

Seventeenth Loksabha

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Title: Introduction of the Narcotic Drugs and Psychotropic Substances (Amendment) Bill, 2021.

**THE MINISTER OF STATE IN THE MINISTRY OF FINANCE (DR. BHAGWAT KARAD):** Sir, on behalf of Shrimati Nirmala Sitharaman, I beg to move for leave to introduce a Bill further to amend the Narcotic Drugs and Psychotropic Substances Act, 1985.

**माननीय अध्यक्ष :** प्रस्ताव प्रस्तुत हुआ:

“कि स्वामक ओषधि और मनःप्रभावी पदार्थ अधिनियम, 1985 का और संशोधन करने वाले विधेयक को पुरःस्थापित करने की अनुमति प्रदान की जाए ।”

**माननीय अध्यक्ष :** श्री एन.के. प्रेमचन्द्रन ।

**SHRI N. K. PREMACHANDRAN (KOLLAM):** Sir, I rise to oppose the introduction of the Narcotic Drugs and Psychotropic Substances (Amendment) Bill, 2021 under Rule 72 of the Rules of Procedure and Conduct of Business in Lok Sabha.

Sir, my objection is purely on technical grounds. I am challenging the legislative competence. Therefore, I request the hon. Speaker to please grant me some time since I am challenging the legislative competence under the provisions of the Constitution.

Sir, this is a typical example of bad drafting of a law for which every day we are agitating in this House. But, unfortunately, the Government in office is totally not responsive or not sensitive to hear the objections which are being raised by the Opposition since you are having brutal majority. If you examine this case, insensitivity to the objections of the Opposition is the real reason for which this thing has also happened. Sir, lack of proper scrutiny will result in a bad law which is harmful to the society.

Sir, one of the main objections to this Bill is that the provisions in the Bill violate Article 13(2) and Article 21(1) of the Constitution of India. Article 13(2) of the Constitution is very specific and very clear that the State shall not make any law which takes away or abridges the fundamental rights enshrined in Part III of the Constitution. This is Article 13(2).

Sir, coming to the history of this Bill, if you examine this academically, it is very interesting to see that the Narcotic Drugs and Psychotropic Substances Act came into force on 14<sup>th</sup> November, 1985 and the Act was amended thrice, in the years 1988, 2001 and 2014. In 2014, the Act was amended and the clause regarding the definition of illicit activities was changed.

Sir, you may kindly see this. I am drawing the attention of the hon. House. 'illicit activities' was the definition which was under clause 2 sub clause(i-v) of (viii a).

What was done in the year 2014? The words 'Illicit activities' were re-lettered and relocated as Clause (viii b) of Section 2 in the Narcotic Drugs and Psychotropic Substances Act of 2014. Sub-clause (viii a) was replaced as Clause (viii b). What had been done? It was re-lettered as 'Essential Narcotic Drug'.

Sir, the very interesting fact is that the Definition Clause is re-lettered and relocated, but consequential amendment to the penal provision under Section 27A is not made. This is a drafting error on the part of the Government ... (*Interruptions*) It is absolutely a drafting error on the part of the Government.

Unfortunately, the consequential amendment is not done in Section 27A. Section 27A is the penal provision. But the re-lettering and relocation of the Definition is not carried out in Section 27A.

Section 27A provides for the punishment for those who finance illicit trafficking. The enabling provision to Section 27 was not amended. One accused went to the Tripura High Court and pleaded that he was punished under Section 27A, which is a blank list, and therefore, he cannot be charged. The Tripura High Court directed the Government to make appropriate amendment to Section 27A. Hence, this Bill is here.

But again, Sir, they are making a legal hurdle in the Bill. They are giving a retrospective effect to a criminal penal provision from 1<sup>st</sup> May, 2014. That is my main objection. How can a punishment under criminal penal offence be given retrospectively? So, it is a clear violation of Article 20(1).

Sir, according to Article 20(1) of the Constitution, 'no person shall be convicted of any offence except for violation of law in force at the time of the commission of the act charged as an offence.'

**माननीय अध्यक्ष :** आप पूरी डिटेल्स बाद में बताइयेगा ।

... (व्यवधान)

**SHRI N. K. PREMACHANDRAN:** Sir, I am concluding ...  
(*Interruptions*)

**THE MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS AND MINISTER OF STATE IN THE MINISTRY OF CULTURE (SHRI ARJUN RAM MEGHWAL):** You should speak on the merits of the Bill. ...  
(*Interruptions*)

**SHRI N. K. PREMACHANDRAN :** It is totally on the merits. It is a technical point, which I am making.

It is violation of Article 20(1) of the Constitution. That is a Fundamental Right. The Fundamental Right cannot be abridged; it cannot be taken away ... (*Interruptions*)

**SHRI ARJUN RAM MEGHWAL:** We are correcting the error ...  
(*Interruptions*)

**SHRI N. K. PREMACHANDRAN :** That is why I am challenging the legislative competence. ... (*Interruptions*)

Mr. Minister of Parliamentary Affairs, do not be intolerant. I am challenging the legislative competence because you are violating the

Fundamental Right under Article 20(1) of the Constitution ...  
(*Interruptions*)

Sir, what is this? If the Minister of Parliamentary Affairs is so much intolerant, how can we make our submissions? ... (*Interruptions*)

Hon. Speaker, Sir, you have to protect us ... (*Interruptions*)

Sir, so, this is violation of Article 20(1); it is a Fundamental Right. The State shall not make any law, which violates the Fundamental Right.

So, even if we pass this law, definitely it will go for the judicial scrutiny and it will be declared as null and void. So, I am challenging the legislative competence on technical ground. This Bill should be passed with proper scrutiny ... (*Interruptions*) I strongly oppose it.

**SHRI BHARTRUHARI MAHTAB (CUTTACK):** Hon. Speaker, Sir, this Ordinance was promulgated on 30<sup>th</sup> September, 2021 to amend Section 27A of the 1985 Act. The Government is saying that this is being done to correct a drafting error. An Act, which came into force on 14<sup>th</sup> November, 1985 and has been amended thrice, that is, in 1988, in 2001 and in 2014, is now before us for the fourth time to rectify a drafting error. This amendment will be deemed to have been in effect from 1<sup>st</sup> May, 2014.

The point that my friend, Mr. Premachandran, was making was relating to certain issues, which I agree with.

But I am on a different point. The amendments will come into effect from 2014, which means, it will have a retrospective effect. At first, I wondered how wisdom has dawned upon this Government after seven years to rectify a drafting error; and whether it was a drafting error at all? After doing a little research, I found that the Tripura High Court noticed an anomaly, and so, the Union Government was directed by them to amend Section 27A.

After an accused sought bail before the Special Judge in West Tripura in Agartala citing omission that amendment done in Sub-Clause 8(A) of Section 2 of the NDPS Act and relocated at Clause 7B of Section 2 has not been amended in Section 27A. I made a little enquiry also. This amendment was moved by the then Finance Minister Mr. Pranab Mukherjee and subsequently, by Mr. Meena, who was the Minister of State. It was discussed in this House in 2011. More than 16 Members participated in that deliberation. I did not participate in that deliberation, of course, but I am aware that during that period also, this retrospective effect also was being discussed. The then Government, the UPA Government, did not listen to us. My question here is this. Shri Nishikant Dubey was the first initiator of that debate. If the Government thinks that this is a drafting error – and I believe in its logic – yet I cannot accept the view that with this amendment we can make a criminal law amended retrospectively. Article 20 of the Constitution guarantees protection against double jeopardy. Article 20(1) says: “No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.” So, even if this amendment is brought in, the result of the

drafting error could lead to more Constitutional questions that are being raised. I would not go into the merits of the Bill at all during this time of introduction but I would tell this Government, redraft it and come back to this House for approval. Giving retrospective effect on penal provision is bad in law and that which is bad in law is no law.

**माननीय अध्यक्ष :** के. सुरेश जी ।

बहुत डिटेल्ड ज्ञान में चर्चा हो चुकी है । आप कहां इस चक्कर में पड़ रहे हैं?

**SHRI KODIKUNNIL SURESH (MAVELIKKARA):** Sir, I am also opposing it. Already, hon. Member Premachandran ji has mentioned all the points here. So, I am fully supporting him. I would like to request the Government to withdraw this Bill and redraft a new Bill.

**माननीय अध्यक्ष :** माननीय मंत्री जी, क्या आप कुछ बोलना चाहते हैं?

**DR. BHAGWAT KARAD:** Hon. Speaker, Sir, some Members have raised a few questions but these questions will be answered during the discussion on the Bill. My sincere request to you is to allow me to introduce this Bill.

**माननीय अध्यक्ष :** प्रश्न यह है :

“कि स्वामक ओषधि और मनःप्रभावी पदार्थ अधिनियम, 1985 का और संशोधन करने वाले विधेयक को पुरःस्थापित करने की अनुमति प्रदान की जाए ।”

प्रस्ताव स्वीकृत हुआ ।

**DR. BHAGWAT KARAD:** Sir, I introduce the Bill.

**12.18 hrs**