

**BILL NO:----- of 2011**

**AUTHORITATIVE ENGLISH TEXT**

**THE HIMACHAL PRADESH CONFISCATION OF ILL  
GOTTEN ASSETS BILL,2011**

**AS INTRODUCED IN THE LEGISLATIVE ASSEMBLY**

**THE HIMACHAL PRADESH CONFISCATION OF ILL  
GOTTEN ASSETS BILL,2011**

**ARRANGEMNT OF CLAUSES**

**Clauses:**

- 1. Short title.**
- 2. Definitions.**
- 3. Establishment of Special Courts.**
- 4. Cognizance of cases by Special Courts.**
- 5. Declaration of cases to be dealt with under this Act.**
- 6. Jurisdiction of Special Courts.**
- 7. Procedure and power of Special Courts.**
- 8. Appeal against orders of Special Courts.**
- 9. Special Courts not bound to adjourn a trial.**
- 10. Application for confiscation of property.**
- 11. Notice for confiscation.**
- 12. Confiscation of property in certain cases.**
- 13. Transfer to be null and void.**
- 14. Appeal.**
- 15. Power to take possession.**
- 16. Refund of confiscated money or property.**
- 17. Notice or order not to be invalid for error in description.**
- 18. Bar to other proceedings.**

**19. Protection of action taken in good faith.**

**20. Power to make rules.**

**21. Notifications under section 3 and declaration under section 5 to be laid.**

**22. Overriding effect.**

BILL NO of 2011.

**THE HIMACHAL PRADESH CONFISCATION OF ILL GOTTEN  
ASSETS BILL, 2011**

A

BILL

to provide for the constitution of special courts for the speedy trial of certain class of offences and for confiscation of the properties involved and for matter connected therewith or incidental thereto.

WHEREAS corruption is perceived to be amongst some persons holding public offices and some public servants within the meaning of section 2(c) of the Prevention of Corruption Act, 1988 in the State of Himachal Pradesh;

AND, WHEREAS, the Government receives such reports and allegations and has sufficient reasons to believe that some of these may have substance and that some such persons, who have held or are holding public offices and are public servants within the meaning of Section 2(c) of the Prevention of Corruption Act, 1988, have accumulated vast property, disproportionate to their known sources of income by resorting to corrupt means;

AND, WHEREAS, it is obligation of the State to prosecute persons involved in such corrupt practices and also to ensure that they are not allowed to enjoy the fruit of their ill gotten assets as also to ensure that such assets are confiscated and put to fruitful use for public purpose in public interest;

AND, WHEREAS, the existing legal framework is perceived to be inadequate to bring the trials, arising out of those prosecutions to a speedy termination so that the aforesaid offenders should be tried with utmost dispatch, and effective deterrence to curb corrupt practices on the part of public servants is imperative

for the efficient functioning of a parliamentary democracy and the institutions created by or under the Constitution of India;

AND, WHEREAS, it is necessary for the said purpose to designate Special Courts to be presided over by Judicial officers and it is also expedient to make some procedural changes whereby avoidable delay in the final determination of the guilt or innocence, of the persons to be tried, is eliminated without interfering with the right to a fair trial and to take effective deterrent measures of an interim nature to curb the menace of corruption.

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Sixty second Year of the Republic of India as follows: —

**1. *Short title*** .— This Act may be called the Himachal Pradesh Confiscation of Ill Gotten Assets Act, 2011.

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

(a) "authorised officer" means any Judicial officer belonging to Himachal Pradesh Higher Judicial Service and who is or has been Session Judge or Additional Sessions Judge, nominated by the State Government with the concurrence of the High Court for the purpose of section 10;

(b) "Code" means the Code of Criminal Procedure, 1973;

(c) "declaration" in relation to an offence, means a declaration made under section 5;

(d) "offence" means an offence of criminal misconduct which attracts application of clause (e) of sub-section (1) of section 13 of the Prevention of

Corruption Act,1988 either independently or in combination with any other provision of the said Act or any of the provision of Indian Penal Code;

(e) "Special Court" means a Special Court established under section 3; and

(f) words and expressions used herein and not defined but defined in the Code or the Prevention of Corruption Act,1988 shall have the meanings respectively assigned to them in the Code or the said Act.

**3. *Establishment of Special Courts-*** (1) The State Government shall, for the purpose of speedy trial of offences, by notification published in the Official Gazette, designate as many Courts as considered adequate to be called Special Courts.

(2) A Special Court shall be presided over by a Judge to be nominated by the State Government with the concurrence of the Himachal Pradesh High Court.

(3) No person shall be qualified for nomination as a Judge of a Special Court unless he is a member of Himachal Pradesh Higher Judicial Service and is or has

been a Sessions Judge or Additional Sessions Judge, at least for the period of 3 years.

**4. *Cognizance of cases by Special Courts.***— A Special Court shall take cognizance of offence and try such cases as are instituted before it.

**5. *Declaration of cases to Be dealt with under This Act.***— (1) If the State Government is of the opinion that there is *prima-facie* evidence of the commission of an offence alleged to have been committed by a person, who has held or is holding public office and is or has been public servant within the meaning of **section 2(c) of the Prevention of Corruption Act, 1988** in the State of Himachal Pradesh, the State Government shall make a declaration to that effect in every such case.

(2) The declaration made under Sub-section(1) shall not be called in question in any Court.

(3) Notwithstanding anything contained in the Code or any other law for the time being in force, after declaration is made under Sub-section (1),any prosecution in respect of the offence shall be instituted only in a Special Court.

(4) Where any declaration made under section 5 relates to an offence in respect of which a prosecution has already been instituted and the proceedings in relation thereto are pending in a Court other than Special Court under the Prevention of Corruption Act 1988, such proceedings shall, notwithstanding anything contained in any other law for the time being in force, stand transferred to Special Court for trial of the offence in accordance with this Act.

**6. *Jurisdiction of Special Court***— A Special Court shall have jurisdiction to try any person alleged to have committed the offence in respect of which a declaration has been made under section 5, either as Principal, conspirator or abettor and all of them can be jointly tried therewith at one trial in accordance with the Code.

**7. *Procedure And powers of Special Courts.***— (1) A Special Court shall, in the trial of such cases, follow the procedure prescribed by the Code for the trial of warrant cases before a Magistrate.

(2) Save as expressly provided in this Act, the provisions of the Code and of the Prevention of Corruption Act, 1988 shall, in so far as they are not inconsistent with the provisions of this Act, apply to the proceedings before a Special Court and for the purpose of the said provisions, the persons conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.

(3) A Special Court may pass, upon any person convicted by it, any sentence authorised by law for the punishment of the offence of which such person is convicted.

**8. Appeal against orders of Special Courts.**—An appeal shall lie from any judgment and sentence of a Special Court only to the High Court of Himachal Pradesh both on facts and law.

(2) Save as provided under Sub-section(1), no appeal or revision shall lie in any court from any judgment, sentence or order of a Special Court.

(3) Every appeal under this section shall be preferred within a period of sixty days from the date of judgment of a Special Court:

Provided that the High Court may entertain an appeal after the expiry of the said period of sixty days, if it is satisfied, for reasons to be recorded in writing, that the appellant had sufficient cause for not preferring the appeal within the specified period.

**9. Special Court not bound to adjourn a Trial.**— (1) A Special Court shall not adjourn any trial for any purpose unless such adjournment is, in its opinion, necessary in the interests of justice and for reasons to be recorded in writing.

(2) The Special Court shall endeavour to dispose of the trial of the case within a period of one year from the date of its institutions.

(3) A Presiding Judge appointed under section 3 may act on the evidence recorded by his predecessor or predecessors or partly recorded by his predecessor or predecessors and partly recorded by him.

**10. Application for confiscation of property.**—(1) Where the State Government, on the basis of *prima-facie* evidence, have reasons to believe that any person,

who has held or is holding public office and or has been a public servant, has committed the offence, the State Government may, whether or not the Special Court has taken cognizance of the offence, authorise the Public Prosecutor for making an application to the authorised officer for confiscation under this Act



of the money, and other property, which the State Government believe the said person to have procured by means of the offence.

(2) An application under sub-section (1)—

(a) shall be accompanied by one or more affidavits, stating the grounds on which the belief, that the said person has committed the offence, is founded and the amount of money and estimated value of other property believed to have been procured by means of the offence; and

(b) shall also contain any information available as to the location for the time being of any such money and other property, and shall, if necessary, give other particulars considered relevant to the context.

**11. Notice for confiscation.**— (1) Upon receipt of an application made under section 10 of this Act, the authorised officer shall serve a notice upon the person in respect of whom the application is made (hereafter referred to as the person affected) calling upon him within such time as may be specified in the notice, which shall not be ordinarily less than thirty days, to indicate the source of his income, earnings or assets, out of which or by means of which he has acquired such money or property, the evidence on which he relies and other relevant information and particulars, and to show cause as to why all or any of such money, or property or both, should not be declared to have been acquired by means of the offence and be confiscated to the State Government.

(2) Where a notice under sub-section (1) to any person specifies any money or property or both as being held on behalf of such person by any other person, a copy of the notice shall also be served upon such other person.

(3) Notwithstanding anything contained in sub-section (1), the evidence, information and particulars brought on record before the authorised officer, by the person affected or the State Government shall be open to be rebutted in the

trial before the special Court; Provided that such rebuttal shall be confined to the trial for determination and adjudication of guilt of the offender by the Special Court under this Act.

**12. Confiscation of property in certain cases.**— (1) The authorised officer may, after considering the explanation, if any, to the show cause notice issued under section 11 and the materials available before it, and after giving to the person affected (and in case the person affected holds any money or property specified in the notice through any other person, to such other person also) a reasonable opportunity of being heard, by order, record a finding whether all or any other money, assets or property in question have been acquired illegally.

(2) Where the authorised officer specifies that some of the money, or property or both referred to in the show cause notice are acquired by means of the offence, but is not able to identify specifically such money, or property or both, then it shall be lawful for the authorised officer to specify the money, or property or both which, to the best of his judgment, have been acquired by means of the offence and record a finding, accordingly under sub-section (1).

(3) Where the authorised officer records a finding under this section to the effect that any money, assets or property or all of them have been acquired by means of the offence, he shall declare that such money or property or both shall, subject to the provisions of this Act, stand confiscated to the State Government free from all encumbrances:

Provided that if the market price of the property confiscated is deposited with the authorised officer, the property shall not be confiscated.

(4) Where any share(s) in a Company stands confiscated to the State Government under this Act, then, the Company shall, notwithstanding anything contained in the Companies Act, 1956 or the Articles of Association of the Company, forthwith register the State Government as the transferee of such share(s).

(5) Every proceeding for confiscation of money, or property or both, under this Act, shall be disposed of within a period of six months from the date of service of the notice under sub-section(1) of section 11.

(6) The order of confiscation passed under this section shall, subject to the order passed in appeal, if any, under section 14, be final and shall not be called in question in any Court of law.

**13. *Transfer To be null And void.***—Where, after the issue of a notice under section 11, any money or property or both referred to in the said notice are transferred by any mode whatsoever, such transfer shall, for the purposes of the proceedings under this Act, be void and if such money or property or both are subsequently confiscated to the State Government under section 12 then, the transfer of such money or property or both shall be deemed to be null and void.

**14. *Appeal.***— (1) Any person aggrieved by any order of the authorised officer under this Act may appeal to the High Court within thirty days from the date on which the order appealed against was passed.

(2) Upon any appeal preferred under this section the High Court may, after giving such parties, as it thinks proper, an opportunity of being heard, pass such order as it thinks fit.

(3) An appeal preferred under sub-section (1) shall be disposed of preferably within a period of six months from the date it is preferred, and stay order, if any, passed in an appeal shall not remain in force beyond the prescribed period of disposal of appeal.

**15. *Power to take possession.***— (1) Where any money or property or both have been confiscated to the State Government under this Act, the concerned authorised officer shall order the person affected, as well as any other person, who may be in possession of the money or property or both to surrender or deliver possession thereof to the concerned authorised officer or to any person

duly authorised by him in this behalf, within thirty days of the service of the order; provided that the authorised officer, on an application made in that behalf and being satisfied that the person affected is residing in the property in question, may instead of dispossessing him immediately from the same, permit such person to occupy it for a limited period to be specified on payment of

market rent to the State Government and thereafter, such person shall deliver the vacant possession of the property.

(2) If any person refuses or fails to comply with an order made under sub-section (1), the authorised officer may take possession of the property and may, for that purpose, use such force as may be necessary.

(3) Notwithstanding anything contained in sub-section (2) the authorised officer may, for the purpose of taking possession of any money or property or both referred to in sub-section (1), requisition the service of any police officer to assist and it shall be the bounden duty of such police officer to comply with such requisition.

**16. *Refund of Confiscated money or property.***—Where an order of confiscation made under section 12 is modified or annulled by the High Court in appeal or where the person affected is acquitted by the Special Court, the money or property or both shall be returned to the person affected and in case it is not possible for any reason to return the property, such person shall be paid the price thereof including the money so confiscated with the interest at the rate of six percent per annum thereon calculated from the date of confiscation:

Provided that return of money or property or both may be subject to such conditions as may be imposed by the authorised officer on an application by the State regarding alienation of such property pending appeal against

acquittal before the High Court, as the authorised officer may determine after recording the reasons for passing such order.

**17. Notice or Order not to be invalid for error in description.**— No notice issued or served, no declaration made and no order passed, under this Act, shall be deemed to be invalid by reason of any error in the description of the property or person mentioned therein, if such property or person is identifiable from the description so mentioned.

**18. Bar to other proceedings.**—Save as provided in sections 8 and 14 and notwithstanding anything contained in any other law, no suit or other legal

proceedings shall be maintainable in any Court in respect of any money or property or both ordered to be confiscated under section 12.

**19. Protection of action taken in good faith.**—No suit, prosecution or other legal proceedings shall lie against any person for anything in good faith done or intended to be done in pursuance of this Act.

**20. Power to Make rules.**—(1) The State Government may, by notification published in the Official Gazette, make such rules, if any, as it may deem necessary for carrying out the purposes of this Act.

(2) Every rule made under this Act shall be laid, as soon as may be after it is so made, before the State Legislative Assembly, while it is in session, for period of then ten days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the successive session aforesaid, the Legislative Assembly agrees in making any modification in the rule or agrees that rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such

modification or annulment shall be without prejudice to the validity of any thing previously done under that rule.

**21. *Notifications under section 3 and declarations under section 5 to be laid.***— Every notification issued under sub-section (1) of section 3 and every declaration made under sub-section (1) of section 5 shall be laid, as soon as may be, after they are made, before the State Legislature.

**22. *Overriding effect.***—Notwithstanding anything in the Prevention of Corruption Act, 1988 or any other law for the time being in force, the provisions of this Act shall prevail in case of any inconsistency.

## **STATEMENT OF OBJECTS AND REASONS.**

There are reports and allegations that some persons holding public offices and who are public servants, have acquired vast property, disproportionate to their known source of income by resorting to corrupt means and there are sufficient reasons to believe that some of these may have substance. It is the duty of the State to prosecute persons involved in such corrupt practices and ensure that such ill gotten money and property is confiscated and put to use for public purposes in public interest.

It is felt that existing legal frame work is inadequate to try such public servants in a time bound frame work so as to curb corrupt practices on the posts of public servants. As such, it has been decided to bring a special law which may provide for speedy trial of such offences by the Special Courts and for

confiscation of the money and property accumulated by resorting to corrupt practices by such persons holding public offices and public servants.

The Bill proposes for constitution of Special Courts for quick trial of certain categories of offences and confiscation of ill gotten properties. The members of Himachal Pradesh Higher Judicial Services of the rank of District and Session Judge or Additional District and Sessions Judge, with at least three years of experience in the State shall be presiding Judge of such Court. Further, the Special Courts shall endeavour to dispose of the trial within the period of one year and appeal against the orders of the Special Court shall lie to the High Court.

The Bill further proposes that if the State Government is convinced prima facie that a public servant has amassed wealth and properties by committing a crime, an application may be made to the Special Court for confiscation of the properties of the concerned public servant and till the final

disposal of the case by the Special Court, the State Government shall have the powers to take action as per provisions of this Act.

This Bill seeks to achieve aforesaid objective.

Shimla:  
The -----2011

(Prem Kumar Dhumal)  
Chief Minister.

## FINANCIAL MEMORANDUM

Clause -3 of the Bill provides interalia to designate the Courts of Session Judge and Additional Sessions Judges in the State, as Special Courts. As such, the provisions of the Bill if enacted, will be implemented



through existing Government machinery and there shall be no additional expenditure from the state exchequer.

#### MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 20 of the Bill seeks to empower the State Government to make rule for carrying out provisions of this Act. The Proposed delegation of power is essential and normal in character.

THE HIMACHAL PRADESH CONFISCATION OF ILL GOTTEN ASSETS  
BILL 2011.

A

BILL

To provide for the constitutions of Special Courts for the speedy trial of certain cases of offences and for confiscation of the properties involved and for matters connected there with or incidental there to.

(Prem Kumar Dhumal)  
Chief Minister.

(A.C Dogra)  
Principal Secretary(Law).

Shimla:  
The -----2011.