

PUNJAB VIDHAN SABHA

Bill No. 32-PLA-2017

**THE PUNJAB FORFEITURE OF ILLEGALLY ACQUIRED PROPERTY
BILL, 2017**

A

BILL

to provide for the forfeiture of property derived illegally from, or used in illicit traffic in narcotic drugs and psychotropic substances and for the matter connected therewith or incidental thereto.

WHEREAS the Government has sufficient reasons to believe that a large number of persons possess ill-gotten proceeds of crime and have accumulated vast properties by resorting to illicit means like smuggling, illicit traffic and trade of narcotic drugs and psychotropic substances.

AND WHEREAS it is the constitutional, legal and moral obligation of the State to prosecute persons involved in such illegal practices and confiscate their ill-gotten assets ;

AND WHEREAS it is also necessary and expedient to lay down the procedure to confiscate such property acquired through illicit means.

BE it enacted by the Legislature of State of Punjab in the Sixty-eighth Year of the Republic of India as follows :—

1. (1) This Act may be called the Punjab Forfeiture of Illegally Acquired Property Act, 2017.

Short title extent and commencement.

(2) It extends to the whole of the State of Punjab.

(3) It shall come into force on and with effect from the date of its publication in the Official Gazette.

2. The provisions of this Act shall apply only to the persons specified here under :—

Application.

(a) every person who has been convicted of an offence punishable under the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), hereinafter referred to as the 'NDPS Act, 1985', with imprisonment for a term of ten years or more;

- (b) 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 (46 of 1988);

Provided that such order of detention has not been revoked on the report of the Advisory Board constituted under the said Act of 1988 or such order of detention has not been set aside by a Court of competent jurisdiction ;

- (c) every person who has been arrested or against whom a warrant or authorisation of arrest has been issued for the commission of an offence punishable under the NDPS Act, 1985 with imprisonment for a term of ten years or more;
- (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) ; and
- (f) any holder (hereinafter 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, anyone who held such property after such person and before the present holder, is or was a transferee in good faith for adequate consideration.

Definitions.

3. Under this Act, unless the context otherwise requires,—

- (a) “appellate authority” means the appellate authority specified in section 15 of this Act;
- (b) “associate” in relation to a person whose property is liable to be confiscated and forfeited under this Act, 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, 2013 (18 of 2013), of which such person had been or is a member, partner or director;

- (iv) any individual who had been or is a member, partner or director of an association or 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 ; and
- (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 State Government authorised by it under section 5 ;
- (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 7;
- (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 Act applies, means,—
- (i) any property acquired by such person, whether before or after the commencement of this Act, wholly or partly out of or by means of any income, earnings or assets derived or obtained from or attributable to the contravention of any provisions of the NDPS Act, 1985 ; or
 - (ii) any property acquired by such person, whether before or after the commencement of this Act, for a consideration or by any means wholly or partly traceable to any property referred to in sub-clauses (i) or the income or earnings 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 ; and
 - (B) any property acquired by such person, whether before or after the commencement of this Act, 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); and
 - (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 ; and
- (k) "trust" includes any other legal obligation.

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

(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 State Government in accordance with the provisions of this Act:

Provided that no property shall be forfeited under this Act if such property was acquired, by a person to whom the NDPS Act, 1985 applies, before a period of six years from the date he was arrested or against whom a warrant or authorisation of arrest has been issued for the commission of an offence punishable under the NDPS Act, 1985 or from the date the order of detention was issued, as the case may be.

5. (1) The State Government may, by order published in the Official Gazette, authorise any Divisional Commissioner or any other officer of the State Government of equivalent rank to perform the functions of the competent authority under this Act. Competent authority

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

6. (1) The officer-in-charge of a police station shall, on receipt of information, if satisfied that any person to whom this Act applies holds any illegally acquired property, after recording reasons for doing so, proceed to take all steps necessary for tracing and identifying such property. Identifying illegally acquired property

(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

7. (1) Where any officer conducting an inquiry or investigation under section 6 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 shall result in frustrating any proceeding relating to forfeiture of such property under this Act, 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 Act

8. (1) The State Government may, by order published in the Official Gazette, appoint as many of its officers (not below the rank of a District Magistrate) 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 7 or under section 10 in such manner and subject to such conditions as may be prescribed.

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

9. (1) If, having regard to the value of the properties held by any person to whom this Act 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 an officer making an investigation under section 6, forwarded to the competent authority through the concerned Commissioner of Police or Senior Superintendent of Police, as the case may be, 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 without 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 State Government under this Act.

Notice of
forfeiture of
property.

(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 :

Provided that no notice for forfeiture shall be served upon any person referred to in clause (c) of section 2 or relative of a person referred to in that clause or associate of a person referred to in that clause or holder of any property which was at any time previously held by a person referred to in that clause.

(3) In a case where the provisions of section 11 are applicable, no notice under this section shall be invalid merely on the ground that it fails to mention the evidence relied upon or it fails to establish a direct nexus between the property sought to be forfeited and any activity in contravention of the provisions of the NDPS Act, 1985.

10. (1) The competent authority may, after considering the explanation, if any, to the show cause notice issued under section 9, 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 notice through any other person, to such other 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 :

Provided further that the order under this sub-section shall be passed by the competent authority preferably within a period of further thirty days after the expiry of period of thirty days specified in the show cause notice.

(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 Act, stand forfeited to the State Government free from all encumbrances :

Provided that no illegally acquired property of any person who is referred to in clause (c) of section 2 or relative of a person referred to in that clause or associate of a person referred to in that clause or holder of any property which was at any time previously held by a person referred to in that clause shall stand forfeited.

(4) Where any shares in a company stand forfeited to the State Government under this Act, then, the company shall, notwithstanding anything contained in the Companies Act, 2013 (18 of 2013) or the articles of association of the company, forthwith register the State Government as the transferee of such shares.

11. In any proceedings under this Act, the burden of proving that any property specified in the notice served under section 9 is not illegally acquired property shall be on the person affected.

Burden of proof

12. (1) Where the competent authority makes a declaration that any property stands forfeited to the State Government under section 10 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.

Fine in lieu of forfeiture

(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 10 and thereupon such property shall stand released.

13. In the case of any person referred to in sub-clause (vi) of clause (b) of section 3, 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 9 and all the other provisions of this Act shall apply accordingly.

Procedure in relation to certain trust properties

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 ; and
- (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

14. Where after the making of an order under sub-section (1) of section 7 or the issue of a notice under section 9 or under section 13, 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 Act, be ignored and if such property is subsequently forfeited to the State Government under section 10, then, the transfer of such property shall be deemed to be null and void.

Appellate authority

15. The Principal Secretary to the Government of Punjab in the Department of Home Affairs shall be the appellate authority for forfeited property for hearing appeals against the orders made under section 7, section 10, sub-section (1) of section 12 or section 13.

Appeals

16. (1) An officer referred to in sub-section (1) of section 6 or any person aggrieved by an order of the competent authority made under section 7, section 10, sub-section (1) of section 12 or section 13, may, within forty-five days from the date on which the order is served on him, prefer an appeal to the appellate authority :

Provided that the appellate authority 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 authority 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 or set aside the order appealed against.

(3) Any appeal made under this section shall be decided preferably within a period of sixty days.

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

Notice or order not to be invalid for error in description

17. No notice issued or served, no declaration made, and no order passed under this Act 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.

18. No order passed or declaration made under this Act shall be appealable except as provided therein and no civil court shall have jurisdiction in respect of any matter which the appellate authority or any competent authority is empowered by or under this Act 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 Act.

Bar of jurisdiction.

19. The competent authority and the appellate authority shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely :—

Competent authority and appellate authority 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 ; and
- (f) any other matter which may be prescribed.

20. (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 Act.

Information to competent authority.

(2) Every officer referred to in section 21 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 Act.

21. For the purposes of any proceedings under this Act, the following officers are hereby empowered and required to assist the Administrator appointed under section 8, competent authority and the appellate authority, namely :—

Certain officers to assist Administrator, competent authority and appellate authority.

- (a) officers of Police ;
- (b) officers of the Revenue Department of the State ;
- (c) officers of the Local Authorities ; and

- (d) such other officers of the State Government as may be specified by the State Government in this behalf by notification in the Official Gazette.

Power to take possession

22. (1) Where any property has been declared to be forfeited to the State Government under this Act, or where the person affected has failed to pay the fine due under sub-section (1) of section 12 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 8 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.

23. With a view to rectifying any mistakes apparent from record, the competent authority or the appellate authority, 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 Act.

24. No finding of any officer or authority under any other law shall be conclusive for the purposes of any proceedings under this Act.

Service of notices and orders

25. Any notice or order issued or made under this Act 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 ; and
- (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.

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

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

27. (1) Where the detention order of a detenu is set aside or withdrawn, properties seized or frozen under this Act shall stand released.

Release of property in certain cases.

(2) Where any person referred to in clause (a) or clause (c) of section 2 of this Act has been acquitted or discharged from the charges under NDPS Act, 1985 and the acquittal was not appealed against or when appealed against, the appeal was disposed of as a consequence of which such property could not be forfeited or warrant of arrest or authorization of arrest issued against such person has been withdrawn, then, property seized or frozen under this Act shall stand released.

28. (1) The State Government may, by notification in the Official Gazette, make such rules, as it may deem necessary for carrying out the purposes of this Act.

Power to make rules.

(2) Every rule made under this section, shall be laid, as soon as may be, after it is made, before the House of the State Legislature while it is in session for a total period of ten days, which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session in which it is so laid or the successive sessions as aforesaid, the House agrees in making any modification in the rule or the House agrees that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be. However any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.

29. If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order, make such provision including any adaptation or modification of any provision of this Act, as appears to the State Government to be necessary or expedient for the purpose of removing the difficulty :

Removal of difficulties.

Provided that no such order shall be made after the expiry of a period of two years from the date of the commencement of this Act.

STATEMENT OF OBJECTS AND REASONS

Many persons residents of Punjab State are accused and convicts in the cases registered under the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985. These accused and convict persons have created properties, out of the proceeds of the crime committed by them under the NDPS Act, 1985. There is also a need for inclusion of provisions for attachment, seizure and forfeiture etc. of such property illegally acquired by the offenders under the NDPS Act, 1985.

Thus for the said purpose it is necessary to empower the officers of the State Government for attachment, seizure and forfeiture etc. of such property illegally acquired by the offenders under the NDPS Act, 1985 to fight the menace of drugs in the State of Punjab.

It is, therefore, proposed to enact a special law for the purpose namely, "Punjab Forfeiture of Illegally Acquired Property Act, 2017". The draft Act has been prepared in consultation with the Director General of Police, Punjab. The Act has the proposed provisions for attachment, seizure and forfeiture etc. of such property-illegally acquired by the offenders under NDPS Act, 1985.

CAPTAIN AMARINDER SINGH,
Chief Minister, Punjab.

FINANCIAL MEMORANDUM

State Government may by order published in the Official Gazette appoint any officer (not below the rank of a District Magistrate) to perform the functions of an Administrator. Administrator shall receive and manage the properties. The Administrator shall also take such measures as the State Government may direct, to dispose of the properties which are forfeited to the State Government. The proceed of the disposal of the properties will be deposited in the Consolidated Fund of State.

The Actual accrual from the proceed of the disposal of the forfeited properties can't be foreseen, as it is not possible to assess how many properties would be actually forfeited. However, proceed of the disposal of the forfeited properties will be beneficial to the State.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Section 28 of the Punjab Forfeiture of Illegally Acquired Property Act, 2017 empowers to the State Government to make rules to carry out the purposes of this Act. The powers sought are necessary for the proper implementation of the provisions of the Act and are normal in nature.

The Governor has, in pursuance of clause (1) and (3) of Article 207 of the Constitution of India, recommended to the Punjab Legislative Assembly, the introduction and consideration of the Bill.

CHANDIGARH :

The 28th November, 2017.

SHASHI LAKHANPAL MISHRA,

Secretary.

N.B.—The above Bill was published in the *Punjab Government Gazette (Extraordinary)*, dated the 28th November, 2017 under the proviso to rule 121 of the Rules of Procedure and Conduct of Business in the Punjab Vidhan Sabha (Punjab Legislative Assembly).