

Narcotics and Drug Abuse in India: Legal Control, Positive Measure and Failures

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Abstract

It is necessary to lay down statutory guidelines regarding the procedure to be followed by the law enforcement officials during investigation of the criminal offences so that they do not resort to illegal arrests, unlawful searches and seizures, coercive interrogation and illicit means to collect evidence. Procedural norms are essential for regulating the proceedings in the court of law. The procedural provisions are indispensable components of any penal statute.

In the Narcotics Drugs and Psychotropic Substances Act¹, all the procedures required to be followed by the enforcement officials during the investigation have been exhaustively dealt with. However, many of the procedural provisions are complex, cumbersome and impractical. Moreover, diverse and conflicting interpretations accorded to those provisions by the court have rendered the procedural law highly uncertain and vulnerable. Under these circumstances, the enforcement officials often fail to meticulously follow such provisions, and this result in large percentage of drug offenders.

1. Introduction

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1.1 Search of a Place or a Building

It is stipulated in the section 41 of the NDPS act that a gazette officer of any government department has been entrusted with the enforcement of the act, who has been empowered for the purpose of this section by a general or special order by the central or state government, may authorize search of any building, conveyance or place, if he has reasons to believe from personal knowledge or 'information given by any

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¹ Narcotics Drugs and Psychotropic Substances Act, 1985.

person and taken in writing that any contraband drug or any documented article in relation to an offence under the act.

There have been conflicting judicial pronouncements on the question whether the failure of any officer to merely record, record the information, received by him, in writing, in terms of section 41 and 42 of the NDPS Act will render the search illegal and thus vitiates the subsequent proceedings or trial.

The Punjab and Haryana High Court held in *Hakam Singh v. Union Territory, Chandigarh*², that it is mandatory to reduce in writing the information received by an officer under section 41. The Court held the prerequisite of recording the information in writing cannot be said to be only a formality and its contravention would certainly cause prejudice to the accused, because in the absence of any writing, there would be no chance to cross-examine the officer with regard to the factum or contents of the information received. The failure of the police officer in recording the secret information in writing was one of the grounds for quashing the conviction of the accused in the NDPS act.

The Gujarat High Court disagreed with the above view in *Gurajmal Kanaiyalal Soni v. State of Gujarat*³ and observed 'we are not in a position to endorse the view that in the absence of writing; there will be no chance to cross-examine the officer with regard to the factum and contents of the information received and that would cause prejudice to the accused.

The Bombay High Court in *Abdul Sattar v. State*⁴ and the Delhi High Court in *Richhpal v. State*⁵ have also held that mere failure to reduce the information received by an officer into writing, before conducting a search, does not vitiate the proceedings. Coming to the practicability of these provisions, it may not always be possible for an officer to reduce the secret information in writing as he has to act swiftly on such information, suppose an informer is keeping a watch over the buildings and he notices a suspect entering a building with a briefcase suspected to contain heroin. The informer will rush to the official, for furnishing this information. If the official starts writing the information instead of immediately hurrying towards the spot, there is a likelihood that the suspect might escape in the meantime. Speed and promptness of the action is the essence of success for both the traffickers as well as enforcement officials.

The requirement of writing the information in writing before conducting the search does not appear to serve any practical purpose. If the aim of the provision is to ensure that the enforcement officials do not make fake or frivolous searches without recording the statement in writing, there is nothing to prevent an officer from circumventing the law by recording the information after the search has been made by manifesting it as having been recorded prior to the search. Further, the information itself can be faked as an enforcement official cannot be compelled by any court of law or any other authority to disclose the source of information under any circumstances, whatsoever, by virtue of section 68 of the NDPS Act.

1.3 Search of Persons

Section 50 of the NDPS act, 1985 stipulates that, "when any officer duly authorized under section 42 is authorized to search any person under the provision of section 41, section 42 or section 43, he shall, if the person so requires, take such person without delay to the nearest gazetted officer of any department mentioned in section 42 or the nearest magistrate."

However, these provisions have been subjected to conflicting interpretations by the courts, leading to uncertainty regarding the true ambit of this section.

² 1988 Cr. L.J. 528 (P&H)

³ 1991 Cr. L.J. 1483 (Guj)

⁴ 1989 Drugs Cases 50

⁵ 1989 Drugs Cases 97

On the one hand, seven High Courts including the Punjab and Haryana High Court in *Jang Singh v. State of Haryana*⁶, *Harbhajan Singh v. State of Haryana*⁷, *Bhajan Singh v. State of Haryana*⁸, *Hakam Singh v. union territory*⁹, *Chandigarh and Paul Osumbu v. State of Haryana*¹⁰; Delhi High Court in *Kailash Singh v. State*¹¹, *Jayapalan v. State*¹²; the Himachal Pradesh High Court in *State of H.P. v. Sudershan Kumar*¹³; the Rajasthan High Court in *Choteylal v. State of Rajasthan*¹⁴, *Prthvi Raj v. State of Rajasthan*¹⁵; the Allahabad High Court in *Dadan Singh v. State of U.P.*¹⁶; the Madhya Pradesh High Court in *Mariappa and other v. State of Madhya Pradesh*¹⁷, *Salamat Ali v. State*¹⁸ and the Gauhati High Court in *Md. Jainulabdin v. State of Manipur*¹⁹, have held that officer making the search under section 41, 42, 43 does not inform the person searched that he has a right to be taken before a gazetted officer or a magistrate for a personal search, it will be violation of the mandatory provision of section 50 of the NDPS act and would consequently vitiate the proceedings. As per these pronouncements an officer conducting a search under the act needs to comply with the provisions unless it will quash the proceedings against the accused and such officer is under a legal obligation to bring the provision of section 50 of NDPS Act to the knowledge of the accused.

Apart from the above conflicting court ruling, one practical problem regarding the compliance of section 50 of the NDPS acts. Sometimes, a person whose movements are suspicious may be searched by the police without knowing whether such person is carrying stolen property, narcotics or illegal arms. Similarly, a person may be searched by a police or security staff as a matter of routine to see whether he is carrying any hazardous good or weapons which may endanger public safety. In such situations, if the person is detected with carrying illicit or contraband drugs, then the legality of such search and seizure, for the purpose of his conviction under the NDPS act, becomes questionable and needs to be ascertained.

1.4 Institutional mechanisms to curb the Menace of Drug Abuse

Till the coming into force of the Narcotic Drugs and Psychotropic Substances Act, 1985 only the state police or state excise could investigate the drug offences and prosecute the offenders. The officials of some of the other government departments namely customs, central excise, narcotics, drug control and revenue, had limited powers of search, seizure and arrest. The seized contraband and drugs and the arrested persons had to be handed over by such officials to the state police or the state excise for further proceedings. Being overburdened with the investigations of more serious crimes, law and order duties and security arrangements etc, the police could hardly devote much attention to the drug offences. Therefore, the NDPS Act, 1985 sought to confer equal powers under the act on a number of agencies of the Central Government as well as the State Government.

⁶ 1988 Drugs Case 67

⁷ 1988 Drugs Case 81

⁸ 1968 Drugs Case 94

⁹ 1988 CrL. L.J. 528 (P&H)

¹⁰ 1991 Drugs Case 87

¹¹ 1989 Drugs Case 88

¹² 1989 Drugs Case 106

¹³ 1989 CrL. L.J. 1412 (H.P.)

¹⁴ 1989 Drugs Case 364

¹⁵ 1988 CrL. L.J. (RAJ) 718

¹⁶ 1993 CrL. L.J. 1785 (Allahabad)

¹⁷ 1990 CrL. L.J. 1990 (M. P.)

¹⁸ 1992 Drugs Case 78

¹⁹ 1991 CrL. L.J. 696 (Gauhati)

1.5 Narcotics Control Board

The Narcotic Drugs and Psychotropic Substances Act, 1985 which came into effect from 14th November, 1985 made an express provision for constituting a Central Authority for the purpose of exercising the powers and functions of the Central Government under the Act. In exercise of the powers, the “Narcotics Control Bureau” was constituted with Headquarters at Delhi in the year, 1986. The Bureau, subject to the supervision and control of the Central Government, exercises the powers and functions of the Central Government for taking measures with respect to:

- Co-ordination of action by various offices, State Governments and other authorities under the NDPS Act, Custom Act, 1962, Drugs Act and Cosmetics Act, 1940, and any other law for the time being in force in connection with the enforcement provisions of the NDPS Act, 1985
- Implementation of the obligation in respect of counter measures against illicit traffic under the various international conventions and protocols that are in force or which may be ratified or acceded to by India in future.
- Assistance to concerned authorities in foreign countries and concerned international organizations to facilitate coordination and universal action for prevention and suppression of illicit traffic in these drugs and substances.
- Co-ordination of action taken by the other concerned Ministries, Departments and Organizations in respect of matters relating to drug abuse²⁰.

The primary areas of focus for counter narcotics efforts, made by the Narcotics Control Bureau in India include:

- Intensive preventive and interdiction efforts on known drug routes.
- Identification of illicit cultivation of the opium poppy and the wild growth of cannabis and eradication of these sources of supply.
- Strict surveillance and enforcement at import and export points, land borders, airports, foreign post offices and production areas etc.
- Strict control over the movements of precursor chemicals.
- Improved coordination between various drug law enforcement agencies in order to effectively implement the Drug laws.
- Building of an electronic database of offenders and suspects.
- Strengthening of international liaison to improve the collection, analysis and dissemination of operation intelligence in order to keep a complete watch on drug smugglers.
- Implementing a scheme of monetary rewards for information leading to seizures of Narcotic drugs to informants and officers.
- Using satellite imagery for monitoring identified areas for illicit growth of cannabis or opium.
- Conducting training programs for law enforcement officials for upgrading their skill to combat drug trafficking
- NCB strives to promote interagency co-operation in India and abroad in order to implement the provisions of various international conventions relating to drug abuse and illicit drug trafficking.

The work and recovery record of Narcotics Control Bureau is appreciable as regards to the seizures of contrabands made from the year 2009 to 2014, it can be said that the NCB has done a commendable job

²⁰ Narcotics Control Bureau, Ministry of Home Affairs, Government of India available at <http://www.narcoticsindia.nic.in/about.php> accessed on 20/04/16 at 14:15hrs.

in this regard and succeeded in its mission to control the supply of contrabands²¹. Major trafficking trends and patterns that have dominated the drug trafficking scenario in India as per the latest Annual Report²² published by the Narcotics Control Bureau, can be broadly summarized as follows:

- Suspected diversion of opium from licit cultivation and indigenous production of low-quality Heroin.
- Trafficking of Heroin from South West Asia to India and further to Sri Lanka, Maldives and other western countries.
- Trafficking of hashish and cannabis from Nepal to India.
- Illicit cultivation of opium poppy.
- Wild growth of cannabis.
- Diversion of precursor chemicals and other controlled substances.
- Diversion of pharmaceutical preparations and prescription drugs containing psychotropic and controlled substances and their smuggling to neighboring countries.
- Trafficking of drugs through illicit internet pharmacies and misuse of courier services. ã Involvement of foreign nationals in trafficking and distribution networks, majorly Nigerians in the case of Heroin and Cocaine & Israelis and Nepalese in the case of Hashish.
- Trafficking of Ketamine, a veterinary anesthetic, from India to certain destinations in South East Asia.
- Emergence of new psychoactive substances like Ketamine, Mephedrone etc in the country²³.

1.6 Central Bureau of Narcotics

The primary responsibilities of Central Bureau of Narcotics established under the multi-agency scheme of the Narcotics Drugs and Psychotropic Substances Act, 1985 cover the following:

- Supervision over licit cultivation of opium poppy in India spread across 22 Districts 102 Tehsils/Parganas in the States of Madhya Pradesh, Rajasthan and Uttar Pradesh.
- To check and take legal recourse against the illegal cultivators of the poppy in the country.
- Preventive and enforcement functions especially in the three poppy growing States.
- Conducting investigation of cases under the NDPS Act, 1985 and filing of complaints in the Court of Law.
- Action for tracing and freezing of illegally acquired property as per the provisions of NDPS Act, 1985.
- Issue of licenses for manufacture of synthetic narcotic drugs and cultivation of the narcotics by licit means.
- Issuance of Export Authorizations / Import Certificate for export / import of Narcotic Drugs and Psychotropic Substances.
- Issuance of No Objection Certificate (NOC) for import/ export of a select number of Precursor Chemicals.
- Import of Poppy Seeds are permitted only from Australia, Austria, France, China, Hungary, the Netherlands, Poland, Slovenia, Spain Turkey and Czech Republic on production of an appropriate certificate from the Competent Authority of the exporting country that the opium have been grown

²¹Narcontrol 2014, Journal of Narcotics Control Bureau, Operations

²² Narcotics Control Bureau, Ministry of Home Affairs, Annual Report, 2014

²³ Major Trafficking Trends of 2014, Annual Report of Narcotics Control Bureau available at http://narcoticsindia.nic.in/upload/download/document_idfa385fb5a8e79b41a0d37b12c9f95996.pdf accessed on 21/04/16 at 11:15hrs.

legally in that country. All import contracts for this item shall compulsory be registered with the Narcotics Commissioner, Gwalior prior to import.

- India is a signatory to the UN Convention on Narcotic Drugs 1961, UN Convention on Psychotropic Substances 1971 & UN Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 which obligates member countries to monitor the implementation of the United Nations drug control conventions. CBN interacts with the International Narcotics Control Board, Vienna and the Competent Authorities of other countries to verify genuineness of the transaction prior to authorizing the shipments²⁴.

Despite the legal provisions enshrined under the Narcotics Drugs and Psychotropic Substances Act, 1985, instances of illegal cultivation of opium poppy and cannabis have been noticed. The Government of India considers such illegal cultivation as a matter of serious concern. The Central and State Governments continue to work together to combat this problem and issue directions to all officers under their control to discharge their responsibility with integrity under Section 47 of the NDPS Act. For this purpose, the Central Government and each State Government has designated one or more nodal officers to whom the officers who come to know of any illegal cultivation are reporting.

1.7 Directorate of Revenue Intelligence

The recognition of the need for a central organization for gathering details of violations of economic laws in a continuous and organized manner so as to devise a strategy to deal with them and to alert the concerned customs formation was felt as early as 1953. This resulted in the setting up of an organization called the Central Revenue Intelligence Bureau in 1953. The organization was charged with the responsibility of developing intelligence on matters connected with anti-smuggling and anti-corruption in the Customs and Central Excise formations all over the country. In retrospect, one Assistant Commissioner and two Superintendents as then provided, was too small a complement of staff. The work done by this small organization, however, brought into sharp focus the urgent need and necessity for an exclusive organization to deal with the menace of violation of fiscal laws. The Directorate of Revenue Intelligence (DRI) was thus formed in 1957 as a direct result of the sequence of events which followed preceding its establishment. The Directorate of Revenue Intelligence primarily undertakes all aspects of work pertaining to customs, central excise and narcotics.

Directorate of Revenue Intelligence functions under the Central Board of Excise and Customs in the Ministry of Finance, Department of Revenue, headed by Director General in New Delhi, it is presently divided into seven zones, each under the charge of an Additional Director General, and further sub-divided into Regional Units, Sub-Regional Units and Intelligence Cells with a complement of Additional Directors, Joint Directors, Deputy Directors, Assistant Directors, Senior Intelligence Officers and Intelligence Officers.

The Charter of the DRI includes:

- Collection of intelligence about smuggling of contraband goods, narcotics, under-invoicing etc. through sources of India and abroad, including secret sources.
- Analysis and dissemination of such intelligence to the field formations for action.
- Working out of intelligence by the Directorate officers themselves to a successful conclusion, where necessary.
- Keeping watch over important seizures and investigation cases.

²⁴Central Bureau of Narcotics website available at - <http://cbn.nic.in/html/aboutcbn.htm> accessed on 22/04/16 at 12:40hrs.

- Associating or taking over the investigations which warrant specialized handling by the Directorate.
- Guiding important investigation/prosecution cases.
- Functioning as the liaison authority for exchange or information among United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) countries for combating international smuggling and customs frauds in terms of the recommendation of the ESCAP conference.
- Keeping liaison with foreign countries, Indian Missions and Enforcement agencies abroad on anti-smuggling matters.
- To refer cases registered under the Customs Act to the Income Tax Department for action under the Income Tax Act.
- To keep statistics of seizures and prices/rates etc. for watching trends of smuggling and supply required material to the ministry of Finance and other Ministries.

The land borders of our country, extending to more than 15,000 km and a coastline of over 7,500 km, make the task before DRI very daunting. The progressive economic liberalization with increasing emphasis on trade facilitation has also led to enormous increase in the misuse of the facilities / concessions resulting in loss of customs duty and foreign exchange. The complexion of economic frauds has changed dramatically.

2. Problems of Enforcement Agencies

While all round efforts are being made for prevention and containment of drug abuse in our society, a long journey is yet to be covered before we can draw some satisfaction. The menace of drug abuse having transnational causes and implications shall require Herculean efforts on the part of all the institutions. The empowerment of society through sensitization and awareness is the only solution to support the efforts of enforcement agencies in containing the proliferation of drug trafficking and drug abuse. However, there are some inherent drawbacks in the functioning of these institutional agencies namely:

1. **Widespread Corruption:** It is correct to say that the organized drug syndicate cannot function without the active or tacit connivance of the enforcement officials. The illegal drug trade generates such exorbitant profits that the traffickers can conveniently buy off the enforcement officials and the judiciary.
There is, of course, no dearth of the honest and conscience-oriented enforcement officials. However, they may rarely be strategically placed. Even if they happen to occupy sensitive positions and are able to book a few offenders, they may not be a witness to their conviction and punishment for they are frequently transferred as the trials take a long time to conclude.
2. **Lack of Co-ordination:** The inter-agency swapping of clues and secret information has to be enhanced for effective coordination and better results. The exchange of intelligence input between the agencies should be free from biases, prejudices and a sense of rivalry because it is a common experience that even when they are working in the same field or same geographical area agencies do not indulge in free and transparent information sharing. Many a times, when agencies work without informing each other, it results in the frustration of the efforts.
3. **Lack of Training :** A general overview of some of the judgments passed by the Hon'ble Supreme Court and Various High Court's reveal that the enforcement officials are generally ignorant of the basic provisions of the act and commit various procedural and substantive irregularities during the investigation which translates into the failure of the prosecution case on numerous occasions and an overall poor conviction rate.

4. **Lack of Infrastructure:** It is felt for some time that the existing infrastructure at the Centre and States was not adequate to perform the assigned functions efficiently and speedily. However, creating another authority will not solve the problem at hand. Hence it is both essential and indispensable to strengthen the existing organizations to enable them to undertake all the functions under the NDPS Act, 1985. A strong, well equipped and professionally managed Central Drugs Standard Control organization, which could be given the status of Central Drug Administration was an appropriate and viable solution. A detailed proposal, to create such a structure and strengthen the State level regulatory apparatus with complementary roles of the Centre and the States, while at the same time ensuring uniform and effective implementation, has been sent for drafting.

3. NDPS Act, 1985: A Critical Appraisal

The issue of drug abuse in India is complex and multidimensional having far reaching ramifications, requiring both approaches that is the efforts to regulate illicit trafficking / widespread substance abuse and to provide essential drugs for use as health / medical measures and Scientific research purposes. India is a signatory to the International Law on the matter. The United Nation conventions allow the signatory sovereign countries the flexibility to evolve and develop national policies and programs that are in sync with the indigenous needs while retaining their focus on the core conventions objectives.

Accordingly, the Narcotics drugs and Psychotropic Substances Act was enacted by the parliament in 1985. The Act was amended once in 1989 and subsequently in 2001. During the enforcement of the act several anomalies were noticed, therefore with the object of eliminating the persistent anomalies and incorporating new dynamic provisions which were the need of the time, the NDPS Act, 1985 was recently amended again in 2014. In the light of the above background, a critical appraisal of the NDPS Act is as follows:

Positive Aspects of Act:

- Exercising its power under section 4(3) of the Narcotics Drugs and Psychotropic Substances (NDPS) Act, 1985 the Central Government set up the Narcotics Control Bureau (NCB) in 1986, as the chief law enforcement agency in India responsible for fighting drug trafficking and abuse of illegal substances. The NCB primarily functions as *national coordinator international liaison and is the nodal point for the collection and dissemination of intelligence*. This system ensures *co-ordinated implementation with the broad parameters of broad national strategy*.
- A salient feature of the act is simplification of the procedure of addition or deletion from the list of manufactured drugs and psychotropic substances maintained under the NDPS Act. Contrary to the previous position, no formal amendment or laying of bill in the parliament is required for the same as the government is empowered to make such changes by way of simple notification in the official gazette.
- Unlike the previous NDPS Act, which was restrictive and limited in scope as it stressed only on preventing abuses of the prohibited narcotics, the present act recognizes the necessity and gravity of the medical and scientific use of the same. After the amendment of act a distinct category has been created, which includes a list of all the drugs the central government has notified for the medicinal, scientific and research purposes. Additionally, the procedure for obtaining drugs under this category has been further simplified.
- Drug trafficking and abuse is often a habitual problem, particularly for those who indulge in it once. To tackle and deter such miscreants from subsequent indulging the act prescribes a far stringent punishment for the repeat offenders. Broadly, the punishment for repeat offences can be up to one and

half times the quantum of punishment for the first offence. Resultantly, the punishment would vary from 15 years of rigorous imprisonment to 30 years of rigorous imprisonment depending on the gravity of the offence. Similarly, the quantum of fine for a subsequent conviction would also be up to one and half times the fine for the first offence. Subsequently, section 31A of the NDPS act provides for death penalty for second conviction which is a burningly debated.

- Under section 41 of the NDPS Act, the power to issue search and arrest warrant has been vested in both the Magistrate as well as specially designated (gazetted) officer of the Central and State Governments. This provision has been purposely designed to minimize the time and maximize the effectiveness of the action initiated in response to any vital information or clue. Another aspect of it is that the need of a judicial satisfaction for granting the same has been done away with. It is worthy to note that however, the power of search, seizure and issue of warrant etc. are inherent in the NDPS Act, notwithstanding, all the subjects both substantive and procedural are also guided by the Code of Criminal Procedure, 1972.
- Under section 64A of the NDPS Act, immunity may be tendered to an addict who is charged with an offence under section 27 or with offences involving small quantity of narcotic drugs and voluntarily seeks to undergo and undergoes medical treatment for the de-addiction or de-toxification from an hospital or institution maintained or recognised by the Government or the local authorities shall not be liable to prosecution under section 27 or any other section for offences involving small quantity of narcotics drugs and psychotropic substances act. Notwithstanding the above provision, if the addict does not undergo the complete treatment such immunity is liable to be withdrawn immediately.
- Section 31A of the NDPS Act deals with the like treatment of international criminals so that the technicalities and intricacies of the difference in the domestic laws of different nations do not confer any benefit on them. Section 31A of the Act provides that any person convicted by a competent court of criminal jurisdiction outside India under any corresponding law shall be dealt with as if he has been convicted by a court in India.
- Chapter V-A of the act has been introduced to provide for the investigation, freezing, seizure and forfeiture of the property derived or acquired through the illicit trafficking of drugs or narcotic substances. The assets amassed out of the money of trafficking by the drug trafficker are liable to forfeiture and confiscation. The sale proceeds of such property are credited to the National Fund for Control of Drug Abuse. Provisions for tracing and seizing of illegally acquired properties pursuant to drug trafficking activity were introduced in the principal Act by way of amendment in 1989 and were further strengthened in the amending Act of 2001.
- The present Act prior to the amendment of 2014, did not prescribe a time limit for the investigating officer to look into the illegally acquired properties of the drug traffickers. However, the current amendment has laid down a maximum time limit of ninety days for ascertaining the same. This will not only allow the timely determination of the illicitly amassed properties but also minimize the manipulation of facts about the seized properties.
- Prior to the 2014 amendment of the Act, each state had its own regulations which varied from state to state. The current amendment has brought in uniformity for all states and union territories as the power to amend the provisions of Essential Narcotics Drugs will be vested with the Central Government ensuring the highest standard of uniformity throughout the country. Further, in each state, instead of multiple agencies being involved in the process of licensing, there will be only one the drugs controller, thus eliminating the interdepartmental red tape and inordinate delays.

4. Negative Aspects of Act:

- The first real problem lies with the complainants. Parents, friends, family, relatives, neighbors never really complain as many of the law's practical aspects are not known by the people in general in the society. The police are also reluctant and unwilling to respond to such complaints for the fear of drug user developing health problems.
- The consumption of drugs continues to be punishable as the current amendment has increased the punishment of small quantity offences from a maximum of six months to one year of imprisonment. This is particularly regrettable as the parliament had the opportunity to review and reform the penal provisions against the people who use drugs. In past decade, an increasing number of countries have moved toward the complete de-criminalization of the drug users, with negligible or no negative consequences on the individuals and society.
- From the legal point of view the drug commonly known as 'Bhang' falls outside the purview of the Narcotics Drugs and Psychotropic Substances Act and it is not a prohibited substance under the same. However, Bhang is covered by the excise acts of the respective states and many states issue licenses for its general consumption. Bhang is generally believed to be a relatively less harmful form of cannabis. Its use has got some socio-cultural sanction as well in certain regions of the country. The line distinguishing between Cannabis and Bhang is very thin i.e. if Bhang tests positive of Tetra Hydro Cannabinol (THC), which is an active component of Bhang then it is classified as psychotropic substance.
- The National Fund for Control of Drug Abuse was constituted from the seed money provided by the central government. The use of comprehensive provisions of forfeiture of property acquired by the traffickers is too scanty for the reasons like lack of will or the time-consuming process. The fund has not yet attained the desired growth.
- India is the largest licit producer of the opium in the world, which is both exported and used by pharmaceutical industries domestically. The Government periodically enhances the official price paid to the farmers to increase the incentives to the licit cultivators for declaring and selling all the licitly grown opium to the Government. The price of such harvest set by the Indian Government is at par with what the US government and other countries are willing to pay in the international market for the Indian opium. Notwithstanding, it is only a fraction of the drug's value offered to the farmer in the black market. Thus, the Government, in spite of the penal provisions, has failed to keep a check as more and more farmers are induced to divert sales to the drug traffickers who are willing to pay a much higher price for the same.
- The Narcotics Drugs and Psychotropic Substances Act prescribe Capital Punishment for a repeat offence of drug trafficking, even though it does not involve violence or killing and, consequently, cannot be categorized as a "most serious crime", for which the death penalty may be used. Empirical evidence and research studies reveal that there is no compelling evidence that demonstrates the death penalty is a greater deterrent than other punishments in reducing drug crimes. When a second conviction for murder does not automatically qualify as a "rarest of rare" case deserving capital punishment. However, the debate goes on as the recent law commission has recommended the remove the death penalty for all the cases except that involving terrorism.
- Over the years the undue delay in the disposal of the cases under the NDPS Act has emerged as burning issue despite the creation of special courts under this Act to help deal with the cases expeditiously.

However, in many states, such courts have been given the additional responsibility of dealing with other cases as well causing undue delays in the disposal of drug related cases. Further, it is quite difficult to find witnesses, often due to threats from the accused including possible bribes to turn hostile. A number of times long time-gaps between the occurrence of the crime and the trial cast doubts on the accuracy of the evidence leading to acquittal on grounds of insufficient evidence. It is indeed a well-known fact that experienced advocates brings out inconsistencies in the statements of the witness on cross examination so as to weaken the case of prosecution.

- The failure of the enforcement agencies to present prosecution cases according to the procedure set by the NDPS Act due to ignorance and lack of knowledge of the provisions of the NDPS act. For most of the agencies, except the Narcotics Control Bureau, like the Department of Revenue Intelligence, Police, Customs, Central Excise etc, drug control implementation is an additional responsibility.
- The existing webs of agencies are facing variety of problems which hamper their efficiency and effectiveness viz.; the shortage of staff; lack of co-ordination and sharing of sensitive information; inter-departmental transfers; procedural irregularities committed by the enforcement officials pertaining to the ignorance of the provisions of the NDPS act, constituting one of the prime reasons for the observance of a low conviction rate; lack of educational qualifications to keep a check on the intricate banking and commercial transactions involved in transfer and holding unaccounted money by the traffickers; widespread corruption practices and the casual approach of the officers etc.

5. Drug De-addiction and Rehabilitation Policy:

The line differentiating between a drug dependent and a drug addict is not a major one. Especially, in today times when drug addiction is increasingly becoming an area of concern as traditional settings, social taboos, importance of self-restraint, control and discipline are eroding with the rapid pace of urbanization and industrialization.

It is now well accepted that drug dependence is a medical condition, classified as a “multi-factorial health disorder that often follows the course of a relapsing and remitting chronic disease”.²⁵ It is then imperative that health interests be central to the response to drug use. Although drug policy in India provides for treatment, it is not prioritized in enforcement.

Section 71 of the NDPS Act empower of the Government of India to establish centers for identification, treatment, etc. of addicts and for supply of narcotic drugs and psychotropic substances contains provisions for setting up of rehabilitation and treatment centers for drug dependent persons. And for this purpose, the Government of India has set up the Integrated Rehabilitation Centre for Addicts (IRCA).

The Integrated Rehabilitation Centre for Addicts (IRCAs) provides counseling, treatment and rehabilitation services to the victims of substance abuse. In addition to the IRCAs, mentioned above, De-addiction Centers/Units are also present in about 122 Government Hospitals across the country, which are under the Ministry of Health and Family Welfare. The current policy draws upon the strength of Non-Governmental Organizations, as these are placed in an informal setting, are present in the rural and remote locations, are known in the community, have access to information and use innovative dissemination methods conducted in the local language viz. role plays, street plays, informal discussions etc.²⁶

The IRCAs is entrusted with the following services:

²⁵ UNODC and WHO, Principles of Drug Dependence Treatment, Discussion Paper, March 2008

²⁶ Central sector scheme of assistance for prevention of alcoholism and substance (drugs) abuse and for social defence services, Guidelines, Ministry of Social Justice and Empowerment

1. **Rehabilitation:** The primary objective of the IRCA is the complete rehabilitation of the addict after having been treated for drug dependence. To facilitate the self-sustainability of the addict/dependent family members, an IRCA would avail of the services available through various schemes / programs of the Government / State through effective networking. Rehabilitation activities may include relevant vocational training utilizing local resources. It also involves identification and networking with government recognized vocational centers to refer recovering/recovered addicts for training. The Central Government also maintain a network directory of specialized services²⁷.
2. **Preventive Education and Awareness Generation-:** The Programs primarily addresses specific target groups (vulnerable or the high-risk groups) in the neighborhood, educational institutions, workplace, slums and social welfare organizations with the purpose of sensitizing the community about the impact of addiction, and the need and importance to take professional help to treatment.
3. **Identification of substance dependent persons for motivational counseling:** this require assessing the problem related to addiction and motivating the addict to avail the services at IRCA. It envisages total recovery of the addicted person leading to his socio-economic rehabilitation through a unique and appropriate combination of individual counseling, group therapy, yoga, exposure to self-help/support groups, and introduction to other recovering addicts. It also includes support and care to families of the addicted person²⁸.
4. **Detoxification and Whole Person Recovery (WPR):** Detoxification services are provided for safe and ethical management of withdrawal symptoms. The addict would be helped to overcome the desire to use drugs even when he is in situations, which were once tempting²⁹.
WPR would indicate that a person who has acquired life skills stays drug free and develops an interest in healthy living. It provides for the whole range of community-based services for the identification, motivation, counseling, de-addiction, after care and rehabilitation for Whole Person Recovery (WPR) of addicts to make a person drug free, crime free and gainfully employed.
5. **Referral Services:** Addicts showing deviant behavioral symptoms like violence, depression, suicidal thoughts, etc., should be assessed and referred to a psychiatric hospital immediately for availing specialized psychiatric services. For allied and opportunistic medical manifestations such as tuberculosis, hepatitis C, STDs, AIDS, etc., referral should be made for appropriate medical interventions which would, inter-alia, include services of other specialists, hospitals and testing laboratories, run/controlled/aided/accredited by the Union or State Governments such as National Aids Control Organization (NACO) and de-addiction hospitals set up by the Ministry of Health and Family Welfare including also other institutional networks established in the field of social defense focusing on the target groups covered under this scheme. There should be a system of inter-linkage of care givers and care-giving institutions to ensure effective handling of the social defense issues³⁰.
6. **After-care and support to families for co-dependence and rehabilitation:** After care and follow up are essential components of addiction treatment subsequent to the discharge of the client from the IRCA. The outcome of therapy depends largely on the effectiveness of the follow-up efforts and the dependents reintegration into the community.

²⁷Central Sector Scheme of Assistance for Prevention of Alcoholism and Substance (Drugs) Abuse and for Social Defence Services, Guidelines, Ministry of Social Justice and Empowerment.

²⁸'Health and Family Welfare in India' by B. Jena and R. N. Pati, P. 136

²⁹'Drug Dependence: A Multidisciplinary Approach' Edited by J.S. Madden, Robin Walker and W. H. Kenyon, P.272

³⁰Central Sector Scheme of Assistance for Prevention of Alcoholism and Substance (Drugs) Abuse and for Social Defence Services, Guidelines, Ministry of Social Justice and Empowerment.

The IRCA has a well-defined program for the family members especially for co-dependence and ensuring the social reintegration of the addict/family. This includes counseling, relapse prevention, self-help programme, and reaching out to the families of the addicts through regular home visits. The focus would be to make the families understand that addiction is a disease, and help them develop a caring attitude towards the addicts. The thrust would to help the addicts as well as their families deal with their negative emotions and improve their quality of life³¹.

Being a criminal statute, welfare provisions of the NDPS Act have remained under-emphasized. Over the last two decades, drug law enforcement has relegated treatment to a mere paper provision. This must change. Statutory sections beneficial to persons who use drugs are as much a part of drug policy as those proscribing drugs. The vigor in enforcing penal procedures must also be seen in applying measures that support the health and rights of people who use drugs. The need of the hour is for concerned authorities to deliberate, together with people who use drugs, on mechanisms that affirm voluntary and effective treatment as an important and legitimate constituent of drug policy.

³¹ Drug Abuse Treatment and Rehabilitation: A Practical Planning and Implementation Guide, UNODC, United Nations Publication, ISBN 92-1-148160-0, Chapter- 3.