

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[(viiid)] "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 (viiid) 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, 1954 adopted by the United Nations Conference at New York in March, 1954;
 - (b) the protocol, amending the Convention mentioned in sub-clause (a), adopted by the United Nations Conference at Geneva in March, 1972;
 - (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, Dorixol, Heptadol, Heptanal, Hoechst, 10820, Detalgine, Mecodin, Mepection, Mephenon, Miadone, Moheptal, Physeptone, Pysopeptone, 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