

AS INTRODUCED IN LOK SABHA

Bill No. 241 of 2016

THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES
(AMENDMENT) BILL, 2016

By

DR. DHARAM VIRA GANDHI, M.P.

A

BILL

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

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

1. (1) This Act may be called the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2016.

Short title and
commencement.

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

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| Amendment of section 1. | 2. In section 1 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the principal Act), in sub-section (1), for the words "Narcotic Drugs and Psychotropic Substances", the words "Hard Drugs" shall be substituted. | 61 of 1985. |
| Substitution of references to certain expression by certain other expression. | 3. Throughout the principal Act,— (a) for the words "narcotic drugs and psychotropic substances", wherever they occur, the words "hard drugs" shall be substituted; and (b) for the words "narcotic drugs or psychotropic substances", wherever they occur, the words "hard drugs" shall be substituted. | 5 |
| Amendment of section 2. | 4. In section 2 of the principal Act,— (a) clauses (viii a) and (viii b) shall be renumbered as clauses (viii c) and (viii d), respectively, and, before clauses (viii c) and (viii d) as so renumbered, the following clauses shall be inserted, namely:— (viii a) "drug" means a substance the use of which affects biological or neurological state of a person; (viii b) "hard drug" means a drug specified in the Schedule the use of which leads to significant physical or psychological addiction or degradation of a person but does not include a soft drug;' (b) clause (xxiii) shall be omitted; (c) after clause (xxiii a), the following clause shall be inserted, namely:— (xxiii b) "soft drug" means a drug the use of which does not lead to significant physical or psychological dependence or degradation of a person;' and (d) after clause (xxviii a), the following clause shall be inserted, namely:— (xxviii b) "voluntary declaration" means a declaration made by a person without any coercion or force about his being an addict of any narcotic drug or psychotropic substance or hard drug;'. 5. In section 3 of the principal Act, for the words "psychotropic substances", the words "hard drugs" shall be substituted. | 10 15 20 25 |
| Amendment of section 3. | | |
| Amendment of section 4. | 6. In section 4 of the principal Act, in sub-section (2), after clause (da), the following clause shall be inserted, namely:— (db) introduction of mechanism for authorised and monitored sale of soft drugs with such cap on profit to be made by a retailer on the sale of soft drugs, as the Central Government may determine;". | 30 |
| Amendment of section 6. | 7. In section 6 of the principal Act, after sub-section (2), the following proviso shall be inserted, namely:— "Provided that the members of the Committee shall be certified experts in matters pertaining to hard drugs;". | 35 |
| Amendment of section 7A. | 8. In section 7A of the principal Act,— (a) in sub-section (1), after clause (d), the following clause be inserted, namely:— (e) such portion of income from authorised sale of soft drugs as may be determined, from time to time, by the Central Government;"; and (b) in sub-section (2),— (i) for clause (c), the following clause shall be substituted, namely:— (c) identifying addicts and treating and rehabilitating them in dedicated rehabilitation centres;"; | 40 45 |

(ii) clause (d) shall be omitted;

(iii) in clause (e), for the words "drug abuse", the words "the dangers attached with the abuse of hard drugs" shall be substituted;

5 (iv) in clause (f), the words "at dedicated rehabilitation centres" shall be added at the end; and

(v) after clause (f) the following clause shall be inserted, namely:—

"(g) setting up of Drug Abuse Control and Prevention Centres at State and district levels to assist the Hard Drugs Consultative Committee in combating abuse of hard drugs."

10 **9.** For section 8 of the principal Act, the following section shall be substituted, namely:—

Substitution
of new
section for
section 8.

"8. No person shall produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import from India, export from India or tranship any hard drug or its substituent listed under the rules or the orders made under this Act, except for medical or scientific purposes and in the
15 manner and to extent provided by the provisions of this Act or the rules or orders made thereunder and in case where any such provision, imposes any requirement by way of licence, permit or authorisation, the terms and conditions of such licence, permit or authorisation shall also be adhered to:

Prohibition of
certain
operations.

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

10. In section 9 of the principal Act,—

Amendment
of section 9.

(a) in sub-section (1), in clause (a), after sub-clause (va), the following sub-clause shall be inserted, namely:—

25 "(vb) the manufacture, cultivation, possession, transport, import inter-State, export inter-State, sale, purchase, consumption or use of hard drugs;

(vc) the manufacture, cultivation, possession, transport, import inter-State, export inter-State, sale, purchase, consumption or use of soft drugs;" and

(b) in sub-section (2), after clause (a), the following clauses shall be inserted, namely:—

30 "(aa) prescribe the forms and conditions of licences or permits for the manufacture, cultivation, possession, transport, import inter-State, export inter-State, sale, purchase, consumption or use of hard drugs and designate the authorities which shall grant such licence or permit and the fee that shall be charged therefor; and

35 "(ab) prescribe the forms and conditions of licences or permits for the manufacture, cultivation, possession, transport, inter-State import or export, sale, purchase, consumption or use of soft drugs and designate the authorities which shall grant such licence or permit and the fee that shall be charged therefor;"

11. In section 10 of the principal Act,—

Amendment
of section 10.

40 (a) in sub-section (1), in clause (a), sub-clause (iii) shall be omitted;

(b) for the words "poppy straw", wherever they occur, the words "components for the manufacture of hard drugs" shall be substituted; and

(c) for the word "opium", wherever it occurs, the words "hard drugs" shall be substituted.

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| Amendment of section 14. | 12. In section 14 of the principal Act, the words "industrial purposes only of" shall be omitted. | |
| Amendment of section 16. | 13. In section 16 of the principal Act, for the words "coca plant" and the words "coca leaves", wherever they occur, the words "controlled substances used for the manufacture or production of hard drugs" shall be substituted. | 5 |
| Amendment of section 20. | 14. Existing section 20 of the principal Act, shall be numbered as sub-section (1) and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:— “(2) Notwithstanding any other provision of law, except as otherwise provided in this section, the following acts done by the consumer shall be lawful and shall not attract any civil or criminal penalty or be the basis for seizure or forfeiture of assets:— (a) possessing, cultivating, using, displaying, purchasing or transporting soft drugs; (b) consumption of soft drugs except in public; and (c) assisting another person in any of the acts mentioned in clauses (a) and (b). | 10 |
| Amendment of section 21. | 15. In section 21 of the principal Act,— (a) the words "or uses" shall be omitted; and (b) for the words "manufactured drug" at both the places, the words "manufactured hard drug" shall be substituted. | 15 |
| Insertion of new section 22A. | 16. After section 22 of the principal Act, the following section shall be inserted, namely:— | 20 |
| Restriction on cultivation of soft drugs. | "22A. (1) The cultivation of soft drugs shall be subject to the following— (a) cultivation of soft drugs shall be at a location where the soft drugs are not accessible to public view; (b) reasonable precautions shall be taken by the person cultivating the soft drugs to prevent unauthorise access to the soft drugs; and (c) cultivation shall be in a land or premise that is lawfully owned by the person cultivating the soft drugs or cultivation shall be with the consent of the person who is in lawful possession of that land or premise, as the case may be. (2) Whoever contravenes the provisions of sub-section (1) shall be punished with a fine which may extend upto rupees." | 25 |
| Substitution of new section for section 27. | 17. For section 27 of the principal Act, the following section shall be substituted, namely:— | 30 |
| Punishment for consumption of hard drug. | "27. Whoever, consumes any hard drug or its substituent shall,— (a) where the user is not classified as a repeated offender, be punished with fine which may extend to twenty thousand rupees or remanded to a dedicated rehabilitation or counselling centre for detoxification or be required to undergo community service at a rehabilitation centre or be subject to all the three, that is, the fine, the remand and the community service; (b) if the user has made a voluntary declaration, not attract any criminal liability; and (c) where the user has been classified as a repeated offender with more than two instances of use of hard drug, be remanded to a dedicated rehabilitation centre followed by compulsory community service." | 35 |
| Amendment of section 44. | 18. In section 44 of the principal Act, for the words "coca plant, the opium poppy or cannabis plant" at both the places, the words "controlled substances used for the manufacture or production of hard drugs" shall be substituted. | 45 |

- 19.** In section 46 of the principal Act, for the words "opium poppy, cannabis plant or coca plant", the words "controlled substances used for the manufacture or production of hard drugs" shall be substituted. Amendment of section 46.
- 20.** In section 47 of the principal Act, for the words "opium poppy, cannabis plant or coca plant", the words "controlled substances used for the manufacture or production of hard drugs" shall be substituted. Amendment of section 47.
- 21.** In section 60 of the principal Act, in sub-section (1), for the words", the narcotic drug, psychotropic substance, controlled substance, opium poppy, coca plant, cannabis plant", the words "the hard drug, controlled substances used for the manufacture or production of hard drugs" shall be substituted. Amendment of section 60.
- 22.** In section 64A of the principal Act, for the words " voluntarily seeks", the words "has made a voluntary declaration" shall be substituted. Amendment of section 64A.

STATEMENT OF OBJECTS AND REASONS

The Narcotic Drugs and Psychotropic Substances Act, 1985, known as NDPS Act was enacted in order to meet the United Nations Conventions on Drug Policy. The objective was to prevent rampant drug use in society, as it was believed drugs and intoxicants degrade the moral character of individuals and destabilize well-ordered society. It was believed that drugs were an enemy of ordered civilization and the goal was a drug-free world.

Most drugs were made illegal. Anyone found using or possessing such substances was prescribed harsh punishments and large amounts of money was invested in the enforcement of drug restrictions and punishments handed out herewith. Plants and chemicals used in the manufacture of drugs were strictly controlled and drug enforcement agencies spent large amounts of money and time ensuring that drugs were eradicated from society.

30 years down the line, where do we stand? The fact of the matter is that the NDPS Act has not only failed in achieving its professed goals, but this "War on Drugs" has delivered results directly opposite to what it was aimed to achieve. There can be no better verdict and/or evaluation of such punitive drug laws than frank admission statement of the United Nations Conference on 12th March, 2009, admitting that "the War on Drugs has failed".

The War on Drugs has led to the creation of a dangerous drug mafia, scores of human rights violations and destroyed innumerable lives. As the common man's recreational substances were made unavailable, the newer, more potent, addictive and dangerous alternative drugs flooded the markets. Heroin replaced opium, cocaine replaced cannabis, and so on. As the drug business involves huge super profits, on one hand it creates business rivalries that on the other hand spill into gang wars and ruthless and aggressive marketing, thus pushing more and more people into the drug world. Consequently, more and more people are turning to the easily available and aggressively marketed addictive street drugs. The NCRB reported in 2014, that there are at least 25,000 individuals accused under the NDPS Act. Statistics of the Narcotics Control Bureau (NCB) indicate that number of users arrested contributes to 88% of those jailed under NDPS. Traffickers and distributors are 2%. No financiers have been arrested. The drug mafia operates with impunity, increasing the scale of its operations. The UN has estimated that drug trade is the largest illegal market in the world, amounting to \$300 billion. Drug money is being used to fund wars and terrorism and creating narco-terrorism.

India is currently facing a massive drug problem, with citizens between 15-40 years of age habitually abusing more and more harmful substances as the supply of less harmful, conventional intoxicants is curtailed. Punjab, Mizoram, Maharashtra, Delhi and Himachal Pradesh are the worst affected States. It is ironic that inspite of loud noises made from different parts of the country, especially Punjab and Mizoram about the increasing drug menace, resulting in immense death and misery, the NDPS Act has neither been reviewed or analysed by any Government in the past.

It has dawned upon nations worldwide that banning all intoxicating substances and imposing criminal liabilities on non-violent users is only worsening the problem. It is time to treat drug abuse and addiction as the health issue instead of treating it as a crime against society. It is high time to modernize our drug policy.

The Bill, therefore, seeks to amend the Narcotic Drugs and Psychotropic Substances Act, 1985 with a view to:—

(a) substitute the words "narcotic drugs and psychotropic substance" and the words "narcotic drugs or psychotropic substance" with the words 'hard drugs' throughout the parent Act;

(b) include 'soft drugs' within the purview of the Act;

(c) empower the Central Government to take measures for authorised and monitored sale of soft drugs;

(d) provide that members of the Narcotic Drugs and Psychotropic Substances Consultative Committee shall be certified experts in matters dealing with narcotic drugs, psychotropic substances and hard drugs;

(e) set up Drug Abuse Control and Prevention Centres at State and District Level to combat abuse of narcotic drugs, psychotropic substances and hard drugs;

(f) prohibit produce, manufacture, sell, etc. of any hard drugs or its substituent except for medical or scientific purposes;

(g) empower the Central Government to permit and regulate the manufacture, cultivation, possession, transport, inter-State import or export, sale, purchase, consumption or use of hard drugs and soft drugs;

(h) provide punishment for contravention in relation to the manufacture, cultivation, possession, transport, import inter-State, export inter-State, sale, purchase, consumption or use of soft drugs;

(i) provide restriction on cultivation of soft drugs; and

(j) provide punishment for consumption of hard drug and exemption of a person making voluntary declaration from prosecution for consumption of hard drugs.

Hence this Bill.

NEW DELHI;
August 2, 2016.

DHARAM VIRA GANDHI

ANNEXURE

EXTRACT FROM THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985

[No. 61 OF 1985]

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|---|---|
| Short title, extent and commencement. | <p>1. (1) This Act may be called the Narcotic Drugs and Psychotropic Substances Act, 1985.</p> <p style="text-align: center;">* * * * *</p> |
| Definitions. | <p>2. In this Act, unless the context otherwise requires,—</p> <p style="text-align: center;">* * * * *</p> <p style="padding-left: 40px;">(viii<i>a</i>) cultivating any coca plant or gathering any portion of coca plant;</p> <p style="padding-left: 40px;">(viii<i>b</i>) cultivating the opium poppy or any cannabis plant;</p> <p style="text-align: center;">* * * * *</p> <p style="padding-left: 40px;">(xiii<i>a</i>) "small quantity", in relation to narcotic drugs and psychotropic substances, means and quantity lesser than the quantity specified by the Central Government by notification in the Official Gazette.</p> <p style="text-align: center;">* * * * *</p> <p style="padding-left: 40px;">(xviii<i>a</i>) "use", in relation to narcotic drugs and psychotropic substances, means any kind of use except personal consumption;</p> <p style="text-align: center;">* * * * *</p> |
| Power to add to or omit from the list of psychotropic substances. | <p>3. The Central Government may, if satisfied that it is necessary or expedient so to do on the basis of</p> <p style="padding-left: 40px;">(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</p> <p style="padding-left: 40px;">(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.</p> |
| Central Government to take measures for preventing and combating abuse of and illicit traffic in narcotic drugs, etc. | <p>4. * * * * *</p> <p>(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:</p> <p style="text-align: center;">* * * * *</p> <p style="padding-left: 40px;">(da) identification, treatment, education, after care, rehabilitation and social re-intergration of addicts;</p> <p style="text-align: center;">* * * * *</p> |

6. * * * * *

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

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The Narcotic
Drugs and
Psychotropic
Substances
Consultative
Committee.

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—

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National Fund
for Control of
Drug Abuse.

(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

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(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.

* * * * *

8. 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

(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 authorization also in accordance with the terms and conditions of such licence, permit or authorization:

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:

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

9. (1) Subject to the provisions of section 8, the Central Government may, by rules—

(a) permit and regulate—

* * * * *

Prohibition of
certain
operations.

(va) the manufacture of manufactured drugs (other than prepared opium) but not including manufacture of medicinal opium or any preparation containing

Power of
Central
Government
to permit,
control and
regulate.

any manufactured drug from materials which the maker is lawfully entitled to possess;

* * * * *

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

* * * * *

(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 any 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, 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.";

* * * * *

Power of State Government to permit, control and regulate.

10. (1) Subject to the provisions of section 8, the State Government may, by rules

(a) permit and regulate—

* * * * *

(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);

* * * * *

Special provision relating to cannabis.

14. Notwithstanding anything contained in section 8, Government may, by general or special order and subject to such conditions as may be specified in such order, allow cultivation of any cannabis plant for industrial purposes only of obtaining fibre or seed or for horticultural purposes.

* * * * *

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

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

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Punishment for contravention in relation to cannabis plant and cannabis.

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

(a) cultivates any cannabis plant; or

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

(i) where such contravention relates to clause (a) 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; and

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

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

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

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

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

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

Punishment for contravention in relation to manufactured drugs and preparations.

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

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

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

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

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

Punishment for consumption of any narcotic drug or psychotropic substance.

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

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

* * * * *

44. The provisions of sections 41, 42 and 43, shall so far as may be, apply in relation to the offences punishable under Chapter IV and relating to coca plant, the opium poppy or cannabis plant and for this purpose references in those sections to narcotic drugs, or psychotropic substance, 1 [or controlled substance], shall be construed as including references to coca plant, the opium poppy and cannabis plant.

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

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46. Every holder of land shall give immediate information to any officer of the police or of any of the departments mentioned in section 42 of all the opium poppy, cannabis plant or coca plant which may be illegally cultivated within his land and every such holder of land who knowingly neglects to give such information, shall be liable to punishment.

Duty of land holder to give information of illegal cultivation.

Duty of
certain
officers to
give
information
of illegal
cultivation.

47. Every officer of the Government and every panch, sarpanch and other village officer of whatever description shall give immediate information to any officer of the Police or of any of the departments mentioned in section 42 when it may come to his knowledge that any land has been illegally cultivated with the opium poppy, cannabis plant or coca plant, and every such officer of the Government, panch, sarpanch and other village officer who neglects to give such information, shall be liable to punishment.

* * * * *

Immunity
from
prosecution
to addicts
volunteering
for
treatment.

64A. Any addict, who is charged with an offence punishable under section 27 or with offences involving small quantity of narcotic drugs or psychotropic substances, who voluntarily seeks to undergo medical treatment for de-addiction from a hospital or an institution maintained or recognized by the Government or a local authority and undergoes such treatment shall not be liable to prosecution under section 27 or under any other section for offences involving small quantity of narcotic drugs or psychotropic substances:

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

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LOK SABHA

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BILL

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

(Dr. Dharam Vira Gandhi, M.P.)