1. Ins. by Act 2 of 1989, sec. 2 (w.e.f. 29-5-1989).

2. Ins. by Act 9 of 2001, sec. 2 (w.e.f. 2-10-2001).

3. Came into force on 14-11-1985, vide S.O. 821 (E), dated 14th November, 1985.

4. Subs. by Act 9 of 2001, sec. 3, for clause (i) (w.e.f. 2-10-2001).

(iii) "cannabis (hemp)" means—

- (a) *charas*, that is, the separated resin, in whatever form, whether crude or purified, obtained from the cannabis plant and also includes concentrated preparation and resin known as hashish oil or liquid hashish;
- (b) *ganja*, that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated; and
- (c) any mixture, with or without any neutral material, of any of the above forms of cannabis or any drink prepared therefrom;

(iv) "cannabis plant" means any plant of the genus *cannabis*;

¹[(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;]

(v) "coca derivative" means—

- (a) crude cocaine, that is, any extract of coca leaf which can be used, directly or indirectly, for the manufacture of cocaine;
- (b) ecgonine and all the derivatives of ecgonine from which it can be recovered;
- (c) cocaine, that is, methyl ester of benzoyl-ecgonine and its salts; and
- (d) all preparations containing more than 0.1 per cent. of cocaine;

(vi) "coca leaf" means—

- (a) the leaf of the coca plant except of a leaf from which all ecgonine, cocaine and any other ecgonine alkaloids have been removed;
- (b) any mixture thereof with or without any neutral material;

but does not include any preparation containing not more than 0.1 per cent. of cocaine;

(vii) "coca plant" means the plant of any species of the genus *Erythroxylon*;

²[(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;]

²[(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 of an officer empowered in this behalf or duly authorised under section 50A with a view to identifying the persons involved in the commission of an offence under this Act;]

³[(viiic) "corresponding law" means any law corresponding to the provisions of this Act;]

³[(viid)] "controlled substance" means any substance which the Central Government may, having regard to the available information as to

1. Ins. by Act 16 of 2014, sec. 2(a) (w.e.f. 1-5-2014, vide S.O. 1183(E), dated 30th April, 2014).

2. Ins. by Act 9 of 2001, sec. 3 (w.e.f. 2-10-2001).

3. Clause (viiia) relettered as clause (viid) by Act 9 of 2001, sec. 3 (w.e.f. 2-10-2001). Earlier clause (viiia) was inserted by Act 2 of 1989, sec. 3 (w.e.f. 29-5-1989).

its possible use in the production or manufacture of narcotic drugs or psychotropic substances or to the provisions of any International Convention, by notification in the Official Gazette, declare to be a controlled substance;

- (viii) "conveyance" means a conveyance of any description whatsoever and includes any aircraft, vehicle or vessel;
- ¹[(viiiia) "essential narcotic drug" means a narcotic drug notified by the Central Government* for medical and scientific use;]
- ²³[(viiiib) "illicit traffic", in relation to narcotic drugs and psychotropic substances, means—
- (i) cultivating any coca plant or gathering any portion of coca plant;
 - (ii) cultivating the opium poppy or any cannabis plant;
 - (iii) engaging in the production, manufacture, possession, sale, purchase, transportation, warehousing, concealment, use or consumption, import inter-State, export inter-State, import into India, export from India or transshipment, of narcotic drugs or psychotropic substances;
 - (iv) dealing in any activities in narcotic drugs or psychotropic substances other than those referred to in sub-clauses (i) to (iii); or
 - (v) handling or letting out any premises for the carrying on of any of the activities referred to in sub-clauses (i) to (iv); other than those permitted under this Act, or any rule or order made, or any condition of any licence, term or authorisation issued, thereunder, and includes—
 - (1) financing, directly or indirectly, any of the aforementioned activities;
 - (2) abetting or conspiring in the furtherance of or in support of doing any of the aforementioned activities; and
 - (3) harbouring persons engaged in any of the aforementioned activities;]
- (ix) "International Convention" means—
- (a) the Single Convention on Narcotic Drugs, 1953 adopted by the United Nations Conference at New York in March, 1953;
 - (b) the protocol, amending the Convention mentioned in sub-clause (a), adopted by the United Nations Conference at Geneva in March, 1955;
 - (c) the Convention on Psychotropic Substances, 1971 adopted by the United Nations Conference at Vienna in February, 1971; and
 - (d) any other international convention, or protocol or other instrument amending an international convention, relating to narcotic drugs or psychotropic substances which may be ratified or acceded to by India after the commencement of this Act;
- (x) "manufacture", in relation to narcotic drugs or psychotropic substances, includes—
- (1) all processes other than production by which such drugs or substances may be obtained;
 - (2) refining of such drugs or substances;

1. Ins. by Act 16 of 2014, sec. 2(b) (w.e.f. 1-5-2014, vide S.O. 1183(E), dated 30th April, 2014).

2. Ins. by Act 2 of 1989, sec. 3 (w.e.f. 29-5-1989).

3. Clause (viiiia) re-lettered as clause (viiiib) thereof by Act 16 of 2014, sec. 2(b) (w.e.f. 1-5-2014, vide S.O. 1183(E), dated 30th April, 2014).

* See Notification at page No. 7.

- (3) transformation of such drugs or substances; and
- (4) making of preparation (otherwise than in a pharmacy on prescription) with or containing such drugs or substances;

(xi) "manufactured drug" means—

- (a) all coca derivatives, medicinal cannabis, opium derivatives and poppy straw concentrate;
- (b) any other narcotic substance or preparation which the Central Government may, having regard to the available information as to its nature or to a decision, if any, under any International Convention, by notification in the Official Gazette, declare to be a manufactured drug;

but does not include any narcotic substance or preparation which the Central Government may, having regard to the available information as to its nature or to a decision, if any, under any International Convention, by notification in the Official Gazette, declare not to be a manufactured drug;

- (xii) "medicinal cannabis", that is, medicinal hemp, means any extract or tincture of cannabis (hemp);
- (xiii) "Narcotic Commissioner" means the Narcotics Commissioner appointed under section 5;
- (xiv) "narcotic drug" means coca leaf, cannabis (hemp), opium, poppy straw and includes all manufactured goods;
- (xv) "opium" means—
 - (a) the coagulated juice of the opium poppy; and
 - (b) any mixture, with or without any neutral material, of the coagulated juice of the opium poppy,

but does not include any preparation containing not more than 0.2 per cent. of morphine:

(xvi) "opium derivative" means—

- (a) medicinal opium, that is, opium which has undergone the processes necessary to adapt it for medicinal use in accordance with the requirements of the Indian Pharmacopoeia or any other pharmacopoeia notified in this behalf by the Central Government, whether in powder form or granulated or otherwise or mixed with neutral materials;
- (b) prepared opium, that is, any product of opium by any series of operations designed to transform opium into an extract suitable for smoking and the dross or other residue remaining after opium is smoked;
- (c) phenanthrene alkaloids, namely, morphine, codeine, thebaine and their salts;
- (d) diacetylmorphine, that is, the alkaloid also known as diamorphine or heroin and its salts; and
- (e) all preparations containing more than 0.2 per cent. of morphine or containing any diacetylmorphine;

(xvii) "opium poppy" means—

- (a) the plant of the species *Papaver somniferum* L.; and
- (b) the plant of any other species of *Papaver* from which opium or any phenanthrene alkaloid can be extracted and which the Central Government may, by notification in the Official Gazette, declare to be opium poppy for the purposes of this Act;

(xviii) "poppy straw" means all parts (except the seeds) of the opium poppy after harvesting whether in their original form or cut, crushed or powdered and whether or not juice has been extracted therefrom;

(xix) "poppy straw concentrate" means the material arising when poppy straw has entered into a process for the concentration of its alkaloids.

- (xx) "preparation", in relation to a narcotic drug or psychotropic substance, means any one or more such drugs or substances in dosage form or any solution or mixture, in whatever physical state, containing one or more such drugs or substances;
- (xxi) "prescribed" means prescribed by rules made under this Act;
- (xxii) "production" means the separation of opium, poppy straw, coca leaves or cannabis from the plants from which they are obtained;
- (xxiii) "psychotropic substance" means any substance, natural or synthetic, or any natural material or any salt or preparation of such substance or material included in the list of psychotropic substances specified in the Schedule;
- ¹[(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.]
- (xxiv) "to import inter-State" means to bring into a State or Union territory in India from another State or Union territory in India;
- (xxv) "to import into India", with its grammatical variations and cognate expressions, means to bring into India from a place outside India and includes the bringing into any port or airport or place in India of a narcotic drug or a psychotropic substance intended to be taken out of India without being removed from the vessel, aircraft, vehicle or any other conveyance in which it is being carried.

Explanation.—For the purposes of this clause and clause (xxvi), "India" includes the territorial waters of India;

- (xxvi) "to export from India", with its grammatical variations and cognate expressions, means to take out of India to a place outside India;
- (xxvii) "to export inter-State" means to take out of a State or Union territory in India to another State or Union territory in India;
- (xxviii) "to transport" means to take from one place to another within the same State or Union territory;
- ²[(xxviiiia) "use", in relation to narcotic drugs and psychotropic substances, means any kind of use except personal consumption;]
- (xxix) words and expressions used herein and not defined but defined in the Code of Criminal Procedure, 1973 (2 of 1974) have the meanings respectively assigned to them in that Code.

Explanation.—For the purposes of clauses (v), (vi), (xv) and (xvi) the percentages in the case of liquid preparations shall be calculated on the basis that a preparation containing one per cent. of a substance means a preparation in which one gram of substance, if solid, or one millilitre of substance, if liquid, is contained in every one hundred millilitre of the preparation and so on in proportion for any greater or less percentage:

Provided that the Central Government may, having regard to the developments in the field of methods of calculating percentages in liquid preparations prescribed, by rules, any other basis which it may deem appropriate for such calculation.

NOTIFICATION

In exercise of the powers conferred by clause (viiiia) of section 2 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), the Central Government hereby notifies for medical and scientific use, the following narcotic drugs to be essential narcotic drugs, namely:—

- (1) Methyl morphine (commonly known as 'Codeine') and Ethyl morphine and their salts (including Dionine), all dilutions and preparations except those which are compounded with one or more other ingredients and containing not more than 100 milligrammes of the drug per dosage unit and with a concentration of not

1. Ins. by Act 9 of 2001, sec. 3 (w.e.f. 2-10-2001).

2. Ins. by Act 2 of 1989, sec. 3 (w.e.f. 29-5-1989).

more than 2.5% in undivided preparations and which have been established in therapeutic practice;

- (2) 1-phenethyl-4-N - propionylanilino-piperidine (the international-non-proprietary name of which is Fentanyl) and its salts and preparations, admixtures, extracts or other substances containing any of these drugs;
- (3) Dihydrocodeinone (commonly known as Hydrocodone), its salts (such as Dicodeide, Codinovo, Diconone, Hycodan, Multacodin, Nyodide, Ydroced and the like) and its esters and salts of its esters, and preparations, admixtures, extracts or other substances containing any of these drugs;
- (4) 4:4-diphenyl-6-dimethylamino-heptanone-3 (otherwise known as 6-dimethyl amino 4: 4-diphenyl-3-heptanone and as Methadone) and its salts such as (Adanon, Algolysin, Amidone, Amdosan, Butalgin, Depridol, Diaminon, Dianone, Dolafin, Dolamid, Dolphine, Dorioxol, Heptadol, Heptanal, Hoechst, 10820, Detalgine, Mecodin, Mepection, Mephenon, Miadone, Moheptal, Physeptone, Pyssopeptone, Polamidon, Simron, Turnanon and the like) and preparations, admixtures, extracts or other substances containing any of these drugs;
- (5) Morphine and its salts and all preparations containing more than 0.2 per cent. of Morphine;
- (6) Dihydroxy Codeinone (commonly known as Oxy-codone, and Dihydroxycodine), its salts (such as Eucodal, Boncodal, Dinarcon, Hydrolaudine, Nucodan, Percodan, Scophedal, Tebodol and the like), its esters and the salts of its esters and preparations, admixtures, extracts or other substances containing any of these drugs.

[Vide S.O. 1181(E), dated 5th May, 2015, published in the Gazette of India, Extra., Pt. II, Sec. 3(ii), No. 923, dated 5th May, 2015.]

COMMENTS

(i) A person, who assists a narcotics trafficker in concealing the narcotics in his apartment so that the trafficker may avoid detection, is involved in illicit traffic; *R. v. Jackson*, (1977) 35 CCC (2d) 331.

(ii) It may be noted that clause (iv) of section 2 (viii) is independent of other clauses and is in the nature of a residuary provision. It would include an activity of distribution; *R. Parkash v. State of Karnataka*, (1980) Cr LJ 165.

(iii) The definition of the term 'manufacture' as contained in section. 2(x) is an inclusive one. Where the definition is an inclusive definition, the word not only bears its ordinary, popular and natural sense whenever that would be applicable but it also bears its extended statutory meaning; *S. K. Gupta v. K.P. Jain*, AIR 1979 SC 734.

(iv) Heroin being an opium is manufactured drug; *T. Paul Kuki v. State of West Bengal*, (1993) 3 Crimes 660 (Cal) (DB).

(v) It is true that opium is substance which once seen and smelt can never be forgotten because opium possesses a characteristic appearance and a very strong and characteristic scent. It is possible for people to identify opium without having to subject the product to a chemical analysis. It is only when opium is in a mixture so diluted that its essential characteristics are not easily visible or capable of being apprehended by the senses that a chemical analysis may be necessary; *Baidyanath Mishra v. State of Orissa*, (1967) SCD 1165: 34 Cut LT 1.

Chemical analysis

Necessity of chemical analysis is only when opium is in a mixture so diluted that its essential characteristics are not easily visible or capable of being comprehended by the senses. In case opium is not mixed up with any other material, its chemical analysis is not required at all; *Harjit Singh v. State of Punjab*, (2011) 4 SCC 441: JT 2011 (4) SC 100: (2011) 4 SCALE 116: 2011 Cr LJ 2332.

Word "Coagulated" - Meaning Theory

The word "coagulated" occurring in section 2(xv)(a) means solidified, clotted, curdled something which has commenced in curded/solid form; *Harjit Singh v. State of Punjab*, (2011) 4 SCC 441: JT 2011 (4) SC 100: (2011) 4 SCALE 116: 2011 Cr LJ 2332.

3. Power to add to or omit from the list of psychotropic substances.—The Central Government may, if satisfied that it is necessary or expedient so to do on the basis of—

- (a) the information and evidence which has become available to it with respect to the nature and effects of, and the abuse or the scope for

abuse of, any substance (natural or synthetic) or natural material or any salt or preparation of such substance or material; and

(b) the modifications or provisions (if any) which have been made to, or in any International Convention with respect to such substance, natural material or salt or preparation of such substance or material.

by notification in the Official Gazette, add to, or, as the case may be, omit from, the list of psychotropic substances specified in the Schedule such substance or natural material or salt or preparation of such substance or material.

CHAPTER II AUTHORITIES AND OFFICERS

4. Central Government to take measures for preventing and combating abuse of and illicit traffic in narcotic drugs, etc.—(1) Subject to the provisions of the Act, the Central Government shall take all such measures as it deems necessary or expedient for the purpose of preventing and combating abuse of narcotic drugs and psychotropic substances and the illicit traffic therein ¹[and for ensuring their medical and scientific use].

(2) In particular and without prejudice to the generality of the provisions of sub-section (1), the measures which the Central Government may take under the sub-section include measures with respect to all or any of the following matters, namely:—

- (a) coordination of actions by various officers, State Governments and other authorities—
 - (i) under this Act, or
 - (ii) under any other law for the time being in force in connection with the enforcement of the provisions of this Act;
- (b) obligations under the International Conventions;
- (c) assistance to the concerned authorities in foreign countries and concerned international organisations with a view to facilitating coordination and universal action for prevention and suppression of illicit traffic in narcotic drugs and psychotropic substances;
- (d) identification, treatment, education, after care, rehabilitation and social re-integration of addicts;
- ²[(da) availability of narcotic drugs and psychotropic substances for medical and scientific use;]
- (e) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act and preventing and combating the abuse of narcotic drugs and psychotropic substances and illicit traffic therein.

(3) The Central Government may, if it considers it necessary or expedient so to do for the purposes of this Act, by order, published in the Official Gazette, constitute an authority or a hierarchy of authorities by such name or names as may be specified in the order for the purpose of exercising such of the powers and functions of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order, and subject to the supervision and control of the Central

1. Ins. by Act 16 of 2014, sec. 3(a) (w.e.f. 1-5-2014, vide S.O. 1183(E), dated 30th April, 2014).

2. Ins. by Act 16 of 2014, sec. 3(b) (w.e.f. 1-5-2014, vide S.O. 1183(E), dated 30th April, 2014).

Government and the provisions of such order, such authority or authorities may exercise the powers and take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers and take such measures.

COMMENTS

Section 4(1) of the Act does not create the Narcotics Control Bureau. It only authorizes the Central Government to take all such measures as it deems necessary or expedient for the purpose of preventing and combating abuse of narcotic drugs and psychotropic substances and the illicit traffic therein; *State v. Kulwant Singh*, AIR 2003 SC 1599.

5. Officers of Central Government.—(1) Without prejudice to the provisions of sub-section (3) of section 4, the Central Government shall appoint a Narcotics Commissioner and may also appoint such other officers with such designations as it thinks fit for the purposes of this Act.

(2) The Narcotics Commissioner shall, either by himself or through officers subordinate to him, exercise all powers and perform all functions relating to the superintendence of the cultivation of the opium poppy and production of opium and shall also exercise and perform such other powers and functions as may be entrusted to him by the Central Government.

(3) The officers appointed under sub-section (1) shall be subject to the general control and direction of the Central Government, or, if so directed by that Government, also of the Board or any other authority or officer.

6. The Narcotic Drugs and Psychotropic Substances Consultative Committee.—(1) The Central Government may constitute, by notification in the Official Gazette, an advisory committee to be called “The Narcotic Drugs and Psychotropic Substances Consultative Committee” (hereafter in this section referred to as the Committee) to advise the Central Government on such matters relating to the administration of this Act as are referred to it by that Government from time to time.

(2) The Committee shall consist of a Chairman and such other members, not exceeding twenty, as may be appointed by the Central Government.

(3) The Committee shall meet when required to do so by the Central Government and shall have power to regulate its own procedure.

(4) The Committee may, if it deems it necessary so to do for the efficient discharge of any of its functions constitute one or more sub-committees and may appoint to any such sub-committee, whether generally or for the consideration of any particular matter any person (including a non-official) who is not a member of the Committee.

(5) The term of office of, the manner of filling casual vacancies in the offices of and the allowances, if any, payable to, the Chairman and other members of the Committee, and the conditions and restrictions subject to which the Committee may appoint a person who is not a member of the Committee as a member of any of its sub-committees, shall be such as may be prescribed by rules made by the Central Government.

7. Officers of State Government.—(1) The State Government may appoint such officers with such designations as it thinks fit for the purposes of this Act.

(2) The officers appointed under sub-section (1) shall be subject to the general control and direction of the State Government, or, if so directed by that Government also of any other authority or officer.

¹[CHAPTER IIA**NATIONAL FUND FOR CONTROL OF DRUG ABUSE**

7A. National Fund for Control of Drug Abuse.—(1) The Central Government may, by notification in the Official Gazette, constitute a Fund to be called the National Fund for Control of Drug Abuse (hereafter in this Chapter referred to as the Fund) and there shall be credited thereto—

- (a) an amount which the Central Government may, after due appropriation made by Parliament by law in this behalf, provide;
- (b) the sale proceeds of any property forfeited under Chapter VA;
- (c) any grants that may be made by any person or institution;
- (d) any income from investment of the amounts credited to the Fund under the aforesaid provisions.

²(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.]

(4) The Governing Body shall consist of a Chairman (not below the rank of an Additional Secretary to the Central Government) and such other members not exceeding six as the Central Government may appoint.

(5) The Governing Body shall have the power to regulate its own procedure.

7B. Annual report of activities financed under the fund.—The Central Government shall, as soon as may be, after the end of each financial year, cause to be published in the Official Gazette, a report giving an account of the activities financed under section 7A during the financial year, together with a statement of accounts.]

CHAPTER III

PROHIBITION, CONTROL AND REGULATION

8. Prohibition of certain operations.—No person shall—

- (a) cultivate any coca plant or gather any portion of coca plant; or
- (b) cultivate the opium poppy or any cannabis plant; or

1. Chapter IIA (containing sections 7A and 7B) ins. by Act 2 of 1989, sec. 4 (w.e.f. 29-5-1989).

2. Subs. by Act 9 of 2001, sec. 4, for sub-sections (2) and (3) (w.e.f. 2-10-2001).

- (c) produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into India, export from India or tranship any narcotic drug or psychotropic substance,

except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the rules or orders made thereunder and in a case where any such provision, imposes any requirement by way of licence, permit or authorisation also in accordance with the terms and conditions of such licence, permit or authorisation:

Provided that, and subject to the other provisions of this Act and the rules made thereunder, the prohibition against the cultivation of the cannabis plant for the production of *ganja* or the production, possession, use, consumption, purchase, sale, transport, warehousing, import inter-State and export inter-State of *ganja* for any purpose other than medical and scientific purpose shall take effect only from the date which the Central Government may, by notification in the Official Gazette, specify in this behalf:

¹[Provided further that nothing in this section shall apply to the export of poppy straw for decorative purposes.]

COMMENTS

(i) There need be no physical connection between the goods and the person charged. A man may be miles and miles away from the goods and yet if proof is available that he had an interest in or was concerned in illegal importation of goods he would be guilty of the offence; *Addl. Collector of Customs v. Sitaram Agarwalla*, AIR 1962 Cal 242 approved in *Radha Kishan v. Union of India*, AIR 1965 SC 1072.

(ii) If the person possessing the drugs or substances does not carry himself but entrusts the same to some other person for carriage in a car, then that person (driver of the car) would be the person who transports the said drugs and the person who directs him to do so would be the abettor of the offence of transporting; *Narvir Chand v. State*, (1952) Cr LJ 246.

(iii) All manufactured drugs are also narcotic drugs, possession of which is prohibited under this section; *T. Paul Kuki v. State of West Bengal*, (1993) 3 Crimes 660 (Cal) (DB).

Possession of Contraband

To hold a person guilty, possession has to be conscious. Control over the goods is one of the tests to ascertain conscious possession so also the title. Once an article is found in possession of an accused it could be presumed that he was in conscious possession; *Ram Singh v. Central Bureau of Narcotics*, AIR 2011 SC 2490: (2011) 11 SCC 347: (2011) 6 SCALE 243: 2011 Cr LJ 3579.

²[8A. Prohibition of certain activities relating to property derived from offence.—No person shall—

- (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

1. Ins. by Act 2 of 1989, sec. 5 (w.e.f. 29-5-1989).

2. Ins. by Act 9 of 2001, sec. 5 (w.e.f. 2-10-2001).

- (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.]

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

(a) permit and regulate—

- (i) the cultivation, or gathering of any portion (such cultivation or gathering being only on account of the Central Government) of coca plant, or the production, possession, sale, purchase, transport, import inter-State, export inter-State, use or consumption of coca leaves;
- (ii) the cultivation (such cultivation being only on account of Central Government) of the opium poppy;
- (iii) the production and manufacture of opium and production of poppy straw;
- ¹[(iiiia) 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;]
- (iv) the sale of opium and opium derivatives from the Central Government factories for export from India or sale to State Government or to manufacturing chemists;
- (v) the manufacture of manufactured drugs (other than prepared opium) but not including manufacture of medicinal opium or any preparation containing any manufactured drug from materials which the maker is lawfully entitled to possess;
- ²[(va) the manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption and use of essential narcotic drugs:

Provided that where, in respect of an essential narcotic drug, the State Government has granted licence or permit under the provisions of section 10 prior to the commencement of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2014 (16 of 2014), such licence or permit shall continue to be valid till the date of its expiry or for a period of twelve months from such commencement, whichever is earlier;]

- (vi) the manufacture, possession, transport import inter-State, export inter-State, sale, purchase, consumption or use of psychotropic substances;
 - (vii) the import into India and export from India and transshipment of narcotic drugs and psychotropic substances;
- (b) prescribe any other matter requisite to render effective the control of the Central Government over any of the matters specified in clause (a).

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

1. Ins. by Act 16 of 2014, sec. 4(a)(i) (w.e.f. 1-5-2014, *vide* S.O. 1183(E), dated 30th April, 2014).
 2. Ins. by Act 16 of 2014, sec. 4(a)(ii) (w.e.f. 1-5-2014, *vide* S.O. 1183(E), dated 30th April, 2014).

- (a) empower the Central Government to fix from time to time the limits within which licences may be given for the cultivation of the opium poppy;
- (b) require that all opium, the produce of land cultivated with the opium poppy, shall be delivered by the cultivators to the officers authorised in this behalf by the Central Government;
- (c) prescribe the forms and conditions of licences for cultivation of the opium poppy and for production and manufacture of opium; the fees that may be charged therefor; the authorities by which such licences may be granted, withheld, refused or cancelled and the authorities before which appeals against the orders of withholding, refusal or cancellation of licences shall lie;
- (d) prescribe that opium shall be weighed, examined and classified according to its quality and consistence by the officers authorised in this behalf by the Central Government in the presence of the cultivator at the time of delivery by the cultivator;
- (e) empower the Central Government to fix from time to time the price to be paid to the cultivators for the opium delivered;
- (f) provide for the weighing, examination and classification, according to the quality and consistence, of the opium received at the factory and the deductions from or additions (if any) to the standard price to be made in accordance with the result of such examination; and the authorities by which the decisions with regard to the weighing, examination, classification, deductions or additions shall be made and the authorities before which appeals against such decisions shall lie;
- (g) require that opium delivered by a cultivator, if found as a result of examination in the Central Government factory to be adulterated, may be confiscated by the officers authorised in this behalf;
- (h) prescribe the forms and conditions of licences for the manufacture of manufactured drugs, the authorities by which such licences may be granted and the fees may be charged therefor;
- ¹[(ha) prescribe the forms and conditions of licences or permits for the manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption or use of essential narcotic drugs, the authorities by which such licence or permit may be granted and the fees that may be charged therefor;]
- (i) prescribe the forms and conditions of licences or permits for the manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption or use of psychotropic substances, the authorities by which such licences or permits may be granted and the fees that may be charged therefor;
- (j) prescribe the ports and other places at which any kind of narcotic drugs or psychotropic substances may be imported into India or exported from India or transhipped; the forms and conditions of certificates, authorisations or permits, as the case may be, for such import, export or transhipment; the authorities by which such

1. Ins. by Act 16 of 2014, sec. 4 (b) (w.e.f. 1-5-2014, *vide* S.O. 1183(E), dated 30th April, 2014).

certificates, authorisations or permits may be granted and the fees that may be charged therefor.

¹[9A. Power to control and regulate controlled substances.—(1) If the Central Government is of the opinion that, having regard to the use of any controlled substance in the production or manufacture of any narcotic drug or psychotropic substance, it is necessary or expedient so to do in the public interest, it may, by order, provide for regulating or prohibiting the production, manufacture, supply and distribution thereof and trade and commerce therein.

(2) Without prejudice to the generality of the power conferred by sub-section (1), an order made thereunder may provide for regulating by licences, permits or otherwise, the production, manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption, use, storage, distribution, disposal or acquisition of any controlled substance.]

10. Power of State Government to permit, control and regulate.—(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 ²{except poppy straw produced from plants from which no juice has been extracted through lancing};
- (ii) the possession, transport, import inter-State, export inter-State, sale, purchase, consumption and use of opium;
- (iii) the cultivation of any cannabis plant, production, manufacture, possession, transport, import inter-State, export inter-State, sale, purchase consumption or use of cannabis (excluding *charas*);
- (iv) the manufacture of medicinal opium or any preparation containing any manufactured drug from materials which the maker is lawfully entitled to possess;
- (v) the possession, transport, purchase, sale, import inter-State, export inter-State, use or consumption of ³[manufactured drugs (other than prepared opium and essential narcotic drugs)] and of coca leaf and any preparation containing any manufactured drug;
- (vi) the manufacture and possession of prepared opium from opium lawfully possessed by an addict registered with the State Government on medical advice for his personal consumption:

Provided that save in so far as may be expressly provided in the rules made under sub-clauses (iv) and (v), nothing in section 8 shall apply to the import inter-State, export inter-State, transport, possession, purchase, sale, use or consumption of manufactured drugs which are the property and in the possession of the Government:

Provided further that such drugs as are referred to in the preceding proviso shall not be sold or otherwise delivered to any person who, under the rules made by the State Government under the aforesaid sub-clauses, is not entitled to their possession;

1. Ins. by Act 2 of 1989, sec. 6 (w.e.f. 29-5-1989).

2. Ins. by Act 16 of 2014, sec. 5(a) (w.e.f. 1-5-2014, vide S.O. 1183(E), dated 30th April, 2014).

3. Subs. by Act 16 of 2014, sec. 5(b), for "manufactured drugs other than prepared opium" (w.e.f. 1-5-2014, vide S.O. 1183(E), dated 30th April, 2014).