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असाधारण

EXTRAORDINARY

भाग II — खण्ड 2

PART II — Section 2

प्राधिकार से प्रकाशित

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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.

RAJYA SABHA

The following Bills have been introduced in the Rajya Sabha on 29th August, 2013:—

I

BILL NO. LVIII OF 2013

A Bill further to amend the Drugs and Cosmetics Act, 1940.

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

1. (1) This Act may be called the Drugs and Cosmetics (Amendment) Act, 2013.

Short title and
commence-
ment.

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

Provided that different dates may be appointed for different provisions of this Act, and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

23 of 1940.

2. In the Drugs and Cosmetics Act, 1940 (hereinafter referred to as the principal Act), for the long title and first paragraph of the preamble, the following shall be substituted, namely:—

Amendment
of long title
and preamble.

“An Act to regulate the import, export, manufacture, distribution and sale of drugs, cosmetics and medical devices to ensure their safety, efficacy, quality and conduct of clinical trials and for matters connected therewith or incidental thereto.

WHEREAS it is expedient to regulate the import, export, manufacture, distribution and sale of drugs, cosmetics and medical devices to ensure their safety, efficacy, quality and conduct of clinical trials and for matters connected therewith or incidental thereto.”.

Amendment of section 1.

3. In section 1 of the principal Act, in sub-section (1), for the words “and Cosmetics”, the words “, Cosmetics and Medical Devices” shall be substituted.

Substitution of words “Drugs Control Officer” for word “Inspector”.

4. Throughout the principal Act, for the word “Inspector”, wherever it occurs, the words “Drugs Control Officer” shall be substituted.

Amendment of section 2.

5. In section 2 of the principal Act, for the words and figures “the Dangerous Drugs Act, 1930”, the words and figures “the Narcotic Drugs and Psychotropic Substances Act, 1985” shall be substituted.

2 of 1930.
61 of 1985.

Amendment of section 3.

6. In section 3 of the principal Act,—

(i) after clause (a), the following clauses shall be inserted, namely:—

‘(aA) “bioavailability study” means a study to assess the rate and extent to which the active drug is absorbed from a pharmaceutical formulation and becomes available in the systemic circulation or availability of drug at the site of action;

(aB) “bioequivalence study” means a study to establish the absence of a significant difference in the rate and extent of absorption of an active drug from a pharmaceutical formulation in comparison to the reference formulation having the same active drug when administered in the same molar dose under similar conditions;’;

(ii) in clause (aa), after sub-clause (ii), the following sub-clause shall be inserted, namely:—

“(iii) in relation to Medical Devices, the Medical Device Technical Advisory Board constituted under section 5A;”;

(iii) after clause (aa), the following clauses shall be inserted, namely:—

‘(ab) “Central Drugs Authority” means the Central Drugs Authority of India constituted under sub-section (1) of section 4A;

(ac) “Central Drugs Laboratory” means a drug testing laboratory established by the Central Government, by whatever name, for carrying out the functions assigned to it under this Act and rules made thereunder;

(ad) “Central Licensing Authority” means the Drugs Controller General of India designated as such under sub-section (2) of section 4J;

(ae) “Chairperson” means the Chairperson of the Central Drugs Authority;

(af) “clinical trial” means—

(i) in respect of drugs, any systematic study of new drug, investigational new drug or bioavailability or bioequivalence study of any drug in human subjects to generate data for discovering or verifying its clinical, pharmacological (including pharmacodynamic and pharmacokinetic) or adverse effects with the objective of determining safety, efficacy or tolerance of the drug;

(ii) in respect of cosmetics, the systematic study, including dermatological study, of a cosmetic including a new cosmetic on human subjects to generate data for discovering or verifying its adverse effects with the objective of determining safety, efficacy or tolerance of the cosmetic;

(iii) in respect of medical devices, the systematic clinical investigation or study of a medical device, investigational medical device or a new medical device, in, or on human subjects to assess the safety or performance of the medical device;’;

(iv) in clause (aaa), after the words “component of cosmetic”, the words “and includes new cosmetic” shall be inserted;

(v) in clause (b),—

(A) in sub-clause (ii), after the words “destruction of vermin or insects”, the words “or microbes” shall be inserted;

(B) sub-clause (iv) shall be omitted;

(C) after sub-clause (iv), the following sub-clause shall be inserted, namely:—

‘(v) any new drug for which permission has been granted by the Central Licensing Authority under the first proviso to clause (c) of sub-section (1) of section 18.

Explanation I.—In this sub-clause, “new drug” means—

(i) a drug, including bulk drug substance, which has not been used in the country to any significant extent under the prescribed conditions, recommended or suggested in the labelling thereof and has not been recognised as effective and safe by the Central Licensing Authority for the expected claims and its limited use, if any;

(ii) a drug approved by the Central Licensing Authority for certain claims, which is proposed to be marketed with modified or new claims, namely, indications, dosage, dosage form (including sustained release dosage form) and route of administration;

(iii) a fixed dose combination of two or more drugs, individually approved earlier for certain claims, which are proposed to be combined for the first time in a fixed ratio, or if the ratio of ingredients in a marketed combination is proposed to be changed, with certain claims, namely, indications, dosage, dosage form (including sustained release dosage form) and route of administration;

(iv) all vaccines, recombinant Deoxyribonucleic Acid derived products, Living Modified Organisms, monoclonal anti-bodies, stem cells, gene therapeutic products and xenografts which are intended to be used as drugs;

Explanation II.—A new drug shall continue to be a new drug for such period as may be prescribed except the type of new drug specified in clause (iv) of *Explanation I* which shall always remain a new drug;’;

(vi) after clause (b), the following clauses shall be inserted, namely:—

‘(ba) “Drugs Control Officer” means—

(i) in relation to Ayurvedic, Siddha or Unani drug, a Drugs Control Officer appointed by the Central Government or a State Government under section 33G;

(ii) in relation to any other drug or cosmetic, a Drugs Control Officer

appointed by the Central Drugs Authority or a State Government under section 21;

(iii) in relation to any medical device, the Medical Device Officer appointed by the Central Drugs Authority under section 7H;

(bb) “Drugs Controller General of India” means an officer appointed by the Central Government under sub-section (I) of section 4G;

(bc) “Ethics Committee” means the Ethics Committee constituted under section 4T;’;

(vii) in clause (c), in sub-clause (ii), for the words “Central Government”, the words “Central Drugs Authority” shall be substituted;

(viii) after clause (c), the following clauses shall be inserted, namely:—

‘(d) “Indian Pharmacopoeia” means the official book of standards for drugs which specifies the standards of identity, purity and strength for the drugs mentioned therein;

(da) “investigational medical device” means a device, which is an object of a clinical investigation or research or development involving one or more subjects to determine the safety or effectiveness of a device;

(db) “investigational new drug” means chemical entity or substance which is under investigation in clinical trial regarding its safety and efficacy and which is required to be approved by the Central Drugs Authority;

(dc) “investigator” means a person who is responsible for the conduct of a clinical trial and responsible for the rights, health, safety and well being of the study subjects on the study site;’;

(ix) clause (e) shall be omitted;

(x) for clause (f), the following clause shall be substituted, namely:—

‘(f) “manufacture” means—

(i) in relation to any drug (except human blood and its components, or any cosmetic) includes any process or part of a process for making, altering, ornamenting, finishing, packing, labelling, breaking up or otherwise treating or adapting any drug or cosmetic with a view to its sale, export, stocking or distribution but does not include the compounding or dispensing of any drug, or the packing of any drug or cosmetic, in the ordinary course of retail business;

(ii) in relation to human blood and its components includes any process or part of a process of collection, processing, storage, packing, labelling and testing for its use, sale, export or distribution for transfusion in human beings;

(iii) in relation to any medical device, includes any process or part of process for making, assembling, altering, ornamenting, finishing, packing, labelling, or adapting any medical device with a view to its sale or stock or export or distribution but does not include assembling or adapting a device already on the market for an individual patient;’;

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

‘(fa) “medical device” means—

(i) any instrument, apparatus, appliance, implant, material or other article, whether used alone or in combination, including the software,

intended by its manufacturer to be used specially for human beings or animals for one or more of the specific purposes of,—

(A) diagnosis, prevention, monitoring, treatment or alleviation of any disease or disorder;

(B) diagnosis, monitoring, treatment, alleviation of, or assistance for, any injury or handicap;

(C) investigation, replacement or modification or support of the anatomy or of a physiological process;

(D) supporting or sustaining life;

(E) disinfection of medical devices;

(F) control of conception,

and which does not achieve its primary intended action in or on the human body or animals by any pharmacological or immunological or metabolic means, but which may be assisted in its intended function by such means;

(ii) an accessory to such an instrument, apparatus, appliance, material or other article;

(iii) a device which is reagent, reagent product, calibrator, control material, kit, instrument, apparatus, equipment or system whether used alone or in combination thereof intended to be used for examination and providing information for medical or diagnostic purposes by means of *in vitro* examination of specimens derived from the human body or animals;

(iv) any new medical device;

(fb) “Member” means a Member of the Central Drugs Authority and includes the Chairperson and the Member-Secretary;’;

(xii) in clause (h), in sub-clause (ii), for the words “Central Government”, the words “Central Drugs Authority” shall be substituted;

(xiii) after clause (i), the following clauses shall be inserted, namely:—

(j) “protocol” means a document that states the background, objectives, rationale, design, methodology (including but not limited to the methods for dealing with adverse events or withdrawals) and statistical considerations of the clinical trial and also states the conditions under which the trial shall be performed and managed;

(k) “regulations” means the regulations made by the Central Drugs Authority under this Act;

(l) “sponsor” means and includes an investigator, an individual or a company or an institution responsible for the initiation, financing and management of a clinical trial;

(m) “State Government” includes the administrator of a Union territory appointed by the President under article 239 of the Constitution;

(n) “State Licensing Authority” means an officer designated as such by the State Government under sub-section (3) of section 7F or sub-section (2) of section 18;

(o) “Schedule” means a Schedule appended to this Act;’.

Insertion of new Chapters IA and IB.

7. After Chapter I of the principal Act, the following Chapters shall be inserted, namely:—

‘CHAPTER IA

CENTRAL DRUGS AUTHORITY

Constitution of Central Drugs Authority.

4A. (1) The Central Government shall, by notification in the Official Gazette, constitute an Authority to be known as the Central Drugs Authority to exercise the powers conferred on, and perform the functions assigned to it by or under this Act.

(2) The Central Drugs Authority shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.

(3) The head office of the Central Drugs Authority shall be in the National Capital Region.

(4) The Central Drugs Authority may, with the prior approval of the Central Government, by notification in the Official Gazette, establish its offices at such other places in India as it considers necessary.

Composition of Central Drugs Authority.

4B. (1) The Central Drugs Authority shall consist of the following, namely:—

(a) Secretary to the Government of India, Ministry of Health and Family Welfare, Department of Health and Family Welfare— *Chairperson, ex officio*;

(b) Secretary to the Government of India, Ministry of Health and Family Welfare, Department of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy— *Member, ex officio*;

(c) Secretary, Department of AIDS Control and Director General, National AIDS Control Organisation, Ministry of Health and Family Welfare — *Member, ex officio*;

(d) Secretary to the Government of India, Ministry of Commerce and Industry, Department of Commerce— *Member, ex officio*;

(e) Secretary to the Government of India, Ministry of Chemicals and Fertilisers, Department of Pharmaceuticals— *Member, ex officio*;

(f) Secretary, Department of Health Research and Director General, Indian Council of Medical Research, Ministry of Health and Family Welfare — *Member, ex officio*;

(g) Secretary to the Government of India, Ministry of Science and Technology, Department of Bio-technology— *Member, ex officio*;

(h) Director General Health Services, Directorate General of Health Services, New Delhi—*Member, ex officio*;

(i) Additional Secretary or Joint Secretary and Legislative Counsel in the Legislative Department, Ministry of Law and Justice in charge of the Group dealing with the work relating to the Ministry of Health and Family Welfare— *Member, ex officio*;

(j) Additional Secretary or Joint Secretary in charge of the Drugs Quality Control Division in the Ministry of Health and Family Welfare— *Member, ex officio*;

(k) four experts having such qualifications and experience to be nominated by the Central Government in such manner as may be prescribed— Member;

(l) four State Licensing Authorities to be nominated by the Central Government in such manner as may be prescribed— Member;

(m) Drugs Controller General of India— Member-Secretary, *ex officio*.

(2) The Members appointed under clause (k) of sub-section (1) shall hold office for a period of three years from the date of their nomination, and shall be eligible for re-nomination;

(3) The Central Drugs Authority shall meet at such time and place and shall observe such rules of procedure in regard to the transaction of business at its meeting and allowances payable to a Member for attending such meetings as may be specified by regulations.

4C. (1) On and from the date of constitution of the Central Drugs Authority,—

(a) any reference to the Central Drugs Standards Control Organisation in any law other than this Act or in any contract or other instruction shall be deemed as a reference to the Central Drugs Authority;

(b) all properties and assets, movable and immovable, of, or belonging to, the Central Drugs Standards Control Organisation, shall vest in the Central Drugs Authority;

(c) all rights and liabilities of the Central Drugs Standards Control Organisation shall be transferred to, and be the rights and liabilities of, the Central Drugs Authority;

(d) without prejudice to the provisions of clause (c), all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for, the Central Drugs Standards Control Organisation immediately before the said date, for or in connection with the purpose of the said Central Drugs Standards Control Organisation shall be deemed to have incurred, entered into or engaged to be done by, with or for, the Central Drugs Authority;

(e) all sums of money due to the Central Drugs Standards Control Organisation immediately before that date shall be deemed to be due to the Central Drugs Authority;

(f) all suits and other legal proceedings instituted or which could have been instituted by or against the Central Drugs Standards Control Organisation immediately before that date may be continued or may be instituted by or against the Central Drugs Authority;

(g) every employee of the Central Drugs Standards Control Organisation holding any office under the Central Drugs Standards Control Organisation immediately before that date shall hold his office in the Central Drugs Authority by the same tenure and upon the same terms and conditions of service as respects remuneration, leave, provident fund, retirement and other terminal benefits as he would have held such office if the Central Drugs Authority had not been constituted and shall continue to do so as an employee of the Central Drugs Authority or until the expiry of the period of six months from that date if such employee opts not to be the employee of the Central Drugs Authority within such period:

Provided that the salaries, allowances and other conditions of service of such employees shall not be varied to their disadvantage on exercise of their option to become the employee of the Central Drugs Authority.

Transfer of assets, liabilities, etc., of Central Drugs Standards Control Organisation to Central Drugs Authority constituted under this Act and other provisions, etc.

(2) Notwithstanding anything in the Industrial Dispute Act, 1947 or in any other law for the time being in force, absorption of any employee by the Central Drugs Authority in its regular service under this section shall not entitle such employee to any compensation under that Act or any other law and no such claim shall be entertained by any court, tribunal or other authority. 14 of 1947.

Member not to participate in meetings in certain cases.

4D. Any Member having any direct or indirect interest, whether pecuniary or otherwise, in any matter coming up for consideration at a meeting of the Central Drugs Authority, shall, as soon as possible after the relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Authority, and the Member shall not take any part in any deliberation or decision of the Authority with respect to that matter.

Vacancies, etc., not to invalidate proceedings.

4E. No act or proceeding of the Central Drugs Authority shall be invalidated merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Central Drugs Authority; or

(b) any defect in the nomination of a person as a Member of the Central Drugs Authority; or

(c) any irregularity in the procedure of the Authority not affecting the merits of the case.

Resignation.

4F. A Member of the Central Drugs Authority nominated under clause (k) of sub-section (1) of section 4B may, by notice in writing under his hand addressed to the Central Government, resign his office:

Provided that the Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon office or until the expiry of his term of office, whichever is the earliest.

Appointment of Drugs Controller General of India.

4G. (1) The Central Government shall appoint the Drugs Controller General of India or other person having such specialised qualifications and experience as may be prescribed to perform the functions and discharge the duties assigned to the Drugs Controller General of India by or under this Act.

(2) The salaries, allowances and pensions payable to the Drugs Controller General of India, appointed under sub-section (1) shall be such as may be determined by the Central Government.

Staff of Central Drugs Authority.

4H. (1) The Central Government may, in consultation with the Central Drugs Authority create, such number of posts as it considers necessary for the efficient discharge of the functions and exercise of the powers by the Central Drugs Authority under this Act.

(2) The manner of appointment of officers and employees of the Central Drugs Authority, their salaries, allowances and pension and other conditions of service shall be such as may be determined by the Central Drugs Authority by regulations with the approval of the Central Government.

Powers and functions of Central Drugs Authority.

4-I. The Central Drugs Authority shall—

(a) specify, by regulations, the guidelines, norms, structures and requirements for effective functioning of the Central Licensing Authority and the State Licensing Authorities;

(b) assess periodically the functioning of the Central Licensing Authority and the State Licensing Authorities;

(c) have power to issue directions to the Central Licensing Authority and the State Licensing Authorities to ensure compliance with the guidelines, norms, structures and requirements specified by it under clause (a);

(d) review, suspend or cancel any permission, licence or certificate issued by the Central Licensing Authority or the State Licensing Authorities;

(e) specify, by regulations, the fees or charges for issue or renewal of licences, certificates, approvals and permissions by the Central Licensing Authority and the State Licensing authorities;

(f) coordinate, mediate and decide upon the disputes arising out of the implementation of the provisions of the Act and rules and regulations made thereunder between two or more States Licensing Authorities;

(g) constitute such committees or sub-committees as it considers necessary for the efficient discharge of its functions and exercise of its powers under this Act;

(h) recommend to the Central Government the measures as regards the standards of drugs, cosmetics and medical devices for effective implementation of the provisions of this Act;

(i) perform such other functions as may be prescribed by the Central Government.

4J. (1) The Drugs Controller General of India shall exercise the powers conferred upon him under this Act or the rules made thereunder.

Powers and functions of Drugs Controller General of India.

(2) The Drugs Controller General of India shall act as the Central Licensing Authority and shall have powers to—

(a) issue, renew, suspend or cancel licences or certificates or permission, as the case may be, for import, export or manufacture of drugs, cosmetics or medical devices or permission for conducting clinical trials;

(b) recall or direct to recall any drug, cosmetic or medical device;

(c) collect the fees or charges for issue or renewal of licences, certificates, approvals and permissions issued by the Central Licensing Authority under this Act;

(d) discharge any other functions as may be assigned to him by the Central Drugs Authority;

(3) The Drugs Controller General of India may, with the prior approval of the Central Drugs Authority, delegate such of his powers to the officers of the Central Drugs Authority as may be considered necessary.

(4) The Drugs Controller General of India shall be the legal representative of the Central Drugs Authority, and shall be responsible for day-to-day administration of the Central Drugs Authority.

(5) The Drugs Controller General of India shall have administrative control over the officers and employees of the Central Drugs Authority.

4K. The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Central Drugs Authority grants of such sums of money as are required by it.

Grants by Central Government.

Accounts and audits.

4L. (1) The Central Drugs Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Central Drugs Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Central Drugs Authority to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Central Drugs Authority shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has, in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Central Drugs Authority.

(4) The accounts of the Central Drugs Authority as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded annually to the Central Government and that Government shall cause the same to be laid, as soon as may be after it is received, before each House of Parliament.

Annual report.

4M. (1) The Central Drugs Authority shall prepare every year an annual report in such form and manner and at such time as may be prescribed by the Central Government, giving summary of its activities during the previous year and copies of the report shall be forwarded to the Central Government.

(2) A copy of the report forwarded under sub-section (1) shall be laid, as soon as may be after it is received, before each House of Parliament.

Power to make rules.

4N. (1) The Central Government may, after consultation with or on the recommendation of the Central Drugs Authority and subject to previous publication, by notification in the Official Gazette, make rules for the purpose of giving effect to the provisions of this Chapter.

(2) Without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(a) the form and manner in which the accounts of the Central Drugs Authority shall be maintained under sub-section (1) of section 4L;

(b) the form and manner in which and the time within which annual report is to be prepared under sub-section (1) of section 4M.

Power to make regulations.

4-O. (1) The Central Drugs Authority may, with the approval of the Central Government, by notification in the Official Gazette, make regulations consistent with this Act and the rules made thereunder.

(2) In particular, and without prejudice to the generality of the foregoing powers, such regulations may provide for all or any of the following matters, namely:—

(a) the allowances payable to a Member for attending the meetings of the Central Drugs Authority under sub-section (3) of section 4B;

(b) the manner of appointment of the officers and employees of the Central Drugs Authority, their salaries, allowances and pension and other conditions of service under sub-section (2) of section 4H;

(c) the matters specified under clauses (a) and (e) of section 4-I;

(d) the functions of the Central Drugs Laboratory and the functions of the Director of the Central Drugs Laboratory under the proviso to sub-section (1) of section 6.

CHAPTER IB

CLINICAL TRIALS

4P. (1) No person shall initiate or conduct any clinical trial in respect of a new drug or investigational new drug or medical device or investigational medical device or cosmetic or bioavailability or bioequivalence study of any drug in human subjects except under, and in accordance with, the permission granted by the Central Licensing Authority in such manner as may be prescribed.

No clinical trial without permission.

(2) No person shall initiate or conduct any clinical trial unless it is approved by the Ethics Committee constituted under section 4T, in such manner as may be prescribed.

(3) No person shall initiate or conduct any clinical trial before it is registered with the Central Drugs Authority in such manner as may be prescribed.

(4) No permission from the Central Licensing Authority under this Chapter shall be required to initiate or conduct any bioequivalence or bioavailability studies of approved drugs by the Government Institutes, Hospitals, autonomous medical or Pharmacy institutions for academic or research purposes.

4Q. In case of injury or death of a person in course of a clinical trial, whether such injury or death has been caused due to the clinical trial, shall be decided by the Drugs Controller General of India or such authority in such manner as may be prescribed.

Decision.

4R. (1) In case of a person having been injured as a result of his participation in a clinical trial, he shall be provided by the person conducting the clinical trial, such medical treatment in such manner as may be prescribed.

Medical treatment and compensation for injury due to clinical trial.

(2) In case injury or death of a person occurs due to the clinical trial, the person conducting such clinical trial shall give him, or as the case may be, his legal heir, such compensation as may be decided by the Drugs Controller General of India or such authority, in such manner as may be prescribed.

4S. Notwithstanding anything contained in this Chapter, the Central Licensing Authority may, in public interest, abbreviate, defer or omit the pre-clinical and clinical data requirements for approval of clinical trial of drugs indicated in life threatening or serious diseases or diseases of special relevance to the country.

Deferment of clinical data requirements by the Central Licensing Authority.

4T. (1) The Ethics Committee, constituted for the purpose of giving approval to a clinical trial protocol and other related matters, shall be registered with the Central Licensing Authority in such manner as may be prescribed.

Registration of Ethics Committee.

(2) The registration of the Ethics Committee shall be valid for a period of five years and may be renewed in such manner as may be prescribed.

4U. (1) The Ethics Committee shall consist of at least seven members including three or more persons from medical field, one legal expert, one social scientist and one person from community having such qualifications and experience as may be prescribed.

Composition of Ethics Committee.

(2) The Ethics Committee shall appoint, from amongst its members, a Chairperson (who is from outside the institution), and a member-convenor.

4V. (1) The Ethics Committee shall give its approval to the clinical trial protocol and other related documents in such manner as may be prescribed.

Functions and responsibilities of Ethics Committee.

(2) The Ethics Committee shall be responsible to safeguard the rights, safety and well being of all trial participants enrolled in the clinical trial.

(3) The Ethics Committee shall make periodic review of the trial, based on the study progress reports furnished by the investigators, or monitoring and internal

audit reports furnished by the Sponsor, or by visiting the study sites in such manner as may be prescribed.

(4) The Ethics Committee shall have power to revoke its approval to a clinical trial, for reasons to be recorded in writing and shall communicate such decision to the investigator as well as to the Central Licensing Authority.

(5) The Ethics Committee shall perform such other functions and responsibilities as may be prescribed.

Action against
Ethics
Committee.

4W. (1) In case the Ethics Committee fails to discharge its functions and responsibility under this Act, action shall be taken by the Central Licensing Authority against the Ethics Committee for suspension or cancellation of its registration.

(2) On the suspension or cancellation of the registration of the Ethics Committee under sub-section (1), the Central Licensing Authority shall review the approval granted by the Ethics Committee for continuance or otherwise of the clinical trial in such manner as may be prescribed.

(3) If the registration of the Ethics Committee is cancelled under sub-section (1), the members of such Committee shall be disqualified for becoming a member of any other Ethics Committee for a period of five years under this Act.

Inspection by
Drugs Control
Officer, etc.

4X. Any person conducting clinical trial shall allow the Drugs Control Officer or Medical Device Officer of the Central Drugs Authority or any other officer authorised by the Central Licensing Authority to enter with or without prior notice into any premises related to clinical trial to inspect the facilities, any record, data, documents, books, drugs including investigational new drugs, medical devices including investigational medical devices and cosmetics and that officer can seek clarifications, information and records wherever required so as to ensure that the clinical trial is being conducted in accordance with the provisions of this Act and the rules made thereunder.

Disclosure of
name, address,
etc., of persons
involved in
clinical trials.

4Y. Every person, sponsor, clinical research organisation or any other organisation or investigator conducting a clinical trial or his agent shall, if so required, disclose to the Drugs Control Officer or the Medical Device Officer or any other officer authorised by the Central Licensing Authority, the name, address and other particulars of the persons involved in conducting the clinical trials, including the trial participants.

Maintenance
of records and
furnishing of
information.

4Z. Every person, sponsor, clinical research organisation or any other organisation or investigator conducting a clinical trial or his agent holding a permission under this Chapter shall keep and maintain such data, records, registers and other documents as may be prescribed and shall furnish such information as may be required by the Central Drugs Authority or any officer authorised by it.

Penalty for
conducting
clinical trial of
any drug or
investigational
new drug or
any medical
device or in-
vestigational
medical device
without
permission.

4ZA. Whoever, himself or by any other person on his behalf, conducts clinical trial with any drug or investigational new drug or any medical device or investigational medical device in contravention of section 4P and the rules made thereunder, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine which may extend to ten lakh rupees:

Provided that whoever, himself or by any other person on his behalf, conducts clinical trial with any drug or investigational new drug or medical device or investigational medical device in contravention of the provisions of section 4P and the rules made thereunder, which caused grievous hurt to or death of any trial participant of clinical trial, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to ten years and shall also be liable to fine which shall not be less than twenty lakh rupees:

Provided further that the fine imposed under this section shall be paid to the trial participant or, as the case may be, his legal heirs:

Provided also that any person convicted of an offence under this section shall not be permitted to conduct any clinical trial.

4ZB. Whoever, having been convicted of an offence under section 4ZA, is again convicted under that section, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to ten years and shall also be liable to fine which shall not be less than thirty lakh rupees.

Penalty for repeat offence.

4ZC. Whoever, himself or by any other person on his behalf, conducts clinical trials with cosmetics in contravention of section 4P and the rules made thereunder, shall be punishable with imprisonment for a term which shall not be less than two years and shall also be liable to fine which shall not be less than five lakh rupees:

Penalty for conducting clinical trial of cosmetics without permission.

Provided that whoever, himself or by any other person on his behalf, conducts clinical trials with any cosmetics in contravention of the provisions of section 4P and the rules made thereunder, which caused grievous hurt or death of trial participant of the clinical trial shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and shall also be liable to fine which shall not be less than ten lakh rupees:

Provided further that the fine imposed under this section shall be paid to the trial participant or, as the case may be, his legal heirs:

Provided also that any person convicted of an offence under this section shall not be permitted to conduct any clinical trial.

4ZD. Whoever having been convicted of an offence under section 4ZC, is again convicted under that section, shall be punishable with imprisonment for a term which shall not be less than five years and shall also be liable to fine which shall not be less than five lakh rupees.

Penalty for repeat offence.

4ZE. Whoever, himself or by any other person on his behalf, conducts clinical trials with any drug or investigational new drug or medical device or investigational medical device or cosmetic in contravention of conditions of permission issued under section 4P and rules made thereunder shall be punishable with imprisonment for a term which shall not be less than two years and shall also be liable to fine which shall not be less than five lakh rupees:

Penalty for violation of conditions of permission.

Provided that whoever, himself or by any other person on his behalf, conducts clinical trials with any drug or investigational new drug or medical device or investigational medical device or cosmetic in contravention of conditions of permission issued under section 4P and rules made thereunder, which caused resulted in grievous hurt or death of a subject during the clinical trial shall be punished with imprisonment for a term which shall not be less than three years but which may be extended to seven years and shall also be liable to fine which shall not be less than ten lakh rupees:

Provided further that the fine imposed on and realised from the person convicted under this section shall be paid, by way of compensation to the legal heirs of the person who had suffered the grievous hurt or death during such clinical trial referred to in this clause:

Provided also that whoever, having been convicted of an offence under this section shall be debarred from conducting any further clinical trial.

4ZF. Whoever, having been convicted of an offence under section 4ZE, is again convicted of an offence under that section, shall be punished with imprisonment for a term which shall not be less than five years and fine which shall not be less than ten lakh rupees.

Penalty for repeat offence.

Penalty for failure to provide compensation.

4ZG. Whoever responsible to provide compensation for clinical trial related injury or death under this chapter fails to do so, he shall be punishable with imprisonment which may extend to two years and with fine which shall not be less than twice the amount of the compensation.

Penalty for contravention of any provision of this chapter.

4ZH. Whoever initiates or conducts clinical trial of any drug or investigational new drug or medical device or investigational medical device or cosmetic in contravention to any provisions under this Chapter not covered under section 4P, section 4Q, section 4R, section 4S, section 4T, section 4U, section 4W, section 4X, section 4Y or section 4Z or any other rules made under this chapter shall be punishable with imprisonment which may extend to two years and with fine which shall not be less than fifty thousand rupees.

Confiscation of stock, etc.

4ZI. Where any person has been convicted for contravening any provision of this Chapter or any rule made thereunder, the stock of the drug or investigational new drug or medical device or investigational medical device or cosmetic in respect of which the contravention has been made as well as any implements or machinery, vehicle, vessel or other conveyances used in or for the purposes of conducting clinical trials shall be liable to confiscation.

Cognizance of offences.

4ZJ. (1) No prosecution under this Chapter shall be instituted, except on a complaint made by—

(a) a Drugs Control Officer or a Medical Device Officer appointed by the Central Drugs Authority; or

(b) a gazetted officer of the Central Government authorised by that Government by an order made in this behalf; or

(c) the person aggrieved; or

(d) any recognised consumer association.

(2) Nothing contained in this Chapter shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Chapter.

Powers of Central Government to make rules.

4ZK. (1) The Central Government may, after consultation with the Central Drugs Authority, and after previous publication, by notification in the Official Gazette, make rules to provide for—

(a) the guidelines and requirements for conducting clinical trials;

(b) the forms and fees for the purposes of this Chapter;

(c) the conditions for issue of the permission under section 4P;

(d) the norms and procedure for approval of any clinical trial by the Ethics Committee under sub-section (2) of section 4P and sub-section (1) of section 4V;

(e) the norms and procedure for registration of any clinical trial under sub-section (3) of section 4P;

(f) the manner in which the Central Licensing Authority shall review the approval granted by the Ethics Committee for continuance of clinical trial under sub-section (2) of section 4W;—

(g) the records, registers or other documents to be kept and maintained under this Chapter;

(h) the manner in which copies of documents relating to clinical trial are to be obtained and certified;

(i) the conditions subject to which small quantities of drugs or cosmetics or medical devices may be imported or manufactured for the purpose of conducting clinical trials;

(j) the powers and duties of Drugs Control Officers or Medical Device Officers;

(k) the norms and procedures for deciding whether injury or death of a trial participant has been caused due to clinical trial, under section 4Q;

(l) the norms and procedures for providing medical treatment to the trial participants under sub-section (1) of section 4R;

(m) the norms and procedures for providing compensation to the trial participants or their legal heirs under sub-section (2) of section 4R;

(n) the norms and procedures for registration and renewal of Ethics Committees under section 4T;

(o) additional functions and responsibilities of the Ethics Committee under sub-section (5) of section 4V;

(p) the norms and procedures for conducting inspections relating to conduct of clinical trials under sections 4X and 4Y.

4ZL. Nothing contained in this Chapter shall apply to Ayurvedic, Homeopathy, Siddha or Unani drugs.’.

Chapter not to apply to Ayurvedic, Homeopathy, Siddha or Unani drugs.

8. In Chapter II of the principal Act, for the Chapter heading “THE DRUGS TECHNICAL ADVISORY BOARD, THE CENTRAL DRUGS LABORATORY AND THE DRUGS CONSULTATIVE COMMITTEE”, the Chapter heading “TECHNICAL ADVISORY BOARDS, CENTRAL DRUGS LABORATORIES AND CONSULTATIVE COMMITTEE” shall be substituted.

Substitution of new heading for Chapter II.

9. In section 5 of the principal Act,—

Amendment of section 5.

(a) in sub-section (1),—

(i) for the words “as soon as may be, constitute”, the words “, by notification in the Official Gazette, constitute” shall be substituted;

(ii) after the words “to advise the Central Government”, the words “, the Central Drugs Authority” shall be inserted;

(b) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) The Board shall consist of the following members, namely:—

(i) the Director General of Health Services, *ex officio*, who shall be Chairperson;

(ii) the Drugs Controller General of India, *ex officio*;

(iii) one Director of the Central Drugs Laboratory to be nominated by the Central Government, *ex officio*;

(iv) the Director of the Indian Veterinary Research Institute, Izatnagar, *ex officio*;

(v) two experts to be nominated by the Central Government from amongst persons who are in charge of drugs control in the States;

(vi) one expert, to be elected by the Executive Committee of the Pharmacy Council of India, from amongst teachers in pharmacy or pharmaceutical chemistry or pharmacognosy on the staff of an Indian University or a college affiliated thereto;

(vii) one expert, to be elected by the authority established for regulating the medical education, from amongst teachers in medicine or therapeutics on the staff of an Indian University or a college affiliated thereto;

(viii) one person to be nominated by the Central Government from the pharmaceutical industry;

(ix) one pharmacologist to be elected by the Governing Body of the Indian Council of Medical Research;

(x) one person to be elected by the Central Council of the Indian Medical Association;

(xi) two Government Analysts appointed under this Act, to be nominated by the Central Government;

(xii) the Director of the National Institute of Biologicals, *ex officio*;

(xiii) the Secretary-cum-Scientific Director of Indian Pharmacopoeia Commission, *ex officio*;

(xiv) the Director of a National Institute of Pharmaceutical Education and Research to be nominated by the Department of Pharmaceuticals;

(xv) one expert to be nominated by the Department of Bio-technology;

(xvi) one expert to be nominated by the Central Government from the Medical institutes or institutions controlled by the Central Government or State Governments from amongst persons involved in the conduct of clinical trials;

(xvii) one person representing recognised consumer associations or consumer interests to be nominated by the Ministry of Consumer Affairs.”;

(c) in sub-section (3),—

(i) for the words “but shall be eligible for re-nomination and re-election”, the words “and shall be eligible for re-nomination or, as the case may be, re-election for not more than two consecutive terms” shall be substituted;

(ii) in the proviso, for the words, brackets and figures “clause (ix) or clause (x) or clause (xi) or clause (xvi) of sub-section (2)”, the words, brackets and figures “clause (v) or clause (vi) or clause (vii) or clause (xi) of sub-section (2)” shall be substituted;

(d) in sub-section (4), after the words “The Board may”, the words “in consultation with the Central Drugs Authority and” shall be inserted;

(e) for sub-section (7), the following sub-section shall be substituted, namely:—

“(7) The Central Drugs Authority shall appoint a person to be the Secretary of the Board and shall provide the Board with such staff as the Central Drugs Authority considers necessary.”.

10. After section 5 of the principal Act, the following section shall be inserted, namely:—

“5A. (1) The Central Government shall, by notification in the Official Gazette, constitute, a Medical Devices Technical Advisory Board to advise the Central Government, the Central Drugs Authority and State Governments on technical matters

Insertion of
new section 5A.

Constitution
of Medical
Devices
Technical
Advisory
Board.

pertaining to medical devices, arising out of the administration of this Act and to carry out other functions assigned to it by or under this Act.

(2) The Board shall consist of the following members, namely:—

(a) the Director General, Indian Council of Medical Research, who shall be the Chairperson, *ex officio*;

(b) the Drugs Controller General of India, *ex officio*;

(c) one expert each from the following, having qualifications and experience in the field of medical devices, to be nominated by—

(i) the Department of Science and Technology;

(ii) the Department of Atomic Energy;

(iii) the Department of Electronic and Information Technology;

(iv) the Central Government from the Government testing laboratories connected with the testing of medical devices;

(v) the Indian Council of Medical Research;

(vi) the Bureau of Indian Standard;

(vii) the Defence Research and Development Organisation;

(d) one expert from the field of biomedical technology from recognised technical educational institutions, to be nominated by the Central Government;

(e) one expert from the field of biomaterial or polymer technology from recognised technical educational institutions, to be nominated by the Central Government;

(f) one person representing recognised consumer associations to be nominated by the Ministry of Consumer Affairs;

(g) one pharmacologist to be nominated by the Central Government from recognised medical or research institute in the field of medical devices;

(h) one expert to be nominated by the Central Government from recognised medical or research institute from amongst persons involved in conduct of clinical trials;

(i) one person to be nominated by the Central Government from the medical device industry.

(3) The nominated members of the Board shall hold office for a period of three years, and shall be eligible for re-nomination for not more than two consecutive terms:

Provided that the person nominated under clause (c) of sub-section (2) shall hold office for so long as he holds the appointment of the office by virtue of which he was nominated as a member of the Board.

(4) The Board may, in consultation with the Central Drugs Authority, and subject to the previous approval of the Central Government, make bye-laws fixing quorum and regulating its own procedure and the conduct of all business to be transacted by it.

(5) The Board may constitute sub-committees and may appoint to such sub-committees for such periods not exceeding three years, as it may decide, for the consideration of particular matters, persons who are not members of the Board.

(6) The functions of the Board may be exercised notwithstanding any vacancy therein.

(7) The Central Drugs Authority shall appoint a person to be the Secretary of the Board and shall provide the Board with such staff as the Central Drugs Authority considers necessary.”.

Amendment
of section 6.

11. In section 6 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) The Central Drugs Authority may, with the prior approval of the Central Government, establish a Central Drugs Laboratory under the control of a Director to be appointed by the Central Drugs Authority, to carry out the functions entrusted to it by this Act or any rules made thereunder:

Provided that the Central Drugs Authority may, in consultation with the Central Government, specify by regulations the functions of the Central Drugs Laboratory in respect of any drug or class of drugs or cosmetic or class of cosmetics or medical device or class of medical devices to be performed by any other laboratory and the powers of the Director of the Central Drugs Laboratory shall be exercised by the Director of the laboratory to whom the functions have been assigned.”;

(1A) The Central Drugs Authority may, by notification, designate any Central Drugs Laboratory—

(a) for testing of drugs or class of drugs or cosmetics or class of cosmetics or medical devices or class of medical devices;

(b) as an Appellate Laboratory for testing of drugs or class of drugs or cosmetics or class of cosmetics or medical devices or class of medical devices;

(b) in sub-section (2),—

(i) in the opening portion, for the words “after consultation with the Board”, the words “in consultation with the Central Drugs Authority” shall be substituted;

(ii) in clause (d), for the words, figures and letter “under Chapter IV or Chapter IVA of samples of drugs or cosmetics”, the words, figures and letters “under Chapter IIA, Chapter III, Chapter IV or Chapter IVA of samples of drugs or cosmetics or medical devices” shall be substituted.

Substitution of
new section
for section 7.

12. For section 7 of the principal Act, the following section shall be substituted, namely:—

Drugs,
Cosmetics and
Medical
Devices
Consultative
Committee.

7. (1) The Central Government may constitute an advisory committee to be called “the Drugs, Cosmetics and Medical Devices Consultative Committee” to advise the Central Government, the Central Drugs Authority, the State Governments, the Drugs Technical Advisory Board and the Medical Device Technical Advisory Board on any matter tending to secure uniformity throughout India in the administration of this Act.

(2) The Drugs, Cosmetics and Medical Devices Consultative Committee shall consist of the following members, namely:—

(a) the Drugs Controller General of India, who shall be the chairperson, *ex officio*;

(b) two representatives of the Central Drugs Authority nominated by it;

(c) the Secretary-cum-Scientific Director of the Indian Pharmacopoeia Commission;

(d) one representative of the Pharmaceuticals Export Promotion Council nominated by it;

(e) one representative of the Department of Revenue, Ministry of Finance, Government of India dealing with the administration of the Narcotic Drugs and Psychotropic Substances Act, 1985; and

(f) one representative of each State Government who is in-charge of the matters relating to regulation of drugs, cosmetics and medical devices in that State.

(3) The Drugs, Cosmetics and Medical Devices Consultative Committee shall meet at least twice in a year or when required to do so by the Central Government or, as the case may be, the Central Drugs Authority and shall have power to regulate its own procedure.

13. After Chapter II of the principal Act, the following Chapter shall be inserted, namely:—

Insertion of new Chapter IIA.

‘CHAPTER IIA

IMPORT, MANUFACTURE, SALE, DISTRIBUTION AND EXPORT OF MEDICAL DEVICES

7B. For the purposes of this Chapter, the expression “standard quality” in relation to medical device, means the medical device which conforms such standards as may be prescribed.

Standards quality of medical device.

7C. For the purposes of this Chapter, a medical device shall be deemed to be misbranded—

Misbranded medical device.

(a) if it is so coloured, coated, or polished so as to conceal any damage or if it is made to appear of better or greater therapeutic or functional value than it really is; or

(b) if it is not labelled in the prescribed manner; or

(c) if its label or container or anything accompanying the medical device bears any statement, design or device which makes any false claim.

7D. For the purposes of this Chapter, a medical device shall be deemed to be adulterated—

Adulterated medical device.

(a) if it consists, in whole or in part, of rusted or corroded or filthy or putrid or decomposed substance; or

(b) if it has been prepared, packed or stored under insanitary conditions whereby it may have been rendered injurious to health; or

(c) if it contains any harmful or toxic substance or parts which may render it dangerous to use or injurious to health; or

(d) if any substance or part has been mixed or added thereto or substituted or removed therefrom so as to reduce its quality or strength or which may render it dangerous to use or injurious to health; or

(e) if its container is composed, in whole or in part, of any deleterious substance which may render it dangerous to use or injurious to health.

7E. For the purposes of this Chapter, a medical device shall be deemed to be spurious—

Spurious medical device.

(a) if it is imported, manufactured, sold, distributed or exported under a name which belongs to another medical device; or

(b) if it is an imitation of, or a substitute for, another medical device or resembles another medical device in a manner likely to deceive or bears upon it or upon its label or container the name of another medical device unless it is plainly and conspicuously marked so as to reveal its true character and its lack of identity with such other medical device; or

(c) if the label or the container bears the name of an individual or firm or company purporting to be the manufacturer of the medical device, which individual or firm or company is fictitious or does not exist; or

(d) if it has been substituted wholly or in part by another medical device or substance; or

(e) if it purports to be the product of a manufacturer of whom it is not truly a product.

7F. (1) No person shall himself or by any other person on his behalf,—

(a) import, or manufacture for sale or for export, or export—

(i) any medical device which is not of standard quality;

(ii) any misbranded medical device;

(iii) any adulterated medical device;

(iv) any spurious medical device;

(v) any software or part or component or instrument or the list of the software or part or ingredient or instrument contained in it, unless displayed in the prescribed manner on the label or container thereof;

(vi) any medical device which by means of any statement, design or accessory accompanying it or by any other means, purports or claims to cure or mitigate any such disease or ailment, or to have any such other effect;

(vii) any medical device containing any component which may render it unsafe or harmful for use under the directions indicated or recommended;

(viii) any medical device which has been imported or manufactured in contravention of any of the provisions of this Chapter or rules made thereunder;

(b) import or manufacture for sale or for export, or export any medical device, except under, and in accordance with the conditions of, a licence or certificate issued by the Central Licensing Authority for the purpose of this Chapter in such manner and on such conditions as may be prescribed:

Provided that nothing contained in clause (a) shall apply to import or manufacture of any medical device in small numbers for the purpose of examination, test, analysis, demonstration or for personal use subject to such conditions as may be prescribed:

Provided further that the Central Government may, in consultation with the Central Drugs Authority, by notification in the Official Gazette, permit, subject to any conditions specified therein, the import or manufacture of any medical device or class of medical devices not approved in the country or not of standard quality for sale or for distribution, stocking or exhibiting or offering for sale or distribution of such medical device under this Act.

Prohibition of import, manufacture and export of certain medical devices.

(2) No person shall himself or by any other person on his behalf—

(a) sell, or stock or distribute or exhibit or offer for sale any medical device referred to in clause (a) of sub-section (1);

(b) sell, or stock or exhibit or offer for sale or distribute any medical device which has been imported or manufactured in contravention of any of the provisions of this Act or any rule made thereunder;

(c) sell, or stock or exhibit or offer for sale or distribute any medical device, except under, and in accordance with the conditions of, a licence issued by the State licensing authorities for the purposes of this Chapter in such manner and on such conditions as may be prescribed.

(3) The State Government may, for the purposes of this Chapter by notification, in the official Gazette, designate one or more person, having such qualifications and experience, as the State Licensing Authority, with such powers and functions and on such terms and conditions, as may be prescribed.

52 of 1962.

7G. (1) The law for the time being in force relating to customs and to goods, the import of which is prohibited by the Customs Act, 1962 or rules made or notifications issued thereunder or any other law for the time being in force shall, subject to the provisions of section 7J, section 7K and section 7L of this Act, apply in respect of medical device, the import of which is prohibited under this Chapter, and officers of Customs and officers empowered under that Act or law to perform the duties imposed thereby on a Customs Collector and other officers of Customs, shall have the same powers in respect of such medical device as they have for the time being in respect of such goods as aforesaid.

Application of law relating to sea customs and powers of Customs Officers.

(2) Without prejudice to the provisions of sub-section (1), the Commissioner of Customs or any officer of the Government authorised by the Central Government in this behalf, may detain any imported package which he suspects to contain any medical device, the import of which is prohibited under this Chapter or any other law for the time being in force and shall forthwith report such detention to the Drugs Controller General of India and, if necessary, forward the package or sample of any suspected medical device found therein to the Laboratory prescribed for the purpose:

Provided that in the event of that package or sample of that medical device found in contravention of any of the provisions of this Chapter or any rule made thereunder, the same shall not be allowed to be imported from that or any other port of entry in the country.

7H. (1) The Central Drugs Authority may, by notification in the Official Gazette, appoint such persons, as it thinks fit, having such qualification and experience as may be prescribed, to be the Medical Device Officers for such areas as may be assigned to them by the Central Drugs Authority.

Medical Device Officers and their duties and powers.

(2) The powers which may be exercised by a Medical Device Officer and the duties which may be performed by him, the medical devices or classes of medical devices in relation to which and the conditions, limitations or restrictions subject to which, such powers and duties may be exercised or performed shall be such as may be prescribed.

(3) No person who has any financial interest in the import, export, manufacture or sale of medical devices shall be appointed to be a Medical Device Officer under this section.

45 of 1860.

(4) Every Medical Device Officer shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code and shall be officially subordinate to such authority having the prescribed qualifications, as the Central Drugs Authority may specify in this behalf.

Power of Central Government to regulate, restrict or prohibit import or manufacture, etc., of medical device in public interest. Offences for import, manufacture, sale, etc., of medical device in contravention of this Chapter.

7-I. Without prejudice to any other provisions contained in this Chapter, if the Central Government is satisfied that the use of any medical device is likely to involve any risk to human beings or animals or that any medical device does not have the functional value claimed or purported to be claimed for it or which is not safe or effective for use or for which there is no functional justification and that in the public interest it is necessary or expedient so to do, then, it may, by notification in the Official Gazette, regulate, restrict or prohibit the import or manufacture, sale or distribution of such medical device.

7J. Whoever, himself or by any other person on his behalf, imports or manufactures for sale or for export or for distribution or sells or exports or stocks or exhibits or offer for sale,—

(a) any medical device deemed to be adulterated under section 7D or spurious under section 7E and which when used by any person for or in the diagnosis, treatment, mitigation, or prevention of any disease or disorder is likely to cause his death or is likely to cause such bodily harm which amount to grievous hurt within the meaning of section 320 of the Indian Penal Code, solely on account of such medical device being spurious or not of standard quality, as the case may be, shall be punishable with imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine which shall not be less than ten lakh rupees or three times value of the medical device confiscated, whichever is more:

45 of 1860.

Provided that the fine imposed under this clause shall be paid to the person who had used the adulterated or spurious medical device:

Provided further that where the use of adulterated or spurious medical device referred to in this clause has caused the death of a person who used such medical device, the fine imposed shall be paid to his legal heir;

(b) any medical device—

(i) deemed to be adulterated under section 7D or misbranded under section 7C, but not being a medical device referred to in clause (a); or

(ii) without a valid licence as required under clause (b) of sub-section (1) or clause (c) of sub-section (2) of section 7F,

shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and shall also be liable to fine which shall not be less than one lakh rupees or three times the value of the medical device confiscated, whichever is more:

Provided that the court may, for any adequate and special reasons, to be recorded in the judgment, impose a sentence of imprisonment for a term of less than three years and of fine of less than one lakh rupees;

(c) any medical device deemed to be spurious under section 7E, but not being a medical device referred to in clause (a) shall be punishable with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and shall also be liable to fine which shall not be less than five lakh rupees or three times the value of the medical device confiscated, whichever is more:

Provided that the court may, for any adequate and special reasons, to be recorded in the judgment, impose a sentence of imprisonment for a term of less than seven years but not less than three years and of fine of less than one lakh rupees;

(d) any medical device, other than a medical device referred to in clause (a) or clause (b) or clause (c), in contravention of any other provisions of this Chapter or any rule made thereunder, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to two years and shall also be liable to fine which shall not be less than one lakh rupees.

7K. Whoever himself or by any other person on his behalf imports or manufactures or sells or exports or distributes any medical device in contravention of the provisions of any notification issued under section 7-I, shall be punishable with imprisonment for a term which shall not be less than three years and shall also be liable to fine which shall not be less than one lakh rupees.

Penalty for import, manufacture, etc., of medical device in contravention of section 7-I.

7L. (1) Whoever having been convicted of an offence,—

(a) under clause (b) of section 7J, is again convicted of an offence under that clause shall be punishable with imprisonment for a term which shall not be less than seven years but which may extend to ten years and shall also be liable to fine which shall not be less than two lakh rupees:

Penalty for repeat offences.

Provided that the court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than seven years and of fine of less than one lakh rupees;

(b) under clause (c) of section 7J, is again convicted of an offence under that clause shall be punishable with imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine which shall not be less than ten lakh rupees;

(c) under clause (d) of section 7J, is again convicted of an offence under that clause shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to five years and shall also be liable to fine which shall not be less than two lakh rupees.

(2) Whoever having been convicted of an offence under section 7K is again convicted of an offence under that clause shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and shall also be liable to fine which shall not be less than two lakh rupees.

7M. (1) Where any person has been convicted under this Chapter for contravening any provision of this Chapter or any rule made thereunder, the stock of the medical device in respect of which the contravention has been made shall be liable to confiscation and if such contravention is in respect of—

Confiscation.

(a) import or manufacture of any medical device deemed to be misbranded under section 7C or adulterated under section 7D or spurious under section 7E; or

(b) import or manufacture for sale or for export or for distribution, sale, export or stocking or exhibiting or offering for sale or for export, or distribution of any medical device without a valid licence as required under clause (b) of sub-section (1) or clause (c) of sub-section (2) of section 7F,

any implements or machinery used in such import or manufacture, sale, export or distribution and any receptacles, packages or coverings in which such medical device is contained and the animals, vehicles, vessels or other conveyances used in carrying such medical device shall also be liable to confiscation.

(2) Without prejudice to the provisions contained in sub-section (1) where the court is satisfied, on the application of a Medical Device Officer or otherwise and after such inquiry as may be necessary that the medical device is not of standard quality

is a misbranded, adulterated or spurious medical device, such medical device shall be liable to confiscation.

Powers of
Central
Government
to make rules.

7N. The Central Government may after consultation with or on the recommendation of the Central Drugs Authority and subject to previous publication, by notification in the Official Gazette, make rules for the purpose of giving effect to the provisions of this Chapter which may—

(a) provide for classification of medical devices into different classes based on the degree of risk associated with their use or application;

(b) prescribe standards for different classes of medical devices and the organisations or bodies for developing such standards;

(c) prescribe procedures for assessment of conformity to the standards and quality assurance;

(d) provide for use of standards as prescribed from time to time for manufacturing or developing new medical device;

(e) prescribe conditions for import or manufacture of custom made devices and devices for clinical investigations;

(f) prescribe procedures for reporting adverse events, post marketing surveillance and recall of medical devices;

(g) prescribe requirements for approval of laboratories, institutions or bodies for carrying out conformity assessment of medical devices;

(h) prescribe procedures for overseas inspections;

(i) prescribe the qualifications of Medical Device Officer and Government Analysts for medical devices;

(j) prescribe the methods of test or analysis to be employed in determining whether a medical device is of standard quality;

(k) prescribe the forms of licences or the certificates, as the case may be, for import, manufacture for sale, for distribution or for export or for sale, of medical devices, the form of application for such licences or certificates, as the case may be, the conditions subject to which such licences or certificates, as the case may be, may be issued, the authority empowered to issue the same, the qualification of such authority and the fees payable therefor and provide for the suspension or cancellation of such licences in any case where any provision of this Chapter or the rules made thereunder is contravened or any of the conditions subject to which they are issued is not complied with;

(l) prescribe the records, registers or other documents to be kept and maintained;

(m) prescribe the fees for the inspection including overseas inspection (for the purposes of grant or renewal of licence) of premises, wherein any medical device is being or is proposed to be manufactured;

(n) prescribe the manner in which copies are to be certified;

(o) specify the diseases or ailments or conditions which a medical device may not purport or claim to prevent, cure or mitigate and such other effects which a medical device may not purport or claim to have;

(p) prescribe the conditions subject to which small quantities of medical device may be imported or manufactured for the purpose of examination, test, analysis, demonstration or for personal use;

(q) require the date of manufacture and the date of validity or expiry to be clearly or truly stated on the label or container of any specified medical device or class of medical device, and prohibit the sale, import, export, stocking or exhibition for sale or for export, or distribution of the said medical device or class of medical device after the expiry of a specified period from the date of manufacture or after the expiry of the date of validity or expiry as applicable;

(r) prescribe the conditions to be observed in the packing in packages, and other containers of medical device, including the use of packing material which comes into direct contact with the medical device and prohibit the sale, import, stocking or exhibition for sale or for export, or distribution of medical device packed in contravention of such conditions;

(s) regulate the mode of labelling of packed medical device, and prescribe the matter which shall or shall not be included in such labels;

(t) prescribe the powers and duties of Medical Device Officers and the qualifications of the authority to which such Medical Device Officers shall be subordinate and specify the medical device or classes of medical device in relation to which and the conditions, limitations or restrictions subject to which, such powers and duties may be exercised or performed;

(u) prescribe the forms of report to be given by the prescribed laboratory, and the manner of application for test or analysis and the fees payable therefor;

(v) provide for the exemption, conditionally or otherwise, from all or any of the provisions of this Chapter or the rules made thereunder, of any specified medical device or class of medical device;

(w) specify the places at which medical device may be imported, and prohibit their import at any other place;

(x) regulate the submission by importers, and the securing of samples of such medical device, as may be specified, for examination, test or analysis by the prescribed laboratory, and specify the fees, if any, payable for such examination, test or analysis;

(y) specify the evidence to be supplied, whether by accompanying documents or otherwise, of the quality of medical device sought to be imported, the procedure for officers of Customs in dealing with such evidence, and the manner of storage at places of import of medical device detained pending admission;

(z) provide for the exemption, conditionally or otherwise, from all or any of the provisions of this Chapter and the rules made thereunder of medical device imported for the purpose only of transport through, and export from, India;

(za) require that the accepted scientific name of any specified software or part or instrument shall be displayed in the prescribed manner on the label or wrapper of any imported, medical device containing such part or ingredient or instrument;

(zb) prescribe procedures for assigning unique identification number to medical devices;

(zc) specify the offences against this Chapter or any rule made thereunder in relation to which an order of confiscation may be made under section 7M;

(zd) sum which may be specified by the Central Government under section 32-B'.

- Amendment of section 8. **14.** In section 8 of the principal Act, in sub-section (2), for the word “Board”, the words “Central Drugs Authority” shall be substituted.
- Insertion of new section 9E. **15.** After section 9D of the principal Act, the following section shall be inserted, namely:—
- Adulterated Cosmetics. **“9E.** For the purposes of this Chapter, a cosmetic shall be deemed to be adulterated,—
- (a) if it consists, in whole or in part, of any filthy, putrid or decomposed substance; or
- (b) if it has been prepared, packed or stored under insanitary conditions whereby it may have been contaminated with filth or whereby it may have been rendered injurious to health; or
- (c) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or
- (d) if it bears or contains, for purposes of colouring only, a colour other than one which is prescribed; or
- (e) if it contains any harmful or toxic substance which may render it injurious to health; or
- (f) if any substance has been mixed therewith so as to reduce its quality or strength.”.
- Amendment of section 10. **16.** In section 10 of the principal Act,—
- (i) after clause (bb), the following clause shall be inserted, namely:—
- “(bba) any adulterated cosmetic;”;
- (ii) in the second proviso, for the word “Board”, the words “Central Drugs Authority” shall be substituted.
- Amendment of section 11. **17.** In section 11 of the principal Act, in sub-section (2), the following proviso shall be inserted, namely:—
- “Provided that in the event of that package or sample of that drug or cosmetic found in contravention of any of the provisions of this Chapter or any rule made thereunder, the same shall not be allowed to be imported from that or any other port of entry in the country.”.
- Amendment of section 12. **18.** In section 12 of the principal Act, in sub-section (1), for the word “Board”, wherever it occurs, the words “Central Drugs Authority” shall be substituted.
- Substitution of new section for section 13. **19.** For section 13 of the principal Act, the following sections shall be substituted, namely:—
- Penalty for import of drugs or cosmetics in contravention of this Chapter. **“13.** Whoever, himself or by any other person on his behalf, imports,—
- (a) any drug deemed to be adulterated under section 9A or spurious under section 9B and which when used by any person for or in the diagnosis, treatment, mitigation, or prevention of any disease or disorder is likely to cause his death or is likely to cause such bodily harm which amount to grievous hurt within the meaning of section 320 of the Indian Penal Code, solely on account of such drug being adulterated or spurious or not of standard quality, as the case may be, shall be punishable with imprisonment for a term which shall not be less than ten

years but which may extend to imprisonment for life and shall also be liable to fine which shall not be less than ten lakh rupees or three times value of the drugs confiscated, whichever is more:

Provided that the fine imposed under this clause shall be paid to the person who had used the adulterated or spurious drugs:

Provided further that where the use of adulterated or spurious drugs referred to in this clause has caused the death of a person who used such drugs, the fine imposed shall be paid to his legal heir;

(b) any drug—

(i) deemed to be adulterated under section 9A, but not being a drug referred to in clause (a); or

(ii) without a valid licence as required under clause (c) of section 10,

shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and shall also be liable to fine which shall not be less than one lakh rupees or three times the value of the drugs confiscated, whichever is more:

Provided that the court may, for any adequate and special reasons, to be recorded in the judgment, impose a sentence of imprisonment for a term of less than three years and of fine of less than one lakh rupees;

(c) any drug deemed to be spurious under section 9B, but not being a drug referred to in clause (a) shall be punishable with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and shall also be liable to fine which shall not be less than three lakh rupees or three times the value of the drugs confiscated, whichever is more:

Provided that the court may, for any adequate and special reasons, to be recorded in the judgment, impose a sentence of imprisonment for a term of less than seven years but not less than three years and of fine of less than one lakh rupees;

(d) any drug, other than a drug referred to in clause (a) or clause (b) or clause (c), in contravention of any other provisions of this Chapter or any rule made thereunder, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to two years and shall also be liable to fine which shall not be less than one lakh rupees:

Provided that the court may, for any adequate and special reasons, to be recorded in the judgment impose a sentence of imprisonment for a term of less than one year;

(e) any cosmetic deemed to be adulterated under section 9E or spurious under section 9D and which when used by any person is likely to cause his death or is likely to cause such bodily harm which amount to grievous hurt within the meaning of section 320 of the Indian Penal Code, solely on account of such cosmetics being adulterated or spurious or not of standard quality, as the case may be, shall be punishable with imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine which shall not be less than ten lakh rupees or three times value of the cosmetics confiscated, whichever is more:

Provided that the fine imposed under this clause shall be paid to the person who had used the adulterated or spurious cosmetic:

Provided further that where the use of adulterated or spurious cosmetic referred to in this clause has caused the death of a person who used such cosmetic, the fine imposed shall be paid to his legal heir;

(f) any cosmetic,—

(i) deemed to be spurious under section 9D or adulterated under section 9E but not being a cosmetic referred to in clause (e);

(ii) without a valid licence as required under clause (c) of section 10,

shall be punishable with imprisonment for a term which shall not be less than two years and shall also be liable to fine which shall not be less than fifty thousand rupees;

(g) any cosmetic other than a cosmetic referred to in clause (e) or clause (f), the import of which is prohibited under section 10, or any rule made under this Chapter, shall be punishable with imprisonment for a term which shall not be less than one year and shall also be liable to fine which shall not be less than twenty thousand rupees;

(h) any cosmetic in contravention of the provisions of any notification issued under section 10A, shall be punishable with imprisonment for a term which shall not be less than two years and shall also be liable to fine which shall not be less than fifty thousand rupees.

13A. Whoever having been convicted of an offence—

(a) under clause (b) of section 13 is again convicted of an offence under that clause, shall be punishable with imprisonment for a term which shall not be less than seven years but which may extend to ten years and shall also be liable to fine which shall not be less than two lakh rupees:

Provided that the court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than seven years and of fine of less than one lakh rupees;

(b) under clause (c) of section 13 is again convicted of an offence under that clause shall be punishable with imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine which shall not be less than three lakh rupees;

(c) under clause (d) of section 13 is again convicted of an offence under that clause shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to four years and shall also be liable to fine which shall not be less than fifty thousand rupees;

(d) under clause (f) or clause (g) or clause (h) of section 13 is again convicted under that clause, shall be punishable with imprisonment for a term which shall not be less than three years, and shall also be liable to fine which shall not be less than one lakh rupees;

Penalty for repeat offences.

Amendment of section 16.

20. In section 16 of the principal Act, in sub-section (2), for the word “Board”, the words “Central Drugs Authority” shall be substituted.

Substitution of new section for section 18.

21. For section 18 of the principal Act, the following section shall be substituted, namely:—

Prohibition of manufacture and sale of certain drugs and cosmetics.

“18. (1) Save as otherwise provided in sub-section (3), no person shall himself or by any other person on his behalf—

(a) manufacture for sale or for export or for distribution, or sell, or stock or exhibit or offer for sale or distribute—

(i) any drug which is not of a standard quality, or is misbranded, adulterated or spurious;

(ii) any cosmetic which is not of a standard quality, or is misbranded, adulterated or spurious;

(iii) any patent or proprietary medicine, unless there is displayed in the prescribed manner on the label or container thereof the true formula or list of active ingredients contained in it together with the quantities thereof;

(iv) any drug which by means of any statement, design or device accompanying it or by any other means, purports or claims to prevent, cure or mitigate any such disease or ailment, or to have any such other effect as may be prescribed;

(v) any cosmetic containing any ingredient which may render it unsafe or harmful for use under the directions indicated or recommended;

(vi) any drug or cosmetic in contravention of any of the provisions of this Chapter or any rule made thereunder;

(b) sell, or stock or exhibit or offer for sale, or distribute any drug or cosmetic which has been imported or manufactured in contravention of any of the provisions of this Act or any rule made thereunder;

(c) manufacture for sale or for export or for distribution, or sell, or stock or exhibit or offer for sale, or distribute any drug or cosmetic, except under, and in accordance with the conditions of a licence issued for such purposes under this Chapter:

Provided that no licence for manufacture of any new drug shall be issued except in accordance with the prior permission granted by the Central Licensing Authority, in such manner as may be prescribed:

Provided further that the State Licensing Authority shall, before issuing any licence for manufacture of any new drug, ensure that the permission from the Central Licensing Authority is obtained:

Provided also that nothing in this section shall apply to the manufacture, subject to prescribed conditions, of small quantities of any drug for the purpose of examination, test or analysis:

Provided also that the Central Government may, after consultation with the Central Drugs Authority, by notification in the Official Gazette, permit, subject to any condition specified in the notification, the manufacture for sale, or for distribution, sale, stocking or exhibiting or offering for sale or distribution of any drug or class of drugs not being of standard quality.

(2) The State Government may for the purposes of this Chapter by notification in the Official Gazette, designate one or more person, having such qualifications and experience, as the State Licensing Authority, with such powers and functions and on such terms and conditions, as may be prescribed.

(3) On and from the commencement of the Drugs and Cosmetics (Amendment) Act, 2013, the Central Licensing Authority shall have power to issue a licence or a certificate, as the case may be, for the manufacture for sale or for export of drugs specified in the Third Schedule to this Act:

Provided that no licence for manufacture of any drug specified under the Third Schedule shall be issued by the State Licensing Authorities.

(4) The Central Government, after consultation with the Central Drugs Authority and after giving by notification in the Official Gazette not less than

three months' notice of its intention so to do, may by a like notification add to or otherwise amend the Third Schedule for the purposes of this Chapter, and thereupon the Third Schedule shall be deemed to be amended accordingly.

Amendment of section 18A.

22. In section 18A of the principal Act,—

(a) for the words “drug or cosmetic”, at both the places where they occur, the words “drug or cosmetic or medical device” shall be substituted;

(b) after the word “Inspector”, the words “or Medical Device Officer” shall be inserted.

Amendment of section 18B.

23. In section 18B of the principal Act, for the words, brackets, letter and figures “clause (c) of section 18”, the words, brackets, letter and figures “clause (b) of sub-section (1) or clause (c) of sub-section (2) of section 7F or clause (c) of section (10) or clause (c) of sub-section (1) of section 18” shall be substituted.

Insertion of new sections 18D, 18E and 18F.

24. After section 18C of the principal Act, the following sections shall be inserted, namely:—

“18D. No drug or cosmetic or medical device shall be exported except in accordance with the conditions of a permission or licence or certificate, as the case may be, issued by the Central Licensing Authority, in such manner, as may be prescribed.

Prohibition of export of certain drugs, cosmetics and medical devices.

18E. Whoever, himself or by any other person on his behalf, exports any drug, cosmetic or medical device in contravention of the provisions of section 18D shall be punishable with imprisonment for a term which shall not be less than one year and shall also be liable to fine which shall not be less than two lakh rupees or three times value of the drug, cosmetic or medical device exported or confiscated, whichever is more.

Penalty for export of drugs and cosmetics in contravention of section 18D.

18F. Whoever having been convicted of an offence under section 18E is again convicted of an offence under that section, shall be punishable with imprisonment for a term which shall not be less than two years and with fine which shall not be less than five lakh rupees or three times value of the drug, cosmetic or medical device exported or confiscated, whichever is more.”.

Penalty for repeat offences.

Amendment of section 19.

25. In section 19 of the principal Act,—

(a) for the words “drug or cosmetic”, wherever they occur, the words “drug or cosmetic or medical device” shall be substituted;

(b) for the words, “this Chapter”, the words, figures and letter “Chapter IIA or Chapter III or Chapter IV” shall be substituted;

(c) in sub-section (2),—

(i) in the opening portion, for the words, figures and “section 18 a drug shall not be deemed to be misbranded or adulterated or spurious or to be below standard quality nor shall a cosmetic be deemed to be misbranded or to be below standard quality”, the words, figure and letter “section 7F, a medical device shall not be deemed to be misbranded or adulterated or spurious or not of standard quality, or for the purposes of section 18 a drug shall not be deemed to be misbranded or adulterated or spurious or to be below standard quality or shall a cosmetic be deemed to be misbranded or adulterated or spurious or to be below standard quality” shall be substituted;

(ii) in clause (a), after the word “consumption”, the words “or use” shall be inserted;

(d) in sub-section (3), in the opening portion, for the word and figures “section 18”, the words, figures and letter “section 7F or section 18” shall be substituted.

26. In section 20 of the principal Act,—Amendment
of section 20.

(a) in sub-section (1), for the words “such drugs or classes of drugs or such cosmetics or classes of cosmetics”, the words “such drugs or classes of drugs or such cosmetics or classes of cosmetics or such medical devices or classes of medical devices” shall be substituted;

(b) in sub-section (2),—

(i) for the words “Central Government”, the words “Central Drugs Authority” shall be substituted;

(ii) for the words “such drugs or classes of drugs or such cosmetics or classes of cosmetics”, the words “such drugs or classes of drugs or such cosmetics or classes of cosmetics or such medical devices or classes of medical devices” shall be substituted;

(c) in sub-section (3), for the words “Central Government”, the words “Central Drugs Authority” shall be substituted;

(d) in sub-section (4), for the words “import, manufacture or sale of drugs or cosmetics”, the words “import, export, manufacture or sale of drugs or cosmetics or medical devices” shall be substituted.

27. In section 21 of the principal Act,—Amendment
of section 21.

(a) in sub-section (1), for the words “Central Government or” at both the places where they occur, the words “Central Drugs Authority or” shall be substituted;

(b) in sub-section (3), for the words “import, manufacture or sale”, the words “import, export, manufacture or sale” shall be substituted;

(c) after sub-section (4), the following sub-section shall be inserted, namely:—

“(5) Any person appointed as the Inspector under this section, before the commencement of the Drugs and Cosmetics (Amendment) Act, 2013, shall, after such commencement, be deemed to have been appointed as the Drugs Control Officer for the purposes of this section and shall continue to discharge his functions as the Drugs Control Officer unless his appointment is terminated or withdrawn.”.

28. In section 22 of the principal Act,—Amendment
of section 22.

(a) for the word “Inspector”, wherever it occurs, the words “a Drugs Control Officer or a Medical Device Officer” shall be substituted;

(b) for the words “drug or cosmetic”, wherever they occur, the words “drug or cosmetic or medical device” shall be substituted;

(c) for the words “this Chapter”, wherever they occur except in clause (cca) of sub-section (1), the words, figures; and letter “Chapter IIA or Chapter IV” shall be substituted;

(d) in sub-section (1),—

(A) in clause (a), for sub-clause (ii), the following sub-clause shall be substituted, namely:—

“(ii) any premises wherein any drug or cosmetic or medical device is being sold, or exported, or stocked or exhibited or offered for sale, or export, or distributed;”;

(B) in clause (b), for sub-clause (i), the following sub-clause shall be substituted, namely:—

“(i) which is being imported or manufactured or sold or exported or is stocked or exhibited or offered for sale, or for export, or is being distributed;”;

(C) in clause (cca), for the words “manufacture for sale or for distribution, stocking, exhibition for sale, offer for sale or distribution”, the words “manufacture for sale, or for export or for distribution, stocking, exhibition for sale or for export, offer for sale or for export or for distribution” shall be substituted;

(D) in clause (d), for the words “exercise such other powers”, the words “exercise such other powers and perform such functions” shall be substituted;

(E) after clause (d), the following proviso shall be inserted, namely:—

“Provided that in case the stocks of the drugs or cosmetics or medical devices, and the records, registers, documents or any other material objects connected or related thereto are seized, he shall, as soon as may be, inform the Judicial Magistrate and take his orders as to the custody thereof.”;

(e) in sub-section (3), for the words “may extend to three years, or with fine,” the words “shall not be less than three years and shall also be liable to fine which shall not be less than fifty thousand rupees” shall be substituted.

Substitution of new section for section 23. **29.** For section 23 of the principal Act, the following section shall be substituted, namely:—

Procedure of Drugs Control Officers and Medical Device Officers. “23. The Drugs Control Officer or the Medical Device Officer shall take sample of drugs or cosmetics or medical devices, as the case may be, for test and examination under Chapter IIA or Chapter IV, as the case may be, in such manner as may be prescribed.”.

Substitution of new section for section 24. **30.** For section 24 of the principal Act, the following section shall be substituted, namely:—

Persons bound to disclose place where medical device or drugs or cosmetics are manufactured or kept. “24. Every person for the time being in charge of any premises whereon any drug or cosmetic or medical device is being manufactured or is kept for sale or distribution shall, on being required by any Drugs Control Officer or, as the case may be, the Medical Device Officer so to do, be legally bound to disclose to the Drugs Control Officer or, as the case may be, the Medical Device Officer, the place where the drug or cosmetic or medical device is being manufactured or is kept, as the case may be.”.

Substitution of new section for section 25. **31.** For section 25 of the principal Act, the following section shall be substituted, namely:—

Reports of Government Analysts. “25. The Government Analyst shall submit report in relation to samples of drugs or cosmetics or medical devices and action shall be taken thereon, in such manner as may be prescribed.”.

Amendment of section 26. **32.** In section 26 of the principal Act, for the words “drug or cosmetic”, the words “drug or cosmetic or medical device” shall be substituted;

Substitution of new section for section 26A. **33.** For section 26A of the principal Act, the following section shall be substituted, namely:—

Powers of Central Government to prohibit manufacture, etc., of drug, cosmetic and medical device in public interest. “26A. Without prejudice to any other provisions contained in Chapter IIA and Chapter IV, if the Central Government is satisfied, that the use of any drug or cosmetic or medical device is likely to involve any risk to human beings or animals or that any drug or medical device does not have the therapeutic value claimed or purported to be claimed for it or contains ingredients and in such quantity for which there is no therapeutic justification and that in the public interest it is necessary or expedient so to do, then, that Government may, by notification in the Official Gazette, regulate, restrict or prohibit the manufacture, sale or distribution of such drug or cosmetic or medical device.”.

- 34.** In section 26B of the principal Act, for the word “drug”, wherever it occurs, the words “drug or medical device” shall be substituted. Amendment of section 26B.
- 35.** In section 27 of the principal Act,— Amendment of section 27.
- (i) in the opening portion, for the words “manufactures for sale or for distribution, or sells, or stocks or exhibits or offers for sale or distributes”, the words “manufactures for sale or for export or for distribution, or sells, or exports, or stocks or exhibits or offers for sale or for export or distributes” shall be substituted;
- (ii) in clause (a), in the second proviso,—
- (a) for the word “relative”, the words “legal heir” shall be substituted;
- (b) the *Explanation* shall be omitted.
- 36.** In section 27A of the principal Act, for the words “manufactures for sale or for distribution, or sells, or stocks or exhibits or offers for sale”, the words “manufactures for sale or for export or for distribution, or sells, or exports, or stocks or exhibits or offers for sale or for export” shall be substituted. Amendment of section 27A.
- 37.** In section 28 of the principal Act, for the words “may extend to one year or with fine which shall not be less than twenty thousand rupees or with both”, the words “shall not be less than three years and shall also be liable to fine which shall not be less than three lakh rupees” shall be substituted. Amendment of section 28.
- 38.** In section 28A of the principal Act, for the words “may extend to one year or with fine which shall not be less than twenty thousand rupees or with both”, the words “shall not be less than three years and shall also be liable to fine which shall not be less than three lakh rupees” shall be substituted. Amendment of section 28A.
- 39.** In section 28B of the principal Act, for the words “may extend to three years and shall also be liable to fine which may extend to five thousand rupees”, the words “shall not be less than three years and shall also be liable to fine which shall not be less than five lakh rupees” shall be substituted. Amendment of section 28B.
- 40.** In section 29 of the principal Act,— Amendment of section 29.
- (a) for the words “drug or cosmetic”, the words “drug or cosmetic or medical device” shall be substituted;
- (b) for the words “which may extend to five thousand rupees”, the words “which shall not be less than fifty thousand rupees” shall be substituted.
- 41.** In section 30 of the principal Act,— Amendment of section 30.
- (a) in sub-section (1A), for the words “may extend to two years or with a fine which may extend to two thousand rupees”, the words “shall not be less than three years and shall also be liable to fine which shall not be less than ten lakh rupees” shall be substituted;
- (b) in sub-section (2), for the words “may extend to two years, or with fine which shall not be less than ten thousand rupees or with both”, the words “shall not be less than two years and shall also be liable to fine which shall not be less than one lakh rupees” shall be substituted;
- (c) after sub-section (2), the following sub-section shall be inserted, namely:—
- “(3) Whoever having been convicted of an offence under section 28A or section 28B is again convicted of an offence under that section shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and shall also be liable to fine which shall not be less than five lakh rupees.”.

Amendment
of section 31.

42. In section 31 of the principal Act, in sub-section (I),—

(a) in clause (ii),—

(A) for the words “manufacture for sale, or for distribution, sale, or stocking or exhibiting or offering for sale, or distribution”, the words “manufacture for sale or for export or for distribution, sale, export, or stocking or exhibiting or offering for sale or for export or for distribution” shall be substituted;

(B) for the words, brackets, letter and figures “clause (c) of section 18”, the word and figures “section 18” shall be substituted.

(b) in the opening portion, after clause (ii), for the words “manufacture, sale or distribution” the words “manufacture, sale, export or distribution” shall be substituted.

Amendment
of section
31A.

43. In section 31A of the principal Act,—

(a) for the words and figures “this Chapter except those contained in section 31”, the words, figures and letters “Chapter IB, Chapter IIA and Chapter IV except those contained in section 4ZI, section 7M and section 31” shall be substituted;

(b) for the words “manufacture, sale or distribution”, at both the places where they occur, the words “manufacture, sale, export or distribution” shall be substituted.

Amendment
of section 32.

44. In section 32 of the principal Act,—

(a) for the words “this Chapter”, wherever they occur, the words, figures and letter “Chapter IIA or Chapter IV” shall be substituted;

(b) in sub-section (I), for clause (a), the following clause shall be substituted, namely:—

“(a) a Drugs Control Officer or a Medical Device Officer; or”.

Amendment
of section 33.

45. In section 33 of the principal Act,—

(a) in sub-section (I), for the word “Board”, wherever it occurs, the words “Central Drugs Authority” shall be substituted;

(b) in sub-section (2),—

(i) in clause (e), for the words “manufacture for sale or for distribution, for the sale and for the distribution”, the words “manufacture for sale or for export or for distribution for the sale, for the export and for the distribution” shall be substituted;

(ii) in clause (h), for the words “sale, stocking or exhibition for sale, or distribution”, the words “sale, export, stocking or exhibition for sale, or export, or distribution” shall be substituted;

(iii) in clause (i), for the words “sale, stocking or exhibition for sale, or distribution”, the words “sale, export, stocking or exhibition for sale, or export, or distribution” shall be substituted;

(iv) in clause (k), for the words “manufacture, sale or stocking or exhibition for sale, or distribution”, the words “manufacture, sale, export or stocking or exhibition for sale, or for export or distribution” shall be substituted.

Amendment
of section 33P.

46. In section 33P of the principal Act, for the words “any State Government”, the words “any State Government or the Central Drugs Authority” shall be substituted.

- 47.** After section 33P of the principal Act, the following sections shall be inserted, namely:—
- Insertion of new sections 33Q and 33R.
- “33Q. The Central Drugs Authority may suspend or cancel any permission, licence or certificate issued by the Central Licensing Authority or the State Licensing Authority, in the public interest and for the reasons to be recorded in writing or if the permission, licence or certificate, as the case may be, is found not to have been issued in accordance with the provisions of this Act and the rules and regulations made thereunder, in the manner as may be prescribed.
- Power of Central Drugs Authority to suspend or cancel permission, licence or certificate granted under this Act.
- 33R. (1) Any person aggrieved by any action or decision of any State Licensing Authority or the Central Licensing Authority, may prefer an appeal to the Central Drugs Authority within such period and in such manner as may be prescribed.
- (2) Any person aggrieved by any action or decision of the Central Drugs Authority, may prefer an appeal to the Central Government within such period and in such manner as may be prescribed.”.
- Appeals.
- 48.** In section 34A of the principal Act,—
- Amendment of section 34A.
- (a) for the words, figures and letter “Chapter IV or Chapter IVA”, at both the places where they occur, the words, figures and letters “Chapter IB, Chapter IIA, Chapter III, Chapter IV or Chapter IVA” shall be substituted;
- (b) for the words “manufacture, sale or distribution of drugs”, the words “clinical trial, import, manufacture, sale, export or distribution of drugs, cosmetics or medical devices” shall be substituted.
- 49.** In section 34AA of the principal Act,—
- Amendment of section 34AA.
- (i) in clause (c), for the words “any drug or cosmetic”, the words “any drug or cosmetic or medical device” shall be substituted;
- (ii) in clause (d), for the words “one thousand rupees”, the words “one lakh rupees” shall be substituted.
- 50.** After section 34AA of the principal Act, the following section shall be inserted, namely:—
- Insertion of new section 34AAA.
- “34AAA. Whoever himself or by any other person on his behalf imports, manufactures, stocks, sells, distributes or exports, or intends to do so, any drug or cosmetic or medical device and submits misleading or wrong information or refuses to provide correct information in that regard as required by the licensing authority under this Act shall be punishable with imprisonment for a term which shall not be less than three years and shall also be liable to fine which shall not be less than one lakh rupees.”.
- Penalty for submission of misleading or wrong information or refusal to furnish information.
- 51.** After section 35 of the principal Act, the following sections shall be inserted, namely:—
- Insertion of new sections 35A and 35B.
- “35A. Any person convicted for an offence under this Act shall be liable to bear the cost of storage of any article related to such offence, seized under this Act.
- Liability to bear storage cost of seized article, drugs, etc..

Mandatory destruction of seized spurious or adulterated or not of standard quality drugs, cosmetics and medical devices.

35B. The seized spurious or misbranded or adulterated or not of standard quality drugs, cosmetics and medical devices, having been proved so and after their use as evidence in the case before the court is over, shall be destroyed by the official authority in custody of these products in the manner as may be prescribed and the convicted person shall be liable to bear the cost of destruction of seized articles.”.

Substitution of new section for section 38.

52. For section 38 of the principal Act, the following section shall be substituted, namely:—

Rules and regulations to be laid before Parliament.

“38. Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.”.

Insertion of new Schedule.

53. After the Second Schedule to the principal Act, the following Schedule shall be inserted, namely:—

“THE THIRD SCHEDULE

[See section 18(3)]

CATEGORIES OF DRUGS WHICH THE CENTRAL LICENSING AUTHORITY IS EMPOWERED TO ISSUE LICENCE:

1. Sera;
2. Solution of serum proteins intended for injection;
3. Vaccines; and includes DNA vaccines and vaccines containing living genetically engineered organisms;
4. Toxins;
5. Antigens and anti-toxins;
6. Anti-biotics (betalactams and cephalosporins);
7. Parenteral preparations meant for parenteral administration;
8. Hormones and preparations containing hormones;
9. r-DNA derived drugs;
10. RNA interference based products;
11. Monoclonal anti-bodies;
12. Cellular products and stem cells;
13. Gene therapeutic products;
14. Xenografts;
15. Cytotoxic substances (anti-Cancer drugs);
16. Blood products;
17. Modified Living Organisms.”.

STATEMENT OF OBJECTS AND REASONS

The Drugs and Cosmetics Act, 1940 is a consumer protection law, which is concerned with the standards and quality of drugs and cosmetics and regulates their import, manufacture, sale and distribution in the country.

2. In January, 2003, the Central Government constituted an Expert Committee under the Chairmanship of Dr. R.A. Mashelker, Director General of the Council of Scientific and Industrial Research (CSIR) to undertake a comprehensive examination of drug regulatory issues, including the menace of spurious drugs and to suggest measures to improve the drug administration in the country. The Committee noted that the problems in the drug regulatory system in the country are primarily due to inadequate or weak drug control infrastructure at the State and Central level and therefore, recommended centralised licensing of manufacture of drugs. The Committee further recommended for a strong, well equipped, empowered, independent and professionally managed Central Drugs Standard Control Organisation (CDSCO) which may be given the status of Central Drug Administration reporting directly to the Central Government.

3. With a view to give effect to the recommendations of the Mashelkar Committee, the Central Government introduced the Drugs and Cosmetics (Amendment) Bill, 2007 in the Rajya Sabha on 21st August, 2007, which, *inter alia*, provided for centralised licensing of manufacture of drugs, regulatory provisions for clinical trials and export of drugs and cosmetics, creation of strong, well equipped, empowered, self managed and independent Central Drugs Authority in place of the existing central drugs regulatory body i.e. the CDSCO and do away with the Drugs Technical Advisory Board.

4. The said Bill was referred to the Department-related Parliamentary Standing Committee on Health and Family Welfare for examination and Report. The Committee in its 30th Report made several recommendations, including for creation of a separate Chapter for regulating medical devices. The provisions relating to regulation of clinical trials and exports in the Bill also needed to be made more comprehensive and therefore, the Central Government decided to withdraw the Bill of 2007 and introduce a new Bill, namely, the Drugs and Cosmetics (Amendment) Bill, 2013 excluding the provisions relating to AYUSH drugs for which a separate Bill will be brought before Parliament.

5. The new Bill contains, *inter alia*, a revised approach to the centralised licensing, in respect of seventeen categories of very critical drugs included in the proposed Third Schedule to the Act, a separate Chapter containing regulatory provisions for Medical Devices, more comprehensive provisions for regulating clinical trials and exports and a revised composition of the Central Drugs Authority consisting of, *inter alia*, Secretaries of seven Ministries and Departments of the Central Government, four State Drugs Controllers and four experts, with the Drugs Controller General (India) as its Member-Secretary. The Drugs Technical Advisory Board has been retained.

6. In the Bill certain other amendments are also proposed which are consequential in nature. The Bill also seeks to harmonise different provisions of the Act.

7. The notes on clauses explain in detail the various provisions of the Bill.

8. The Bill seeks to achieve the above objects.

GHULAM NABIAZAD

Notes on clauses

Clause 1.—This clause provides for the short title and commencement of the proposed legislation.

Clause 2.—This clause seeks to amend the long title and preamble of the Drugs and Cosmetics Act, 1940 (hereinafter referred to as the Act). It is proposed to insert “Medical Device” with “Drugs and Cosmetics” in the long title and “regulation of safety, efficacy, quality, etc. of medical devices, export of drugs and clinical trials” in the preamble.

Clause 3.—This clause seeks to amend sub-section (1) of section 1 of the Act, to substitute the words “and Cosmetics”, with the words “Cosmetics and Medical devices” in the short title.

Clause 4.—This clause seeks to substitute the word “Inspector” with the words “Drugs Control Officer” throughout the Act.

Clause 5.—This clause seeks to amend section 2 of the Act so as to substitute the “Dangerous Drugs Act, 1930” with “the Narcotic Drugs and Psychotropic Substances Act, 1985”.

Clause 6.—This clause seeks to amend section 3 of the Act relating to definitions, to define “bioavailability study”, “bioequivalence study”, “Medical Device Technical Advisory Board”, “Central Drugs Authority”, “Central Drugs Laboratory”, “Central Licensing Authority”, “Chairperson”, “clinical trial”, “New Drug”, “Drugs Control Officer”, “Medical Device Officer”, “Drugs Controller General of India”, “Ethics Committee”, “Indian Pharmacopoeia”, “investigational medical device”, “investigational new drug”, “Investigator”, “manufacture”, “medical device” “member”, “protocol”, “regulations”, “sponsor”, “State Government”, “State Licensing Authority”, “Schedule” and to amend the definitions of “cosmetic” to insert “new cosmetics”, “drugs” to insert “or microbes” after the words “destruction of vermin or insects”, to omit the provisions of “medical device” and to insert the provisions relating to “new drug”, to substitute “manufacture” to take care of “exports”, “human blood and its components” and “medical devices”, to substitute the words “Central Government” with the words “Central Drugs Authority” etc.

Clause 7.—This clause seeks to insert new Chapters, CHAPTER IA titled “CENTRAL DRUGS AUTHORITY” containing proposed new sections 4A to 4-O and CHAPTER IB with chapter heading “CLINICAL TRIALS” containing proposed new sections 4P to 4ZL.

The proposed new section 4A provides for the constitution of the Central Drugs Authority, which shall be a body corporate having perpetual succession and common seal, its location of head office and empowers the Central Drugs Authority to establish its offices in other places in India.

The proposed new section 4B provides for composition of the Central Drugs Authority, terms of office of its Members and conduct of its meetings.

The proposed new section 4C provides for the reference of Central Drugs Authority *vis-a-vis* the Central Drugs Standards Control Organisation; ownership of property, assets, etc.; rights and liabilities to be transferred; debts, obligations and liabilities incurred and contracts entered, by, with or for before the date of constitution of the Central Drugs Authority shall be deemed to have been vested, transferred, incurred, and entered in or by the Central Drugs Authority; money due shall be deemed to be due and suits and legal proceedings in the name of Central Drugs Standards Control Organisation may be continued or instituted by or against the Central Drugs Authority and the employees of the Central Drugs Standards Control Organisation shall be transferred to the Central Drugs Authority with same terms and conditions and their absorption therein.

The proposed new section 4D provides for declaration of conflict of interests by the Members of Central Drugs Authority.

The proposed new section 4E provides that any vacancy in, or any defect in the constitution of the Central Drugs Authority, or any defect in the nomination of a person as a member, or any irregularity in its procedure not affecting the merits of a case, shall not invalidate its proceedings.

The proposed new section 4F provides for the manner of resignation of a nominated Member and further provides that unless permitted to relinquish, to continue in office until the expiry of three months from the date of receipt of notice of resignation or until a person duly appointed as his successor or until the expiry of his term of office, which is the earliest.

The proposed new section 4G empowers the Central Government to appoint the Drugs Controller General of India and to determine his salaries, allowances and pensions.

The proposed new section 4H empowers the Central Government to create posts in the Central Drugs Authority and to determine the manner of appointment, salaries, allowances, pensions and other conditions of service of its officers and employees.

The proposed new section 4-I enumerates the powers and functions of the Central Drugs Authority such as, to specify by regulations the guidelines, norms, etc.; assess periodically the functioning of the Central and State Licensing Authorities; power to issue directions to ensure compliance of guidelines, norms, etc., to review, suspend or cancel permission, licence or certificate issued by the Central or State Licensing Authority; to specify the fees, or charges for issue or renewal of licenses; coordinate, mediate and decide upon the disputes arising out of the implementation of the provisions of the Act, rules, etc., recommend to the Central Government the measures as regards the standards of Drugs, cosmetics, etc.

The proposed new section 4J provides for the powers and functions of the Drugs Controller General of India. Sub-section (2) of the aforesaid section provides that the Drugs Controller General of India shall exercise the powers such as, to issue, renew, suspend, or cancel licence for import, export or manufacture of drugs, cosmetics or medical device or for permission for conduct criminal trials; to recall or direct to recall any drug, cosmetic or medical device; collect fees or charges for licenses, etc. Sub-section (3) empowers the Drugs and Controller General of India to delegate his powers with the prior approval of Central Drugs Authority; Sub-section (4) provides that the Drugs Controller General of India shall be the legal representative of the Central Drugs Authority and sub-section (5) provides that the Drugs Controller General of India shall have administrative control over the officers and employees of the Central Drugs Authority.

The proposed new section 4K provides for financial grants to be made by the Central Government to the Central Drugs Authority.

The proposed new section 4L provides for maintenance of proper accounts by the Central Drugs Authority and the details regarding procedure for auditing of its accounts.

The proposed new section 4M provides for preparation of an annual report by the Central Drugs Authority, which shall be forwarded to the Central Government and also be laid before each House of Parliament.

The Proposed new section 4N lays down the powers of the Central Government to make rules for giving effect to the provisions as contained in CHAPTER IA.

The Proposed new section 4-O lays down the power of the Central Drugs Authority to make regulations consistent with this Act and the rules made thereunder.

The proposed new section 4P prohibits clinical trial without permission. Sub-section (1) of the aforesaid section prohibits the conduct of clinical trials in respect of a new drug or investigational new drug or medical device or investigational medical device or cosmetic or bioavailability or bioequivalence study of any drug in human subjects without due permission from the Central Licensing Authority. Sub-section (2) prohibits conduct of any clinical trial unless approved by the Ethics Committee. Sub-section (3) prohibits conduct of

clinical trial before registration with the Central Drugs Authority. Sub-section (4) provides that no permission from Central Licensing Authority is required by the Government Institute, Hospital, etc., to initiate or conduct any bioequivalence or bioavailability studies of approved drugs.

The proposed new section 4Q empowers the Drugs Controller General of India or any other prescribed authority to decide the cause of injury or death of person which may occur in course of or due to clinical trial, and the manner thereof.

The proposed new section 4R provides for the person conducting clinical trial to give medical treatment and compensation in case of an injury or death of a person as a result of his participation in clinical trial, and the manner thereof.

The proposed new section 4S empowers the Central Licensing Authority in public interest to abbreviate, defer or omit the pre-clinical and clinical data requirements for approval of clinical trial indicated in life threatening or serious diseases or diseases of special relevance to the country.

The proposed new section 4T provides for the registration of Ethics Committee constituted for the purpose with the Central Licensing Authority, the period of its validity and its renewal.

The proposed new section 4U provides for the composition of the Ethics Committee.

The proposed new section 4V provides for the functions and responsibilities of the Ethics Committee such as, to give its approval for clinical trial protocol and other related documents; to safe guard the rights, safety and wellbeing of all trial participants enrolled in the clinical trial; to make periodic review of the trial, based on the study progress reports; to revoke its approval to a clinical trial, etc..

The proposed new section 4W empowers the Central Licensing Authority to suspend or cancel the registration of Ethics Committee and disqualification of its members on such cancellation, in case the Ethics Committee fails to discharge its functions and responsibility under the Act.

The proposed new section 4X empowers the Central Licensing Authority to carry out inspections of clinical trials and provides that the person conducting clinical trial shall allow the Drugs Control Officer or Medical Device Officer to enter with or without prior notice in to any premises related to clinical trial to inspect the facilities, record, data, document books and can also seeks clarifications, information's, etc..

The proposed new section 4Y provides for the person, sponsor and organisation conducting clinical trial to disclose name, address and other particulars of the persons involved in conducting the clinical trials, including the trial participants.

The proposed new section 4Z provides for the person, sponsor and organisation to maintain of data, records, registers and other documents and furnishing of information related to clinical trials to the Central Drugs Authority.

The proposed new section 4ZA provides for penalty for conducting clinical trials in respect of any drug or investigational new drug or any medical device or investigational medical device without permission.

The proposed new section 4ZB provides for penalty for repeat offence for conducting clinical trials in respect of any drug or investigational new drug or any medical device or investigational medical device without permission.

The proposed new section 4ZC provides for penalty for conducting clinical trial of cosmetics without permission.

The proposed new section 4ZD provides for penalty for repeat offence for conducting clinical trial of cosmetics without permission.

The proposed new section 4ZE provides for penalty for violation of conditions of permission for clinical trials in respect of any drug or investigational new drug or any medical device or investigational medical device or cosmetic. It further provides enhancement of penalty for resulting grievous hurt or death during clinical trial.

The proposed new section 4ZF provides for penalty for repeat offence for contravention of conditions of permission for clinical trials in respect of any drug or investigational new drug or any medical device or investigational medical device or cosmetics.

The proposed new section 4ZG provides for penalty for failure to provide compensation for clinical trial related injury or death.

The proposed new section 4ZH provides for penalty for contravention to any provisions under the Chapter IB not covered under section 4P, section 4Q, section 4R, section 4S section 4T, section 4U, section 4W, section 4X, section 4Y, section 4Z or any rule made under Chapter IB.

The proposed new section 4ZI provides for confiscation, upon conviction of the persons contravening any provisions of Chapter IB, of the stock of the drug or investigational new drug or medical device or investigational medical device or cosmetic in respect of which the contravention has been made as well as any implements or machinery, vehicle, vessel or other conveyances used in or for the purposes of conducting clinical trials.

The proposed new section 4ZJ provides that no court shall take cognizance of offence under Chapter IB pertaining to Clinical Trials except on complaint made by persons mentioned therein.

The proposed new section 4ZK empowers the Central Government to make rules after consultation with the Central Drugs Authority, to give effect to the provisions of Chapter IB.

The proposed new section 4ZL excludes the application of provisions of Chapter IB to Ayurvedic, Homeopathic, Siddha or Unani drugs.

Clause 8.—This clause provides for substitution of the existing heading of Chapter II of the Act with the heading “TECHNICAL ADVISORY BOARDS, CENTRAL DRUGS LABORATORIES AND CONSULTATIVE COMMITTEE”.

Clause 9.—This clause seeks to amend section 5 of the Act which provides for constitution, composition, functions, manner for nomination or election of members of the Drugs Technical Advisory Board to advise the Central Government and the State Governments on technical matters.

Clause 10.—This clause seeks to insert a new section 5A so as to provide for constitution, composition, functions, manner for nomination or election of members Medical Devices Technical Advisory Board to advise the Central Government, the Central Drugs Authority and the State Government.

Clause 11.—This clause seeks to amend section 6 of the Act with in respect to establishment and determination of functions of a Central Drugs Laboratory by the Central Drugs Authority and the rule making powers of the Central Government in that regard.

Clause 12.—This clause seeks to amend section 7 of the Act for renaming the Drugs Consultative Committee as the “Drugs, Cosmetics and Medical Device Consultative Committee”, its composition and provides for the Committee to meet at least twice in a year and the power to regulate its own procedure.

Clause 13.—This clause seeks to inserts a new Chapter, CHAPTER IIA, titled “IMPORT, MANUFACTURE, SALE, DISTRIBUTION AND EXPORT OF MEDICAL DEVICES” containing proposed new sections 7B to 7N”.

The proposed new section 7B provides for definition of “standard quality” for in relation to medical devices.

The proposed new section 7C provides for definition of “misbranded medical device”.

The proposed new section 7D provides for definition of ‘adulterated medical device’.

The proposed new section 7E provides for definition of “spurious medical device”.

The proposed new section 7F provides for prohibition, with certain exemptions of, (i) import, manufacture for sale or export of any medical device which is not of standard quality; misbranded, adulterated, spurious, not displayed on the label in prescribed manner, with therapeutic claims, with components which render it unsafe or harmful to use or in violation of any provision of Chapter IIA or rules made thereunder; import, manufacture for sale or export of medical devices except under and in accordance with the conditions of a licence or certificate issued by the Central Licensing Authority; (ii) prohibits sell or stock or distribute or exhibit or offer for sale of medical device; sell or stock or exhibit or offer for sale of medical device which has been imported or manufactured in contravention of any provisions of the Act; sell, stocking, exhibiting, offering for sale or distribution of medical devices except under a licence issued by the Licensing Authority. It further provides for the State Government to designate one or more persons as State Licensing Authority.

The proposed new section 7G provides for the law relating to customs and goods shall subject to the provisions of sections 7J, 7K, and 7L apply in respect of medical device the import of which is prohibited under Chapter IIA and empowers the customs officers to exercise the powers under this Act regarding import of medical device. It further provides for the Commissioner of Customs or any other officer of the Central Government to detain any imported package suspected to have contained medical device which is prohibited for import and shall report of such detention to the Drugs Controller General of India and if necessary, forward it to laboratory and further in the event the package or sample of that medical device found in contravention of any of the provisions of this Chapter or rules made thereunder, the same shall not be allowed to be imported.

The proposed new section 7H provides for the appointment of Medical Device Officers by the Central Drugs Authority and their powers and duties. It further provides that the Medical Device Officers so appointed shall be deemed to be public servant.

The proposed new section 7-I provides for power of the Central Government to regulate, restrict or prohibit import, manufacture, sale or distribution of any medical device in public interest which is likely to involve any risk to human beings or animals, etc.

The proposed new section 7J provides for offences of import, manufacture for sale, stocking, exhibiting, offering for sale of medical device or distribution or export of any adulterated, spurious or not of standard quality medical device, grievous injury or death caused thereby, the penalties therefor and payment of fines to the person or his legal heir who had used such medical device, causing him grievous hurt or his death.

The proposed new section 7K provides for penalty for import, manufacture, sell, export or distribution of any medical device in contravention of provisions of any notification issued under section 7-I.

The proposed new section 7L provides for penalty for committing repeat offences specified under sections 7J and 7K.

The proposed new section 7M provides for confiscation of medical device, implements, machinery, receptacles, packages, coverings, animals, vehicles, vessels or other conveyances of persons convicted for offences under Chapter IIA or rules made thereunder. It further provides that the Court may on the application of the Medical Device Office after inquiry pass an order of confiscation, if the medical device is not of standard quality or is misbranded, adulterated, etc.

The proposed new section 7N lays down the powers of the Central Government to make rules for giving effect to the provisions as contained in this Chapter.

Clause 14.—This clause seeks to amend section 8 of the Act to substitute the word “Board” with “Central Drugs Authority” in respect of consultation by the Central Government with the words Central Drugs Authority, instead of with the Drug Technical Advisory Board, for amending the Second Schedule of the Act relating to standards of drugs for the purpose of Chapter III relating to import of drugs and cosmetics.

Clause 15.—This clause seeks to insert new section 9E to provide for definition of adulterated cosmetics.

Clause 16.—This clause seeks to amend section 10 of the Act for including “adulterated cosmetics” under prohibited cosmetics, and substituting “Board” with “Central Drugs Authority” for advising the Central Government on permitting import of not-of-standard quality drugs.

Clause 17.—This clause seeks to amend section 11 of the Act by inserting a proviso in sub-section (2) for prohibiting import of drug or cosmetic from that or any other port in the country, if the package of such drug or cosmetic is found in contravention of provisions of Chapter III of the Act.

Clause 18.—This clause seeks to amend sub-section (1) of section 12 of the Act to substitute the word “Board” with the words “Central Drugs Authority”.

Clause 19.—This clause seeks to substitute section 13 of the Act by new sections 13 and 13A. The proposed new section 13 provides for offences of import of any adulterated, spurious or not of standard quality drug or cosmetics, grievous injury or death caused thereby, punishment and penalties therefor and payment of fines to the person or his legal heir who had used such drugs or cosmetics, causing him grievous hurt or death.

The proposed new section 13A provides for penalty for committing repeat offences mentioned under section 13 relating to import of adulterated drugs, cosmetics, etc.

Clause 20.—This clause seeks to amend section 16 of the Act to substitute the word “Board” with the words “Central Drugs Authority”, in respect of consultation by the Central Government with the Central Drugs Authority, instead of with the Drug Technical Advisory Board, for amending the Second Schedule of the Act.

Clause 21.—This clause seeks to substitute section 18 of the Act to provide for prohibition on issuance of licence by the State Government for manufacture for sale, etc., of new drugs without prior permission of the Central Licensing Authority and putting responsibility for ensuring thereof on the State Government; designation of persons as State Licensing Authorities on prescribed terms and conditions by the State Governments, and their powers and functions; power of Central Licensing Authority to issue of licence or certificate for manufacture for sale or for export of drugs included in the Third Schedule and prohibition on issuance of licence for manufacture of any drugs included in the Third Schedule by the State Licensing Authorities; power of Central Government to amend the Third Schedule in consultation with the Central Drugs Authority by notification with the prior publication in the Official Gazette, etc.

Clause 22.—This clause seeks to amend section 18A of the Act to substitute the words “drug or cosmetic” with the words “drug or cosmetic or medical device” relating to disclosure of name of manufacturer, etc., from whom any person has acquired such products, and empowering Medical Device Officers also, alongwith Drug Inspectors, to whom such disclosures are to be made.

Clause 23.—This clause seeks to amend section 18B of the Act to provide for including licenses under Chapter IIA relating to medical devices and Chapter III relating to import of drugs and cosmetics requiring them to maintain prescribed records, registers and other documents and information and to furnish the required information to the appropriate officer or authority.

Clause 24.—This clause seeks to insert new sections 18D, 18E and 18F in the Act.

The proposed new section 18D empowers the Central Licensing Authority to issue permission or licence or certificate, as the case may be, for export of drugs, cosmetics or medical devices.

The proposed new section 18E provides for penalty for contravention of provisions of section 18D relating to export of drugs, cosmetics or medical devices.

The proposed new section 18E provides for penalty for committing repeat offences specified under section 18E relating to export of drugs, cosmetics or medical devices.

Clause 25.—This clause seeks to amend section 19 of the Act relating to “Pleas” to insert provisions for covering matters relating to Chapter IIA, Chapter III, adulterated and spurious cosmetics under Chapter IV as well as exports under new section 18D.

Clause 26.—This clause seeks to amend section 20 of the Act to provide for appointment of Government Analysts for medical devices or classes of medical device also, appointment of Government Analysts in the Central Government by the Central Drugs Authority instead of by the Central Government and bringing financial interests in exports also within the purview of disqualifications for appointment as Government Analysts.

Clause 27.—This clause seeks to amend section 21 of the Act to provide for appointment of Drug Inspectors in the Central Government by the Central Drugs Authority instead of by the Central Government, bringing financial interests in exports also within the purview of disqualifications for appointment as Inspector and to insert a new sub-section (5) to provide that the Inspector appointed before the commencement of the amendment Act shall after commencement of such Act be deemed to have been appointed as Drugs Control Officer and shall continue to discharge his function as Drugs Control Officer.

Clause 28.—This clause seeks to amend section 22 of the Act to substitute the word “Inspector” with the words “Drugs Control Officer and Medical Device Officer”; bringing Chapter IIA, relating to medical devices, and exports also within the purview of application of this section; the procedure for taking custody of materials seized by the Drugs Control Officer or the Medical Device Officer and for enhancing the penalty for obstructing him from performing his duties.

Clause 29.—This clause seeks to substitute section 23 of the Act to provide that the sample of drugs or cosmetics or medical devices shall be taken by the Drugs Control Officer or the Medical Device Officer in the manner as may be specified in the rules.

Clause 30.—This clause seeks to substitute section 24 of the Act to provide for disclosure of information relating to manufacture of Medical Devices as well, and to empower the Medical Device Officer who can also exercise the powers under the section.

Clause 31.—This clause seeks to substitute section 25 of the Act to provide that the Government Analyst shall submit report in relation to samples of drugs or cosmetics or medical devices and the action to be taken thereon, in the manner as may be specified in the rules.

Clause 32.—This clause seeks to amend section 26 of the Act to substitute the words “drug or cosmetic” with the words “drug or cosmetics or medical device” to enable a purchaser to submit samples of medical devices also to a Government Analyst for test and analysis and receive report thereof.

Clause 33.—This clause seeks to substitute section 26A of the Act empowering the Central Government to regulate, restrict or prohibit the manufacture, sale or distribution of drugs or cosmetic or medical device if use of such drug, cosmetic or medical device is likely to involve any risk to human beings or animals or that any drug or medical device does not have the therapeutic value claimed, etc.

Clause 34.—This clause seeks to amend section 26B of the Act to substitute the word “drug” with the words “drug or medical device” to regulate or restrict the manufacture, sale or distribution of Medical Devices as well in case of emergency and in public interest.

Clause 35.—This clause seeks to amend section 27 of the Act to bring export of drugs within the purview of the penalty provided in this section; to enable the “legal heir” instead of “relative” of the deceased for receiving the financial claims realised from the convict and to omit the “explanation” containing the details of the relatives entitled for receiving such claims.

Clause 36.—This clause seeks to amend section 27A of the Act so as to provide the export of cosmetics also within the purview of the penalty provided in the section.

Clause 37.—This clause seeks to amend section 28 of the Act to enhance penalty for non-disclosure of the name of the manufacturer, place of manufacture, etc., in contravention of provisions of sections 18A and 24 of the Act.

Clause 38.—This clause seeks to amend section 28A of the Act to enhance penalty for not keeping of documents, non-disclosure of information, etc., in contravention of provisions of section 18B of the Act.

Clause 39.—This clause seeks to amend section 28B of the Act to enhance penalty in contravention of provisions of section 26A relating to drugs, cosmetics and medical devices whose manufacture, sale or distribution has been regulated, restricted or prohibited under that section.

Clause 40.—This clause seeks to amend section 29 of the Act to include medical devices also within the purview of the penalty for use of report of Government Analyst for advertisement of drug or cosmetic and to enhance the penalty therefor.

Clause 41.—This clause seeks to amend section 30 of the Act to enhance the penalties for repeat offences relating to manufacture, sale, etc., of cosmetics in contravention of provisions of Chapter IV and for use of report of Government Analyst for the purpose of advertisement of the product and to insert a new sub-section (3) to provide for penalty for repeat offence for non-disclosure of the name of the manufacturer, place of manufacture, etc., and for not keeping of documents, non-disclosure of information, etc., in contravention of provisions of sections 28A and 28B of the Act.

Clause 42.—This clause seeks to amend section 31 of the Act relating to confiscation so as to include “exports” within its purview and expanding its purview to the provisions of new section 18 pertaining to prohibition on manufacture, sale, distribution, etc., without licence, which would now include licenses issued by the Central Licensing Authority as well.

Clause 43.—This clause seeks to amend section 31A of the Act to provide for application of provisions of new Chapter IB relating to clinical trials and new Chapter IIA relating to import, manufacture, sale, distribution and export of Medical Devices, along with chapter IV exempting the provisions of sections 4ZI and 7M relating to confiscation.

Clause 44.—This clause seeks to amend section 32 of the Act relating to cognizance of offences and to substitute the word “Inspector” with the words “Drugs Control Officer or Medical Device Officer” and to insert new Chapter IIA within its purview.

Clause 45.—This clause seeks to amend section 33 of the Act relating to power of Central Government to make rules and to provide for consulting the “Central Drugs Authority” in place of the “Drug Technical Advisory Board” and for including exports as well within the purview of these rules.

Clause 46.—This clause seeks to amend section 33P of the Act relating to power of the Central Government to give directions by including the Central Drugs Authority also within the purview of these directions.

Clause 47.—This clause seeks to insert new sections 33Q and 33R in the Act.

The proposed new section 33Q empowers the Central Drugs Authority to suspend or cancel any permission, licence or certificate issued by the Central Licensing Authority or the State Licensing Authority, in the public interest if such permission, licence or certificate is found not to have been issued in accordance with the provisions of the Act.

The proposed new section 33R provides for preferring appeal to the Central Drugs Authority against any action or decision of any State Licensing Authority or the Central Licensing Authority and to the Central Government against any action or decision of the Central Drugs Authority.

Clause 48.—This clause seeks to amend section 34A of the Act relating to offences by Government Department so as to insert the new Chapter IB relating to Clinical Trials, new Chapter IIA relating to import, manufacture, sale, distribution and export of Medical Devices within the purview of this section.

Clause 49.—This clause seeks to amend section 34AA of the Act relating to penalty for vexatious search or seizure so as to include medical devices within the purview of the section and to enhance the penalty provided therefor.

Clause 50.—This clause seeks to insert a new section 34AAA to provide for penalty for submission of misleading or wrong information or refusal to furnish information as required by the licensing authority.

Clause 51.—This clause seeks to insert new sections 35A and 35B in the Act.

The proposed new section 35A imposes the liability to bear the cost of storage of any article seized for any offence under this Act on the person convicted for that offence.

The proposed new section 35B provides for destruction of the seized spurious, misbranded, adulterated or not-of-standard quality drugs, cosmetics and medical devices after their use in the court as evidence and placing the liability to bear the cost of such destruction on the convicted person.

Clause 52.—This clause seeks to substitute section 38 of the Act relating to laying of rules and regulations made under the Act.

Clause 53.—This clause seeks to insert a new Schedule, namely, “THE THIRD SCHEDULE”, in the Act relating to Categories of drugs which the Central Licensing Authority is empowered to issue licence containing seventeen categories of drugs.

FINANCIAL MEMORANDUM

Clause 7 of the Bill proposes to insert, *inter alia*, new section 4A relating to constitution of Central Drugs Authority. Sub-section (4) of the aforesaid section empowers the Central Drugs Authority to establish its offices. Sub-section (3) of the proposed new section 4B provides for allowances payable to members on account of holding of meetings of the Central Drugs Authority. The proposed new sub-section (2) of section 4G provides for salaries, allowances and pensions of the Drugs Controller General of India. The proposed new section 4H empowers the Central Drugs Authority to create posts. Sub-section (2) of the aforesaid section 4H provides for salaries, allowances and pensions to the officers and employees of the Central Drugs Authority which shall be determined by the Central Government.

2. The Bill, if enacted and brought into operation, may involve expenditure from the Consolidated Fund of India and is not likely to involve any other expenditure whether of a recurring or non-recurring nature.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 7 of the Bill proposes to insert new Chapters IA and IB (containing new sections 4A to 4ZL) in the Drugs and Cosmetics Act, 1940.

The proposed new section 4-I provides that the Central drugs Authority shall specify, by regulations, (i) the guidelines, norms, structures and requirements for effective functioning of the Central Licensing Authority and the State Licensing Authorities and (ii) the fees or charges for issue or renewal of licenses, certificates, approvals and permissions by the Central Licensing Authority and the State Licensing Authorities.

The proposed new section 4N empowers the Central Government to make rules for giving effect to the provisions of Chapter IA after consultation with, or on the recommendation of, the Central Drugs Authority and subject to previous publication by notification in the Official Gazette.

The proposed new section 4-O empowers the Central Drugs Authority to make regulations consistent with the Act and the rules made thereunder, with the approval of the Central Government, by notification in the Official Gazette.

The proposed new section 4ZK empowers the Central Government to make rules for giving effect to the provisions of Chapter IB after consultation with, the Central Drugs Authority and after previous publication by notification in the Official Gazette.

2. Clause 10 of the Bill proposes to insert a new section 5A in the Act. Sub-section (4) of the proposed new section 5A confers power on the Medical Device Technical Advisory Board, in consultation with the Central Drugs Authority, and subject to the previous approval of the Central Government, to make bye-laws fixing quorum and regulating its own procedure and the conduct of all business to be transacted by it.

3. Clause 11 of the Bill proposes to amend section 6 of the Act. The proposed sub-section (1) of the aforesaid section provides, *inter alia*, that the Central Drugs Authority may, in consultation with the Central Government, specify by regulations the functions of the Central Drugs Laboratory in respect of any drug or class of drugs or cosmetic or class of cosmetics or medical device or class of medical devices to be performed by any other laboratory.

4. Clause 13 of the Bill proposes to insert a new Chapter IIA (containing new sections 7B to 7N) in the Act. The proposed new section 7N empowers the Central Government to make rules for giving effect to the provisions of Chapter IIA after consultation with, or on the recommendation of, the Central Drugs Authority and after previous publication, by notification in the Official Gazette.

5. The matters in respect of which the rules or regulations may be made under the aforementioned provisions are matters of procedure or administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

II

BILL NO. LIX OF 2013

A Bill to repeal the Delhi Rent Act, 1995

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

Short title.

1. This Act may be called the Delhi Rent (Repeal) Act, 2013.

Repeal of Act
33 of 1995.

2. The Delhi Rent Act, 1995 is hereby repealed.

STATEMENT OF OBJECTS AND REASONS

The Delhi Rent Control Act, 1958 was enacted and it was subsequently amended in 1960, 1963, 1976, 1984 and 1988. In order to bring the said law in conformity with the provisions of Model Rent Control Legislation formulated by the Central Government, the Delhi Rent Bill, 1994 was introduced in Parliament. The said Bill was passed by Parliament in 1995. Although the said Bill received the assent of the President in August, 1995, it could not be brought into force. Hence, the Delhi Rent Control Act, 1958, as amended from time to time, is still in force. The salient features of the 1958 Act are – to provide for control on rental housing market; fixation of fair or standard rent; protection of tenants against indiscriminate eviction; obligations of landlords regarding maintenance; and right of landlords for recovery of possession in specific circumstances.

2. The Delhi Rent Act, 1995 was decided to be brought into force after making further amendments therein. Accordingly, the Delhi Rent (Amendment) Bill, 1997 was introduced in Rajya Sabha incorporating the changes suggested by All-Party Committee and various representations received from the public.

3. The Delhi Rent (Amendment) Bill, 1997 was referred to the Standing Committee on Urban and Rural Development on 6th August, 1997 which could not submit its report because of dissolution of 11th Lok Sabha. The Bill could not be taken up in 12th Lok Sabha. After formation of 13th Lok Sabha, the Bill was again referred to the Standing Committee on 17th February, 2000. The Committee concluded the examination of the said Bill and submitted its report to Parliament on 21st December, 2000 and endorsed the Delhi Rent (Amendment) Bill, 1997 subject to the following changes:—

(i) the rental limit for the purpose of applicability of the Act may be increased at least to Rs. 7,500 per month;

(ii) for inheritance of tenancy of non-residential premises by dependent legal heir, the period may be increased from three years to five years;

(iii) format and procedure of rent agreement be prescribed.

However, official amendments to the Bill could not be moved till the dissolution of 14th Lok Sabha.

4. With a view to make the Rent law more comprehensive, it was decided to invite comments from public in the matter. Accordingly, notice was published in the leading newspapers. In response, the public suggested changes, *inter alia*, relating to— (i) increase in rent to be linked with inflation/price index from the date of notification of the Act; (ii) exemption limit for application of the Act for residential and non-residential premises to be kept separate and be increased; (iii) inheritance right of commercial tenancy in general and, where tenants paid “pugree” to the owners in particular, to be continued; and (iv) eviction of the tenant in case of *bona fide* requirement of the owners.

5. In a meeting of representatives of Government of National Capital Territory of Delhi and the Ministry of Urban Development held on 16th March, 2012, the Government of National Capital Territory of Delhi favoured preparation of a new draft Bill to be placed in public domain for adequate discussion in the light of later developments. Accordingly, it has been decided to repeal “the Delhi Rent Act, 1995”.

6. Accordingly, it is proposed to introduce the Delhi Rent (Repeal) Bill, 2013 to repeal the Delhi Rent Act, 1995.

7. The Bill seeks to achieve the above objects.

KAMAL NATH.

III**BILL NO. LX OF 2013**

A Bill further to amend the Constitution of India.

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

Short title and commencement.

1. (1) This Act may be called the Constitution (One Hundred and Twentieth Amendment) Act, 2013.

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

Amendment of article 124.

2. In article 124 of the Constitution, in clause (2),—

(a) for the words "after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose", the words, figures and letter "on the recommendation of the Judicial Appointments Commission referred to in article 124A" shall be substituted;

(b) the first proviso shall be omitted;

(c) in the second proviso, for the words "Provided further that", the words "Provided that" shall be substituted.

3. After article 124 of the Constitution, the following article shall be inserted, namely:—

Insertion of
new article
124A.

"124A. (1) There shall be a Commission to be known as the Judicial Appointments Commission.

Judicial
Appointments
Commission.

(2) Parliament may, by law, provide for—

(a) the composition of the Commission;

(b) the appointment, qualifications, conditions of service and tenure of office of the Chairperson and other Members of the Commission;

(c) the functions of the Commission;

(d) the procedure to be followed by the Commission in discharge of its functions;

(e) the manner of selection of persons for appointment as Chief Justice of India and other Judges of the Supreme Court, Chief Justices and other Judges of High Courts; and

(f) such other matters as may be considered necessary.

4. In article 217 of the Constitution, in clause (1), for the portion beginning with the words "after consultation" and ending with the words "the High Court", the words, figures and letter "on the recommendation of the Judicial Appointments Commission referred to in article 124A" shall be substituted.

Amendment
of article 217.

5. In article 222 of the Constitution, in clause (1), for the words "after consultation with the Chief Justice of India", the words, figures and letter "on the recommendation of the Judicial Appointments Commission referred to in article 124A" shall be substituted.

Amendment
of article 222.

6. In article 231 of the Constitution, in clause (2), sub-clause (a) shall be omitted.

Amendment
of article 231.

STATEMENT OF OBJECTS AND REASONS

The Judges of the Supreme Court are appointed by the President under clause (2) of article 124 of the Constitution while the Judges of the High Courts are appointed by the President under clause (1) of article 217 of the Constitution. The President is required to hold consultation with such of the Judges of the Supreme Court and of the High Courts in the States as he may deem necessary for the purpose. However, every Judge of a High Court shall be appointed by the President after consultation with the Chief Justice of India, the Governor of the State and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court.

2. The transfer of Judges from one High Court to another High Court is made by the President after consultation with the Chief Justice of India under clause (1) of article 222 of the Constitution.

3. As regards the appointment of Judges of the Supreme Court and High Courts, the Supreme Court, in the matters of the Supreme Court Advocates-on-Record Association Vs. Union of India and its Advisory Opinion 1998 in Third Judges case, had interpreted articles 124(2) and 217(1) of the Constitution with respect to the meaning of “consultation” as “concurrence”. It was also held that the consultation with the Chief Justice of India means collegium consisting of the Chief Justice and two or four Judges, as the case may be. This has resulted in a Memorandum of Procedure laying down the process which is being presently followed for appointment of Judges to both the High Courts and the Supreme Court. The Memorandum of Procedure confers upon the Judiciary itself the power for appointment of Judges.

4. After review of the pronouncements of the Supreme Court and relevant constitutional provisions, it was felt that a broad based Judicial Appointment Commission could be established for making recommendations for selection of Judges. It would provide a meaningful role to the executive and judiciary to present their view points and make the participants accountable while introducing transparency in the selection process.

5. Thus, the Constitution (One Hundred and Twentieth Amendment) Bill, 2013 proposes to insert a new article 124A to constitute a Judicial Appointments Commission for making recommendations with respect to the appointment of Judges in Higher Judiciary.

6. The proposed Bill would enable equal participation of Judiciary and Executive in appointment of Judges in higher judiciary and make the system of appointments more accountable and thereby increase the confidence of the public in the institution of judiciary.

7. The Bill seeks to achieve the above objectives.

KAPIL SIBAL.

IV**BILL NO. LXI OF 2013**

A Bill to provide for the composition of the Judicial Appointments Commission for the purpose of recommending persons for appointment as Chief Justice of India and other Judges of the Supreme Court, Chief Justices and other Judges of High Courts, its functions, procedure to be followed by it and for matters connected therewith or incidental thereto.

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

1. (1) This Act may be called the Judicial Appointments Commission Act, 2013.

Short title and
commencement.

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

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) "Chairperson" means the Chairperson of the Judicial Appointments Commission referred to in clause (a) of sub-section (1) of section 3;

(b) "Commission" means the Judicial Appointments Commission referred to in sub-section (1) of section 3;

(c) "Member" means a Member of the Commission and includes its Chairperson;

(d) "prescribed" means prescribed by the rules made under this Act;

(e) "regulations" means the regulations made by the Commission under this Act.

3. (1) The Judicial Appointments Commission, referred to in clause (1) of article 124A of the Constitution, shall consist of—

Constitution of Judicial Appointments Commission.

(a) the Chief Justice of India, Chairperson, *ex officio*;

(b) two other Judges of the Supreme Court next to the Chief Justice of India in seniority—Members, *ex officio*;

(c) the Union Minister in charge of Law and Justice—Member, *ex officio*;

(d) two eminent persons, to be nominated by the collegium consisting of the Prime Minister, the Chief Justice of India and the Leader of Opposition in the House of the People—Members:

Provided that the eminent persons shall be nominated for a period of three years and shall not be eligible for re-nomination.

(2) The Secretary to the Government of India in the Department of Justice shall be the convenor of the Commission.

(3) The fee and allowances payable to the eminent persons shall be such as may be prescribed.

4. It shall be the duty of the Commission,—

Functions of Commission.

(a) to recommend persons for appointment as Chief Justice of India, Judges of the Supreme Court, Chief Justices of High Courts and other Judges of High Courts;

(b) to recommend transfer of Chief Justices of High Courts and the Judges of High Courts from one High Court to any other High Court; and

(c) to ensure that the person recommended is of ability, integrity and standing in the legal profession.

5. In case of appointment of Judge of a High Court, the views of the Governor and the Chief Minister of the concerned State as also of the Chief Justice of High Court shall be elicited in writing in accordance with the procedure as may be specified by regulations made by the Commission.

Procedure for recommendation with respect to appointment of High Court Judges.

6. (1) The Central Government may appoint such number of officers and other employees as it may consider necessary for the discharge of functions of the Commission under this Act.

Officers and employees of Commission.

(2) The terms and other conditions of service of the officers and other employees of the Commission appointed under sub-section (1) shall be such as may be prescribed.

7. (1) The Central Government shall, within a period of three months from the date of coming into force of this Act, intimate the vacancies existing in the Supreme Court and a High Court to the Commission for making its recommendations.

Reference to Commission for filling up of vacancies.

(2) The Central Government shall, two months prior to the date of occurrence of any vacancy by reason of completion of the term of Judge of the Supreme Court and a High Court, make a reference to the Commission for filling up the vacancies.

(3) The Central Government shall, within a period of two months from the date of occurrence of any vacancy by reason of death, resignation of the Judge of the Supreme Court and a High Court, make a reference to the Commission for filling up the vacancies.

8. (1) The Convenor of the Commission shall initiate the process for selection by inviting recommendations from the Chief Justices of High Courts, the Central Government and the State Governments in respect of candidates fulfilling the eligibility criteria.

Procedure for shortlisting of candidates.

(2) The Commission may, by regulations, specify the procedure for shortlisting of candidates for considering their appointment as Judges to the Supreme Court.

(3) The Commission may, by regulations, specify the procedure for shortlisting of candidates for considering their appointment as Judges to the High Court.

9. (1) The Commission shall meet at such time and place as the Chairperson may decide.

Meetings of Commission.

(2) The Commission shall have the power to specify, by regulations, the procedure for the discharge of its functions under the Act.

10. No act or proceedings of the Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy in, or defect in the constitution of, the Commission.

Vacancies, etc., not to invalidate proceedings of Commission.

11. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the fee and allowances payable to the eminent persons under sub-section (3) of section 3;

(b) the terms and other conditions of service of officers and other employees of the Commission under sub-section (2) of section 6;

(c) any other matter which is to be, or may be, prescribed in respect of which provision is to be made by the rules.

12. (1) The Commission may, by notification in the Official Gazette, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act.

Power to make regulations.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the procedure for recommendation with respect to appointment of Judge of a High Court under section 5;

(b) the procedure for shortlisting of candidates for considering their appointment as Judges of the Supreme Court under sub-section (2) of section 8;

(c) the procedure for shortlisting of candidates for considering their appointment as Judges of the High Court under sub-section (3) of section 8;

(d) the procedure to be followed by the Commission in discharging of its functions under sub-section (2) of section 9;

(e) any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be made by regulations.

Rules and regulations to be laid before Parliament.

13. Every rule and regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Power to remove difficulties.

14. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, after consultation with the Commission, by an order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

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

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

STATEMENT OF OBJECTS AND REASONS

The Judges of the Supreme Court are appointed by the President under clause (2) of article 124 of the Constitution while the Judges of the High Courts are appointed by the President under clause (1) of article 217 of the Constitution. The President is required to hold consultation with such of the Judges of the Supreme Court and of the High Courts in the States as he may deem necessary for the purpose. However, every Judge of a High Court shall be appointed by the President after consultation with the Chief Justice of India, the Governor of the State and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court.

2. The transfer of Judges from one High Court to another High Court is made by the President after consultation with the Chief Justice of India under clause (1) of article 222 of the Constitution.

3. As regards the appointment of Judges of Supreme Court and High Courts, the Supreme Court, in the matters of the Supreme Court Advocates-on-Record Association Vs. Union of India and its Advisory Opinion 1998 in Third Judges case, had interpreted articles 124(2) and 217(1) of the Constitution with respect to the meaning of "consultation" as "concurrence". It was also held that the consultation with the Chief Justice of India means collegium consisting of Chief Justice and two or four Judges, as the case may be. This has resulted in a Memorandum of Procedure laying down the process which is being presently followed for appointment of Judges to both the High Courts and the Supreme Court. The Memorandum of Procedure confers upon the Judiciary itself the power for appointment of Judges.

4. After review of the pronouncements of the Supreme Court and relevant constitutional provisions, it was felt that a broad based Judicial Appointments Commission could be established for making recommendations for selection of Judges. It would provide a meaningful role to the executive and judiciary to present their view points and make the participants accountable while introducing transparency in the selection process.

5. Thus, the Judicial Appointments Commission Bill, 2013 seeks to broad base the appointment process and make it more participatory to ensure greater transparency and objectivity in the appointments to higher judiciary.

6. The proposed Bill provides for the constitution of the Judicial Appointment Commission, comprising of —(a) the Chief Justice of India, an *ex officio* Chairperson; (b) two other Judges of the Supreme Court next to the Chief Justice of India in seniority as *ex officio* Members; (c) the Union Minister in charge of Law and Justice as *ex officio* Member; and (d) two eminent persons, to be nominated by the collegium consisting of the Prime Minister, the Chief Justice of India and the Leader of Opposition in the House of the People, as members.

7. The proposed Bill would enable equal participation of Judiciary and Executive, make the system of appointments more accountable, and thereby increase the confidence of the public in the institutions.

8. The Bill seeks to achieve the above objectives.

KAPIL SIBAL.

FINANCIAL MEMORANDUM

Sub-clause (1) of clause 3 of the Bill provides for establishment of the Judicial Appointments Commission, referred to in clause (1) of article 124A of the Constitution, comprising—(a) the Chief Justice of India an *ex officio* Chairperson; (b) two other Judges of the Supreme Court next to the Chief Justice of India in seniority as *ex officio* Members; (c) the Union Minister in charge of Law and Justice as *ex officio* Member; and (d) two eminent persons to be nominated by the collegium consisting of the Prime Minister, the Chief Justice of India and the Leader of Opposition in the Lok Sabha.

Sub-clause (2) of clause 3 provides that Secretary to the Government of India in the Department of Justice be the convenor of the Commission.

Sub-clause (3) of clause 3 provides that the fee and allowances payable to eminent persons shall be such as may be prescribed.

Sub-clause (1) of clause 6 provides that the Central Government may appoint such number of officers and other employees as it may consider necessary for the discharge of functions of the Commission under this Act.

The expenditure on account of the aforesaid provisions would be negligible. At this stage, it is not practicable to make an estimate of expenditure likely to be involved in the financial year 2013-2014, both recurring and non-recurring. However, the expenditure would be met from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 11 of the Bill confers power upon the Central Government to make rules for carrying out the provisions of the Bill. The matters in respect of which rules may be made are—(a) the fee and allowances payable to the eminent persons under sub-section (3) of section 3; (b) the terms and other conditions of service of officers and other employees of the Commission under sub-section (2) of section 6; and (c) any other matter which is to be or may be prescribed, in respect of which provision is to be made by rules.

2. Clause 12 of the Bill confers power upon the Judicial Appointments Commission to make regulations consistent with the Act and the rules made thereunder to carry out the provisions of the Act. The matters in respect of which, regulations may be made are matters relates to—(a) the procedure for recommendation with respect to appointment of Judge of a High Court under section 5; (b) the procedure for shortlisting of candidates for considering their appointment as Judges of the Supreme Court under sub-section (2) of section 8; (c) the procedure for shortlisting of candidates for considering their appointment as Judges of the High Court under sub-section (3) of section 8; (d) the procedure to be followed by the Commission in discharging of its functions under sub-section (2) of section 9; and (e) any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be made by regulations.

3. The rules made by the Central Government and the regulations made by the Commission shall be laid as soon as may be after they are made before each House of Parliament.

4. The matters in respect of which the rules and regulations may be made are generally matters of procedure and administrative detail and it is not practicable to provide them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

SHUMSHER K. SHERIFF,
Secretary-General.