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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके ।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 9th January, 1989/*Pausa* 19, 1910 (*Saka*)

The following Act of Parliament received the assent of the President on the 6th January, 1989 and is hereby published for general information:—

THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (AMENDMENT) ACT, 1988

No. 2 OF 1989

[*6th January*, 1989.]

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

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

Short title and commencement.

1. (1) This Act may be called the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1988.

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

61 of 1985.

Amendment of long title

2. In the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the principal Act), in the long title, after the word "substances", the following shall be inserted, namely:—

", 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 Conventions on Narcotic Drugs and Psychotropic Substances".

Amendment of section 2.

3. In section 2 of the principal Act,—

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

'(*viia*) "controlled substance" means any substance which the Central Government may, having regard to the available information as to 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;';

(*b*) after clause (*viii*), the following clause shall be inserted, namely:—

'(*viiia*) "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 transhipment, 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;';

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

'(*xxviiia*) "use" in relation to narcotic drugs and psychotropic substances, means any kind of use except personal consumption;'.

4. After Chapter II of the principal Act, the following Chapter shall be inserted, namely:— Insertion of new Chapter IIA.

"CHAPTER IIA

NATIONAL FUND FOR CONTROL OF DRUG ABUSE

7A. (*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— National Fund for Control of Drug Abuse.

(*a*) an amount which the Central Government may, after duee 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*) The Fund shall be applied by the Central Government to meet the expenditure incurred in connection with the measures taken for combating illicit traffic in, or controlling abuse of, narcotic drugs and psychotropic substances for all or any of the purposes specified in sub-section (*1*) of section 71.

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

(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. 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.". Annual report of activities financed under the Fund.

5. In section 8 of the principal Act, after the proviso, the following proviso shall be inserted, namely:— Amendment of section 8

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

Insertion of new section 9A.

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

Power to control and regulate controlled substances.

"9A. (*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.".

Insertion of new section 25A.

7. After section 25 of the principal Act, the following section shall be inserted, namely:—

Punishment for contravention of orders made under section 9A.

"25A. If any person contravenes an order made under section 9A, he shall be punishable with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine which may extend to one lakh rupees:

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

Insertion of new section 27A.

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

Punishment for financing illicit traffic and harbouring offenders.

"27A. Whoever indulges in financing, directly or indirectly, any of the activities specified in sub-clauses (*i*) to (*v*) of clause (*viiia*) of section 2 or harbours any person engaged in any of the aforementioned activities, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

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

Insertion of new section 31A.

9. After section 31 of the principal Act, the following section shall be inserted, namely:—

Death penalty

"31A. (*1*) 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 section 15 to section 25 (both inclusive) or section 27A, is subsequently convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, an offence relating to,— for certain offences after previous conviction,

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

TABLE

	Particulars of narcotic drugs/ psychotropic substances	Quantity
	(1)	(2)
(i)	Opium	10 kgs.
(ii)	Morphine	1 kg.
(iii)	Heroin	1 kg.
(iv)	Codeine	1 kg.
(v)	Thebaine	1 kg.
(vi)	Cocaine	500 grams
(vii)	Hashish	20 kgs.
(viii)	Any mixture with or without any neutral material of any of the above drugs	1,500 grams
(ix)	LSD, LSD-25 (+) - N, N-Diethyllyserganide (d-lysergic acid diethylamide)	500 grams
(x)	THC (Tetrahydrocannabinols, the following isomers: 6a (10a), 6a(7), 7, 8, 9, 10, 9)and their stereochemical variants)	500 grams
(xi)	Methamphetamine(+)-2-Methylamine—1-Phenylpropane	1,500 gram
(xii)	Methaqualone (2-Methyl-3-o-tolyl-4-(3H)-quinazolinone)	1,500 gram
(xiii)	Amphetamine (+)-2-amino-1-phenylpropane	1,500 gram
(xiv)	Salts and preparations of the Psychotropic substances mentioned in (ix) to (xiii)]	1,500 gram;

(*b*) financing, directly or indirectly, any of the activities specified in clause (*a*),

shall be punishable with death.

(2) Where any person is convicted by a competent court of criminal jurisdiction outside India under any law corresponding to the provisions of section 15 to section 25 (both inclusive), section

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27A, section 28 or section 29, such person, in respect of such conviction, shall be dealt with for the purposes of sub-section (*1*) as if he had been convicted by a court in India.".

Insertion of new section 32A.

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

No suspension, remission or commutation in any sentence awarded under this Act.

"32A. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any other law for the time being in force but subject to the provisions of section 33, no sentence awarded under this Act (other than section 27) shall be suspended or remitted or commuted.". 2 of 1974.

Substitution of new sections for section 36.

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

Constitution of Special Courts.

"36. (*1*) The Government may, for the purpose of providing speedy trial of the offences under this Act, by notification in the Official Gazette, constitute as many Special Courts as may be necessary for such areas as may be specified in the notification.

(*2*) A Special Court shall consist of a single Judge who shall be appointed by the Government with the concurrence of the Chief Justice of the High Court.

Explanation.—In this sub-section, "High Court" means the High Court of the State in which the Sessions Judge or the Additional Sessions Judge of a Special Court was working immediately before his appointment as such Judge.

(*3*) A person shall not be qualified for appointment as a Judge of a Special Court unless he is, immediately before such appointment, a Sessions Judge or an Additional Sessions Judge.

Offences triable by Special Courts.

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

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

(*b*) where a person accused of or suspected of the commission of an offence under this Act is forwarded to a Magistrate under sub-section (*2*) or sub-section (*2A*) of section 167 of the

2 of 1974. Code of Criminal Procedure, 1973, such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate:

Provided that where such Magistrate considers—

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

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

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

(*c*) the Special Court may exercise, in relation to the person forwarded to it under clause (*b*), the same power which a Magistrate having jurisdiction to try a case may exercise under
2 of 1974. section 167 of the Code of Criminal Procedure, 1973, in relation to an accused person in such case who has been forwarded to him under that section;

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

(*2*) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act, with
2 of 1974. which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.

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

Appeal and revision.

36B. The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code
2 of 1974. of Criminal Procedure, 1973, on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

Application of Code to proceedings before a Special Court.

36C. Save as otherwise provided in this Act, the provisions of
2 of 1974. the Code of Criminal Procedure, 1973 (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor.

Transitional provisions.

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

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

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

Substitution of new section for section 37.

12. For section 37 of the principal Act, the following section shall be substituted, namely:—

Offences to be cognizable and non-bailable.

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

(*a*) every offence punishable under this Act shall be cognizable;

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

(*i*) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(*ii*) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(*2*) The limitations on granting of bail specified in clause (*b*) of sub-section (*1*) are in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force on granting of bail.". 2 of 1974.

Amendment of section 48.

13. In section 48 of the principal Act, after the words "State Government", the words and figures "or any officer of a gazetted rank empowered under section 42" shall be inserted.

Insertion of new section 52A.

14. After section 52 of the principal Act, the following section shall be inserted, namely:—

Disposal of seized narcotic drugs

"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 orclass 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. and psychotropic substances.

(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—

(a) certifying the correctness of the inventory so prepared; or

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

(c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.

(3) Where an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application.

(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 or the Code of Criminal Procedure, 1973, every court trying an offence under this Act, shall treat the inventory, the photographs of narcotic drugs or psychotropic substances and any list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence.". 1 of 1872. 2 of 1974.

15. After section 53 of the principal Act, the following section shall be inserted, namely:— Insertion of new section 53A.

"53A. (1) A statement made and signed by a person before any officer empowered under section 53 for the investigation of offences, during the course of any inquiry or proceedings by such officer, shall be relevant for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,— Relevancy of statements under certain circumstances.

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be

obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or

(*b*) when the person who made the statement is examined as a witness in the case before the court and the court is of the opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice.

(2) The provisions of sub-section (*1*) shall, so far as may be, apply in relation to any proceedings under this Act or the rules or orders made thereunder, other than a proceeding before a court, as they apply in relation to a proceeding before a court.".

Amendment of section 59.

16. In section 59 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

'(*2*) Any officer on whom any duty has been imposed by or under this Act or any person who has been given the custody of—

(*a*) any addict; or

(*b*) any other person who has been charged with an offence under this Act,

and who wilfully aids in, or connives at, the contravention of any provision of this Act or any rule or order made thereunder, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years, and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees.

Explanation.—For the purposes of this sub-section, the expression "officer" includes any person employed in a hospital or institution maintained or recognised by the Government or a local authority under section 64A for providing de-addiction treatment.'.

Insertion of new section 64A.

17. After section 64 of the principal Act, the following section shall be inserted, namely:—

Immunity from prosecution to addicts volunteering for treatment.

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

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

Omission of section 65.

18. Section 65 of the principal Act shall be omitted.

19. After Chapter V of the principal Act, the following Chapter shall be inserted, namely:— Insertion of new Chapter VA.

CHAPTER VA

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

68A. (*1*) The provisions of this Chapter shall apply only to the persons specified in sub-section (*2*). Application.

(*2*) The persons referred to in sub-section (*1*) are the following, namely:—

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

(*b*) every person who has been convicted of a similar offence by a competent court of criminal jurisdiction outside India;

(*c*) every person in respect of whom an order of detention has been made under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988, or under the Jammu and Kashmir Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988:

46 of 1988.

J & K Act XXIII of 1988.

Provided that such order of detention has not been revoked on the report of the Advisory Board constituted under the said Acts or such order of detention has not been set aside by a court of competent jurisdiction;

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

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

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

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

(*a*) "Appellate Tribunal" means the Appellate Tribunal for Forfeited Property constituted under section 68N;

(*b*) "associate" in relation to a person whose property is liable to be forfeited under this Chapter, means—

(*i*) any individual who had been or is residing in the residential premises (including out-houses) of such person;

(*ii*) any individual who had been or is managing the affairs or keeping the accounts of such person;

(*iii*) any association of persons, body of individuals, partnership firm, or private company within the meaning of the Companies Act, 1956, of which such person had been or is a member, partner or director; 1 of 1956.

(*iv*) any individual who had been or is a member, partner or director of an association of persons, body of individuals, partnership firm or private company referred to in sub-clause (*iii*) at any time when such person had been or is a member, partner or director of such association, body, partnership firm or private company;

(*v*) any person, who had been or is managing the affairs, or keeping the accounts, of any association of persons, body of individuals, partnership firm or private company referred to in sub-clause (*iii*);

(*vi*) the trustee of any trust, where,—

(*1*) the trust has been created by such person; or

(*2*) the value of the assets contributed by such person (including the value of the assets, if any, contributed by him earlier) to the trust amounts, on the date on which contribution is made, to not less than twenty per cent. of the value of the assets of the trust on that date;

(*vii*) where the competent authority, for reasons to be recorded in writing, considers that any properties of such person are held on his behalf by any other person, such other person;

(*c*) "competent authority" means an officer of the Central Government authorised by it under section 68D;

(*d*) "concealment" means the concealment or disguise of the nature, source, disposition, movement or ownership of property and includes the movement or conversion of such property by electronic transmission or by any other means;

(*e*) "freezing" means temporarily prohibiting the transfer, conversion, disposition or movement of property by an order issued under section 68F;

(*f*) "identifying" includes establishment of proof that the property was derived from, or used in, the illicit traffic;

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

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

(*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;

(*i*) "relative" means—

(*1*) spouse of the person;

(*2*) brother or sister of the person;

(*3*) brother or sister of the spouse of the person;

(*4*) any lineal ascendant or descendant of the person;

(*5*) any lineal ascendant or descendant of the spouse of the person;

(*6*) spouse of a person referred to in sub-clause (*2*), sub-clause (*3*), sub-clause (*4*) or sub-clause (*5*);

(*7*) any lineal descendant of a person referred to in sub-clause (*2*) or sub-clause (*3*);

(*j*) "tracing" means determining the nature, source, disposition, movement, title or ownership of property;

(*k*) "trust" includes any other legal obligation.

Prohibition of holding illegally acquired property.

68C. (*1*) As from the commencement of this Chapter, it shall not be lawful for any person to whom this Chapter applies to hold any illegally acquired property either by himself or through any other person on his behalf.

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

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

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.

(2) The competent authorities shall perform their functions in respect of such persons or classes of persons as the Central Government may, by order, direct.

Identifying illegally acquired property.

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

(2) The steps referred to in sub-section (1) may include any inquiry, investigation or survey in respect of any person, place, property, assets, documents, books of account in any bank or public financial institution or any other relevant matters.

(3) Any inquiry, investigation or survey referred to in sub-section (2) shall be carried out by an officer mentioned in sub-section (1) in accordance with such directions or guidelines as the competent authority may make or issue in this behalf.

Seizure or freezing of illegally acquired property.

68F. (1) Where any officer conducting an inquiry or investigation under section 68E has reason to believe that any property in relation to which such inquiry or investigation is being conducted is an illegally acquired property and such property is likely to be concealed, transferred or dealt with in any manner which will result in frustrating any proceeding relating to forfeiture of such property under this Chapter, he may make an order for seizing such property and where it is not practicable to seize such property, he may make an order that such property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, or of the competent authority and a copy of such order shall be served on the person concerned:

Provided that the competent authority shall be duly informed of any order made under this sub-section and a copy of such an order shall be sent to the competent authority within forty-eight hours of its being made.

(2) Any order made under sub-section (1) shall have no effect unless the said order is confirmed by an order of the competent authority within a period of thirty days of its being made.

Explanation.—For the purposes of this section, "transfer of property" means any disposition, conveyance, assignment, settlement, delivery, payment or other alienation of property and, without limiting the generality of the foregoing, includes—

(*a*) the creation of a trust in property;

(*b*) the grant or creation of any lease, mortgage, charge, easement, licence, power, partnership or interest in property;

(*c*) the exercise of a power of appointment of property vested in any person, not the owner of the property, to determine its disposition, in favour of any person other than the donee of the power; and

(*d*) any transaction entered into by any person with intent thereby to diminish directly or indirectly the value of his own property and to increase the value of the property of any other person.

Management of properties seized or forfeited under this Chapter.

68G. (*1*) The Central Government may, by order published in the Official Gazette, appoint as many of its officers (not below the rank of a Joint Secretary to the Government) as it thinks fit, to perform the functions of an Administrator.

(*2*) The Administrator appointed under sub-section (*1*) shall receive and manage the property in relation to which an order has been made under sub-section (*1*) of section 68F or under section 68I in such manner and subject to such conditions as may be prescribed.

(*3*) The Administrator shall also take such measures, as the Central Government may direct, to dispose of the property which is forfeited to the Central Government.

Notice of forfeiture of property.

68H. (*1*) If, having regard to the value of the properties held by any person to whom this Chapter applies, either by himself or through any other person on his behalf, his known sources of income, earnings or assets, and any other information or material available to it as a result of a report from any officer making an investigation under section 68E or otherwise, the competent authority has reason to believe (the reasons for such belief to be recorded in writing) that all or any of such properties are illegally acquired properties, it may serve a notice upon such person (hereinafter referred to as the person affected) calling upon him within a period of thirty days specified in the notice to indicate the sources of his income, earnings or assets, out of which or by means of which he has acquired such property, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties, as the case may be, should not be declared to be illegally acquired properties and forfeited to the Central Government under this Chapter.

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

Forfeiture of property in certain cases.

68I. (*1*) The competent authority may, after considering the explanation, if any, to the show cause notice issued under section 68H, and the materials available before it and after giving to the person affected (and in a case where the person affected holds any property specified in the notic through any other person, to such otner person also) a reasonable opportunity of being heard, by order, record a finding whether all or any of the properties in question are illegally acquired properties:

Provided that if the person affected (and in a case where the person affected holds any property specified in the notice through any other person such other person also) does not appear before the competent authority or represent his case before it within a period of thirty days specified in the show cause notice, the competent authority may proceed to record a finding under this sub-section *ex parte* on the basis of evidence available before it.

(*2*) Where the competent authority is satisfied that some of the properties referred to in the show cause notice are illegally acquired properties but is not able to identify specifically such properties, then, it shall be lawful for the competent authority to specify the properties which, to the best of its judgment, are illegally acquired properties and record a finding accordingly under sub-section (*1*).

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

(*4*) Where any shares in a company stand forfeited to the Central Government under this Chapter, then, the company shall, notwithstanding anything contained in the Companies Act, 1956 or the articles of association of the company, forthwith register the Central Government as the transferee of such shares. 1 of 1956.

Burden of proof.

68J. In any proceedings under this Chapter, the burden of proving that any property specified in the notice served under section 68H is not illegally acquired property shall be on the person affected.

Fine in lieu of forfeiture.

68K. (*1*) Where the competent authority makes a declaration that any property stands forfeited to the Central Government under section 68I and it is a case where the source of only a part of the illegally acquired property has not been proved to the satisfaction of the competent authority, it shall make an order giving an option to the person affected to pay, in lieu of forfeiture, a fine equal to the market value of such part.

(*2*) Before making an order imposing a fine under sub-section (*1*), the person affected shall be given a reasonable opportunity of being heard.

(*3*) Where the person affected pays the fine due under sub-section (*1*), within such time as may be allowed in that behalf, the competent authority may, by order, revoke the declaration of forfeiture under section 68I and thereupon such property shall stand released.

Procedure in relation to certain trust properties.

68L. In the case of any person referred to in sub-clause (vi) of clause (*b*) of section 68B, if the competent authority, on the basis of the information and materials available to it, has reason to believe (the reasons for such belief to be recorded in writing) that any property held in trust is illegally acquired property, it may serve a notice upon the author of the trust or, as the case may be, the contributor of the assets out of or by means of which such property was acquired by the trust and the trustees, calling upon them within a period of thirty days specified in the notice, to explain the source of money or other assets out of or by means of which such property was acquired or, as the case may be, the source of money or other assets which were contributed to the trust for acquiring such property and thereupon such notice shall be deemed to be a notice served under section 68H and all the other provisions of this Chapter shall apply accordingly.

Explanation.—For the purposes of this section "illegally acquired property", in relation to any property held in trust, includes—

(*i*) any property which if it had continued to be held by the author of the trust or the contributor of such property to the trust would have been illegally acquired property in relation to such author or contributor;

(*ii*) any property acquired by the trust out of any contributions made by any person which would have been illegally acquired property in relation to such person had such person acquired such property out of such contributions.

Certain transfers to be null and void.

68M. Where after the making of an order under sub-section (*1*) of section 68F or the issue of a notice under section 68H or under section 68L, any property referred to in the said order or notice is transferred by any mode whatsoever such transfer shall, for the purposes of the proceedings under this Chapter, be ignored and if such property is subsequently forfeited to the Central Government under section 68I, then, the transfer of such property shall be deemed to be null and void.

Constitution of Appellate Tribunal.

68N. (*1*) The Central Government may, by notification in the Official Gazette, constitute an Appellate Tribunal to be called the Appellate Tribunal for Forfeited Property consisting of a Chairman and such number of other members (being officers of the Central Government not below the rank of a Joint Secretary to the Government) as the Central Government thinks fit, to be appointed by that Government for hearing appeals against the orders made under section 68F, section 68I, sub-section (*1*) of section 68K of section 68L.

(*2*) The Chairman of the Appellate Tribunal shall be a person who is or has been or is qualified to be a Judge of the Supreme Court or of a High Court.

(*3*) The terms and conditions of service of the Chairman and other members shall be such as may be prescribed.

Appeals.

68-O. (*1*) Any person aggrieved by an order of the competent authority made under section 68F, section 68I, sub-section (*1*) of

section 68K or section 68L, may, within forty-five days from the date on which the order is served on him, prefer an appeal to the Appellate Tribunal:

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

(2) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving an opportunity to the appellant to be heard, if he so desires, and after making such further inquiry as it deems fit, confirm, modify or set aside the order appealed against.

(3) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches consisting of three members and constituted by the Chairman of the Appellate Tribunal.

(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.

(5) The Appellate Tribunal may regulate its own procedure.

(6) On application to the Appellate Tribunal and on payment of the prescribed fee, the Tribunal may allow a party to any appeal or any person authorised in his behalf by such party to inspect at any time during office hours, any relevant records and registers of the Tribunal and obtain a certified copy of any part thereof.

Notice or order not to be invalid for error in description.

68P. No notice issued or served, no declaration made, and no order passed, under this Chapter shall be deemed to be invalid by reason of any error in the description of the property or person mentioned therein if such property or person is identifiable from the description so mentioned.

Bar of jurisdiction.

68Q. No order passed or declaration made under this Chapter shall be appealable except as provided therein and no civil court shall have jurisdiction in respect of any matter which the Appellate Tribunal or any competent authority is empowered by or under this Chapter to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Chapter.

Competent autho-

68R. The competent authority and the Appellate Tribunal shall have all the powers of a civil court while trying a suit under the Code

5 of 1908.

of Civil Procedure, 1908, in respect of the following matters, namely:— rity and Appellate Tribunal to have powers of civil court.

(*a*) summoning and enforcing the attendance of any person and examining him on oath;

(*b*) requiring the discovery and production of documents;

(*c*) receiving evidence on affidavits;

(*d*) requisitioning any public record or copy thereof from any court or office;

(*e*) issuing commissions for examination of witnesses or documents;

(*f*) any other matter which may be prescribed.

Information to competent authority.

68S. (*1*) Notwithstanding anything contained in any other law, the competent authority shall have power to require any officer or authority of the Central Government or a State Government or a local authority to furnish information in relation to such persons, points or matters as in the opinion of the competent authority will be useful for, or relevant to, the purposes of this Chapter.

(*2*) Every officer referred to in section 68F may furnish *suo motu* any information available with him to the competent authority if in the opinion of the officer such information will be useful to the competent authority for the purposes of this Chapter.

Certain officers to assist Administrator, competent authority and Appellate Tribunal

68T. For the purposes of any proceedings under this Chapter, the following officers are hereby empowered and required to assist the Administrator appointed under section 68G, competent authority and the Appellate Tribunal, namely:—

(*a*) officers of the Narcotics Control Bureau;

(*b*) officers of the Customs Department;

(*c*) officers of the Central Excise Department;

(*d*) officers of the Income-tax Department;

(*e*) officers of enforcement appointed under the Foreign Exchange Regulation Act, 1973;

46 of 1973.

(*f*) officers of police;

(*g*) officers of the Narcotics Department;

(*h*) officers of the Central Economic Intelligence Bureau;

(*i*) officers of the Directorate of Revenue Intelligence;

(*j*) such other officers of the Central or State Government as are specified by the Central Government in this behalf by notification in the Official Gazette.

Power to take possession.

68U. (*1*) Where any property has been declared to be forfeited to the Central Government under this Chapter, or where the person affected has failed to pay the fine due under sub-section (*1*) of section 68K within the time allowed therefor under sub-section (*3*) of that section, the competent authority may order the person affected as well as any other person who may be in possession of the property

to surrender or deliver possession thereof to the Administrator appointed under section 68G or to any person duly authorised by him in this behalf within thirty days of the service of the order.

(2) If any person refuses or fails to comply with an order made under sub-section (1), the Administrator may take possession of the property and may for that purpose use such force as may be necessary.

(3) Notwithstanding anything contained in sub-section (2), the Administrator may, for the purpose of taking possession of any property referred to in sub-section (1), requisition the service of any police officer to assist him and it shall be the duty of such officer to comply with such requisition.

Rectification of mistakes.

68V. With a view to rectifying any mistakes apparent from record, the competent authority or the Appellate Tribunal, as the case may be, may amend any order made by it within a period of one year from the date of the order:

Provided that if any such amendment is likely to affect any person prejudicially, it shall not be made without giving to such person a reasonable opportunity of being heard.

Findings under other laws not conclusive for proceedings under this Chapter.

68W. No finding of any officer or authority under any other law shall be conclusive for the purposes of any proceedings under this Chapter.

Service of notices and orders.

68X. Any notice or order issued or made under this Chapter shall be served—

(a) by tendering the notice or order or sending it by registered post to the person for whom it is intended or to his agent;

(b) if the notice or order cannot be served in the manner provided in clause (a), by affixing it on a conspicuous place in the property in relation to which the notice or order is issued or made or on some conspicuous part of the premises in which the person for whom it is intended is known to have last resided or carried on business or personally worked for gain.

Punishment for acquiring property in relation to which proceedings have been taken under this Chapter.

68Y. Any person who knowingly acquired, by any mode whatsoever, any property in relation to which proceedings are pending under this Chapter shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to fifty thousand rupees.'.

Insertion of new section 74A.

20. After section 74 of the principal Act, the following section shall be inserted, namely:—

Power of Central Government to give directions.

"74A. The Central Government may give such directions as it may deem necessary to a State Government regarding the carrying into execution of the provisions of this Act, and the State Government shall comply with such directions.".

Amendment of section 76.

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

"(*da*) the manner in which and the conditions subject to which properties shall be managed by the Administrator under sub-section (2) of section 68G;

(*db*) the terms and conditions of service of the Chairman and other members of the Appellate Tribunal under sub-section (3) of section 68N;

(*dc*) the fees which shall be paid for the inspection of the records and registers of the Appellate Tribunal or for obtaining the certified copy of any part thereof under sub-section (6) of section 68-O;

(*dd*) the powers of a civil court that may be exercised by the competent authority and the Appellate Tribunal under clause (*f*) of section 68R;

(*de*) the disposal of all articles or things confiscated under this Act;

(*df*) the drawing of samples and testing and analysis of such samples;

(*dg*) the rewards to be paid to the officers, informers and other persons;".

Amendment of Act 13 of 1976.

22. In the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976, after section 2, the following section shall be inserted, namely:—

Act not to apply to certain persons

61 of 1985

"2A. On and from the commencement of the provisions of Chapter VA of the Narcotic Drugs and Psychotropic Substances Act, 1985, the provisions of this Act shall not apply to persons in relation to whom any order, or proceeding, may be made or taken under that Chapter.".

C. RAMAN MENON,

Addl. Secy. to the Govt. of India.

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