Additional Director General of Police,Crime

Punjab Police Headquarters, Sector 9, Chandigarh

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HAND BOOK on The NDPS Act & DRUG TRAFFICKING

Punjab Police

CRIME WING

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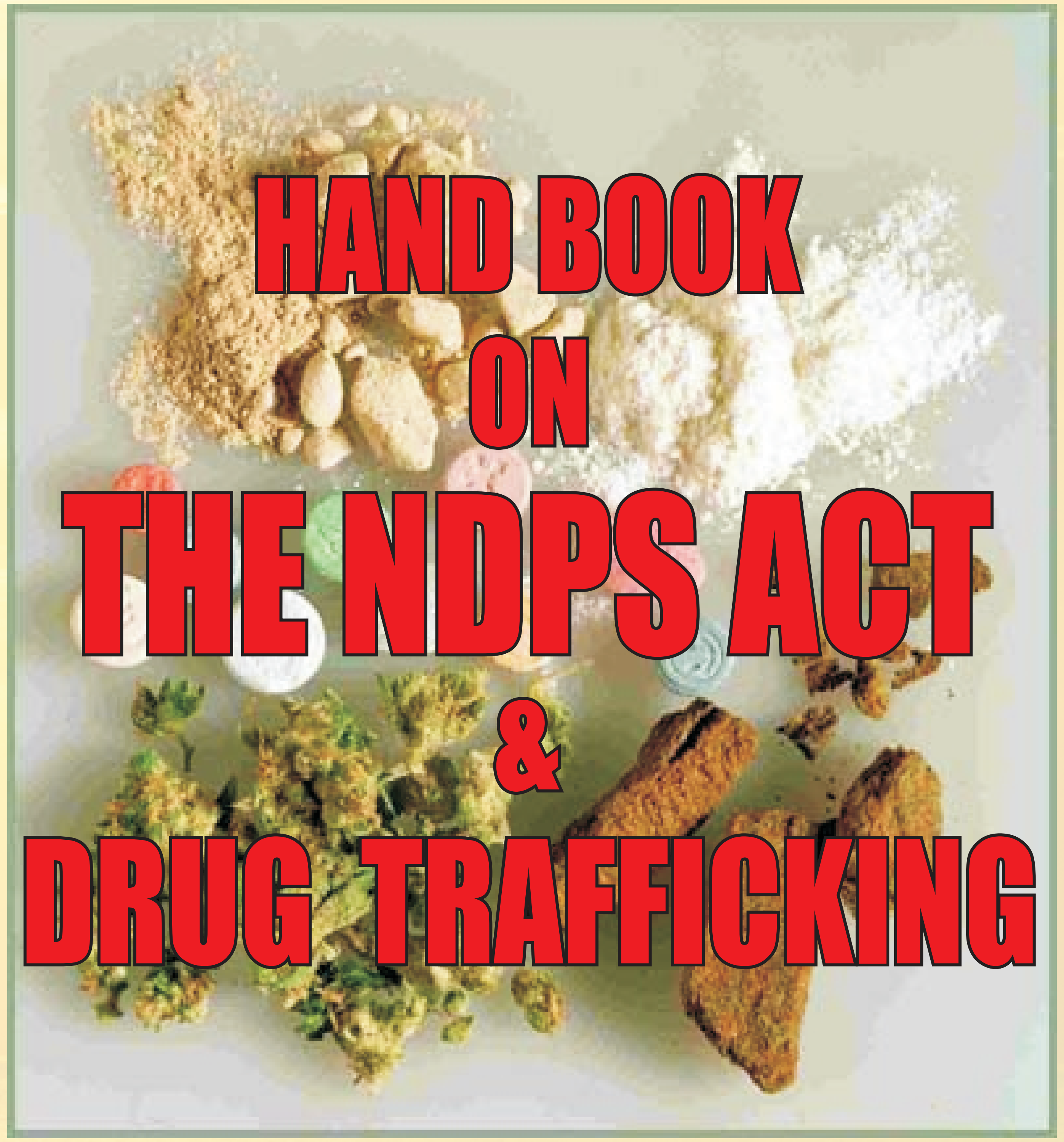

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FOREWORD

The 'Hand Book on NDPS Act and Drug Trafficking' is a well researched effort on a highly technical subject where minute details relating to the procedures and interpretations of the provisions have been discussed at length to help the investigation & prosecution agencies. The legal issues have been subject matter of various judgments of Honourable Supreme Court of India, including setting up of Constitutional Benches on three occasions. The Hand-Book is a gist of the latest legal position on various aspects relating to investigation and prosecution under the Act. The special acts especially TADA and NDPS have had their own procedures in many respects quite distinct from the Code of Criminal Procedure.

In its endeavour to provide the best of professional inputs to the Investigating Officers, Punjab Police has initiated a series of steps to collect, collate and compile all relevant information into manuals to serve as standard reference points to bring about a uniformity in police practices and this handbook is a result of the ongoing modernization programme. Credit goes to our Additional Director General of Police (Crime) Shri Sanjiv Gupta for having undertaken this effort for bringing uniformity in police functions as far as the NDPS Act and Drug Trafficking is concerned.

Punjab Police acknowledges the continuous and dedicated hard- work put in by CA. Neeraj Sharma, who has dared to write on a subject where many fear to tread in. It is a stupendous piece of legal work, for which he deserves my full appreciation. I believe, he will not just stop here and provide the department with more valuable inputs.

The hand book on NDPS Act will be made available in all Police Offices, Police Stations and other institutions across the State and it is sincerely hoped that it will help the department in strengthening the investigations and making a stronger prosecution case to help in checking the menace of drug trafficking.

Paramdeep Singh Gill
Director General of Police
Punjab

9th March, 2011

INTRODUCTORY

The stringent provisions of the NDPS Act call for a strict compliance of the conditions contained therein on the part of the prosecuting agencies. The Courts have taken very serious view of the procedural lapses on the part of investigation agencies in these cases leading to acquittals of many of the accused apprehended with lot of efforts by the agencies. The search and seizures have to be meticulously carried out as per the provisions contained in Section 41 to 43. Collection of samples at the site of recovery of contraband, providing link evidence of the FSL/ Laboratory reports, affixing seals, examination of the prosecution witnesses etc. are the important areas which the agencies must strictly follow to file an error free charge sheet under the NDPS Act and not leave any gaps for the offender to get reprieve due to procedural lapses on our part.

The NDPS Act is an exhaustive subject. My underlying idea has been to emphasize on those aspects of investigation and prosecution, which are relevant to the Investigating Officers. The contents of the Hand Book have been written up in lucid style in easy language to make their intent clear to the user. Further refinements depend on the feedbacks which we will be expecting from our officers and men who have the expertise and exposure in the field.

Acknowledging the sincere efforts of CA. Neeraj Sharma in writing this valuable piece of information not only for the Punjab Police but for other state police organizations and Central Investigative Agencies, I endorse the appreciation of our Worthy Director General for this mammoth task which has been executed in a limited time. I also place on record my sincere felicitations to CA. Neeraj Sharma.

SANJIV GUPTA
Additional Director General of Police
Crime, Punjab

10th March, 2011

PREFACE

The Hand Book on NDPS Act and Drug Trafficking is an effort to present the interpretations of the various provisions from the Investigation and Prosecution perspective for the agencies working in the field of checking illegal trafficking of narcotic drugs. Chapter 3 of the Handbook comprises the Guidance Note, which is of utmost relevance, wherein the provisions have been explained depending upon the nature of search and seizure. The penal provisions of the Act are stringent and the Courts expect the meticulous compliance on the part of the Investigative Agencies. The objective is that a balance may be struck, wherein the offender is not let off and the innocent is not ruined of his liberty and rights.

The Situations have to be understood in light of the various judgments of the Supreme Court of India and various High Courts. The first situation relates to where the contraband is recovered from the person of the offender during his personal search. The second relates to recovery of contraband from a bag, carton, box etc. carried by the person intercepted and if the recovery is made in public place from any private or public conveyance driven by the offender. The third situation describes the provisions to be kept in mind during conducting raid, search or seizure from a building including residential premises and from a private conveyance not in a public place. The prosecution must understand the clear distinction of these situations.

Further, the vital aspects common to all these situations have been explained under various heads. The concept of possession & conscious possession under the law, procedure of drawl of samples as per the Standing Orders of the Narcotic Control Bureau, affixing of seals, filling of CFSL Form No. 29 at the recovery site, Cross Examination of the accused under Section 313 Cr PC etc. are some of the other areas which have been tried to be explained in the Guidance Note. In addition, various steps involved in Investigation and Prosecution have been covered in other Chapters. A check List has been provided in the end to give a gist of the procedural requirements.

The Notification dated 9.10.2001 has specified 239 Narcotic Drugs and Psychotropic Substances as to what would be small quantity and commercial quantity. The concepts were introduced by the NDPS (Amendment) Act 2001. The basic purpose is to make a distinction between drug addicts and drug traffickers. A new section 32B was also inserted by this amendment act, which prescribes the factors to be taken into account for imposing higher than the minimum punishment.

Narcotic is a substance which relieves pain, produces sleep and in large doses brings in stupor, coma and even death. All narcotic drugs tend to develop habit formation, particularly, among neurotic individuals. The menace is ruining the society and killing future generation from usurping. It is a moral as well legal duty of the Police to place stringent checks of drug trafficking, and this effort is primarily directed for achieving the same.

The inspiration to write on the subject was of our honourable Additional Director General of Police, Crime Sh. Sanjiv Gupta, who had been a guiding force during this effort. Any inadvertent errors on my part should kindly be brought to my notice. Any suggestions for further improvement and betterment in the contents of this Hand Book will be a source of encouragement.

CA. NEERAJ SHARMA
3 M.M.MALVIYA ROAD
AMRITSAR.
(Off) 0183- 2227270-71-74
(Fax) 0183-2566861-62
(Cell) 9814054585; 9855254585
Email: nersha@hotmail.com

HAND- BOOK ON THE NDPS ACT & DRUG TRAFFICKING

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Chapter 1

Drug Trafficking and illicit use of Narcotic Drugs and Psychotropic Substances

Background

The genesis and development of the Indian drug trafficking scenario are closely connected with the strategic and geographical location of India which has massive inflow of heroin and hashish from across the Indo-Pak border originating from “Golden crescent comprising of Iran, Afghanistan and Pakistan” which is one of the major illicit drug supplying areas of the world. On the North Eastern side of the country is the "Gold Triangle" comprising of Burma, Loas and Thailand which is again one of the largest sources of illicit opium in the world. Nepal also is a traditional source of cannabis, both herbal and resinous. Cannabis is also of wide growth in some states of India.

As far as illicit drug trafficking from and through India is concerned, these three sources of supply have been instrumental in drug trafficking. Prior to the enactment of the Narcotic Drugs and Psychotropic Substances Act, 1985 [NDPS Act], the statutory control over narcotic drugs was exercised in India through a number of Central and State enactments. The principal Central Acts were:

(a) The Opium Act. 1857;

(b) The Opium Act, 1878 and

(c) The Dangerous Drugs Act, 1930

The preamble to the Narcotic Drugs and Psychotropic Substances Act, 1985 provides as under:

"An Act to consolidate and amend the law relating to narcotic drugs, to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances to provide for the forfeiture of property derived from, or used in, illicit traffic in narcotic drugs and psychotropic substances, to implement the provisions of the International Conventions on Narcotic Drugs and Psychotropic Substances and for matters connected therewith."

The Statement of Objects and Reasons for the Narcotic Drugs and Psychotropic Substances Act, 1985 [NDPS Act] provides:

"The statutory control over narcotic drugs is exercised in India through a number of Central and State enactments. The Principal Central Acts, namely, the Opium Act, 1857, The Opium Act, 1878 and the Dangerous Drugs Act, 1930 were enacted a long time ago. With the passage of time and the developments in the field of illicit drug traffic and drug abuse at national and international level many deficiencies in the existing laws have come to notice, some of which are indicated below:

(i) The scheme of penalties under the present Acts is not sufficiently deterrent to meet the challenge of well organized gangs of smugglers. The Dangerous Drugs Act, 1930 provides for a maximum term of imprisonment of three years with or without fine and four years imprisonment with or without fine with repeat offences. Further, no minimum punishment is prescribed in the present laws, as a result of which drug traffickers' have been sometimes let off by the courts with nominal punishment. The country has for the last few years been increasingly facing the problem of transit traffic of drugs coming mainly from some of our neighboring countries and destined mainly to western countries.

(ii) The existing central laws do not provide for investing the officers of a number of important central enforcement agencies like narcotics, customs central excise etc. with the power of investigation of offences under the said laws.

(iii) Since the enactment of the aforesaid three Central Acts, a vast body of international law in the field of narcotics control has evolved through various international treaties and protocols. The Government of India has been a party to these treaties and conventions which entail several obligations which are not covered or are only partly covered by the present Acts.

(iv) During the recent years, *new drugs of addiction* which have come to be known as ***psychotropic substances*** have appeared on the scene and posed serious problems to national governments. There is no comprehensive law to enable exercise of control over psychotropic substances in India in the manner as envisaged in the convention on Psychotropic Substances 1971 to which also India has acceded.

In view of what has been stated above, an urgent need was felt for the enactment of a comprehensive legislation on narcotic drugs and psychotropic substances, which, inter-alia should consolidate and amend the existing laws relating to narcotic drugs, strengthen the existing controls over drug abuses, considerably enhance the penalties particularly for trafficking offences, make provisions for exercising effective control over psychotropic substances and make provisions for the implementation of international conventions relating to narcotic drugs and psychotropic substances, to which India is a party.

Legislative History of the NDPS Act, 1985

1. The NDPS Act was enacted by Parliament in 1985 in keeping with International Drug Conventions, namely the Single Convention on Narcotic Drugs, 1961; the Protocol amending the Single Convention on Narcotic Drugs, 1972 and the Convention on Psychotropic Substances, 1971.

2. The NDPS Bill, 1985 was passed hastily over four days, without much legislative debate. It received the President's assent on 16 September 1985 and came into force on 14 November 1985. The NDPS Act, 1985 replaced the Opium Act, 1857, the Opium Act, 1878 and the Dangerous Drugs Act, 1930.

3. According to the Statement of Objects and Reasons of the NDPS Act, 1985, India was becoming a transit for drug trafficking and the then legislation was ineffective in countering the problem.

4. The following deficiencies were noted in the law prevailing at the time –

   (i) absence of stringent penalties against drug trafficking;

   (ii) weak enforcement powers;

   (iii) development of a vast body of international law, which India was a signatory to, and,

   (iv) lack of regulations over psychotropic substances.

5. The NDPS Act, 1985 was introduced as a comprehensive legislation to tighten control over abuse on narcotic drugs and psychotropic substances, enhance penalties, especially for trafficking in drugs, strengthen regulations over psychotropic substances and provide for the implementation of international conventions, to which India was a party.

6. The NDPS Act, 1985 combines elements of regulation with prohibition of narcotic drugs and psychotropic substances.

7. The Act proscribes cultivation, production, manufacture, possession, sale, purchase, transport, warehousing, use, consumption, inter-state import and export, import into and export outside India and transship-ment of narcotic drugs and psychotropic substances except for medical and scientific reasons and in accordance with the statute and rules there under.

8. At the same time, it empowers the Central and State Governments to frame rules and permit the above mentioned activities. For example, although consumption of morphine is illegal, the drug can be administered to patients suffering from severe pain as the latter constitutes legitimate medical use under the Act.

9. To deter drug crimes, the Act introduced a mandatory minimum penalty of rigorous imprisonment for ten years and a fine of Rs one lakh. For repeat offences, the minimum sentence was fifteen years imprisonment, which may extend to thirty years.

****

- The NDPS Act, 1985 was supplemented by the ***Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988***, which provides for preventive detention of persons involved in illicit traffic in narcotic drugs and psychotropic substances.

- In 1989, the NDPS Act underwent the first set of amendments, after a Cabinet Sub-Committee for combating drug traffic and abuse recommended that the law be made more stringent.

- In 1998, the second Amendment to the NDPS Act was introduced in Parliament. Thereafter, the NDPS (Amendment) Bill, 1998 was examined by a Parliamentary Standing Committee on Finance.

- In 2001, Parliament passed the NDPS (Amendment) Act. The NDPS (Amendment) Act, 2001 sought to rationalise the sentencing structure, which was considered harsh and disproportionate.

- Earlier, a person with a small amount of contraband could be sentenced to ten years imprisonment and a fine of Rupees one lakh if s/he failed to prove that the drug was meant for personal consumption.

- The NDPS (Amendment) Act, 2001 prescribes punishment according to the drug and quantity seized – according to whether the amount is "small" or "commercial".

    - Under the present Act, a person dealing in small quantity of illicit drugs is subject to imprisonment of up-to six months and/or fine of Rs ten thousand;

    - While a person dealing in commercial quantity can be sentenced to jail for a period of ten to twenty years and a fine ranging from one to two lakh rupees;

    - A person caught with an amount between small and commercial quantity is punishable with imprisonment up to ten years and with fine extending to one lakh rupees.

As it stands, the NDPS Act provides the most stringent penal framework for activities relating to

- narcotic drugs and psychotropic substances, evidenced in the presumption of guilt and reversal of burden of proof (Section 35, NDPS Act);

- discouraging grant of bail (Section 37, NDPS Act),

- bar on suspension, remission and commutation of sentences awarded (Section 32A, NDPS Act),

- bar on release of offender on probation (Section 33, NDPS Act);

- enhanced punishment for more than one convictions (Section 31, NDPS Act) and

- a mandatory death sentence for subsequent conviction for specific offences (impugned Section 31A).

In providing such stringent measures, the NDPS Act overrides provisions of the Code of Criminal Procedure, 1973 such as

- the power to suspend and remit sentences (Sections 432, 433, and 13 434 Cr PC) and

- the power to release offender on probation or admonition (Section 360, Cr PC).

DRUG ADDITCTION

INTRODUCTION

The use of narcotic drugs and psychotropic substances for scientific and medicinal purpose is indispensable. For the preparation of a number of life saving drugs like morphine, pethadine and tranquilizers these drugs and substances are required. India is one of the leading producers of opium in the world for medicinal and scientific purposes Due to the use of narcotic drugs and psychotropic substances for scientific and medicinal purposes, the production of the same cannot be banned altogether, but the production can be controlled and regulated by the government to prevent illicit trafficking and illicit use of the same.

Drug addiction has become one of the curses of our times, a menace which threatens public health and results in the dissolution of human personality, promoting conditions for various forms of human degradation, whose consequences spread to crime and lawlessness. One of its tragedies lies in its morbid assault on youth resulting more open than not in mental disorientation and emotional derangement, pushing the victim towards a fate from which there is seldom any hope of recovery. The evil is insidious and operates secretly and it often comes to be known to others only after the addict has crossed the point of no return. The consequences are far-reaching, because in attacking the younger generation of a country, it destroys the flower of a nation's future. History provides many examples of the willful subversion of a nation's culture - its social values and its integrity by the systematic corruption of its youth through smuggled drugs. The dangers following illicit traffic in narcotic drugs have been recognized worldwide and so agitated is the conscience of the world community that they are now the subject of International Conventions.

Causes of Drug Addiction

The trafficking in illegal drugs means to amass illegal wealth in a short time which is an act of perfidy which no society can condone. Traffickers in illicit drugs have been described as "merchants of death and destruction". A murderer may kill one or two person but a drug trafficker destroys the lives of thousands of boys and girls at the same time to whom he supplies the drugs by pushing them to a stage from where there is no return and there by not only ruining them and their families but also the nation. The illicit trafficking in Narcotic Drugs and Psychotropic Substances has led to drug addiction.

The anguish of the Supreme Court of India was expressed in case of

"Durand Didier v. Chief Secretary, Union Territory of Goa" in the following words:-

"with deep concern, we may point out that the organized activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, in order to effectively control and eradicate the proliferating and booming devastating menace causing deleterious effects and deadly impact on the society as a whole, the Parliament in its wisdom, has made effective provision by introducing this Act 61 of 1985 specifying mandatory minimum imprisonment and fine".

However in-spite of enactment of the NDPS Act as amended in 1989, the menace of drug trafficking and drug abuse is on the increase and the conviction rate in cases under this Act is extremely low. From this appears that either the innocent parsons are being sent to the Courts or there is some procedural defect or deficiency which benefits the accused to get acquittal from the Courts.

The causes for Drug Addiction may be attributed to the following factors:

(a) Drug War

The drug war is being fought by some other countries on our land with our men, money and, our materials. The drug addicted boy is more prone to be a criminal and the examples are there that the Indian youths are being made drug addicts and then given drugs and weapons while sending them back to Indian territory to use the same to make more addicts and to create terrorist activities. Therefore, strict action is required to check these activities.

(b) Organized Gangs of the Smugglers

Drug addiction is the result of the work of gangs of smugglers who want to create demand for the supply of their narcotic drugs and psychotropic substances and if the demand is more the prices for the narcotic drugs would be higher and in this way the smugglers are responsible for drug addiction. This type of activities of smugglers also requires strict action.

(c) Personal or family reasons

There are some personal or family reasons leading to drug addiction which can be detailed as new experiment, curiosity, bad company, lack of family care, lack of discipline, hippy or peer cult, to escaping from their realities of life and having some pleasure and thrilling experience. This type of drug addiction requires reformative approach to bring addicts back into the main stream of life.

Drug Abuse and AIDS

The menace of drug abuse has become more serious in recent times due to spread of HIV virus in India. 80% of victims of AIDS can be linked with drug abuse. HIV can be acquired in three ways:

(a) through sex;

(b) through blood; and

(c) by birth from parents suffering from HIV.

As far as acquiring of HIV through sex is concerned, the drug addicts are more exposed to the same because a drug addicted boy or girl can pay any price unmindfully can go to the extent of even in indulging in sex abuse. HIV can also be acquired by the drug addicts through blood while sharing of the needles. A stage comes when drug addicts require intravenous injections of drug to get kick and quick effect and such an addict is not mentally sound at that stage and can use any needle timely available and there by prone to acquire HIV if the needle was previously used by any person infected with HIV.

For dealing with the menace of drug abuse and illicit trafficking there in due to geographical location of India between "GOLDEN TRIANGLE" and "GOLDEN CRESCENT" the major sources for illicit opium and its derivatives, their markets being in western countries, the danger of India being a transit route is always there which has its own impact and effect locally particularly on the youth because the supply for them becomes easier.

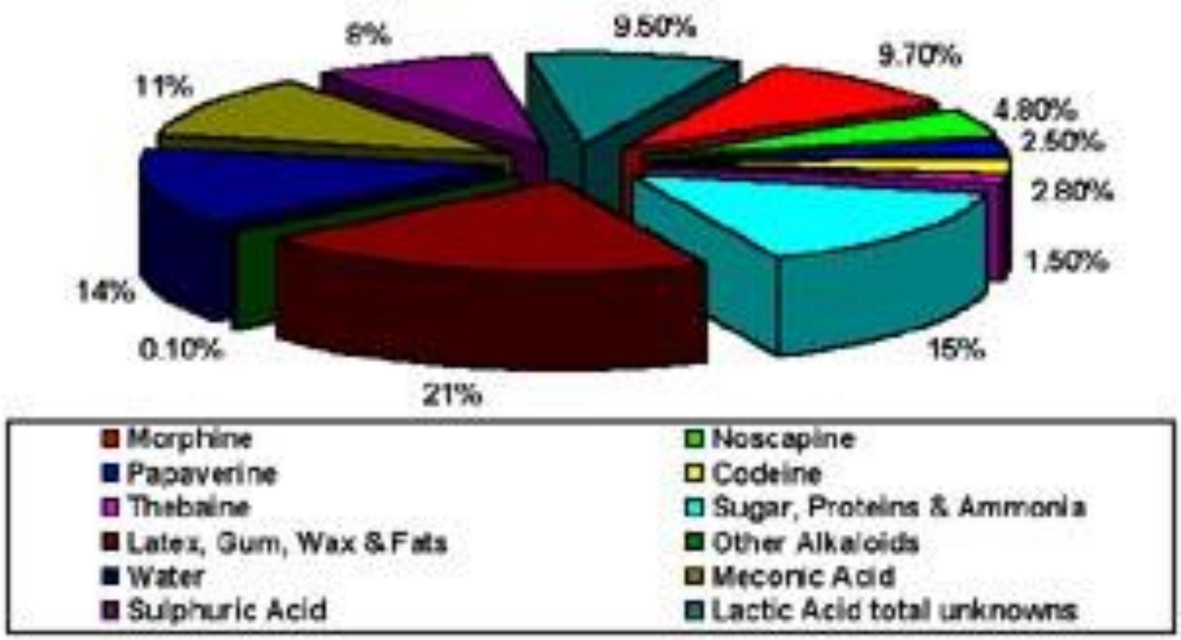
Opium Poppy

An Overview

1. Opium, till today, is the best known source for relieving pain. The word "opium" is derived from Greek word "Opion". In Arabia it was known as Afyun, in Chinese it is "Yapien", in Persian it is known as **"Afium"**, in Sanskrit the ancient Indo-aryan language it is known as "Aahi Phen" meaning snake venom. In the North-East part of India, it is referred to as 'Kani'.

2. The opium poppy (Papaver Somniferum L.) belonging to the family *Papaveraceae*, is an annual medicinal herb. It contains many alkaloids that are frequently used as an analgesic, anti-tussive and anti spasmodic in modern medicine. Besides, it is also grown as a source of edible seed and seed oil.

   The opium poppy plant produces a large number of alkaloids. The broad composition of Indian opium is shown in the following chart:



Opium Poppy Cultivation in India

1. ***India is the only country*** authorized by the United Nations Single Convention on Narcotic Drugs (1961) ***to produce gum opium***.

2. Eleven (11) other countries, i.e, Australia, Austria, France, China, Hungary, the Netherlands, Poland, Slovenia, Spain Turkey and Czech Republic ***cultivate opium poppy, but they do not extract gum***. They cut the bulb with 8" of the stalk for processing in its entirety. This method is known as Concentrate of Poppy Straw process (CPS).

3. Opium poppy has been cultivated in India since the 10th century. The *'Dhanvanatari Nighantu'* an ancient Indian medical treatise of the 10th century lists opium as a remedy for a variety of ailments. In the early part of 16th century, opium was cultivated in India as a federal monopoly during the Moghul period. The *'Ain-e-Akbari'*, a historical record of the times and period of Moghul Emperor - *Akbar* (1556 to 1605AD) states that opium was cultivated in all the provinces of North India scattered over an area of more than one million sq. km. After the decline of Moghuls, the Britishers controlled opium production from year 1773. After independence the Indian Government checks and monitors its production and usage.

4. In India, opium poppy involves lancing and collection of latex from the incised capsule. It is laborious and skilled job requiring considerable man-power to accomplish the task in a short time span.

5. The capsule is the most important organ of the plant as it provides raw opium - a milky exudate. It contains about 70% of the total morphine synthesized by the plant.

6. The terminal capsule is, in general, richer in morphine content than the lateral ones. The lancing is the longitudinal or circumferential cut/ incision by an instrument, of the capsule at appropriate stage. The instrument comprises of 3 to 6 sharp blades of steel or iron affixed to a holder of sufficient length, or all tied together, each spaced a few millimeter.

7. The lancing operation is performed by skilled workers in the afternoon, so that a crust is formed on the surface of freshly exudated latex, due to the hot sun. Starting from the top, the workers move backwards to the base, in order to escape contact with exuding latex and to keep the incision facing the sun.

8. While lancing the appropriate stage is identified by touch, a skill acquired by years of experience; the depth of incision is also an accomplished, precise art. By next early morning, the latex semi-solidifies, and is collected by scraping with a trowel.

9. Opium poppy is an extremely delicate plant greatly susceptible to changes of weather, and predisposed to certain organic diseases. If the field becomes waterlogged, the plants wither and die. Rain at the time of harvest washes away the latex and reduces the yield considerably. High velocity or dry winds are detrimental because they tend to dry the plant quickly and check the flow of latex. In damp climates the crop is attacked by fungi, bacteria etc. Dew during the lancing period increases the apparent yield. Hailstorm destroys the plants and the young plant can be wiped out by frost. At the end of its growth period, the plant needs warmth and dry weather. Humidity, temperature and wind thus have a great influence on the yield of latex.

   The plants require constant care and attention and need to be saved from damage by diseases, pests and parasites, birds and animals. Mildew attacks the leaves which turn blackish brown and finally dry up. Root parasites often prevent the healthy growth of plant. Specific treatment, selective use of insecticides, proper weeding and thinning operations, removal of affected plants and adequate but not excessive irrigation must all be rigidly adhered to for a good yield of latex and seeds from poppy crop

Historical Overview of International Drug Law(s)

Efforts to create a multilateral framework for narcotic substances date back to the late nineteenth century and were led by China and the United States of America. The historical developments in this area may be discussed in brief as under:

1. In **1909, the Shanghai Opium Commission** was established to collect data and estimate the extent of international opium trade. Three years later, thirteen States adopted the **Hague Convention, 1912** thereby agreeing to control the production, manufacture and distribution of opium.

2. The Hague Convention came into force only after principles of ratification were clarified under the Treaty of Versailles, 1919. In 1920, the League of Nations passed a Resolution creating an **Opium Advisory Committee** to oversee the implementation of the Hague Convention.

3. By 1925, two international agreements led the international community to commit itself to a reduction, as opposed to control of opium production.

   The first agreement concerning the **Manufacture or Internal Trade in, and Use of Prepared Opium**, was concluded in Geneva on 11 February 1925 where signatory nations stated that they were - *"fully determined to bring about the gradual and effective suppression of the manufacture of, internal trade in and use of prepared opium."*

   The second treaty, called the **International Opium Convention, 1925,** also referred to as the **Geneva Convention relating to Dangerous Drugs,** extended control to cannabis and institutionalized the international system of regulation by creating a **Permanent Central Opium Board** to maintain statistics on international trade in narcotics. The series of conventions laid down administrative measures, without criminalizing users and/or producers of opiates, cocaine and cannabis.

4. The **Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs**, **1931** sought to limit supplies of potentially addicting but medicinally useful substances, such as morphine and codeine to amounts necessary for medical and scientific purposes. It introduced a system for countries to submit estimates of the quantity of drugs produced and consumed for medical reasons. This practice continues under the existing international framework for drug control.

5. The **1936 Convention for the Suppression of the Illicit Traffic in Dangerous Drugs** was the first treaty to focus on illegal trade in drugs.

   Proposing a semi-punitive approach, the Convention mandated signatories to designate certain activities as offences while regulating other acts. Signed by thirteen States, the Convention came into force in 1939.

6. In 1946, the League of Nations' drug control functions passed on to the United Nations (hereinafter referred to as the "UN"). The League's Advisory Committee on Opium became the **UN Commission on Narcotic Drugs**,which presently leads drug policy making within the UN system.

7. Thereafter, in **1953**, the **Opium Limitation Protocol** was adopted, which authorized seven countries including India to grow opium for export.

8. The **U.N Single Convention on Narcotic Drugs, 1961** was introduced to consolidate existing drug control measures into a "single" treaty. The 1961 Convention aims to balance the use of narcotic drugs by ensuring their availability for medical and scientific pursuits while simultaneously discouraging production, manufacture, export, import, distribution of, trade in, use and possession for non-medical purposes. The treaty laid down a 15 year period for States to eliminate non medical use of opium and 25 years for coca and cannabis.

Drugs are classified according to their perceived liability to abuse and risk to public health under a fourfold system of Schedules. Schedule I contains drugs subject to the strictest controls including heroin, cocaine and cannabis, Schedule II lists out substances that require less stringent regulations, Schedule III covers drugs that are perceived to be at least risk of abuse and Schedule IV applies to drugs that are permitted for medical and scientific use.

9. The 1961 Convention also created the **International Narcotics Control Board** (hereinafter referred to as the "INCB"), a body comprising thirteen independent experts to oversee the implementation of international drug conventions.

10. The **1972 Protocol amending the 1961 Single Convention on Narcotic Drugs** called upon member States to take increased efforts to prevent the illicit production of, traffic in and use of narcotic drugs and to provide treatment and rehabilitation to persons addicted to drugs.

11. In **1971, the Convention on Psychotropic Substances** was adopted as a companion instrument to introduce controls over the manufacture, export and import of psychotropic substances such as amphetamines, barbiturates and hallucinogens like LSD. Its provisions are similar to those of the 1961 Convention.

12. Growing concern over transnational drug crimes and the difficulty in prosecuting persons involved in international drug trafficking led to the adoption of the **Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances in 1988**. The 1988 Convention seeks to harmonize national laws and enforcement actions against drug trafficking, including provisions on extradition, mutual legal assistance, cooperation and assistance for transit states, controlled delivery, money laundering, asset seizure, the diversion of precursor chemicals, and illicit traffic by sea and via the mail.

Together, the three drug conventions of 1961, 1971 and 1988 constitute the international legal framework for drug control. Like other international treaties, these drug conventions are not self-executing. Their provisions must be incorporated into domestic law by legislative acts, in accordance with constitutional principles and the basic concepts of the legal system of that State.

CHAPTER 2

DRUG TRAFFICKING

Since the dawn of history, mankind has been pre-occupied with the discovery, acquisition and use of substances- first natural and later man-made - believed to be capable of having a positive influence on mood, behavior and health. The most ancient of these substances are opium from the poppy plant; cocaine from the leaf of the coca bush; and cannabis from the hemp plant.

DRUG TRAFFICKING is the most heinous and yet the most lucrative crime today which has engulfed almost every part of the world. Over the last two decades, the problem has assumed menacing proportions and intense concern has been demonstrated by the world community. Every nation has taken steps to fight the drug menace by taking legal, administrative and preventive measures. Problem is also being tackled by social means by building awareness, counseling, treatment, rehabilitation of drug addicts, etc.

India geographically is flanked by Golden Crescent and Golden Triangle, the two main sources of opiates in the world - and Nepal, which is the major source of cannabis. Thus, over the years, India emerged as a major transit country for the movement of narcotic drugs from these areas to other parts of the world. The problem of drug trafficking, assumed alarming proportions somewhere in early eighties. Consequently Steps were taken by the Indian Government to meet this challenge and as a first measure, the **Narcotic Drugs & Psychotropic Substances Act, 1985,** also known in short as **NDPS Act,** was enacted by repealing the erstwhile laws.

SCOPE OF THE NDPS ACT

1. Under the NDPS Act, no person can cultivate coca plants, opium poppy and cannabis plants or extract opium, Charas and ganja from such plants.

2. The production of opium derivatives such as morphine, heroin and other intoxicating psychotropic substances, except for medical or scientific purposes, is a crime.

3. Possession of these drugs and trafficking for commercial gains in such drugs is also a crime. Any person committing such offences can be punished with imprisonment ranging from ten to thirty years and also fined from rupees one to three lac.

4. To make the law more deterrent and to further strengthen the hands of enforcement agencies, the Prevention of illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 was brought in, under which the drug traffickers can be detained for a period of one to two years so as to prevent them from indulging in such illegal activities.

5. To make a real dent in these activities and also to give a final blow, further amendment was made in the Act to provide for the forfeiture of the properties from earnings related to drug crimes which became operative in 1989. This amendment also brought in the provisions to award death sentences in certain categories of drug offence.

6. A new Chapter V-A was incorporated in the Act, which provides for tracing, identifying, seizing/freezing and forfeiture of the movable and immovable properties acquired from ill gotten funds by the drug traffickers. Offenders are of following three types who:

(a) have been convicted for an offence under NDPS Act, punishable with imprisonment for a minimum term of 10 years or more;

(b) convicted abroad for similar offences;

(c) or against whom an order of detention under PITNDPS Act, 1988 has been made. (Section 68 A to 68 Z).

FORFEITURE OF PROPERTIES

1. The Act also provides for forfeiture of illegally acquired properties of the drug traffickers held in the names of their relatives, associates or even friends and servants. *[Section 68 (a to f)].*

2. The forfeiture of the properties acquired out of the earnings from drug related crimes can be ordered by a Competent Authority, who is appointed by the government under Section 68-D of the NDPS Act for this purpose.

3. Powers have been given to the Officers of the Departments of Police, Customs, Central Excise, Border Security Force, and Revenue Intelligence, Narcotics Control Bureau etc. to investigate and inquire into the drug offences and enforce the provisions of NDPS Act under Section 53 thereof.

4. These Officers have also been empowered under Section 68-E to take all the steps necessary for tracing and identifying any property illegally acquired by drug trafficking. If there is reasonable belief that any such property is illegally acquired, then the same can be seized or frozen by the enquiry officer under Section-68-F of the Act.

5. However, such an order of seizing or freezing of the illegally acquired property shall be communicated to the Competent Authority within 48 hours: of its being made.

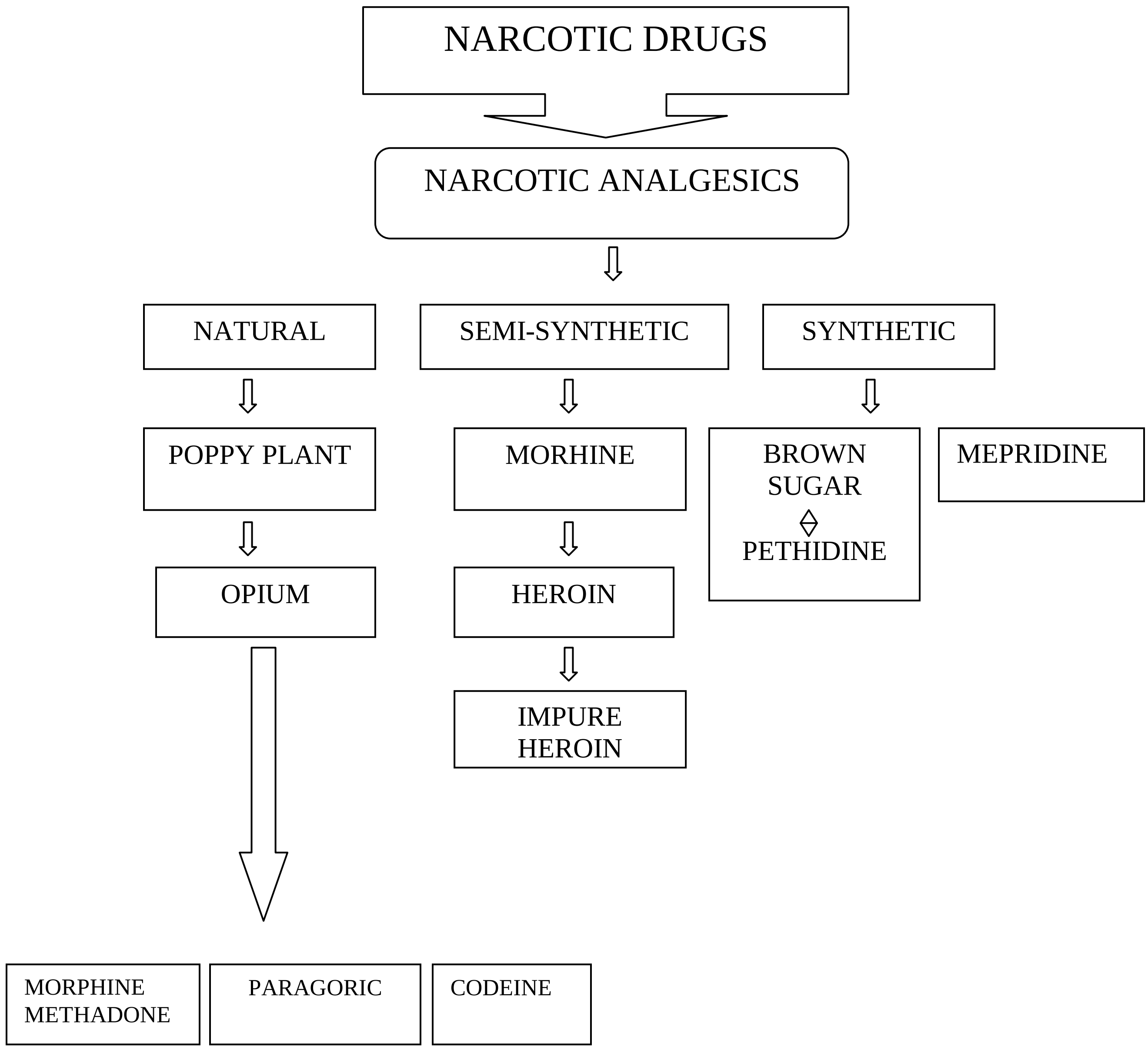
6. Further, an order will have effect only when it is confirmed by the Competent Authority by an order within 30 days of its being made. Thereupon, the Competent Authority will initiate the forfeiture proceeding under Section 68-H & 68- I of the said Act.

7. For the successful culmination of the forfeiture provisions, it is imperative that the Central and State enforcement agencies implementing the provisions of NDPS Act, while dealing with such cases, take simultaneous action to identify and locate the illegally acquired properties by the traffickers as well as their relatives and associates, right from the time intelligence is collected in respect of drug trafficking and gather all relevant details relating there to at that stage itself.

8. It is also essential that in the course of investigation, all possible evidence and material is collected to establish a prima facie nexus between the properties in the hands of relatives and associates with the illegal earnings of the drug traffickers.

9. On completion of the investigation, a report should immediately be sent to the Competent Authority, SAFEMA (FOP) Act & NDPS ACT.

NARCOTIC DRUGS



PSYCHOTROPIC DRUGS & SUBSTANCES

The expression "psychotropic" is composed of two separate words 'psychosis' and ‘tropic’.

Psychosis means a mental or personality disorder sufficiently severe to disrupt the individual's personal and social life and normally demanding special treatment and hospitalization.

Tropic means pertaining to or characteristics of or, occurring in the tropics, that is, the regions falling between the corresponding parallels of latitude on the terrestrial globe, one: tropic of Cancer about 23-1/2^{o} N and the other, tropic of Capricorn, about 23 - 1/2^{0} S of the equator being the boundary of torrid zone. These drugs usually occur in nature in the Torrid Zone.

Psychotropic substances mean drugs that have a short term effects on the nervous system, particularly that change the levels of consciousness and/or variations of mood without general stimulation or depression of the Central Nervous System (CNS).

CATEGORISATION OF DRUGS AS PER NDPS RULES

Schedule I of the Narcotic Drugs and Psychotropic Substances Rules 1985 contains a list of drugs whose import into and export from India is prohibited (vide Rule 53) and their manufacture, possession, transport, import inter-State and export inter-State, sale, purchase, consumption or use are prohibited vide Rule 64 of the NDPS. Rules (Central).

Schedule II of the Rules contains a list of drugs which shall not be imported into India without an Import Certificate (in respect of the consignment) issued by the Issuing Authority, in Form No. 4 appended to NDPS rules. Their transit through India is also not allowed unless such consignment is accompanied by a valid Export Authorization in this behalf issued by the Government of the exporting country (Vide Rule 57). Similarly they cannot be exported out of India without an export authorization in respect of the consignment issued by the Issuing Authority in Form No 5.

Schedule III of the NDPS Rules contains a list of drugs of psychotropic substances which may be exported out of India after the exporter files the original and duplicate copies of the declaration in Form 6 to the Narcotics Commissioner Full details regarding the procedure is given in Rule 58 (3) of the Rule.

TYPES OF NARCOTIC DRUGS

CANNABIS HEMP

The hemp drugs commonly used in India, are all derived from the plant cannabis sativa or cannabis indica which grows all over the country. *Bhang, Sidhi, Sabji or pahariya,* all are the dried leaves and small stalks; ganja is the flowering twig; charas is the resin exudate obtained from the cannabis plant (branches and leaves) and majoon is a form of sweet meat containing a quantity of Bhang.

Constituents of Cannabis

Cannabis has four main constituents they are:

1. Cannabinol
2. Cannabidiol
3. Cannabidiolic Acid and
4. Tetra-hydro cannabinol

Out of these, tetra-hydro cannabinol is mainly responsible for the physiological properties. Tetra-hydro Cannabinol is an oily liquid from which two main isomers may be crystallized.

Marijuna

It is a drug that comes from the Indian hemp plant (cannabis sativa). The plant grows very wild in diverse conditions. There are both male and female plants. Marijuna is the mixture of ground leaves, stems and the seeds of the female plant. The ingredients are crushed and chopped. It can be smoked in a pipe or rolled into a cigarette. At times it is mixed with tobacco. It has a sweet odour while smoking otherwise it smells like burnt rope.

Hashish

This also comes from the hemp plant and is prepared from the flowering tops. When the cannabis plant is ripe, a sticky yellow resin covers the flowering tops and some of the leaves close to it. The resin contains the ingredients that cause the intoxicating effect. On account of presence of resin in greater concentration in Hashish, it is stronger than marijuna. [Hashish and Marijuana are referred to as: "Hash", "pot", "hemp", 'joint sticks", "grass", "weed", "Mary Jane", "shit", "bhang", "tea", "Acapulco gold", "charas", "ganja", and "kif".]

Ganja

Ganja is the dried flowering top of the female plants matted together with resin. It is smoked along with tobacco like charas which is the crude resin extracted from the flowering heads by rubbing these in hands and scraping off the resin left adherent to the palms.

Marihuana

American hemp (cannabis Americana) is known as marihuana. It produces symptoms similar to the hemp plant of India. The only difference is in effect as compared to that of the Indian product. Its preparation is known as muggles and is smoked in Mexico and U.S.A.

Cocaine

Cocaine is derived from the leaves of Erythroxylon coca which is a native of South America. Cocaine is the methyl benzoyl ester of ecgonine, a base similar to topine and, therefore, saponifies readily. The official preparation of cocaine is cocaine-hydrochloride which occurs in the form of colour-less to white crystal or as a quantity of white powder. Although, it is soluble in water but dissolves readily in organic solvents as well. It is insoluble in ether. Cocaine hydrochloride is used therapeutically as a local anesthesia. It is believed to be an anti-fatigue agent and produces hallucinations.

Ketamine

Ketamine drug was developed in 1962. Street terms for Ketamine: jet, super acid, special "K", green, K, cat Valium, etc. It comes in a clear liquid and a white or off white powder form. Ketamine is a tranquilizer most commonly used on animals. The liquid form can be injected, consumed in drinks, or added to smokable materials. The powder form can be used for injection when dissolved. In certain cases, it is being injected intramuscularly.

Ketamine, along with the other "club drugs" has become popular among teens and young adults at dance clubs and "raves". Use of the drug can cause delirium, amnesia, depression and long term memory and cognitive difficulties. Due to its dissociative effect, it is reportedly used as a date-rape drug.

Controlled Substances

Controlled substances may not necessarily be narcotic drugs or psychotropic substances but may altogether form a different category, for instance, those used in the manufacture of heroin. Acetic Anhydride is one such chemical which is used in the manufacture of heroin.

Acetic Anhydride is an important industrial Chemical which has been notified as an essential commodity under Section 3 of the Essential Commodity Act, 1955. In order to prevent this substance from being diversified to the illicit manufacture of heroin, it could be most appropriate to cover this substance as controlled substance under the NDPS. Act.

Precursor Control in India

Chemicals frequently used in the manufacture of illicit narcotic drugs and psychotropic substances are referred to as precursors. These chemicals have a large number of legitimate uses and a small fraction of the total production is sufficient to meet the requirements of the illicit drug industry.

The UN Convention Against illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (1988 Convention for short) identifies the following 23 precursors as the chemicals which need to be controlled.

Table I	**Table II**
Acetic Anhydride	Acetone
Potassium permanganate	Anthranilic acid
N-acetylanthranilic acid	Ethyl ether
Ephedrine	Hydrochloric acid
Ergometrine	Methyl ethyl ketone
Ergotamine	Phenyl acetic acid
Isosafrole	Piper dine
Lysergic acid	Sulphuric acid

3,4-methylenedioxyphenyl-2-propanone	Toluene
1-phenyl-2-propanone	
Pipe Ronal	
Pseudo ephedrine	
Safrole	
Norephedrine	

Section 25 A of the NDPS Act, 1985 provides punishment for any contravention of the Order made under section 9 A.

An offender is liable for rigorous imprisonment, which may be extended to 10 years, and fine, which may extend to one lakh rupees.

The court may impose a fine exceeding one lakh rupees after recording the reasons thereof.

ENFORCEMENT

1. Given India's size and the federal nature of our polity, a number of agencies both at the Centre and in the States have been empowered to enforce the provisions of the NDPS Act.

2. These agencies include the Department of Customs and Central Excise, the Directorate of Revenue Intelligence, the Central Bureau of Narcotics and the Central Bureau of Investigation at the Central level and State Police and Excise Departments at the State level.

3. Section 4 (3) of the Act envisages the creation of a Central Authority to coordinate the activities of the various Central and State agencies involved in drug law enforcement, to implement India's obligations under various international conventions, and to coordinate with international organizations and authorities in foreign countries in the prevention and suppression of the illicit traffic in narcotic drugs and psychotropic substances. In terms of this provision, the Narcotics Control Bureau was set up by the Central Government in 1986 with the broad remit to coordinate drug law enforcement nationally.

4. The empowerment of a large number of agencies under the NDPS Act ensures that India's drug laws are enforced effectively on the ground. The NCB basically functions as the national coordinator international liaison and as the nodal point for the collection and for dissemination of intelligence. This system assures coordinated implementation within the parameters of a broad national strategy.

INVESTIGATIVE PROCEDURES

1. Chapter V of the NDPS Act (Sections 41 to 68) sets out the powers as well as the procedures for the investigation of offences under the Act. This Chapter empowers officers duly authorized by the Central Government or a State Government to issue warrants, to enter and search premises, to stop and search conveyances, to seize narcotic drugs and psychotropic substances, to take statements and to arrest persons suspected of having committed an offence, punishable under the Act.

2. The power to issue search and arrest warrants, is in terms of Section 41, been vested both in Magistrates as well as in specially designated (Gazetted) officers of the Central and State Governments. This is designed to ensure both timely and effective action in response to any information.

3. In addition, both the Central and the State Governments are authorized to entrust any Officer duly empowered under the Act with the powers of an Officer-in-Charge of a Police Station for the investigation of offences under the Act.

4. It needs to be noted, however, that while the powers to search, seize, arrest etc., are inherent in the Act, all these are subject to both the substantive and procedural safeguards mandated by the Code of Criminal Procedure, in relation, inter-alia, to the presence of independent witnesses at a search, the drawing up of search lists or panchanamas, and the constitutional obligation to produce an arrested person before a Judge within 24 hours from the time of arrest etc.

OFFENCES AND PENALTIES

1. Chapter IV, (Sections 15 to 40) sets out the penalties for offences under the Act. These offences are essentially related to violations of the various prohibitions imposed under the Act on the cultivation, production, manufacture, distribution, sale, import and export etc. of narcotic drugs and psychotropic substances.

2. All these offences are triable by Special Courts and the punishments prescribed range from imprisonment from 10 to 20 year for first offences in the case of seizure of drugs/psychotropic substances in commercial quantity to 15 to 30 years for any subsequent offences together with monetary fines.

3. In addition to persons directly involved in trafficking narcotic drugs and psychotropic substances, any person who finances trafficking or harbours a person involved in trafficking, or abets, or is a party to a criminal conspiracy, including a criminal conspiracy to commit an offence outside India, is also liable to the same scale of punishments.

4. The Act was amended in May 1989 to mandate the death penalty for second offences relating to contraventions involving more than certain quantities of specified narcotic drugs and psychotropic substances.

SMALL QUANTITIES & COMMERCIAL QUANTITIES

The Act, however, makes a distinction between possession for personal consumption and trafficking, the punishment for the former being limited to between six months and one year only. The application of this provision is subject to the following two qualifications:

i) The quantity of the drug involved in the offence should be a small quantity as specified by the Central Government. Refer to Notification issued by Government of India quantifying small quantity and commercial quantity in relation to narcotic drug or psychotropic substance vide S.O. 1055 (E) dated 19.10.2001, published in the Gazette of India, Extra, Part II Sec 3 (ii) dated 19.10.2001.

ii) The onus is on the accused to establish that the drug in question was meant for personal consumption and not for sale, distribution etc.

PRECURSOR CONTROL

1. The 1988 U.N. Convention against illicit Traffic in Narcotic Drugs and Psychotropic Substances, to which India is a signatory, requires Parties to impose controls on the manufacture, internal distribution and import and export of chemicals which can be used in the illicit manufacture of narcotic drugs and psychotropic substances.

2. In order to implement India's obligations under this Convention, the NDPS Act was amended in 1993 in order to empower the Central Government to declare any substance as a controlled substance and to regulate its manufacture, import and export etc. (Section 9-A).

3. Violations relating to such substances were established as criminal offences punishable with imprisonment for up to 10 years (Section 25-A). In 1993, the Government of India promulgated the NDPS (Regulation of Controlled Substances) Order, to regulate the manufacture, distribution etc., of any substance declared to be a "Controlled Substance".

4. In exercise of its powers under the Act, the Central Government has so far notified Acetic Anhydride, which is used in the processing of opium into heroin, N-Acetylanthranilic acid which is used in the illicit manufacture of Methaqualone and Ephedrine and Pseudo ephedrine, which are used in the illicit manufacture of amphetamine type stimulants, as controlled substances.

INDIAN SITUATION

VULNERABILITY (BORDER-WISE)

Indo-Pak border

1. Ever since the emergence of the Golden Crescent as a major source of illicit opiates and cannabis resin, the entire Indo-Pak land border has become extremely vulnerable for in-smuggling of drugs from Pakistan.

2. The State of Jammu & Kashmir, by its proximity to opiate sources in Pakistan, is as much vulnerable to trafficking in drugs as any other State bordering Pakistan.

3. Jammu border is the nearest from the North West Frontier Province where most of the illicit opium is grown and converted into Heroin. The Kabul-Lahore highway runs fairly close to Jammu before reaching Lahore, which is opposite to Amritsar in Punjab.

4. Though not many seizures on the Indian side in Jammu & Kashmir have been reported yet most of the major seizures on the Pakistani side take place in areas bordering Jammu

5. Due to tightening of security on the borders, there is some diversification of routes to the adjacent State of Rajasthan. The tour sectors of Sri Ganga Nagar, Bikaner, Jaisalmer and Barmer are the most vulnerable sectors for trafficking of drugs into India from Pakistan. Mostly, when the drugs are meant for northern India or Delhi, routes through Sri Ganga Nagar and Bikaner are preferred by traffickers whereas if, the drugs are meant for Western India and Bombay, they are trafficked through Jaisalmer and Barmer sectors.

6. Large quantities of heroin and hashish is smuggled into India through camel backs in the Jaisalmer and Barmer sectors and, after crossing the border, the same is buried and kept under sand. One of the persons crossing the border gets in touch with the person responsible on the Indian side of the border either at Jaisalmer or Barmer and they proceed in the night in Vehicles to the points where the drugs are concealed and, after loading the same, bring them on to the National highway connecting Delhi-Mumbai. The drugs are concealed under trade goods in trucks and they are transported to Mumbai for onward Export.

7. On the Pakistani side, the Lahore-Hyderabad highway and the railway line run parallel to the Indian border. There are well-connected road and rail facilities adjacent to the border on either side. This border came into prominence some years ago.

8. The entire land border between Gujarat and Pakistan is marshy, known as the Rann of Kutch. Though stray cases of trafficking of drugs through the Rann of Kutch have been reported in the past, yet the area is not very conducive for this activity. Small country boats called "Hodas" are used for transport of drugs from Karachi to the Kori-creek on the coast of Gujarat. Though stray cases of trafficking have been noticed in the past few years, yet the data available is rather erratic to suggest any trends.

Indo-Nepal border

1. Nepal has a wild growth of cannabis plants in the foothills adjacent to the Indian Terai region. Cultivation of cannabis is also undertaken by the by the poor villagers to supplement their earnings.

2. The Indo-Nepal border touches the Indian States of U.P., Bihar, West Bengal and Sikkim.

3. Till a few years ago, some North Indian States allowed cultivation of cannabis for production of 'bhang'. However, presently only Orissa and Madhya Pradesh are legally cultivating cannabis for medical and research purposes. The cultivation is done on very small patches of land.

4. Consumption of cannabis herbal (Ganja) has been popular in many North Indian States, including U.P. and Bihar since times immemorial. The progressive reduction in the cultivation of cannabis in India came as a boon to the traffickers operating on both sides of the Indo-Nepal border.

5. Ganja is smuggled into India by trucks and on head-loads from Nepal. Since ganja does not form any significant part of the drugs exported out of India the entire quantity of ganja that is smuggled into India from Nepal is meant for captive consumption. Small quantities of heroin of Thai/Myanmar origin is also trafficked from Nepal into India.

6. Nearly 80% of the land border with Nepal is in the State of U.P. However, trafficking of ganja is mostly done through the State of Bihar. The U.P. border accounts for only small quantities of ganja and charas. Bihar border is very adversely effected where besides trafficking of ganja on head-loads, both rail and road routes are used very extensively for transportation of the drug.

7. There are well stacked storage places adjacent to the border on the Nepalese side. Since there are no passport and visa restrictions on movement of persons between India and Nepal, it becomes all the more convenient for traffickers to move drugs across the border without any hindrance.

8. The check-posts manned by police and the Customs are far and off and cannot patrol the entire length of the border. Crisscross of different routes is adopted to transport drugs from the border to the consuming centres. The Nepalese border with West Bengal is confined to the Darjeeling sector.

Indo-Myanmar border

1. India's north-west comprises of many small States which include the Border States of Arunachal Pradesh, Nagaland, Manipur and Mizoram.

2. There are frequent reports of smuggling of Myanmar refined heroin from this border into India, especially through the Indian State of Manipur from the border town of Moreh. The earlier reports indicated that heroin of Golden Triangle origin was brought into India from Tamu in Myanmar to Imphal via Moreh.

3. However, recent reports indicate that laboratories have been set up on the Myanmar side near the Indian border for manufacture of heroin with the aid of acetic anhydride, which is smuggled out, from India.

4. Reports also indicate that large quantities of heroin smuggled through this border also find their way into Nepal. A local factor which creates very congenial atmosphere for trafficking of drugs is that tribal inhabitants on either side of the international border can move around freely within a belt of 40 Kms on the Indian side and 16 Kms on Myanmar side of the border for barter trade in terms of daily necessity without any restrictions of passport and visa.

5. Intelligence received also indicates that acetic anhydride, a precursor is smuggled across the Indo-Myanmar border in jerry cans of 5 gallons each and these jerry-cans are tied to floating rafts, which travel along the Chinduin River till they reach Mandalay.

6. Further, a 100 Kms belt on the Indian side of the Indo-Myanmar border was declared as a specified area in which the movement of acetic anhydride has been banned under the Customs Act 1962 unless certain conditions are fulfilled.

International Co-Operation

1. India realizes that the fight against drug trafficking, which recognizes no barrier, has to be fought at the national and international levels. A solution to this problem can be found only with the co-operation of the concerned countries.

2. Similarly, there also exist arrangements between India and United States through a Working Group on Narcotics for exchange of information on drug-related matters and also for extending bilateral arrangements with Sri Lanka and Nepal to discuss matters relating to smuggling which also include discussions on drug trafficking.

3. At the regional level, India discusses drug with its neighbours through the auspices of the SAARC. Also, India is a Member of the ESCAP Regional Plan wherein 15 countries of South-East Asia regularly exchange information on monthly basis.

4. The ESCAP Plan was organized by the Customs Co-operation Council and started operating from Jan. 1987, at the international level India is a signatory to the U.N. Convention on Narcotic Drugs of 1961 and the 1971 Convention on Psychotropic Substances. It is also a useful and active Member of the INTERPOL.

5. India has also established close liaison with many of the countries by permitting them to post their Drug Liaison Officer, in India. These include officers of Drug Enforcement Administration of USA, H. M. Customs of UK, RCMP of Canada and an officer from the Federal Republic of Germany.

6. There is fruitful exchange of intelligence to the mutual seizures have been effected by various agencies around the World in places like Amsterdam, New York, Boston, Rome, Lagos and Tokyo.

7. India has also been providing to the international agencies like the I.N.C.B., INTERPOL, Colombo Plan Bureau, C.C.C., and U. N. Division on Narcotic Drugs, etc. with the latest development with regard to drugs in India and the effort made by the country to prevent trafficking in drugs.

NARCOTICS CONTROL BUREAU

Narcotics Control Bureau is in charge of coordination and enforcement of the NDPS Act. The NCB was constituted by the Central Government in 1986 under Section 4(3) of the NDPS Act to *inter alia,* coordinate all measures for preventing and combating abuse of and illicit traffic in narcotic drugs and psychotropic substances, in connection with implementation of the provisions of the NDPS Act.

The NCB is headquartered in Delhi and operates within the Department of Internal Security, Ministry of Home Affairs.

The NCB also functions as an enforcement agency through its field units located at Mumbai, Delhi, Kolkata, Chennai, Varanasi, Jodhpur, Chandigarh, Jammu, Ahmedabad, Imphal and Tiruvananthapuram.

NARCOTIC COMMISSIONER
[CENTRAL BUREAU OF NARCOTICS]

Prior to 1950, the administration of the Narcotics Laws namely, the Opium Act of 1857 & 1878 and the Dangerous Drugs Act, 1930 was vested with the Provincial Governments. The amalgamation of these agencies laid the foundation of the Opium Department in November, 1950, which is presently known as the Central Bureau of Narcotics [CBN]. The headquarters of CBN was shifted from Shimla to Gwalior in 1960.

1. Central Bureau of Narcotics (C.B.N) is headed by the Narcotics Commissioner (NC). The NC is assisted by three Deputy Narcotics Commissioners (DNCs) in charge of the Units in the opium growing states i.e. Madhya Pradesh, Rajasthan and Uttar Pradesh. Their offices are located at Neemuch, Kota and Lucknow respectively.

2. A Unit comprises of number of Divisional offices headed by a District Opium Officer (DOO) (Group 'B' Gazetted officer), who looks after the poppy cultivation aspects such as licensing of cultivators, measurement of poppy fields, collection of opium, etc.

3. In addition, there are Preventive & Intelligence Cell (P&I Cell) headed by Superintendents (Group 'B' Gazetted Officer). The P&I Cell look after the enforcement aspects. Both the DOO and Supdts. in the Unit report to the DNC in-charge of their Unit.

4. The Central Bureau of Narcotics headquarter is located at Gwalior. The Narcotics Commissioner is assisted by two Dy. Narcotics Commissioners (DNCs) and two Asstt. Narcotics Commissioners (ANCs) along with other support staff/ officers.

5. Besides, overall supervision of activities in respect of all matter relating to Superintendence over opium poppy cultivation, the headquarters office also attends to the issuance of Authorization of Import/ Export of NDPS and other related work.

CHAPTER 3

GUIDANCE NOTE ON LEGAL PROVISONS

The NDPS Act came into force on 14.11.1985. Certain provisions were subsequently amended in 1989 and 2001. Chapter IV deals with Offences and Penalties, whereas Chapter V deals with procedure.

- Section 41 relates to power to issue warrant and authorization;
- Section 42 relates to power of entry, search, seizure and arrest without warrant or authorization;
- Section 43 relates to power of seizure and arrest in public place;
- Section 50 relates to conditions under which search of persons shall be conducted.

The NDPS Act prescribes stringent punishment. Hence a balance must be struck between the need of the law and the enforcement of such law on the one hand and the protection of citizens from oppression and injustice on the other. This would mean that a balance must be struck in.

The provisions contained in Chapter V, intended for providing certain checks on exercise of powers of the authority concerned are capable of being misused through arbitrary or indiscriminate exercise unless strict compliance is in place. The statute mandates that the prosecution must prove compliance with the said provisions.

The procedures for the enforcing agencies need to be categorized to enable them to have full grasp of the subject. An effort is being provided in this Guidance Note to understand the requirements of the law for enabling prosecution of the accused arrested under the NDPC Act. As already said, the provisions under the special act are to be followed meticulously since the punishments are stringent. The judgments of the Supreme Court of India and various High Courts are guiding force and have been referred in detail in the Guidance Note.

The procedures are categorized as per the following probable situations:

A. Where the contraband items are recovered by Personal Search of the suspect including a Chance Recovery;

B. Where the contraband items are recovered from any bag, brief-case, suitcase, tin-box, thaila, jhola, gathri, holdall, carton etc. being carried by the suspect;

or

Where the contraband items are recovered from a public conveyance / private conveyance in a public place suspected to carry any contraband items;

or

Where the accused is intercepted at an international or state transit point during ingress or exgress

C. Where the contraband items are recovered from any building-shop, factory, residential premises or an enclosed place;

or

Where the contraband items are recovered from a personal conveyance not in a public place suspected to carry any contraband items being driven by the suspects;

It is imperative to understand the provisions of the Law as interpreted in various Court Judgments of Supreme Court of India delivered by the Constitution Bench and otherwise to draw Standard Operating Procedures under the given situations. The situations are dealt independently and may find repetition at some places, but are laid down so as to understand every situation in a lucid manner.

Three important judgments of the Constitution Benches of the Supreme Court of India are the guiding force in the above noted situations:

- *State of Punjab v Baldev Singh*
  [1999 (3) RCR Criminal 533]

- *Karnail Singh v State of Haryana*
  [2009 (5) RCR Criminal 515]

- *Vijaysinh Chandubha jadeja v State of Gujarat*
  [2010 (4) RCR Criminal 911]

SITUATION (A)

Where the contraband items are recovered through the Personal Search of the suspect

1. Section 50 of the NDPC Act defines the conditions under which Personal Search may be made.

50. Conditions under which search of persons shall be conducted:-

(1) When any officer duly authorized under Section 42 is about to search any person under the provisions of section 41, Section 42, or section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officers of any of the departments mentioned in Section 42 or to the nearest Magistrate.

(2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in sub-section (1).

(3) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search forthwith discharge the person but otherwise shall direct that search be made,

(4) No female shall be searched by anyone excepting a female.

(5) When an officer duly authorized under Section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under Section 100 of the Code of Criminal Procedure,1973 (2 of 1974).

(6) After a search is conducted under sub-section (5), the officer shall record the reasons for such search and within seventy-two hours send a copy there of to his immediate official superior.

2. CHANCE RECOVERY

a) If a police officer without any prior information as contemplated under the provisions of the NDPS Act makes a search or arrests a person in the normal course of investigation into an offence or suspected offences as provided under the provisions of Cr.P.C and when such search is completed at that stage, Section 42 and Section 50 of the NDPS Act would not be attracted and the question of complying with the requirements there under would not arise.

b) If during such search or arrest there is a chance recovery of any narcotic drug or psychotropic substance then the police officer, who is not empowered, should inform the empowered officer who should thereafter proceed in accordance with the provisions of the NDPS Act. If he happens to be an empowered officer also, then from that stage onwards, he should carry out the investigation in accordance with the other provisions the NDPS Act.

3. SEARCH OF A PERSON UNDER NDPS ACT

Sub-Section (1) of Section 50 provides that when the empowered officer is about to search any suspected person, he shall, if the person to be searched **so requires,** take him to the nearest gazetted officer or the Magistrate for the purpose.

Under sub-section (2), it is laid down that if such request is made by the suspected person, the officer, who is to take the search, may detain the suspect until he can be brought before such gazetted officer or the Magistrate. It is manifest that if the suspect expresses the desire to be taken to the gazetted officer or the Magistrate, the empowered officer is restrained from effecting the search of the person concerned. He can only detain the suspect for being produced before the gazetted officer or the Magistrate, as case may be.

Sub-section (3) lays down that when the person to be searched is brought before such gazette officer or the Magistrate and such gazetted officer or the Magistrate finds that there are no reasonable grounds for search, he shall forthwith discharge the person to be searched, other-wise he shall direct the search to be made.

Therefore, the mandate of Section 50 is precise and clear, viz., if the person intended to be searched expresses to the authorized officer his desire to be taken to the nearest gazetted officer or the Magistrate, he cannot be searched till the gazetted officer or the Magistrate, as the case may be, directs the authorized officer to do so.

4. WHETHER PROVISIONS ARE DIRECTORY OR MANDATORY

Although the Constitution Bench in the case of *State of Punjab vs Baldev Singh* [1999 (3) RCR (Criminal) 533] did not decide in absolute terms the question whether or not Section 50 of the NDPS Act was directory or mandatory, yet it was held that provisions of sub-section (1) of Section 50 make it imperative for the empowered officer to 'inform' the person concerned (suspect) about the existence of his right that if he so requires, he shall be searched before a gazetted officer or a Magistrate; failure to "inform" the suspect about the existence of the said right would cause prejudice to him, and in the case he so opts, failure to conduct his search before a gazetted officer or a Magistrate, may not vitiate the trial but would render the recovery of the illicit article suspect and vitiate the conviction and sentence of an accused, where the conviction has been recorded only on the basis of the possession of the illicit article, recovered from the person during a search conducted in violation of the provisions of Section 50 of the NDPS Act.

5. MODE OF CONVEYING TO THE SUSPECT OF HIS RIGHT

The Constitution Bench of the Supreme Court in *State of Punjab vs Baldev Singh,* noted that it was not necessary that the information required to be given under Section 50 should be in a prescribed form or in writing but it was mandatory that the suspect was made aware of the existence of his right to be searched before a gazette officer or a Magistrate if so required by him.

Concurring with the conclusions drawn in Baldev Singh case, *the Constitution Bench* of the Supreme Court of India in *Vijaysinh Chandubha Jadeja vs State of Gujarat [dt. 29.10.2010]* remarked that any other interpretation of the provision would make the valuable right conferred on the suspect illusory and a farce.

6. WHETHER THE INSERTION OF SUB-SECTIONS (5) AND (6) IN 2001 HAS DILUTED THE MANDATE OF SUB-SECTION (1)

It is pertinent to note that although by the insertion of the said two sub-sections, the rigour of strict procedural requirement is sought to be diluted under the circumstances mentioned in sub-sections, (held in *Karnail Singh vs State of Haryana*) viz. when the authorized officer has reason to believe that any delay in search of the person is fraught with the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance etc. or article or document, he may proceed to search the person instead of taking him to the nearest gazetted officer or Magistrate.

However, even in such cases a safeguard against any arbitrary use of power has been provided under sub-section (6). Under the said sub-section, the empowered officer is obliged to send a copy of the reasons, so recorded to his immediate official superior within 72 hours of the search.

The Constitution Bench of the Supreme Court of India in *Vijaysinh Chandubha Jadeja vs State of Gujarat [dt. 29.10.2010]* has not agreed to any such dilution and has clearly opined that, the insertion of these two sub-sections does not obliterates the mandate of sub-section (1) of Section 50 to inform the person to be searched, of his right to be taken before a gazetted officer or a Magistrate. The flexibility in procedural requirements in terms of the two newly inserted sub-sections can be restored to only in emergent and urgent situations, contemplated in the provision, and not as a matter of course.

Additionally, sub-section (6) of Section 50 of the NDPS Act makes it imperative and obligatory on the authorized officer to send a copy of the reasons recorded by him for his belief in terms of sub-section (5), to his immediate superior officer, within the stipulated time, which exercise would again be subjected to judicial scrutiny during the course of trial.

7. THE CONCEPT OF 'SUBSTANTIAL COMPLIANCE' u/s 50

The Constitution Bench of the Supreme Court in *Vijaysinh Chandubha Jadeja vs State of Gujarat* discussed the decisions in two judgments of Supreme Court in (i) Joseph Fernandez v State of Goa [(2000) [4 SCC 299] and (ii) Prabha Shankar Dubey v State of M.P. [2004(1) RCR Criminal 104] on the concept of 'Substantial Compliance' under the provisions of Section 50.

In Prabha Shankar case, the Supreme Court had held the views echoed in Joseph Fernandez's case that searching officer's information to the suspect to the effect that *"if you wish you may be searched in the presence of a gazetted officer or a Magistrate"* was in substantial compliance with the requirement of Section 50 of the NDPS Act.

However, the Constitution Bench held that it is manifest from the above that Joseph Fernandez does not notice the ratio of Baldev Singh and in Prabha Shankar Dubey, Joseph Fernandez is followed ignoring the dictum laid down in Baldev Singh's case.

We are of the opinion that the concept of "substantial compliance" is neither borne out of the language of sub-section (1) of Section 50 nor it is in consonance with the dictum laid down in Baldev Singh's case.

8. WHAT THE POLICE OFFICER MUST DO TO MEET THE CONDITIONS LAID DOWN IN SECTION 50

a) The obligation of the authorized officer under sub-section (1) of Section 50 of the NDPS Act is mandatory and requires a strict compliance.

   Failure to comply with the provision would render the recovery of the illicit article suspect and vitiate the conviction if the same is recorded only on the basis of the recovery of the illicit article from the person of the accused during such search. This is to check the misuse of power, to avoid harm to innocent persons and to minimize the allegations of planting or foisting of false cases by the Police.

b) It would be imperative on the part of the empowered officer of Punjab Police to apprise the person intended to be searched of his right to be searched before a gazetted officer or a Magistrate.

   The question whether or not the procedure prescribed has been followed and the requirement of Section 50 had been met, is a matter of trial. It would neither be possible nor feasible to lay down any absolute formula in that behalf.

c) No specific form has been prescribed or initiated for conveying the information required to be given under Section 50 of the NDPS Act. However the following notice was held adequate for the purposes of this Act by the Supreme Court of India *in Prabha Shanker Dubey v State of MP (2004) 2 SCC 56*

"By way of this notice, you are informed that we have received information that you are illegally carrying______ (drug) with you, therefore, we are required to search your vehicle and You for this purpose. You would like to give me search or you would like to be searched by any gazetted officer or by a magistrate?"

d) Recommendations of the Supreme Court of India

The Constitution Bench of the Supreme Court in in *Vijaysinh Chandubha Jadeja vs State of Gujarat [dt. 29.10.2010]* has held:

Section 50 gives an option to the empowered officer to take such person (suspect) either before the nearest gazetted officer or the Magistrate but in order to impart authenticity, transparency and credit worthiness to the entire proceedings,

"in the first instance, an endeavor should be to produce the suspect before the nearest Magistrate, who enjoys more confidence of the common man compared to any other officer"

It would not only add legitimacy to the search proceedings, it may verily strengthen the prosecution as well.

IMPORTANT OBSERVATIONS

1. The Supreme Court has held that when an article is out of reach or diverted away from the possession of the accused as in that case where the luggage of the accused had already been loaded into the aircraft, it was held that the contraband recovered from the aforesaid luggage in such circumstances could not be said to be a recovery from the persons of the accused and in these circumstances Section 50 was held to be inapplicable.

2. If a Police Officer, even if he happens to be an 'empowered' officer while effecting an arrest or search during normal investigation into offences purely under the provisions of Cr PC fails to strictly comply with the provisions of Section 100 and 165, Cr PC including the requirement to record reasons, such failure would only amount to an irregularity.

3. The provisions of Section 50 are to be strictly followed by the Police Officer conducting search. He must record in the Case Diary that he gave the option to the accused to be searched either before a Gazetted Officer or before a Magistrate. The offer must contain both the options since the person to be searched has to be informed of all his rights and all the options open to him under the law.

4. The choice of the *nearest* Gazetted Officer or the nearest Magistrate has to be exercised by the Police Officer making the search and not by the accused.

5. The raiding party should desist taking a gazetted officer for the purpose of compliance with the provisions of Section 50 of the NDPS Act, since taking such an officer makes such person impliedly interested in success of the raid. It will be a violation of the NDPS Act since it amounts to the denial of the right of the person to be searched. Moreover the words used in the Section 'take and brought' invariably indicate that the person apprehended by raiding party has to be *taken* before a 'Magistrate or a Gazetted

Officer' and if such person is *brought* before any of the said authority and there is no ground for search, such person be discharged forthwith.

6. It is desired to associate Independent Witnesses if the person is apprehended/intercepted in a public place. However, if no person agrees to join as a witness, the name(s) of such persons should be recorded in the case diary to make the case of prosecution unambiguous.

7. It is desired that a written memo/notice containing the offer giving both the options in English/Hindi/Punjabi must be given to the person to be searched and the reference of service of such written or oral notice to the person searched must be mentioned in the FARD JAMATALASHI (Personal Search Memo) also.

Conclusive Remarks

The provisions of sub-section (1), (2), (3) of Section 50 were enacted by the legislature in its wisdom only qua the personal search of a person and not regarding the search of houses, buildings etc. obviously to preserve the human dignity. There is logic behind enacting the special provisions regarding the personal search, because a person can carry only a small quantity of contraband narcotic drug or psychotropic substance. Thus, in order to rule out the possibility of planting small quantity of such drugs at the instance of unscrupulous officers of the enforcing agency and to eliminate the chance of exploitation, the above referred substantive right under Section 50 has been conferred upon the suspected person. A conjunct reading of the provisions of Section 50 of the Act leaves no doubt that the legislature did intend to confer a distinct right upon the suspect to claim personal search before a Magistrate or Gazetted Officer and prove his innocence in recognition of the right to human dignity and free from exploitation flowing from Article 21 of the Constitution.

Latest Supreme Court Judgments pronounced in 2010- 2011

Supreme Court of India Constitution Bench Judgment in the case of

Vijaysinh Chandubha Jadeja vs State of Gujarat

dt. 29.10.2010

Scope of the Judgment:

Interpretation of Section 50 of the NDPC Act

Question:

Whether Section 50 of the NDPS Act casts a duty on the empowered officer to 'inform' the suspect of his right to be searched in the presence of a Gazetted Officer or a Magistrate, if he so desires or whether a mere enquiry by the said officer as to whether the suspect would like to be searched in the presence of a Magistrate or a Gazetted Officer can be said to be due compliance with the mandate of the said Section?

Important Observations

On the provisions of Section 50

1. The Supreme Court of India has interpreted Section 50 of the NDPS Act in light of the Judgment of the Constitution Bench in the case of *State of Punjab vs Baldev Singh* [1999 (3) RCR (Criminal) 533]

2. Section 50 of the NDPS Act prescribes the conditions under which personal search of a person is required to be conducted. Being the pivotal provision, the Section (as amended by Act 9 of 2001 – inserting sub-sections (5) and (6) with effect from 2nd October, 2001) is extracted in full:

Section 50 NDPS ACT

(1) When any officer duly authorized under Section 42 is about to search any person under the provisions of section 41, Section 42, or section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officers of any of the departments mentioned in Section 42 or to the nearest Magistrate.

(2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in sub-section (1).

(3) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search forthwith discharge the person but otherwise shall direct that search be made,

(4) No female shall be searched by anyone excepting a female.

(5) When an officer duly authorized under Section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under Section 100 of the Code of Criminal Procedure,1973 (2 of 1974).

(6) After a search is conducted under sub-section (5), the officer shall record the reasons for such search and within seventy-two hours send a copy there of to his immediate official superior.

9. The object of the NDPS Act needs to be re-emphasized that in order to prevent abuse of the provisions of the NDPS Act, which confers wide powers on the empowered officers, the safeguards provided by the Legislature have to be observed strictly.

10. Sub-Section (1) of Section 50 provides that when the empowered officer is about to search any suspected person, he shall, if the person to be searched **so requires,** take him to the nearest gazette officer or the Magistrate for the purpose.

11. Under sub-section (2), it is laid down that if such request is made by the suspected person, the officer, who is to take the search, may detain the suspect until he can be brought before such gazetted officer or the Magistrate. *It is manifest that if the suspect expresses the desire to be taken to the gazetted officer or the Magistrate, the empowered officer is restrained from effecting the search of the person concerned. He can only detain the suspect for being produced before the gazetted officer or the Magistrate, as case may be.*

12. Sub-section (3) lays down that when the person to be searched is brought before such gazette officer or the Magistrate and such gazetted officer or the Magistrate finds that there are no reasonable grounds for search, he shall forthwith discharge the person to be searched, otherwise he shall direct the search to be made.

13. The mandate of Section 50 is precise and clear, viz., if the person intended to be searched expresses to the authorized officer his desire to be taken to the nearest gazetted officer or the Magistrate, he cannot be searched till the gazetted officer or the Magistrate, as the case may be, directs the authorized officer to do so.

14. Although the Constitution Bench in the case of *State of Punjab vs Baldev Singh* [1999 (3) RCR (Criminal) 533] did not decide in absolute terms the question whether or not Section 50 of the NDPS Act was directory or mandatory, yet it was held that provisions of sub-section (1) of Section 50 make it imperative for the empowered officer to 'inform' the person concerned (suspect) about the existence of his right that if he so requires, he shall be searched before a gazetted officer or a Magistrate; failure to "inform" the suspect about the existence of the said right would cause prejudice to him, and in the case he so opts, failure to conduct his search before a gazetted officer or a Magistrate, may not vitiate the trial but would render the recovery of the illicit article suspect and vitiate the conviction and sentence of an accused, where the conviction has been recorded only on the basis of the possession of the illicit article, recovered from the person during a search conducted in violation of the provisions of Section 50 of the NDPS Act.

The Court also noted that it was not necessary that the information required to be given under Section 50 should be in a prescribed form or in writing but it was mandatory that the suspect was made aware of the existence of his right to be searched before a gazette officer or a Magistrate if so required by him.

15. Concurring with the conclusions drawn in Baldev Singh case, *the Constitution Bench remarked that any other interpretation of the provision would make the valuable right conferred on the suspect illusory and a farce.*

Effect of the insertion of Sub-sections (5) and (6) in 2001 in Section 50 on the mandate of sub-section (1) to inform the person to be searched, of his right to be taken before a gazetted officer or a Magistrate

1. It is pertinent to note that although by the insertion of the said two sub-sections, the rigour of strict procedural requirement is sought to be diluted under the circumstances mentioned in sub-sections, viz. when the authorized officer has reason to believe that any delay in search of the person is fraught with the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance etc. or article or document, he may proceed to search the person instead of taking him to the nearest gazette officer or Magistrate.

2. However, even in such cases a safeguard against any arbitrary use of power has been provided under sub-section (6). Under the said sub-section, the empowered officer is obliged to send a copy of the reasons, so recorded to his immediate official superior within 72 hours of the search.

3. In our opinion, the insertion of these two sub-sections does not obliterates the mandate of sub-section (1) of Section 50 to inform the person to be searched, of his right to be taken before a gazette officer or a Magistrate.

4. It is also plain from that the flexibility in procedural requirements in terms of the two newly inserted sub-sections can be restored to only in emergent and urgent situations, contemplated in the provision, and not as a matter of course.

5. Additionally, sub-section (6) of Section 50 of the NDPS Act makes it imperative and obligatory on the authorized officer to send a copy of the reasons recorded by him for his belief in terms of sub-section (5), to his immediate superior officer, within the stipulated time, which exercise would again be subjected to judicial scrutiny during the course of trial.

Concept of "Substantial Compliance"

1. The Constitution Bench of the Supreme Court in the present case discussed the decisions two judgments of Supreme Court in (i) Joseph Fernandez v State of Goa [(2000) [4 SCC 299] and (ii) Prabha Shankar Dubey v State of M.P. [2004(1) RCR Criminal 104] on the concept of 'Substantial Compliance' under the provisions of Section 50.

2. In Prabha Shankar case, the Supreme Court had held the views echoed in Joseph Fernandez's case that searching officer's information to the suspect to the effect that *"if you wish you may be searched in the presence of a gazetted officer or a Magistrate"* was in substantial compliance with the requirement of Section 50 of the NDPS Act.

3. However, the Constitution Bench held that it is manifest from the above that Joseph Fernandez does not notice the ratio of Baldev Singh and in Prabha Shankar Dubey, Joseph Fernandez in followed ignoring the dictum laid down in Baldev Singh's case.

4. We are of the opinion that the concept of "substantial compliance" is neither borne out of the language of sub-section (1) of Section 50 nor it is in consonance with the dictum laid down in Baldev Singh's case.

Verdict of the Constitution Bench

1. We are of the firm opinion that the object with which right under Section 50(1) of the NDPS Act, by way of a safeguard, has been conferred on the suspect viz. to check the misuse of power, to avoid harm to innocent persons and to minimize the allegations of planting or foisting of false cases by the law enforcement agencies.

2. It would be imperative on the part of the empowered officer to apprise the person intended to be searched of his right to be searched before a gazetted officer or a Magistrate.

3. We have no hesitation in holding that in so far as the obligation of the authorized officer under sub-section (1) of Section 50 of the NDPS Act is concerned, it is mandatory and requires a strict compliance. Failure to comply with the provision would render the recovery of the illicit article suspect and vitiate the conviction if the same is recorded only on the basis of the recovery of the illicit article from the person of the accused during such search.

4. Needless to add that the question whether or not the procedure prescribed has been followed and the requirement of Section 50 had been met, is a matter of trial. It would neither be possible nor feasible to lay down any absolute formula in that behalf.

5. We also feel that though Section 50 gives an option to the empowered officer to take such person (suspect) either before the nearest gazette officer or the Magistrate but in order to impart authenticity, transparency and credit worthiness to the entire proceedings, in the first instance, **an endeavour should be to produce the suspect before the nearest Magistrate, who enjoys more confidence of the common man compared to any other officer.** It would not only add legitimacy to the search proceedings, it may verily strengthen the prosecution as well.

SITUATION (B)

Where the contraband items are recovered from any bag, brief-case, suitcase, tin-box, thaila, jhola, gathri, holdall, carton etc. being carried by the suspect

or

Where the contraband items are recovered from a public conveyance/private conveyance in a public place suspected to carry any contraband items;

or

Where the accused is intercepted at an international or state transit point during ingress or exgress

1. It is important to know the provisions of Section 43 of the NDPS Act before proceeding further:

43. Power of seizure and arrest in public place - Any officer of any of the departments mentioned in Section 42 may-

(a) seize in any public place or in transit, any narcotic drug or psychotropic substance or controlled substance in respect of which he has reason to believe an offence punishable under this Act has been committed, and, along with such drug or substance, any animal or conveyance or article liable to confiscation under this Act, any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V-A of this Act;

(b) detain and search any person whom he has reason to believe to have committed an offence punishable under this Act, and if such person has any narcotic drug or psychotropic substance or controlled substance in his possession and such possession appears to him to be unlawful, arrest him and any other person in his company.

Explanation:-For the purposes of this section, the expression "public place" includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to, the public.

Important Supreme Court Judgments

- Ajmer Singh v State of Haryana 2010(2) RCR (Criminal) 132
- Madan Lal v State of Himachal Pradesh 2003(4) RCR (Criminal) 100
- State of Himachal Pradesh v Pawan Kumar 2005(2) RCR (Criminal) 622
- Ravindran v Superintendent of Customs (2007) 6 SCC 410

2. Difference between Personal Search and Search of the Bag etc.

i. Search and recovery from a bag, brief case, container etc. does not come within the ambit if Section 50 of the NDPS Act for the following reasons:

   a) Firstly, Section 50 expressly speaks of search of person only. It does not extend to search of a vehicle or a container or a bag or premises;

   b) Secondly, the Section speaks of taking of the person to be searched by the Gazetted Officer or Magistrate for the purpose of search.

ii. A bag, brief case or any such article or container etc. can under no circumstances, be treated as body of a human being. They are given separate name and identifiable as such. They cannot even remotely be treated to be part of the body or a human being.

iii. Depending upon the physical capacity of a person, he may carry any number of items like a bag, a brief case, a suitcase, a tin box, a thaila, a jhola, a gathri, a holdall, a carton etc. of varying size. However, while carrying or moving along with them, some extra effort or energy would be required.

   They would have to be carried either by the hand or hung on the shoulder or back or placed on the head. In common paralance, it would be said that a person is carrying a particular article, specifying the manner in which it was carried like hand, shoulder, back or head etc. Therefore it is not possible to include these articles within the ambit of the word 'person' occurring in Section 50 of the Act.

3. RECOVERY OF ANY BAG ETC. CONTAINING ANY CONTRABAND DURING INTERCEPTION OR CHANCE RECOVERY

a) Section 43 deals with the power of seizing and arrest in public places. Under this provision any empowered officer under Section 42 has the power to seize, detain, search or arrest in public place or in transit if he has reason to believe that an offence punishable under Chapter IV relating to such drug or substance has been committed and seize any document or other article which may furnish evidence of the commission of such offence and can seize any animal or conveyance or article liable to confiscation and can detain and search any person similarly.

b) The empowered officer while acting under Section 43 need not record any reasons of this belief.

c) This section also does not mention anything about the empowered officer having prior information given by any person or about recording the same, as compared to Section 42.

d) Similarly, there is no requirement that the concerned officer must send a copy thereof to his immediate official superior within 72 hours.

Recent judgment of Punjab & Haryana High Court in the case of

Didar Singh @ Dara vs State of Punjab [2010 (3) RCR Criminal 337]

Recovery of contraband effected when accused was standing on the gate of his house holding a bag in his left hand

The High Court admitted that provision of Section 42 of the Act is not applicable because in this case the recovery was effected from the appellant from an open public place and for such recovery, the provision of Section 43 of the Act is applicable. Therefore it cannot be said that the seizure was effected from the house of the appellant.

4. CAUTION IN CASE IF THE PERSONAL SEARCH IS ALSO MADE OF THE SUSPECT SIMULTANEOUSLY

a) It needs to be reiterated that the above provisions are applicable only if NO personal search, of the person who was caught with the bag, brief case, is made simultaneously at the time of interception. It is worthwhile to refer to the case of *Union of India v Shah Alam and another* [decided on 11.6.2009] in which the Supreme Court of India, concluded as under:

> *"From the evidence of the complainant and the Seizure Memo (Fard baramdegi), it is evident that the two respondents were subjected to a body search in course of which packets of heroin were found in the shoulder bags carried by them and were recovered from there. Therefore, we find that the alleged recovery of heroin from the respondents was made in complete violation of Section 50 of the Act."*

b) Another judgment of the Supreme Court of India in the case of *State of Rajasthan v Shanti dated 21.4.2009* clearly establishes that the recovery of opium from the bag, where the personal search of the accused was not carried out, does not fall within the ambit of Section 50 of the NDPS Act. This section is applicable only when there was a personal search.

5. RECOVERY FROM A PRIAVTE OR PUBLIC CONVEYANCE IN PUBLIC PLACE

Section 43 is applicable where the recovery of the contraband is made in a public place from any conveyance which may include a truck, bus, canter, auto rickshaw, private car, motor cycle etc. or any other vehicle from which contraband are recovered. The expression 'public place' includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to, the public.

6. CONCLUSIVE REMARKS

The raiding party must ensure that in case they wish to carry out personal search also before or after conducting search of the bag, brief case or any other article found in possession of the suspect during interception, they must follow the procedures prescribed under Section 50 of the NDPS Act meticulously and record the facts in Seizure Memi *(Fard barmadegi)* and Search Memo (*Zama Talashi).*

SITUATION (C)

Where the contraband items are recovered from any building, shop, factory, residential premises or an enclosed place;

or

Where the contraband items are recovered from a personal conveyance not in a public place, suspected to carry any contraband items;

1. It is important to know the provisions of Section 41 & 42 of the NDPS Act before proceeding further:

41. Power to issue warrant and authorization.- *(1) A Metropolitan Magistrate or a Magistrate of the first class or any Magistrate of the second class specially empowered by the State Government in this behalf, may issue a warrant for the arrest of any person whom he has reason to believe to have committed any offence punishable under this Act, or for the search, whether by day or by night, of any building, conveyance or place in which he has reason to believe any narcotic drug or psychotropic substance or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V-A of this Act is kept or concealed.*

(2) Any such officer of gazetted rank of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including the para-military forces or the armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government if he has reason to believe from personal knowledge or

information given by any person and taken in writing that any person has committed an offence punishable under this Act or that any narcotic drug or psychotropic substance or controlled substance in respect of which any offence under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V-A of this Act is kept or concealed in any building, conveyance or place, may authorize any officer subordinate to him but superior in rank to a peon, sepoy or a constable to arrest such a person or search a building, conveyance or place whether by day or by night or himself arrest such a person or search a building, conveyance or place.

(3) The officer to whom a warrant under sub-section (1) is addressed and the officer who authorized the arrest or search or the officer who is so authorized under sub-section (2) shall have all the powers of an officer acting under Section 42.

42. Power of entry, search seizure and arrest without warrant or authorization.-

(l) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter

V-A of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset -

(a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and other article and an animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V-A of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

Provided that if such officer has reason to believe that a search warrant or authorization cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.

2. Important Judgments of the Constitution Benches of the Supreme Court of India to be kept in consideration for discussing the provisions of these two Sections:

- State of Punjab vs Baldev Singh [(1999) 6 SCC 172]
- Karnail Singh vs State of Haryana [2009 (10) SCALE 255]

Other Judgments of the Supreme Court of India

- Sajan Abraham v State of Kerala [2001(3) RCR Criminal 808]
- Bahadur Singh v State of Haryana [2010(2) RCR Criminal 586]

3. Procedure to be followed

a) When the officer is in the Police Station:

The officer on receiving the information of the nature referred to in Sub-section (1) of Section 42 from any person has to record it in writing in the concerned Register before proceeding to take action in terms of clauses (a) to (d) of Section 42(1), and send a copy within 72 hours to his immediate official superior.

Section 42 has been amended with effect from 2.10.2001 and the time of sending such report of the required information has been specified to be within 72 hours of writing down the same. The relaxation by the Legislature is evidently only to uphold the object of the Act. The question of mandatory application of the provision can be answered in the light of the said amendment. The non-compliance of the said provision may not vitiate the trial if it does not cause any prejudice to the accused.

b) When the officer is not in the Police Station:

If the information is received, when the officer is not in the Police Station, but while was on the move either on patrol duty or otherwise, either by Mobile Phone, or other means, and the information calls for immediate action and any delay could result in the goods or evidence being removed or destroyed, it would not be feasible or practical to take down in writing the information given to him, in such a situation, he could take action as per clauses (a) to (d) of Section 42(1) and thereafter, within 72 hours , record the information in writing and forthwith inform the same to the official superior.

4. Distinction between the two situations

a) The compliance with the requirements of Section 42(1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period that is after the entry, search and seizure. *The question is one of urgency and expediency.*

b) Total non-compliance of requirements of sub-sections (1) and (2) of Section 42 is impermissible. However, delayed compliance with satisfactory explanation about the delay will be acceptable compliance of Section 42.

To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending a copy of such information to the official superior forthwith, may not be treated as violation of Section 42.

c) If the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of Section 42 of the Act.

d) Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of Section 42 of the Act.

e) It is a question of fact to be decided in each case whether there is adequate or substantial compliance with Section 42 or not.

f) It has been held in the Supreme Court Judgment in the case of *State of Karnataka vs Dondusa Namasa Baddi dt. 5.8.2010* [2010(4) RCR Criminal 367] that:

" *It is not the case of the prosecution that sufficient time was not available to record the information in writing and send it to the superior officer and in the face of it, we are of the opinion that <u>any oral evidence of the police officer will not be in compliance with the provisions of Section 42(2) of the Act</u>.*"

5. ADVENT OF TECHNOLOGY

Sending Wire Less Message to superior officials has been held to be substantial compliance by the Supreme Court of India in *Dalel Singh v State of Haryana [RCR 119 SC 2010(1)]* where in the Supreme Court quoted that with the advancement of technology & availability of high speed exchange of information, some of the provisions of the NDPS Act have to be read in the changed context including Section 42.

The observations of the Constitution Bench of the Supreme Court of India in *Karnail Singh v State of Haryana,* on advent of technology are worth noting:

"16. The advent of cellular phones and wireless services in India has assured certain expectation regarding the quality, reliability and usefulness of the instantaneous messages. This technology has taken part in the system of police administration and investigation while growing consensus among the policy makers about it. Now for the last two decades police investigation has gone through a sea change. Law enforcement officials can easily access any information anywhere even they are on the move and not physically present in the police station or their respective offices. For this change of circumstances, it may not be possible all the time to record the information which is collected through Mobile Phones communication in the Register/ Records kept for those purposes in the Police Station or the respective offices of the authorized officials in the Act, if the emergency situation so requires.

As a result, if the statutory provisions under section 41(2) & 42(2) of the Act of writing down the information are interpreted as mandatory provisions, it will disable the haste of an emergency situation and may turn out to be in vain with respect to the criminal search & Seizure. These provisions should not be misused by the wrongdoers/offenders as a major ground for acquittal. Consequently, these provisions should be taken as discretionary measure which should check the misuse of the Act rather than an escape to the hardened drug peddlers".

OTHER IMPORTANT LEGAL ISSUES

1. CONSCIOUS POSSESSION & SECTION 313 Cr.P.C.
2. INDEPENDENT WITNESSES & POLICE WITNESSES
3. AFFIXING OF SEALS
4. PREPARATION OF CFSL FORM NO. 29
5. DRAWAL OF SAMPLES
6. SECTION 100 & SECTION 165 CRPC
7. BAIL UNDER NDPS ACT

PART I

POSSESSION
&
CONSCIOUS
POSSESSION

AND
PROVISIONS
OF
SECTION 313 Cr PC

POSSESSION & CONSCIOUS POSSESSION

1. To understand the concept of Conscious Possession, Section 35 and Section 54 & applicability of Section 313 Cr PC are extracted as under:

Section 35 - Presumption of culpable mental state

(1) In any prosecution for an offence under this Act, which requires a culpable mental state of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the Act charged as an offence in that prosecution.

Explanation:-In this section 'culpable mental state' includes intention, motive, knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purpose of this section, a fact is said to be proved only when the Court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability.

Section 54 - Presumption from possession of illicit articles

In trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under this Act in respect of-

(a) any narcotic drug or psychotropic substance or controlled substance;

(b) any opium, poppy, cannabis plant or coca plant growing on any land which he has cultivated;

(c) any apparatus specifically designed or any group of utensils specially adopted for the manufacture of any narcotic drug or psychotropic substance or controlled substance; or

(d) any materials which have undergone any process towards the psychotropic substance or controlled substance, or any residue left of the materials from which any narcotic drug or psychotropic substance or controlled substance has been manufactured.

for the possession of which he fails to account satisfactorily.

Power to examine the accused

313. (1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court-

(a) may at any stage, without previously warning the accused, put such questions to him as the Court considers necessary;

(b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case:

Provided that in a summons-case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).

(2) No oath shall be administered to the accused when he is examined under subsection (1).

(3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.

(4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

2. EXPLANATION OF THE PROVISIONS

a. The contraband found in the possession of the suspect whether in his bag or conveyance or otherwise has to be considered to be within his special means of knowledge, as to wherefrom, the same, had been brought, and to which destination, the same was to be transported. He is required to explain the circumstances aforesaid. In case he fails to explain the same, it could be said that he was in possession of, and in control over the contraband which was recovered.

b. **Possession** is the core ingredients to be established before the accused is subjected to the punishment. The prosecution has to satisfactorily prove that the accused was in possession of the contraband. The word possession has different shades of meaning and it is quite elastic in its connotation. Possession and ownership need not always go together by the minimum requisite element which has to be satisfied in custody or control over the goods.

It needs to be stressed that the prosecution has to prove the question of possession under Section 313 of the Cr.P.C., where in the object is to afford an opportunity to the accused to explain the circumstances appearing in the evidence against him. If such an exercise is not carried out in the trial, the provisions of Section 114 of the Evidence Act of drawing presumptions may not help the prosecution.

It is incumbent upon the prosecution to conduct proper investigation to ascertain the role played by the appellants and to link him with the contraband. The minimum requisite condition which is required to be satisfied by the prosecution is to establish the custody and control of the goods.

The observations of the Supreme Court of India on the relevance of Section 313 Cr PC [*State of Punjab v Hari Singh Others [2009 (2) RCR Criminal 144*] need to be quoted here:

"At the same time it should be borne in mind that the provision is not intended to nail him to any position, but to comply with the most salutary principle of natural justice enshrined in the maxim audi alteram partem. The word 'may' in clause (a) of sub-section (1) in Section 313 of the Code indicates, without any doubt, that even if the court does not put any question under that clause the accused cannot raise any grievance for it. But if the court fails to put the needed question under clause (b) of the sub-section, it would result in a handicap to the accused and he can legitimately claim that no evidence, without affording him the opportunity to explain, can be used against him. It is now well settled that a circumstance about which the accused was not asked to explain cannot be used against him."

c. Once the possession of the accused and his control over the contraband is proved, the statutory presumption under Section 54 and 35 of the Act operates against him and he is held to be in conscious possession thereof. Thereafter, the onus stands shifted to him, to rebut the statutory presumption. *However it is to be made clear that presumptions under Section 35 and Section 54 can be drawn only once the 'possession' is established as explained in para (b) above.*

d. From the conjoint reading of the provisions of Section 54 and 35, it becomes clear , that once an accused , is found to be in possession of a contraband, he is presumed to have committed the offence under the relevant provisions of the Act, until the contrary is proved.

e. According to Section 35 of the Act, the Court shall presume the existence of mental state for the commission of the offence and it is for the accused to prove otherwise.

f. The word conscious means awareness about a particular fact. It is a state of mind which is deliberate or intended. Once possession is established, the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge.

g. Section 35 of the Act gives a statutory recognition of this position because of the presumption available in law. Similar is the position in terms of Section 54, where also presumption is available to be drawn from possession of illicit articles.

3. IMPORTANT JUDGMENTS ON THE CONCEPT OF POSSESSION & CONSCIOUS POSSESSION

The recent judgment of the Supreme Court of India in the case ***Dharampal Singh Vs. State of Punjab [2010 RCR Criminal 504]*** has discussed the issues involved at length and has made distinction with other decisions of the Court on facts and interpretation. The relevant observations are reproduced to understand the intricacies involved:

Brief facts:

The police intercepted a Car driven by the appellant who was accompanied by another person sitting by his side. An attempt was made to join independent persons to witness to the search but none were available. Hence, the car was searched by SHO in the presence of the Superintendent of Police and in the dicky of the car a gunny bag containing opium, wrapped in a glazed paper was found. Total weight of the opium found was 65 kilograms and from that sample of 100 grams was taken and kept in a sealed cover. The sample so taken was sent to the Chemical Examiner, who found the same to be opium. After completion of the investigation charge-sheet was submitted under Section 18 of the Act and ultimately the appellants were put on trial for commission of the offence punishable under the aforesaid Section.

Observations of the High Court:

The High Court found that since the recovery was effected from the dicky of the car and not from the person of the appellants the provisions of Section 50 of the Act were not applicable and as such the question of violation thereof did not arise at all. The High Court further held that they were in possession of 65 Kilograms of opium.

The High Court noted that it is proved from the cogent, convincing, reliable and unimpeachable evidence that accused was driving Car and Major Singh, accused, was sitting by his side, on the front seat, at the relevant time, when the recovery of 65 Kgs of opium, wrapped in a glazed paper, from a gunny bag, lying in the dicky of the same, was effected. The Car, in question, belonged to the brother of Dharampal Singh, accused, as per the registration certificate, referred to above. Since no enmity against the prosecution witnesses, was either alleged or proved, it could not be imagined that such a big haul of opium, could be planted, against the accused, by them. Since, the recovery of opium, was effected from the dicky of the Car, aforesaid, being driven by Dharampal Singh, accused, by the side of whom, on the front seat, Major Singh, accused was sitting, it can be safely held that both of them <u>were found in possession of the same</u> (opium).

The High Court further taking into account the provisions of Sections 35 and 54 of the Act came to the conclusion that they were in conscious possession of opium and accordingly convicted and sentenced the appellants as above.

Observations of the Supreme Court of India:

1. Appellant, Dharmpal Singh was **<u>found driving the car</u>** whereas appellant, Major Singh was travelling with him and from the dicky of the car 65 Kilograms of opium was recovered. The vehicle driven by the appellant, Dharampal Singh and occupied by the appellant, Major Singh **<u>is not a public transport vehicle</u>**.

2. ***It is trite that to bring the offence within the mischief of Section 18 of the Act possession has to be conscious possession. The initial burden of proof of possession lies on prosecution and once it is discharged legal burden would shift on accused.***

3. **Standard of proof expected from the prosecution is to prove possession beyond all reasonable doubt but what is required to prove innocence by the accused would be preponderance of probability.**

4. Once the accused plea is found probable, discharge of initial burden by the prosecution will not nail him with offence. Offences under the Act, being more serious in nature, higher degree of proof is required to convict an accused.

5. What does ‘Possession’ mean?

It needs no emphasis that the expression **possession** is not capable of precise and completely logical definition of universal application in context of all the statutes. Possession is a polymorphous word and cannot be uniformly applied, it assumes different colour in different context. In the context of Section 18 of the Act once possession is established the accused, who claims that it was not a conscious possession has to establish it because it is within his special knowledge. Section 54 of the Act raises presumption from possession of illicit articles.

From a plain reading of the aforesaid it is evident that it creates a legal fiction and presumes the person in possession of illicit articles to have committed the offence in case he fails to account for the possession satisfactorily.

Possession is a mental state and Section 35 of the Act gives statutory recognition to culpable mental state. It includes knowledge of fact. The possession, therefore, has to be understood in the context thereof and when tested on this anvil, we find that the appellants have not been able to account for satisfactorily the possession of opium. Once possession is established the Court can presume that the accused had culpable mental state and have committed the offence.

6. In somewhat similar facts this Court had the occasion to consider this question in the case of ***Madan Lal and another vs. State of H.P.,2003 (7) SCC 465,*** wherein it has been held as follows:

"26. Once possession is established, the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of the presumption available in law.”

Similar is the position in terms of Section 54, where also presumption is available to be drawn from possession of illicit articles.

The Supreme Court held:

> ***In the factual scenario of the present case, not only possession but conscious possession has been established. It has not been shown by the accused-appellants that the possession was not conscious in the logical background of Sections 35 and 54 of the Act.***

DISTINCTION WITH OTHER JUDGMENTS

The Supreme Court of India in this case has taken pains to make a clear distinction with the other cases of the Supreme Court of India and various High Courts. This explanation provides conceptual clarity and the basis of distinction need to be understood:

1. The decision of this Court in the case of ***Avtar Singh v State of Punjab [2002(4) RCR Criminal 180] is clearly distinguishable.***

   In the said case, according to the prosecution itself, the vehicle loaded with bags of poppy husk was a truck and when it was stopped one person sitting in the cabin and another person sitting in the back of the truck fled away. The accused in the said case were not the only occupants and in the said background this Court held that they cannot be presumed to be in the possession of the goods and it is quite probable that one of those who fled away could have been the custodian thereof.

   However, in the present case the vehicle in question is not a transport vehicle and, therefore, the test applied in the case of public transport vehicles in which several persons travel cannot be applied in the facts of the present case.

2. Similarly, in the case of ***Sorabkhan Gandhkhan Pathan v State of Gujarat [2006(2) Apex Criminal 214]*** the contraband was recovered from an auto-rickshaw and in the absence of specific case that the accused had knowledge of carrying the contraband, only on the ground that he was travelling in an auto-rickshaw, possession cannot be inferred.

CONSCIOUS POSSESSION & PROVISIONS OF SECTION 313 OF CR.P.C.

SCOPE & RELEVANCE OF SECTION 313

1. As part of fair trial, Section 313 of the Code of Criminal Procedure requires giving opportunity to the accused to give his explanation regarding the circumstance appearing against him in the evidence adduced by the prosecution. The purpose behind it is to enable the accused to explain those circumstances.

2. It is not necessary to put entire prosecution evidence and elicit answer but only those circumstances which are adverse to the accused and his explanation would help the court in evaluating the evidence properly. The circumstances are to be put and not the conclusion.

3. It is not an idle formality and questioning must be fair and couched in a form intelligible to the accused.

4. But it does not follow that omission will necessarily vitiate the trial. The trial would be vitiated on this score only when on fact it is found that it had occasioned a failure of justice.

DISTINCTION WITH THE SC JUDGMENT IN HARI SINGH'S CASE

The judgment of this Court in the case of ***State of Punjab vs. Hari Singh and others, 2009(4) SCC 200,*** *reads as follows:*

"9. Stand of the accused persons before the High Court was that there was no evidence to show any conscious possession which is a sine qua non for recording conviction under Section 15 of the Act.

Additionally, it was submitted that <u>*no question*</u> *regarding possession was put to any of them in their examination under Section 313 of the Code of Criminal Procedure, 1973 (in short "the Code").*

18. When the accused was examined under Section 313 Cr.PC, the essence of accusation was not brought to his notice, more particularly, that possession aspect, as was observed by this Court in Avtar Singh v. State of Punjab. The effect of such omission vitally affects the prosecution case."

The above case is clearly distinguishable. In this case <u>no question regarding possession was put to the accused in the examination under Section 313 of the Code of Criminal Procedure,</u> which would be evident from paragraph 9 of the judgment quoted above and in the background thereof the Court held such omission to be vital affecting the case of the prosecution.

OTHER IMPORTANT JUDGMENTS

✓ Supreme Court of India in the case of *Madan Lal & another v State of H.P. [2003(4) RCR Criminal 100]*

The brief facts of the case were that accused was driving the Car and the remaining four accused were sitting therein. One steel container (dolu) in a black coloured bag, was recovered from the said Car which contained 820 gms. of Charas.

All the accused were convicted by holding by the trial court that they were found in conscious possession of charas, despite the fact that one of the accused admitted his conscious possession.

The Supreme Court upheld the judgment of the trial court as the accused failed to explain how they were travelling in a Car together, which was not a public vehicle.

✓ Supreme Court of India in the case of *Megh Singh v State of Punjab [2003(4) RCR Criminal 319]*

The brief facts of the case were that three persons were found sitting, on the gunny bags, containing poppy husk. The appellant was arrested while the other two fled. The trial court convicted the appellant and the appeal was dismissed by the High Court.

The Supreme Court upheld the conviction and sentence of the appellant observing that he was in conscious possession.

The word 'conscious' means awareness about a particular fact. It is the state of mind, which is deliberate or intended. It was further held that possession, in a given case, need not be physical possession, but can be constructive, having power and control over the article, while the person whom physical possession is given holds it, subject to that power or control.

✓ Delhi High Court in the case of *Dilbagh Singh v DRI [2010 (6) RCR Criminal 1011]*

The brief facts of the case are that the accused (petitioner), a taxi driver, was driving the car and remained seated in the front seat. The co-accused was in the rear seat. Another co-accused while driving another car dropped polythene bags containing drugs on the rear seat of the car (taxi) of the petitioner. Soon thereafter the DRI officials intercepted both the cars. The co-accused did not make any reference to the role of the petitioner.

The Court held that that it cannot be held that the accused (petitioner) was in possession of the drug in question and clearly he

✓ Punjab & Haryana High Court in the case of *Karan Singh v State of Haryana [2010 (3) RCR Criminal 790 dt 19.4.2010]*

Brief facts of the case are that a Canter being driven by Karan Singh was intercepted which was found with 8 bags of chura post. The person sitting with driver was Biru Ram and another person sitting in the rear was Bakshish Singh.

The Court held that mere fact that appellant was driving the canter, cannot be held that he was in conscious possession of the poppy husk. The allegations against the appellant are with regard to possession and transportation of the contraband. As per the prosecution, appellant was driving the canter with poppy husk but it has failed to bring any cogent evidence on record to prove the nexus between the appellant and the alleged contraband.

The word 'possession' has different meanings and is quite elastic in the connotation. Possession and ownership cannot always go together but the requisite element which has to be satisfactorily proved is custody or control over the goods.

Without any link evidence, it is difficult to reach at such conclusion beyond reasonable doubt. Admittedly, there were three persons sitting in the vehicle. There could be probability that any of them or some other person was the owner of the goods. Prosecution has failed to prove that if any of them or some other person was the owner of the goods. Prosecution has failed to prove that if anyone of them was the owner of the contraband.

In case prosecution was of the view that appellant was transporting the contraband he should have been charged for transporting the same without permit or authorization as required by law, but no such charge has been framed against the appellant. In *State of Punjab v Balkar Singh*, the Supreme Court had observed that police should have conducted further investigation with regard to ownership of poppy husk to prove that the appellant was in possession of the contraband. Moreover, even if for the sake of arguments, it be presumed that all the allegations are true, even then no conscious possession of contraband is made out.

PART II

INDEPENDENT WITNESSES & POLICE WITNESSES

ROLE OF INDEPENDENT WITNESSES VIS A VIS POLICE WITNESSES

The role of independent witnesses vis a vis police witnesses has been very well explained in the recent judgment of the Supreme Court of India in the case *Ajmer Singh v State of Haryana [2010 (2) RCR Criminal 132]*, wherein the Court has made the following observations:

1. The court cannot agree with the plea that the evidence of the official witness cannot be relied upon as their testimony has not been corroborated by any independent witness.

2. It is clear from the testimony of the prosecution witnesses that efforts were made by the investigating party to include independent witness at the time of recovery, but none was willing. It is true that the punishments provided under the NDPS Act are severe and it is normally expected that there should be independent evidence to support the case of the prosecution. However, it is not an inviolable rule.

3. It may not be possible to find independent witness at all places at all times. The obligation to take public witnesses is not absolute. If after making efforts, which the court considers in the circumstances of the case, reasonable, the police officer is not able to get public witnesses to associate with the raid or arrest of the culprit, the arrest and the recovery made would not be necessarily vitiated.

4. The Court will have to appreciate the relevant evidence and will have to determine whether the evidence of the police officer was believable after taking due care and caution in evaluating their evidence.

In this context, the following judgments are relevant to taken note of:

- ✓ In the first case ***(Durand Didler v. Chief Secretary Union Territory of Goa)*** which came up in the Supreme Court, the accused Durand Didler, a French national was apprehended by the police at Colva (Goa) and was found in possession of 51 grams of brown sugar (heroine), 45 grams of ganja oil and 55 grams of opium. *The counsel for the accused took up the plea that the investigating officer did not deliberately join with him, respectable inhabitants of the locality.*

  The Supreme Court rejected this plea by holding that where the witnesses to search and seizure of contraband drugs from the accused at midnight, were inhabitants of the locality in which police outpost was situate and nothing brought out in the cross-examination of these *panch* witnesses so as to discredit their testimony, the fact that the witnesses were not residing in the vicinity of place of seizure is immaterial and the plea that there was violation of statutory safeguards relating to search and seizure was untenable.

- ✓ The Supreme Court of India in the case *of NCT of Delhi v Sunil [(2000) 1 SCC 748]* held that

  "It is archaic notion that actions of the Police Officer, should be approached with initial distrust. It is time now to start placing at least initial trust on the actions and the documents made by the Police. At any rate, the Court cannot start with the presumption that the police records are untrustworthy. As a proposition of law, the presumption should be the other way round. The official acts of the Police have been regularly performed is a wise principle of presumption and recognized even by the Legislature".

- ✓ The Supreme Court in the case *Appa Bai and another v State of Gujarat [AIR 1988 SC 696]* held that the prosecution theory cannot be thrown out on the ground that an independent witness had not been examined by the prosecution. It was further held that the civilized people are generally insensitive, when a crime is committed, even in their presence, and they withdraw from the victim's side and from the side of the vigilant. They keep themselves away from the courts, unless it is inevitable. Moreover, they think the crime like a civil dispute, between two individuals and do not involve themselves in it.

- ✓ The Supreme Court in the case *Akmal Ahmed v State of Delhi [1999 (2) RCR Criminal 265]* held that, it is now well settled that the evidence of search or seizure, made by the police, will not become vitiated, solely for the reason that the same was not supported by an independent witness.

- ✓ The Supreme Court in the case of *Dharampal Singh v State of Punjab [2010(4) RCR Criminal 504]* has held that the case of the prosecution cannot be rejected only on the ground that independent witnesses have not been examined, in case on appraisal of the evidence on record the court finds the case of prosecution to be trustworthy. It has come in the evidence of the prosecution witnesses that an attempt was made to join person from public at the time of search but none was available. In the face of it mere absence of independent witness at the time of search and seizure will not render the case of the prosecution unreliable.

- ✓ The Punjab & Haryana High Court in the case *Manjit Singh v The State of Punjab [2010 (1) RCR Criminal 441]* has held that mere non-joining of an independent witness, when the evidence of the prosecution witnesses, has been held to be cogent, convincing, creditworthy, and reliable, and there was no reason, on their part, to falsely implicate the accused, no doubt, is cast on the prosecution theory.

- ✓ The Punjab & Haryana High Court in the case of Chander Shekhar v The State [1987 (2) RCR Criminal 284] observed:

  "One of the greatest disadvantages of living in highly urbanized areas in that people are out of sympathy with their neighbours and fellow citizens. This is for a variety of reasons. None wants to get involved in such matters. Our experience is that in the recent past it is really becoming difficult to involve public witnesses in Court cases particularly in cases of capital offences. It is common place experience that in Delhi, if an accident takes place, hardly any body feels concerned. Life is so mechanical and fast that no body has time to sympathize with a fellow citizen. We blame none for it as this is life style growing in highly urbanized areas. Even those who feel concerned keep away for fear of their own security and getting involved in tardy proceedings. There is a subdued murmur that the law and order agency has failed to provide security to the law abiding citizens and what rules, now , is the might and ingenuity of the criminals. Under these circumstances, it will be dangerous, not to rely on relation witnesses and police witnesses in such matters. Of course, provided, such witnesses are confirmed to be truthful when tested at the yardstick of the peculiar facts and circumstances of each case."

GUIDANCE NOTE

For calling independent witnesses, the Police Officer must record in Case Diary, who were the persons who were asked to witness the search & Seizure and whether they were called upon to do so by an order in writing. Reference may in this context be made to the provisions of sub-section (8) of Section 100 Cr.P.C, which provides that any person, who without reasonable cause, refuses or neglects to attend and witness a search upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 IPC.

PART III

AFFIXING SEALS ON SAMPLES

AFFIXING SEALS ON SAMPLES

The provisions of Section 52 and Section 55 of the NDPS Act require to be understood:

52. Disposal of persons arrested and articles seized:- (1) Any officer arresting a person under Section 41, Section 42, Section 43 or Section 44 shall, as soon as may be, inform him of the grounds for such arrest.

(2) Every person arrested and article seized under warrant issued under sub-section (1) of Section 41 shall be forwarded without unnecessary delay to the Magistrate by whom the warrant was issued.

(3) Every person arrested and article seized under sub-section (2) of Section 41, Section 42, Section 43 or Section 44 shall be forwarded without unnecessary delay to -

***(a)* the officer-in-charge of the nearest Police Station or**

***(b)* the officer empowered under Section 53.**

(4) The authority or officer to whom any person or article is forwarded under sub-section (2) or sub-section (3) shall, with all convenient dispatch, take such measures as may be necessary for the disposal according to law of such person or article.

55. Police to take charge of articles seized and delivered:-

An officer-in-charge of a Police Station shall take charge of and keep in safe custody, pending the orders of the Magistrate, all articles seized under this Act within the local area of that Police Station and which may be delivered to him, and shall allow any officer who may accompany such articles to the Police Station or who may be deputed for the purpose, to affix his seal to such articles or to take samples of and from them and all samples so taken shall also be sealed with seal of the officer-in-charge of the Police Station.

EXPLANATION OF THE PROVISIONS RELATING TO AFFIXATION OF SEALS UNDER NDPS ACT

1. The provisions of Section 52 deal with the disposal according to law of person or article. So far as dealing with such arrested person is concerned, the Officer in charge of the Police Station may either secure police custody remand or send such person to judicial custody under the provisions of Cr. P.C.

2. The articles, which are produced before the Police Station Officer, are required to be dealt with as provided in Section 55 of the Act.

3. Section 55 provides that the Officer in Charge of the police station has to take charge of and keep in safe custody, pending orders of the Magistrate, all articles seized under the Act within the local area of the Police Station and allow any officer who may accompany such articles to the Police Station or who may be deputed for the purpose, <u>to affix his seal</u> to such articles or take samples of and from them and <u>all samples so taken are also required to be sealed with the seal of the Officer in charge of the Police Station</u>.

4. It is not necessary that in case the articles are brought and delivered to the Officer in charge of the Police Station by the authorized officer seizing such goods, then again the second seal of the Officer in In-charge should be affixed on it.

5. As per the Instructions of Narcotic Control Bureau (1/88, 1/89) the officer seizing the articles is required to draw samples and affix the seals on the samples as well the residue at the place where such seizure is made. As such, the articles, samples as well as the balance goods, when are delivered to the Officer-in-charge of the Police Station, it will not be necessary for the Officer in charge of the Police Station to again affix the seals.

INSTRUCTIONS ISSUED BY NCB ON AFFIXING SEALS

1. Samples from the Narcotic Drugs and Psychotropic Substances seized must be drawn on the spot of recovery, in duplicate, in the presence of search witnesses *(panchas)* and the person from whose possession, the drug is recovered. *Sample drawn from the seized lot should be proved to be the same which was sent to the analyst.*

2. A sample of the drug is drawn from the lot recovered and sealed with an official seal after taking the signatures of the *panchas* and the person from whom the recovery is made on the PAPER SLIP which is affixed on the packet containing the sample before the same is sealed with an official seal.

3. While drawing the Panchnama, the details of sealing the drugs and the sample for testing, SEAL NUMBER or SEAL MARK should be incorporated in the Panchnama.

4. The sample in duplicate should be kept in heat sealed plastic bags as it is convenient and safe. The plastic bag container should be kept in a paper envelope and is to be <u>sealed</u> properly. Such <u>sealed envelopes</u> may be marked as 'Original' and 'Duplicate'. Both the envelopes should also bear the serial number of the package(s)/ container(s) from which the sample has been drawn. The duplicate envelope containing the sample will also have a reference of the TEST MEMO.

5. The seals should be legible. After sealing the sample parcel of the contraband as well as remaining contraband, the seal should be handed over to the independent person or deposited with the In-charge of the malkhana, so that till the case property has been deposited to the FSL, the same should not be available to prosecuting agency. This is necessary to safeguard the possibility of the sealed contraband and the sample being tempered with by the police official.

1. This envelope along with TEST MEMO should be kept in another envelope, which should also be <u>sealed</u> and marked:

'SECRET- DRUG SAMPLE/ TEST MEMO'

This is to be sent to the FSL, Chandigarh.

7. The receipt obtained from the FSL should link the sample drawn from the seized goods. For this the seal affixed on the sample should be shown on the receipt and an endorsement made by the receiver of the sample, that the seal was found intact.

8. Care should be taken that seal is not damaged. Further the receiver should say that the label was bearing the signature of the *panchas* with the date. A proper receipt will avoid any loop hole for rejecting the Test Report.

9. The sealed envelope containing the samples received in the FSL should be carefully opened so as to preserve <u>the seals</u> in the envelope to be sent back along with the report on the test for evidence purposes.

10. The person carrying the sample to the FSL must give evidence to prove that the correct sample was tested, as taken by him and the LINK between the sample and the Test Report should be established.

11. The sample from the FSL should be received in properly sealed condition. Care should be taken that this SEAL is not broken. Hence, these remnant samples should be kept safely and in protective packing with proper label.

- ✓ The judgment in the case of *Dayal Singh and another v State of Punjab [2007(2) RCR Criminal 596]* is relevant here wherein it was held that if the seal was not handed over to the independent witness but kept with the Investigating Officer or with the raiding party, makes the case fatal for the prosecution as in that situation, the possibility of the sealed contraband and the sample being tampered with, cannot be ruled out.

- ✓ The judgment of Gujarat High Court in the case of *Jitendra @ Sanjaykumar Suryakant Desai v. State of Gujarat* on the matter of affixing seals on samples is very much relevant in this context, where in the following observations are of significance:

  The contention regarding laxity in following the procedure relating to sealing of the seized contraband articles has some substance. There is no dispute that the Seal remains in custody of the police. The possibility of tampering with the muddamal at a later stage and then again resealing the same by the Investigating Agency cannot be ruled out.

  The very purpose behind carrying out the search, taking of sample and sealing in presence of Panch witnesses is to ensure that there is no scope for any mischief in procedure required to be followed.

  At the time of sealing, slips containing signatures of Panch witnesses as well as the Investigating Officer are affixed on the articles seized and a seal is applied over it, so that, in case of any attempt for tampering with the article seized, the seal would be broken or the slip would be torn which would immediately reveal such an attempt.

  It was held that the slips bearing signatures of the panch-witnesses should be affixed on samples and thereafter seals should be applied so that if any attempt is made to tamper with sample, the slips affixed would get torn.

PART IV

CFSL

FORM NO. 29

Preparation of Form No. 29 – TEST MEMO

TEST MEMO
The samples of seized drugs or substances should be dispatched to the respective laboratories under the cover of a Test Memo, which shall be prepared in TRIPLICATE in proforma NCB-1. This Test Memo will be serially numbered for each unit effecting seizure. The seizing officer will carefully fill up column 1 to 8 of the Test Memo and put his signatures with official SEAL. The original and duplicate of the Test Memo shall be sent to the Laboratory concerned along with the samples. The triplicate copy shall be retained in the case file of the seizing officer.

1. Under the NDPS Act, it is the fundamental duty of the prosecution to prove beyond a shadow of reasonable doubt that the investigation conducted in the case is absolutely flawless specifically with regard to the link evidence, which is most significant aspect. It is incumbent upon the prosecution to prove that from the stage of effecting the recovery till the sample reach the Chemical Examiner, there was no chance of tampering with it.

2. The Standing Order No. 1/88 and 2/88 issued by the Narcotic Control Bureau lay down the guidelines that the Test Memo should be filled in at the time of seizure and at the place of seizure along with carrying out the other work related with seizure viz. taking out of samples and seizure of the contraband confiscated. However there are no such provisions provided under the NDPS Act regarding the procedure for carrying out the search except in a limited way in Section 55.

✓ The Punjab & Haryana High Court has held in the *Bhola Singh v State of Punjab [2005(2) RCR Criminal 520]* that:

1. CFSL Form No. 29 should be prepared by the Investigating Officer at the spot and be deposited in the Malkhana along with sealed contrabands;

2. After sealing the sample parcel of the contraband as well as remaining contraband, the seal should be handed over to the independent person so that till the case property had been been deposited to the FSL, the same should not be available to prosecuting agency. This is necessary to safeguard the possibility of the sealed contraband and the sample being tempered with by the police official;

3. CFSL Form should not only be prepared and sealed by the officer making seizure at the place where the case property is seized from the accused, it should also be sealed by the SHO, to whom the sample and the case property is handed over and deposited in the Malkhana along with the sample parcel. It should accompany the sample to Chemical Examiner.

The court held that

"where the seal remained with the police official after use and the CFSL Form was not prepared at the spot, it creates doubt in the prosecution case as filing of such Form is a very valuable safeguard to ensure that the sealed sample is not tempered with till the contraband is analyzed by the Forensic Science Laboratory. The seal not given to the independent witness but kept with the I.O. or with the raiding party, is also fatal to the prosecution case as in that situation, the possibility of the sealed contraband and the sample being tampered with, cannot be ruled out."

- ✓ The judgment of Supreme Court of India in *Khet Singh v Union of India [2002(2) RCR Criminal 277]* in the matter requires specific mention:

  Brief Facts:

  In truck no. RJC 1472, the appellant was found sitting with a cloth basket in his hand. During the search, a polythene bag was found in the basket which contained some black substance suspected to be opium. Appellant Khet Singh and Kanhaiya Lal along with the cloth basket were brought to the Office of the Customs. In the office of the Customs, the opium was seized, samples were taken from it and were sealed. Appellant and Kanhaiya Lal were questioned. The appellant stated that he had purchased the seized opium from Kanhaiya Lal. The samples were sent for chemical examination and the report from the Forensic Science Laboratory revealed that the sample was 'opium'.

  Objections by the Defense:

  The learned Counsel for the appellant contended that instructions issued by the Narcotics Control Bureau, New Delhi, were not followed and the seizure memo was not prepared at the spot and there was delay in depositing the seized drug in the godown. It was argued that this has caused serious prejudice to the accused and therefore, his conviction is vitiated on that account.

  Held by the Court:

  The instructions issued by the Narcotics Control Bureau, New Delhi are to be followed by the officer in-charge of the investigation of the crimes coming within the purview of the NDPS Act, *even though these instructions do not have the force of law.* They are intended to guide the officers and to see that a fair procedure is adopted by the officer in-charge of the investigation.

  It is true that when a contraband article is seized during investigation or search, a seizure mahazar should be prepared at the spot in accordance with law. There may, however, be circumstances in which it would not have been possible for the officer to prepare the mahazar at the spot, as it may be a chance recovery and the officer may not have the facility to prepare a seizure mahazar at the spot itself.

If the seizure is effected at the place where there are no witnesses and there is no facility for weighing the contraband article or other requisite facilities are lacking, the officer can prepare the seizure mahazar at a later stage as and when the facilities are available, provided there are justifiable and reasonable grounds to do so. In that event, where the seizure mahazar is prepared at a later stage, the officer should indicate his reasons as to why he had not prepared the mahazar at the spot of recovery. If there is any inordinate delay in preparing the seizure mahazar, that may give an opportunity to tamper with the contraband article allegedly seized from the accused. There may also be allegations that the article seized was by itself substituted and some other items were planted to falsely implicate the accused. ***To avoid these suspicious circumstances and to have a fair procedure in respect of search and seizure, it is always desirable to prepare the seizure mahazar at the spot itself from where the contraband articles were taken into custody.***

In the present case, though the mahazar was not prepared at the spot where the accused persons were found to be in possession of the contraband article but the same was done only at the Office of the Customs Department while the accused persons were very much present throughout, there was no allegation or suggestion that the contraband article was, in any way, meddled with by the officers. Therefore, we are of the view that the appellant has rightly been found to be in possession of the opium.

- ✓ The Punjab & Haryana High Court in the case of *Gurjant Singh v State of Punjab [2007 (4) RCR Criminal 226]* held that that where the seal remained with the police official after use and the CFSL Form was not prepared at the spot, it creates a serious doubt in the prosecution case as filing of such Form is a very valuable safeguard to ensure that the sealed sample is not tampered with till the contraband is analyzed by the Forensic Science Laboratory.

M-29

(To be retained in the office of issue)

STATEMENT SHOWING DETAILS OF SUSPECTED ARTICLES FORWARDED IN EXCISE CASES TO THE CHEMICAL EXAMINER FOR ANALYSIS

S. No.	Details of the excise cases in which the articles were recovered	Description of the articles	Weight	Description of the seals used on the articles	Remarks
FIR No. Dated U/S S/V PS					

Certified that the articles are intact and in good condition and have been carefully packed in my presence. Each bottle or other article is being wrapped up separately.

SHO PS

No……………………… Dated……………………………

Forwarded to: 'The Deputy Director, Chemical Examiner Punjab Chandigarh, for favour of analysis'.

District……………………

………………………………...

Dated…………………….. S.S.P. OFFICE

Note: The Excise Inspector should personally sign the certificate in triplicate.
One copy being kept as an office copy. One copy is being sent to the Chemical Examiner Punjab to be returned duly completed by him.

PART V

SAMPLES

SAMPLES

GENERAL GUIDELINES

- Samples drawn from seized lot should be proved to be the same which was sent to the analyst.

- Further while drawing the panchanama; the details of sealing the drugs and the sample for testing, like Seal Number should be incorporated in the panchanama.

- The receipt obtained from the laboratory should link the sample drawn from the seized goods. For this the seal affixed on the sample should be shown on the receipt and an endorsement made by the receiver of the sample, that the seal was found intact. Care should be taken that the seal is not damaged.

- Further the receiver should say that the label was bearing the signature of the panchas with the date. A proper receipt will avoid any loop hole for rejecting the Test Report.

- The samples to be tested should be tested chemically and not be confirmed by seeing and smelling or by experience.

- The person carrying the sample to the Lab must give evidence to prove that the correct sample was tested, as taken by him and the **link** between the sample and the test report should be established.

- The sample from the test Lab should be received in properly sealed condition. Care should be taken that this seal is not broken. Hence these remnant samples should be kept safely and in protective packing with proper label.

- Report of the Director, Dy. Director and Asstt. Director of recognized Lab are considered as opinion of scientific experts and they need not come to give evidence on that certificate under section 293(4) (e) of Cr. P.C.

- There should be no discrepancy in the weight of the sample recorded at the time of seizure panchanama and when the same is sent to the lab for testing. There should be no delay in sending the sample for test. It must be sent immediately and not later than 72 hours from the time of seizure, the proper and authorized laboratory report is essential for conviction

Sample Size

Standing Instruction No. 1 of 1988 issued by Narcotic Control Bureau

1.6 Quantity of different drugs required in the sample

The quantity to be drawn in each sample for chemical test should be 5 grams in respect of all narcotic drugs and psychotropic substance except in the cases of opium, Ganja and charas/ hashish where a quantity of 24 grams in each case is required for chemical test. The same quantities should be taken for the duplicate sample also. The seized drugs in the packages/containers should be well mixed to make it homogenous and representative before the sample in duplicate is drawn.

Standing Order No.1 of 1989 dated 13.6.1989 issued by the Central Government in the Ministry of Finance (Department of Revenue)

The quantity to be drawn in each sample for chemical test shall not be less than 5 grams in respect of all narcotic drugs and psychotropic substance save in the case of opium, ganja and charas (hashish) where a quantity of 24 grams in each case is required for chemical test. The same quantities shall be taken for duplicate samples also. The seized drugs in the packages/containers shall be well mixed to make it homogenous and representative before the sample is drawn.

Court Judgments in case of SAMPLES

- ✓ The Supreme Court in *Kuldeep Singh v State of Punjab [2010 (4) 659 SC]* has held that non-collection of samples at the initial stage of seizure was a defect which could not have been cured in the manner in which it was done by opening the bags which had been sealed by the Investigating Officer and mixing the contents thereof.

- ✓ The Punjab & Haryana High Court in Manjit Singh v the State of Punjab *[2010(1) RCR Criminal 441]* has held that the mere fact that delay in sending the samples, to the office of the Chemical Examiner was not explained, in itself, was not sufficient, to come to conclusion that the sample parcels were tempered with, at any stage. In such circumstances, the Court is required to fall back upon the other evidence, produced by the prosecution to complete the link evidence. The other evidence produced by the prosecution, has been subjected to in-depth scrutiny and it has been found to be cogent, convincing, reliable and trustworthy, wherein it was proved that none tampered with the sample parcels, until the same reached the laboratory. Above all the report of the Chemical Examiner (admissible in evidence u/s 293 Cr PC) clearly proves that the seals on the samples were found intact and agreed with the specimen seals sent.

- ✓ The Supreme Court of India held in the case of *State of Orissa v Kunduri Sahoo [2004 (1) RCR Criminal 196]* that mere delay in sending the sample to the Laboratory is not fatal, where there is evidence that the seized articles remained in safe custody.

- ✓ The Punjab & Haryana High Court *in Narinder Singh @ Nindi v State of Punjab [2005 (3) RCR Criminal 343]* held that since all the samples were intact, even if they were sent after 23 days, in the face of other cogent, convincing, reliable and trustworthy evidence produced by the prosecution to prove the completion of link evidence, the possibility of tampering with the samples could not be made out.

STANDING ORDERS

1. **NARCOTIC CONTROL BUREAU**

   STANDING ORDER NO.:- 1/88

2. **NARCOTIC CONTROL BUREAU**

   STANDING ORDER NO.:- 2/88

3. **MINISTRY OF FINANCE –**

   DEPARTMENT OF REVENUE

   STANDING ORDER NO.:- 1/89

Effect of Standing Instructions No. 1/88 and 2/88

The Punjab & Haryana High Court in the case of *Karaj Singh v The State of Punjab [2010(2) RCR Criminal 69]* has made the following observations which require attention:

The standing instructions are advisory in nature and have no legal sanctity. Only statutory laws made by the Parliament or rules made under delegated legislature/power as conferred by the statute have legal force. Circulars, administrative orders or executive instructions issued without any statutory powers are not binding in nature. These are instructions of prudence. The statutory provisions and rules made under the Act have to be looked independent of the departmental instructions. To say the least of it, the stated instruction does not carry statutory flavor and that being so, it is not sufficient to throw out the prosecution case merely because of the stated delay in sending the sample parcels to FSL.

NARCOTIC CONTROL BUREAU

STANDING ORDER NO.:- 1/88

DRAWAL, STORAGE, TESTING AND DISPOSAL OF SAMPLES FROM SEIZED NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

PROCEDURE

1.1 It has been brought to the notice of this Bureau by the Chief Chemist, Central Revenues Control Laboratory that different investigating officers of various enforcement agencies adopt different Procedures in drawing samples from seized narcotic drugs and psychotropic substances, particularly with regard to the number of samples drawn, quantity of the sample, sealing, mode of packing, despatch of samples etc., to the concerned laboratory, for test. It has also been found that handling of samples at different stages and places may also become an issue of dispute during the trial, and hence a clear and uniform procedure is necessary to avoid any doubt or confusion at any level. With a view to bring uniformity of approach in such matters/and also to provide for a secure system of handling of drug samples it is decided to standardize the procedure with regard to drawing, forwarding and testing of samples.

1.2 It may be noted that all drugs and psychotropic substances, materials, apparatus, utensils, or any other articles in respect of which or by means of which any offence punishable under Chapter IV of the Narcotic Drugs and Psychotropic Substances Act, 1985 has been committed, are liable to confiscation under Section 60 of the Narcotic Drugs and Psychotropic Substances Act. In other words, an act of omission or commission constituting an offence under Chapter IV of the Narcotic Drugs and Psychotropic Substances Act, 1985 is only in relation to such narcotic drugs or psychotropic substances which are liable to confiscation. As such all offence under N.D.P.S. Act have to be proved only in relation to such drugs or psychotropic substances which are liable to confiscation.

1.3 All illicit narcotic drugs or psychotropic substances recovered from a person, place, conveyance etc. are material evidence as they are liable to confiscation. Further, they constitute primary evidence for any act, omission or commission on the part of a person rendering him liable for punishment under Chapter IV of the N.D.P.S. Act, 1985. Most of the narcotic drugs and psychotropic substances cannot be conclusively proved to be such drugs or substances merely by visual examination in the trial Court and they require to be proved by chemical analysis to be conducted by chemists authorized under section 293 of Cr.P.C. 1973. The provisions of subsection 4 of section 293 of Cr.P.C. are reproduced hereunder for ready reference:-

Section 293 (4) Cr.P.C.

This section applies to the following government scientific experts, namely:-

(a) *any Chemical Examiner or Assistant Chemical Examiner to Government.*

(b) *The Chief Inspector of Explosives;*

(c) *The Director of Finger-print Bureau;*

(d) *The Director Halfkein Institute of Bombay;*

(e) *The Director (Deputy Director or Assistant Director) of a Central Forensic Science Laboratory or a State Forensic Science Laboratory;*

(f) *The Serologist to the Government.*

[Note:-Sub-Section (4) of section 293 has been amended to include Deputy Directors and Assistant Directors of Central and State Forensic Science Laboratories in the list of Government Scientific experts]

The Government of India, vide notification No. 74F. No. 50/53/76-Ad.II dated 17th July 1976 as amended vide notification dated 2nd February 1977 have declared chemists of different grades working in Central Revenues Control Laboratories as Chemists to Government for the purpose of section 293 of Cr.PC.

1.4 If the drugs seized are found in packages/containers the same should be serially numbered for purposes of identification, In case the drugs are found in loose form the same should be arranged to be packed in unit containers of uniform size and serial numbers should be assigned to each package/container. Besides the serial number, the gross and net weight, particular of the drug and the date of seizure should invariably be indicated on the packages. In case sufficient space is not available for recording the above information on the package, a Card Board label, should be affixed with a seal of the seizing officer and on this Card Board label, the above details should be recorded.

1.5 Place and time of drawal of sample

Samples from the Narcotic Drugs and Psychotropic Substances seized, must be drawn on the spot of recovery, in duplicate, in the presence of search (Panch) witnesses and the person from whose possession the drug is recovered, and mention to this effect should invariably be made in the panch nama drawn on the spot.

1.6 Quantity of different drugs required in the sample

The quantity to be drawn in each sample for chemical test should be 5 grams in respect of all narcotic drugs and psychotropic substances except in the cases of Opium, Ganja and Charas/Hashish where a quantity of 24 grams in each case is required for chemical test. The same quantities should be taken for the duplicate sample also. The seized drugs in the packages/containers should be well mixed to make it homogeneous and representative before the sample in duplicate is drawn.

1.7 Number of samples to be drawn in each seizure case

(a) In the case of seizure of single package/container one sample in duplicate is to be drawn. Normally it is advisable to draw one sample in duplicate from each package/container in case of seizure of more than one package/container.

(b) However, when the package/container seized together are of identical size and weight, bearing identical markings and the contents of each package give identical results on colour test by U.N. kit, conclusively indicating that the packages are identical in all respect/the packages/container may be carefully bunched in lots of 10 packages / containers may be bunched in lots of 40 such packages such packages/containers. For each such lot of packages/containers, one sample in duplicate may be drawn.

(c) Where after making such lots, in the case of Hashish and Ganja, less than 20 packages/containers remains, and in case of other drugs less than 5 packages/containers remain, no bunching would be necessary and no samples need be drawn.

(d) If it is 5 or more in case of other drugs and substances and 20 or more in case of Ganja and Hashish, one more sample in duplicate may be drawn for such remainder package/containers.

(e) While drawing one sample in duplicate from a particular lot, it must be ensured that representative drug in equal quantity is taken from each package/container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot.

1.8 Subject to the detailed procedure of identification of packages/ containers, as indicated in para 1.4 each package/container should be securely sealed and an identification slip, pasted/attached on each one of them at such place and in such manner as will avoid easy obliteration of marks and numbers on the slip. Where more than one sample is drawn, each sample should also be serially numbered and marked as S-1, S-2, S-3 and so on, both original and duplicate sample. It should carry the serial number of the packages and marked as P-1, 2, 3, 4 and so on.

1.9 It needs no emphasis that all samples must be drawn and sealed; in the presence of the accused, Panchnama witnesses and seizing officer and all of them shall be required to put their signatures on each sample. The official seal of the seizing officer should also be affixed. If the person from whose custody the drugs have been recovered, wants to put his own seal on the sample, the same may be allowed on both the original and the duplicate of each of the samples.

1.10 Packing and sealing of samples:

The sample in duplicate should be kept in heat sealed plastic bags as it is convenient and safe. The plastic bag container should be kept in a paper envelope may be sealed properly. Such sealed envelope may be marked as original and duplicate. Both the envelopes should also bear the S.No. of the package (s) container (s) from which the sample has been drawn. The duplicate envelope containing the sample will also have a reference of the test memo. The seals should be legible. This envelope along with test memos should be kept in another envelope which should also be sealed and marked "secret - Drug sample Test memo" to be sent to the concerned chemical laboratory.

1.11 laboratories to which samples may be sent

The seizing officers of the Central Government Departments viz. Customs, Central Excise, Central Bureau of Narcotics, Narcotics Control Bureau, D.R.I., etc. should despatch samples of the seized drugs to one of the Laboratories of the Central Revenues Control Laboratory nearest to their offices depending upon the availability of test facilities. The addresses of the Dy. Chief Chemists of the Central Revenues Control Laboratories are given below:

1. General Manager, Govt. Opium and Alkaloid Works, Ghazipur (U.P.).

2. General Manager, Govt. Opium and Alkaloid Works, Neemuch (M.P.)

3. Chief Chemist, ,Central Revenue Control Laboratory, Pusa Road(IARI), New Delhi.

4. Dy. Chief Chemist, Office of the Collector of Customs House, Chennai 600 001.

5. Dy. Chief Chemist, Chemical Lab., Customs House, Calcutta 1.

6. Dy. Chief Chemist, New Customs House, Ballard Estate, Mumbai 400 038.

7. Dy. Chief Chemist, Central Excise Lab., Estrella Batteries Compound, Dharavi Road, Mumbai -19.

8. Chemical Examiner, Office of the Commissioner of Customs, Customs House, Cochin 9.

9. Chemical Examiner, Central Excise Laboratory, Central Excise New Building, Arkee Garba Ground, Near Telephone Exchange, Subhanpura, Vadodara.

10. Chemical Examiner, Central Excise Laboratory, Central ExCise Laboratory, CORIL Refinery, Vishakhapatnam (A.P.)

11. Chemical Examiner, Customs House, Kandla, Gujarat.

12. Chemical Examiner, Customs House, Laboratory, Sada, MARMUGOA GOA

13. Chemical Examiner, (Assam).

14. Chemical Examiner, Central Excise Laboratory, Assam Oil Refinery, Dibboi, Assam

15. Chemical Examiner, HPCL, Refinery, Corridor Road, Trombay, Mumbai 400074.

The other Central Agencies like B.S.F., C.B.I. and other Central Police organizations may send such samples to the Director, Central Forensic Laboratory, New Delhi. All State Enforcement Agencies may send samples of seized drugs and psychotropic substances to the Director/Deputy Director/Assistant Director of their respective State Forensic Science Laboratory.

The Addresses of State Forensic Science Laboratories are given below:

1. Director, Forensic Science Laboratories, Govt. of Bihar Patna-800 023.

2. Director, Police Forensic Science Laboratory, Rajasthan, Nehru Nagar, Jaipur-6.

3. **Director, Forensic Science Laboratory, Mini Punjab Secretarial, Plot No.2, Sector 9-A, Chandigarh.**

4. Director, State Forensic Science Laboratory, Rasulgarh, Bhubaneshwar-10 (Orrisa).

5. Director, Forensic Science Laboratory, Haryana Madhuban (Kamal).

6. Director, Forensic Science Laboratory, Andhra Pradesh, Red Hills, Hyderabad-4.

7. Director, Forensic Science Laboratory, Trivendram-10.

8. Director, State Forensic Science Laboratory, Govt. of West Bengal, Balgachia Road, Calcutta-37.

9. Director, Forensic Science Laboratory, 5-Miller Road, Om Mehal Building, Bangalore-560052.

10. Director, Forensic Science Laboratory, Assam, Kahitapara, Guwahati-19.

11. Director, Forensic Science Laboratory, Forensic House, Kamaragar Slai, Mysore, Madras-4.

12. Director, Forensic Science Laboratory, Gujarat State, New Mental Corner, Ahmedabad-380016.

13. Director, Forensic Science Laboratory, Mah. State, Vidyanagari, Kalina, Santacruz (E), Mumbai

14. Director, Forensic Laboratory, Civil Lines, Sagar (M.P) -470001.

15. Director, Forensic Science Laboratory, Mahanagar, Lucknow (U. P.)

16. Director, Forensic Science Laboratory, Sector 18, Chandigarh.

17. Director, Forensic Science Laboratory, Bureau of Police Research and Development (MHA), Govt. of India, O.V. Campus, Ramnathpur, Hyderabad-500013.

18. Director, Central Forensic Science Laboratory, C.B.I., Block-4, C.G.O. Complex, Lodhi Road, New Delhi.

19. Assistant Director, Forensic Science Laboratory, Junagarh (Gujarat).

20. Chemical Examiner to the U.P. Govt., Agra (U.P.).

21. Govt. Examiner of questioned documents, Railway Board Building, Simla (HP)

22. Director, Forensic Science Laboratory Opposite C.D. Hospital, Sri Nagar (J.K.)

1.12 Test Memo

The Samples of seized drugs or substances should be despatched to the respective laboratories under the cover of a Test Memo which shall be prepared in triplicate in proforma NCB-I. This test memo will be serially numbered for each unit effecting the seizure. The seizing officer will carefully fill-up column 1 to 8 of the Test Memo and put his signature with official seal. The original and duplicate of the Test Memo should be sent to the Laboratory concerned along with the samples. The triplicate shall be retained in the case file of the seizing officer.

1.13 Mode and time limit for despatch of sample to Laboratory

The samples should be sent either by insured post or through special messenger duly authorized for the purpose. Despatch of samples by registered post or ordinary mail, should not be resorted to.

Samples must be dispatched to the Laboratory within 72 hours of seizure to avoid any legal objection.

1.14 Each Unit of every Enforcement Agency will maintain a Register of samples to monitor the progress of testing, which will have the following columns:-

1	2	3	4
Crime No.	Date of Seizure	Name and address of offender	Description of seized drugs and net qty.

5	6	7
Name of the officer drawing Reference and dispatching the sample	S.No. of sample and S.No. of Packages /containers from which samples were drawn	Test Memo.

8	9	10
Name and Designation of custodian of sample	The authority to whom dispatched.	Date of receipt of analysis Result and its reference

11	12	13
Result in brief	Date of receipt of remnant sample	Date of Destruction /disposal of remnant samples.

14	15
Date of destruction /disposal of duplicate samples.	Remarks

The register should be reviewed once a month by the Head of unit and once in three months by the supervising officer.

1.15 Receipt in the Laboratory

The sealed envelope containing the samples received in the Laboratory concerned should be carefully opened so as to preserve the seals on the envelope to be sent back along with the report on the test for evidence purposes. In the laboratory every sample received for test must be given a distinct Laboratory number. A separate register for Narcotic Drugs and Psychotropic Substances shall be maintained. The Laboratory may further sub-divide the register Agency-wise. The Laboratory number should form a continuous series, beginning on the 1st January every year and ending on the 31st December. The sample clerk must enter the laboratory number and the date of registration on the Test Memo and enter the same number with date of registration on the label of the sample container. Often there may be number of samples coming under once Test Memo, each sample must be given a separate number and all the numbers must be entered on the Memo.

The samples and memos having been marked with Laboratory numbers should be entered in a Register. The headings of the columns in the register will be as indicated below:-

1	2	3	4
Sr. No. (Lab. No.)	Date of receipt	Name of the officer drawing & dispatching the sample	Test Memo Ref. & Date

5	6	7
Description of the drug as per the Test Memo	To whom allotted	Date of receipt by the concerned chemist with his signature

8	9	10
Details of Test results	Date of despatch of remnant samples	Remarks

Note: Columns & 6 should be filled up respectively at the time of actual forwarding of the sample to the concerned chemist.

1.16 Allotment of Samples

Samples of narcotic drugs and psychotropic substances should be taken to the chemical examiner or such officer in the Laboratory for this purpose. He will mark the sample to a chemist. While so doing the chemical examiner or such officer will keep in view the provisions of section 293 of Cr. P.C. The sample clerk will handover the sample and test memos to the chemist named as above and obtain his initial for receipt in his register. All drug samples must reach such chemist the same day and the chemist will keep the samples in his safe custody under lock and key in his steel almirah, provided for the purpose.

1.17 Examination of sample with reference to Test Memo

On receipt of the samples such chemist will examine the same and record its weight in the Test Memo. He will compare the markings on the Test Memos with the markings on the packages/containers. It will be his responsibility to ensure that he tests the relevant sample.

1.18 Expeditious test

Expeditious analysis of narcotic drugs and psychotropic substances is of essence to all proceedings under N.D.P.S. Act, 1985. In many cases the court may refuse to extend Police/judicial remand beyond 15 days in the absence of a chemical report. Accordingly, it is essential that the analysis is completed and the report is despatched within 15 days from the date of receipt of the sample. However, where quantitative analysis requires longer time, the results of the qualitative test should be despatched to the officer from whom the samples were received within the aforesaid time limit on the original copy of the Test Memo so that court proceedings can start immediately. In the next 15 days the results of quantitative test (purity of the drug) should also be indicated on the duplicate test memo and sent to the officer from whom the samples were received.

1.19 Test Register

All results both the qualitative and quantitative tests should be entered into the Register of samples (para 1.15). This register is intended to serve as a reference and as such should be quite durable. It should carry the results and the date of despatch with reference to the Test Memo. There should be clear and adequate reporting of the results in the Test Memo. As soon as the analysis is over the test result should be dispatched by registered post in the name of the officer who forwarded the sample for test.

1.20 Remnants of samples

Remnants of all narcotic drugs and psychotropic substances samples should be returned with reference to the Test Memo to the analysis of the drug.

1.21 Custody of duplicate sample

Duplicate sample of all seized narcotic drugs and psychotropic substances must be preserved and kept safety in the custody of the Investigating officer along with the case property. Normally duplicate sample may not be used but in case of loss of original sample in transit or otherwise or on account of trial court passing an order for a second test, the duplicate sample will be utilized.

1.22 Disposal of Test Memo

As soon as the test result in original or duplicate or both test memos are received, the same will be filed in the Court, trying the case, along with charge sheet/complaint by the Investigating officer. He will keep an attested copy of the same in his case file.

1.23 Disposal of Remnant sample/duplicate sample and the drug

At present, the remnant sample/duplicate sample and seized narcotic drugs and psychotropic, substances can be disposed of after the proceedings of prosecution id over or by obtaining an order from such court under section 110 of the Customs Act, 1962 and/or 451 of Cr. P.C. While obtaining the order of the court under the aforesaid section it is necessary that specific order in respect of the remnant sample/duplicate sample is also obtained.

After such order has been obtained, the drug or substance along with the samples including remnants shall be disposed of in the manner prescribed. Please acknowledge the receipt of the standing order.

NARCOATIC CONTROL BUREAU, NEW DELHI.

STANDING ORDER NO: 2/88

RECEIPT, CUSTODY, STORAGE AND DISPOSAL OF SEIZED CONFISCATED NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

Consequent upon the enforcement of the Narcotic Drugs and Psychotropic Substances Act, 1985, with effect from 14.11.1985, the enforcement activities against drug traffickers in the country have been stepped up resulting in seizures of huge quantities of narcotic drugs and psychotropic substances (hereinafter referred to as the 'drugs'). For successful prosecution of drug offenders, it has been felt necessary to formulate a uniform procedure for drawal of samples of the seized drugs, which forms the primary evidence in the course of prosecution proceedings before the courts of law. Keeping this in view, the Narcotics Control Bureau; the Central Authority created under section 4(3) of the Narcotic Drugs and Psychotropic Act created in 1985 (hereinafter referred to as the 'new law') which functions as the apex coordinating and enforcement agency in the country has formulated and circulated a Standing Order No.1 /88 dated 15.3.1988.

2. Recognising the importance of despatch transit receipt, safe custody, storage, proper accounting and disposal + destruction of the seized/confiscated drugs, and the need for evolving a uniform procedure for regulating the above mentioned operations, both by the Central and State drug law enforcement agencies in the country, the Narcotics Control Bureau has formulated the following procedure to be complied with in this behalf.

3.1 All drugs should be properly classified, carefully weighted and sampled on the spot of seizure.

3.2 All the packages/containers should be serially numbered and kept in lots of sampling. The procedure set out in Standing Order No. 1/88 referred to above should be scrupulously followed.

3.3 After sampling, detailed inventory of such packages/containers should be prepared for being enclosed to the panchanama. Original wrappers must also be preserved for evidentiary purposes.

3.4 After completion of panchanama, the drugs should be packed, in heat sealed plastic bags. For bulk quantities of ganja, instead of plastic bags, gunny bags may also be utilised wherever those are not readily available.

3.5 Agencies, of the Central and State Governments, who have been vested with the powers, of investigation under the new law must specifically designate their godowns, for storage purposes. The godowns should be selected keeping in view their security angle, juxtaposition to courts, etc.

3.6 All drugs must invariably to be stored in safe and vaults provided with double locking system.

3.7 Such godowns, as a matter of rule, be placed under the overall supervision and charge of a Gazetted Officer of the respective enforcement agency, who should exercise utmost care, circumspection and personal supervision, as far as possible. Such officers should not be below the rank of Superintendent in the Departments of Customs, Central Excise, Directorate of Revenue Intelligence, Central Bureau of Narcotics, Narcotics Control Bureau, C.B.I., B.S.F., etc., (Central agencies) and Station House Officer/Officer-in-charge of a police station, Superintendent of State Excise, Naib Tehsildar of Revenue, Drug Control Department, etc. in the States and U.T. enforcement agencies. They will personally be held accountable for safety and security of the drugs.
3.8 Each seizing officer should deposit the drugs fully packed and sealed with his seal in the godown within 48 hours of seizure of such drugs, with a forwarding memo indicating.

(i) NDPS Crime No. as per crime and prosecution register under the new law (i.e. NDPS Act);
(ii) Name (s) of accused;
(iii) Reference of test memo;
(iv) Description of drugs in the sealed packages/containers and other goods, if any;
(v) Drug-wise quantity of each package/container and other goods, if any;
(vi) Drug-wise number of packages/containers;
(vii) Total number of all packages/containers;

Annexure I

3.9 The seizing officer, after obtaining an acknowledgement for such deposit in the format (Annexure - I), will hand over the same to the Investigating Officer of the case along with the case dossiers for further proceedings.

4.0 The officer-in-charge of the godown, before accepting deposit of drugs, will ensure that the drugs are properly packed and sealed. He will also arrange the packages/containers (case-wise and lot-wise) for quick retrieval, etc.

4.1 The godown in-charge is required to maintain a register wherein entries of receipt should be made (as per format at Annexure II).

Annexure II

4.2 It will be incumbent upon the Inspecting Officers of the various departments mentioned in Annexure II to make visits to the godowns for ensuring adequate security and safety and for taking measures for timely disposal of drugs. The Inspecting Officer should record their remarks/observations against col. 15 of the Format at Annexure II.

4.3 The Heads of respective enforcement agencies (both Central and State Governments) may prescribe such periodical reports and returns, as they may deem fit, to monitor the safe receipt, deposit, storage, accounting and disposal of seized drugs.

Annexure III

4.4 While quarterly returns of disposal of drugs by the Central Government agencies concerned shall be furnished to the Director-General, Narcotics Control Bureau by the 15thof the month following the quarter (in the format at Annexure III), the sate enforcement agencies are required to submit their reports to the State Police Headquarters (CID) Director General, Narcotics Bureau informed of the same as per

Annexure IV

4.5 Since the early disposal of drugs assumes utmost consideration and importance, the enforcement agencies should obtain orders for pre-trial disposal of drugs and other articles (including conveyance, if any) by having recourse to the provisions of Section 451 of the Criminal Procedure Code, 1973 (extracts enclosed at

Annexure IV) and those of the provisions of section 110 (IA) , (IB) and (IC) of the customs Act, 1962 read with Government of India's notification No. 31/86-Cus. (AS) dated the 5th Februaray,1986 issued in this behalf which specifies 'Dangerous drugs and psychotropic substances'.

4.6 While preferring the application under section 451 before the Court of Sessions immediately, emphasis may be laid on 'expediency of disposal'. The grounds that may be high-lighted may pertain to:

(i) risk of pilferage, theft and substitution;
(ii) high potential and vulnerability of abuse;
(iii) high temptations to traffickers;
(iv) diminution in the value of other articles (including conveyances) due to long storage, etc.

4.7 Since the filling of the charge-sheet/complaint is a condition present for expeditious issue of orders for pre-trial disposal, complaints by the respective enforcement agencies must be filed after completion of investigation within the stipulated period of 180 days of seizure/arrest, on a priority basis. They should meticulously be adhered to.

4.8 While moving the application under section 451 of the Criminal Procedure Code as above, production of all seized/articles/drugs, etc., along with the panchanama (in original) and detailed Inventory thereof is essential. The inventory should be complete in all respects and contain such particulars as may be relevant to establish nexus/identity of articles. The chemical analysis report should also be simultaneously filed.

4.9 After the court orders are passed for pre-trial disposal of drugs, those drugs which have no legitimate commercial value (excepting opium, morphine, codeine and the baine, which are required to be transferred to the Government Opium and Alkaloid Works Undertaking at Ghazipur or Neemuch, as the case may be) are required to be destroyed consistent with the guidelines issued under this order and not repugnant to the court's order.

5.0 As bulk of seizures of drugs relate to illicit import or export and are made at the points of entry or exit or in transit traffic, such drugs are liable to seizure under section 110 of the Customs Act, 1962 and confiscation under section 111 or 113 ibid. In such cases, it would be appropriate to initiate proceedings under the Customs Act also.

Annexure V

5.1 The relevant provisions of section 110 (IA), (18) and (IC) are reproduced at

5.2 A three member Committee of the respective enforcement agencies (both Central and States), known as the Narcotics Drugs and Psychotropic Substances Disposal Committee should be constituted to discharge its functions from the Head Quarters of the respective Heads of Departments. The Committee will be headed by an officer not below the rank of –

(i) Deputy (*now Joint)* Commissioner of Customs and Central Excise with two members of the rank of Assistant Commissioner of Customs and Central Excise in the case of a Customs and Central Excise Commissionerate;

(ii) Deputy Narcotics Commissioner with two members of the rank of Assistant Narcotics Commissioner in the case of Narcotics Commissioner's Organisation;

(iii) Deputy Director of Revenue Intelligence with two members of the rank of Assistant Director in the case of the Directorate of Revenue Intelligence;

(iv) Deputy Director and two other officers as may be authorised by the Director General, Narcotics Control State Police Organisation;

(v) Deputy Inspector General of Police with two members of the rank of Superintendent of Police in respect of State Police organisations; and

(vi) Deputy Commissioner of Excise with two officers of the rank of Assistant Commissioners, in respect of State Excise Organisations.

The Committee will be directly responsible to the Head of the Department concerned.

5.3 The functions of the Committee will be to

(a) undertake detailed analysis of drugs pending disposal;

(b) advise the respective investigating officers/supervisory officers on the steps to be initiated for expeditious disposal.

The Committee will meet, as frequently as possible, as may be considered necessary for quick disposal of drugs and at least once in two months. While the Central agencies will endorse a copy of the minutes of such meetings directly to Narcotics Control Bureau, the State enforcement agencies concerned will report the same to their respective state police Head Quarters (CID), who, in turn, will keep the Narcotics Control Bureau informed of the progress made from time to time.

5.4 The officers-in-charge of godowns will prepare a list of all such drugs that have become ripe for disposal to the Chairman of the respective drug disposal committee. After examining that they are fit for disposal and satisfying that they are no longer required "for legal proceedings and the approval of the court has been obtained for the purpose, the Members of the respective drug disposal committees will endorse necessary certificates to this effect. The committee will, thereafter, physically examine' and verify the drug consignments will reference to the seizure report and other documents like chemical analysis, etc., including its weighment and record its finding in each case.

[Note: The drugs become ripe for disposal after they are confiscated' by the competent court or the competent authority of the Customs on expiry of the period of appeal or when ordered by the court for disposal under section 451 of the Cr. P.C. 1973 or section 110 1(C) of the Customs Act, 1962]

5.5 In the case of tampering with seal, etc., the composite sample will be drawn for getting the same tested by the Central Revenue Control Laboratory or the State Forensic Science Laboratory/State Drug Control Laboratory concerned. If no variation either in purity or quantity is found, the same will be ordered for destruction by the Department. Where any minor variations are noticed, a detailed report should be submitted to the Head of the Department of the enforcement agency concerned. In the case of wider variations, the matter should be immediately reported to the Narcotic Control Bureau indicating the follow-up action taken in this regard. The destruction of drugs' in such cases can be done only after obtaining the orders of the Head of the Department concerned.

5.6 The Committee will be empowered to order destruction of the seized drugs in the following cases:

Name of drug	Quantity (Kgs.)
Heroin	2
Hashish (Charas)	50
Hashish oil	10
Ganja	500
Cocaine	1
Mandrax	150
Other Drugs	upto value of RS.5 lakhs

The disposal Committee should intimate the Head of the Department concerned the programme of destruction (giving complete details) in advance (at least 15 days before the date of destruction), so that in case he deems fit, he may either himself conduct surprise checks, or depute an officer for conducting such surprise checks. The disposal Committee should inform the respective Heads of Departments in respect of every destruction made by it, indicating the date of destruction, quantities destroyed, etc.

In those cases where the quantities exceed the above limits destruction could be ordered and take place only under the supervision by the Head of Department himself along with the Chairman and Members of Drug Disposal Committee.

5.7 All drugs excepting opium, morphine, codeine and the baine shall be destroyed by incineration in such places where adequate facilities and security arrangements exist for the same after ensuring that this will not be a health hazard from the point of view of pollution.

Annexure VI

5.8 A certificate of destruction (in triplicate) (Annexure-vi) containing all the relevant data like godown entry no., file no., gross and net weight of the drugs seized, etc., shall be prepared and duly endorsed by the signature of the Chairman as well as Members of the Committee. This could also serve the purpose of panchanama. The original copy will be pasted in the godown register after, making necessary entries to this effect, the duplicate to be retained in the seizure case file and the triplicate copy will be kept by the Disposal Committee.

6. The procedure as outlined in Section II of the Opium Manual (Vol.III) will continue to apply for drugs like opium morphine, codeine and the baine. Disposal of poppy straw shall continue to be regulated by the procedure as stipulated by the respective State Excise Department in this behalf.

7. Other goods (including conveyance) ripe for disposal may be disposed of by public auction or in such manner as is deemed convenient in the best interests of the Government.

ANNEXURE I
(Para 3.9)

GODOWN RECEIPT (No. II)

RECEIVED (No.) """""""""""""""""""""""""""" …packages/containers said to contain (Description of Drugs) sealed with the seal No. of (Name & Designation) seizing officer and entered into godown register vide entry No… . . ..

Facsimile of the seal … … … … … …

Place:	Signature of the Officer in charge of Godown with full name and official
Date:	Seal

Time:

ANNEXURE-II
(Para 4.1)

FORMAT OF REGISTER REQUIRED TO BE MAINTAINED BY THE GODOWN IN CHARGE

N.C.B.III

1. Godown entry S.No.
2. N.D.P.S. Crime No.
3. Description of drugs in the scaled packages/containers and other goods, if any
4. No. of packages/containers (drug-wise)
5. Quantity of drug (package/containerwise)
6. Particulars of the test memos.
7. Name(s) and address(es) of accused
8. Name with official designation and address of seizing/depositing officer
9. Facsimile of the seal put on the packages/ containers by the seizing officer
10. Date and time of deposit
11. Particulars of exit and re-entry for exhibiting to court.
12. Date and time of removal for disposal
13. Disposal particulars including destruction or despatch to Central Govt. Opium Factory.
14. Certificate of disposal including price payment particulars, from Govt. Opium Factory, where applicable.
15. Remarks of the Inspecting Officer(s)*

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*Inspecting Officers: In the case of Central Enforcement Agency: (1) D.G.,NCB (2) Dy.D.G.,NCB(3) Narcotics Commissioner of India (4) Dy. Narcotics Commissioners (5) D.G.,BSF,(7) Sr. Officers of CBI, (8) Chief Commissioner, Customs & Central Excise, (9) Commissioner, Customs & Central Excise (10) Assistant Commissioner of Customs and Central Excise.

In the case of State Enforcement Agency: (1) D.G. of Police (2) I.G. of Police (3) Dy. I.G.P. (4) Superintendent of Police (5) State Excise Commissioner (6) Dy. Excise Commissioner (7) Superintendent of Excise and Equivalent officer of State Govt. in the authorised departments.

ANNEXURE III
(Para 4.2)

FORMAT OF QUARTERLY RETURN TO BE FURNISHED BY THE CENTRAL ENFORCEMENT AGENCIES TO N.C.B.

1. Name of the drug
2. Opening Balance as on the 1st day of the quarter
3. Receipts during the quarter
4. Qty. disposed by destruction during the quarter
5. Qty. dispatched to opium factories
6. Stock in hand at the end of the quarter
7. Remarks

ANNEXURE IV
(para 4.5)

PROVISIONS OF SECTION 451 OF THE CRIMINAL PROCEDURE CODE 1973

"451. Order for custody and disposal of property pending trial in certain cases:-

When any property is produced before any criminal court during any enquiry or trial, the court may take such order as it thinks fit for the proper custody of such property pending, the conclusion of the enquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation: For the purpose of this section "property" includes –

(a) Property of any kind or document which is produced before the count or which is in its custody.

(b) Any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offences."

ANNEXURE V
(para 5.1)

PROVISIONS OF SECTION 110(1A) (18) AND (IC) OF THE CUSTOMS ACT, 1962

110 (1 A): The Central Government may, having regard to the perishable or hazardous nature of any goods, depreciation in value of the goods with the passage of time, constraints of storage space for goods, or any other relevant considerations, by notification in the Official Gazette specify the goods or the class of goods which shall, as soon as may be, after its seizure, under sub-section(1) be disposed of by the proper officer in such manner as the Central Government may, from time to time, determine after following the procedure hereinafter specified.

110 (1 B): Where any goods, being goods specified under subsection (1A) have been seized by a proper officer under subsection (1), he shall prepare an inventory of such goods containing such details relating to their description, quality, quantity, mark, numbers, country of origin and other particulars as the proper officer may consider relevant to the identity of the goods in any proceedings under this Act and shall make an application to Magistrate for purpose of:-

(a) certifying the correctness of the inventory so prepared;

or

(b) taking, in the presence of the magistrate photographs of such goods, and certifying such photographs as true; or

(c) allowing to draw representative samples of such goods, in the presence of the Magistrate, and certifying the correctness of any list of samples so drawn.

110(1C): Where the application is made under sub-section (1B) the Magistrate shall, as soon as may be, allow the application.

ANNEXURE-VI (in triplicate)
(Para 5.9)

CERTIFICATE OF DESTRUCTION OF NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

(PARA 9, 10 OF THE STANDING ORDER NO. 88)

DETAILS OF THE DRUGS AND SUBSTANCES DESTROYED

(1) Particulars of the drugs

(2) Seizure case file ref. No.

(3) Godown Register entry No.

(4) As recorded in the Godown register: Gross Wt. Net. Wt.

(a) (b)

(5) Weight ascertained on physical verification: Gross Wt. Net. Wt.

(a) (b)

(6) Name and address of the witnesses

(7) Date/Place/Mode of destruction

It is certified that a Committee consisting of S/Shri... ... ... supervised the destruction of narcotic drugs and psychotropic, substances particulars above, in the presence of following witnesses.

(delete whatever is not applicable).

SIGNATURE WITH DATE (CHAIRMAN)	SIGNATURE WITH DATE (MEMBER)	SIGNATURE WITH DATE (MEMBER)

GOVT. OF INDIA - MINISTRY OF FINANCE – DEPARTMENT OF REVENUE

STANDING ORDER NO 1/89 Dated 13th June, 1989.

Whereas the Central Government considers it necessary and expedient to determine the manner in which the narcotic drugs and psychotropic substances, as specified in Notification No.4/49 dated the 29th May, 1989 (F.No. 664/23/89-Opium, published as S.O. 381 (E), which shall, as soon as may be, after their seizure, be disposed of, having regard to their hazardous nature, vulnerability to theft, substitution and constraints of proper storage space:

SECTION I

DRUGS MEANT FOR DISPOSAL

Drugs specified in Notification No. 4/89 Drugs meant for disposal Specified	**Narcotic Drugs**
	1) Opium 2) Morphine 3) Heroin 4) Ganja 5) Hashish (Charas) 6) Codeine 7) Thebaine 8) Cocaine 9) Poppy straw; and 10) Any other manufactured drug as under clause (xi) of section 2 of the Act.
	Psychotropic Substances
	1) Methaquaione 2) T.H.C. 3) Amphetamine and 4) Any other psychotropic substance, as defined under Clause (xxiii) of section 2 of the said act.

SECTION II

GENERAL PROCEDURE FOR SAMPLING, STORAGE, Etc.

Sampling Classification, Etc. of drugs, Drawal of Samples

2.1 All drugs shall be properly classified, carefully weighed and samples will be taken on the spot of seizure.

2.2 All the packages/containers shall be serially numbered and kept in lots for Sampling. Samples from the narcotic drugs and psychotropic substances seized, shall be drawn on the spot of recovery, in duplicate, in the presence of search witnesses (Panchas) and the person from whose possession the drug is recovered, and a mention to this effect should invariably be made in the panchnama drawn on the spot.

Quantity to be drawn for the sampling

Method of drawal

2.3 The quantity to be drawn in each sample for chemical test shall not be less than 5 grams in respect of all narcotic drugs and psychotropic substances save in the cases of opium, ganja and charas (hashish) where a quantity of 24 grams in each case is required for chemical test. The same quantities shall be taken for duplicate sample also. The seized drugs in the packages/containers shall be well mixed to make it homogeneous and representative before the sample (in Duplicate) is drawn.

(a) Single container/package

2.4 In the case of seizure of a single package/container, one sample in duplicate shall be drawn. Normally, it is advisable to draw one sample (in duplicate) from each package/container in case of seizure of more than one package / container

(b) Bunch of packages/bunching for

(i) Hashish and ganja

(ii) other drugs

2.5 However, when the packages/ containers seized together are of identical size and weight, bearing identical markings and the contents of each package given identical results on colour test by the drug identification kit, conclusively indicated that the packages are identical in all respects the packages/containers except in the case of ganja and hashish (charas), where it may be bunched in lots of, 40 Such packages /containers, one sample (in duplicate) may be drawn.

2.6 Where after making such lots, in the case of hashish and ganja, less than 20 packages/containers remain, and in the case of other drugs, less than 5 packages/containers remain, no bunching would be necessary and no samples need be drawn.

2.7 If such remainder is 5 or more in the case of other drugs and substances and 20 or more in the case of ganja and hashish, one more sample (in duplicate) may be drawn for such remainder/container.

Drawal of representative samples:

2.8 While drawing one sample (in duplicate) from a particular lot, it must be ensured that sample are in equal quantity is taken from each quantity is taken from each package/container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot.

Storage of samples procedure

2.9 The sample in duplicate should be kept in heat sealed plastic bags as it is convenient and safe. The plastic bag container should be kept in a paper envelope which may be sealed properly. Such sealed envelope may be marked as original and duplicate. Both the envelopes should also bear the S.No. of the package (s)/container (s) from which the sample has been drawn. The duplicate envelope containing the sample will also have a reference of the test memo. The seals should be legible. This envelope along with test memos should be kept in another envelope which should also be sealed and marked 'secret-drug' sampl/Test memo, to be sent to the chemical laboratory concerned.

3.0 The seizing officers of the Central Government Departments, viz., Customs, Central Excise, Central Bureau of Narcotics, Narcotics Control Bureau, Directorate of Revenue Intelligence, etc. should dispatch samples of the seized drugs to one of the Laboratories of the Central Revenues Control Laboratory nearest to their offices depending upon the availability of test facilities. The other Central Agencies like BSF, CBI and other Central Director, Central Forensic Laboratory, New Delhi. All State Enforcement Agencies may send samples of seized drugs to the Director/Deputy Director/Assistant Director of their respective State Forensic Science Laboratory.

3.1 After sampling, detailed inventory of such packages/containers shall be prepared for being enclosed to the *panchnama*. Original wrappers shall also be preserved for evidentiary purposes.

SECTION III

RECEIPT OF DRUGS IN GODOWN AND PROCEDURE

Custody of Drugs in Godowns - Storage Procedure

3.2 All the drugs invariably be stored in safes and vaults provided with double-locking system. Agencies of the Central and State Governments, may specifically designate their godowns for storage purposes. The godowns should be selected keeping in view their security angle, juxtaposition to courts, etc.

Maintenance of godowns and procedure for deposit of Drugs

3.3 Such godowns, as a matter of rule, shall be and procedure for deposit placed under the over-all supervision and charge of a of Drugs Gazetted Officer of the respective enforcement agency, who shall exercise utmost care, Acknowledgement to be obtained circumspection and personal supervision as far as possible. Each seizing officer shall deposit the drugs fully packed and sealed in the godowns within 48 hours of such seizure, with a forwarding memo indicating NOPE Crime No. as per Crime and Prosecution (C & P Register) under the new law, name of the accused, reference of test memo, description of the drugs, total no. of packages/containers, etc.

Acknowledgement to be obtained

3.4 The seizing officer, after obtaining an acknowledgement for such deposit in the format (Annexure-I), shall had acknowledgement over such to the Investigating Officer of the case along with the case dossiers for further proceedings.

Action to be taken by Godown-in-charge before Acceptance drugs for deposit

3.5 The Officer-in-charge of the godown, before accepting the deposit of drugs, shall ensure that the of same are properly packed and sealed. He shall also arrange the packages/containers (case-wise and lot-wise) for quick retrieval, etc.

Maintenance of godown register

3.6 The godown-in-charge is required to maintain a register register wherein entries of receipt should be made as per format at Annexure-II.

Inspection by Inspecting Officer

3.7 It shall be incumbent upon the Inspecting Officer Officers of the various Departments mentioned at Annexure-II to make frequent visits to the godowns for ensuring adequate security and safety and for taking measures for timely disposal of drug. The Inspecting Officers should record their remarks/observations against Col.15 of the Format at Annexure-II.

Prescription of periodical reports and returns

3.8 The Heads of the respective enforcement reports and returns agencies (both Central and State Governments) may prescribe such periodical reports and returns, as they may deem fit, to monitor the safe receipt, deposit, storage, accounting and disposal of seized drugs.

Pre-trial disposal of drugs

3.9 Since the early disposal of drugs assumes utmost consideration and importance, the enforcement agencies may obtain orders for pre-trial disposal of drugs and other articles (including conveyance, if any) by having recourse to the provisions of sub-section (2) of section 52A of the Act.

SECTION IV

ACTION TO BE TAKEN BY POLICE AND OTHER EMPOWERED OFFICERS FOR PRE-TRIAL DISPOSAL

4.0 Follow-up action to be taken by Police and Empowered officers

Where any narcotic drug of psychotropic substance has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, the officer, referred to in paragraph 3.3 of the order shall prepare an inventory of such narcotic drugs or psychotropic substances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers of such other identifying particulars of the narcotic drugs or psychotropic substances of the packing in which they are 'packed, country of origin and such other particulars as may be considered relevant to the identity of the aforesaid drugs in any proceedings under the Act and make an application to any Magistrate for the purpose of-

Application to Magistrate for pre-trial

(a) certifying the correctness of the inventory so prepared; or

(b) taking, in the presence of such Magistrate, photographs of such drugs or substances and certifying such photographs as true; or

(c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.

Magistrate to allow Application

4.1 Where an application is made under sub-section (2) of the section 52-A of Act, the Magistrate shall, as soon as may be, allow the application.

Courts to treat documents and list of samples certified by Magistrate as 'primary evidence:-

4.2 Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872) or the Code of Criminal Procedure, 1973 (2 of 1974), every court trying an offence under this Act, shall treat the inventory, the photographs, or narcotic drugs or psychotropic substances and any list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence.

4.3 While preferring an application under section 52A to any Magistrate, emphasis may be laid on 'expediency of disposal'. The ground that may be highlighted may pertain to-

(i) risk of pilferage, theft and substitution;

(ii) constraints of storage and hazardous nature;

(iii) high potential and vulnerability of abuse;

(iv) high temptations to traffickers;

diminution in the value of other articles (including conveyances) due to long storage, etc.

Filling of Charge-sheet/Plaint

4.4. Since the filing of charge-sheet/complaint is condition precedent for expeditious issue of orders for pre-trial disposal, for expeditious issue of orders for pre-trial disposal, complaints by the respective enforcement agencies must be filed after Completion of investigation within the stipulated period of 90 days of seizure/arrest, on a priority basis. This requires to be meticulously adhered to.

4.5 While moving the application under sub-section (2) of section 52A of the Act as above, production of all seized articles/drugs, etc. along with the panchnama (in original) and detailed thereof is essential. The inventory shall be complete in all respects and contain such particulars, as may be relevant to Establish nexus/identity of articles. The chemical analysis report should be simultaneously filed.

Mode of disposal of drugs on which court's and orders obtained

4.6 After the court orders are passed for pre-trial disposal of drugs, those drugs which have no on which court's and legitimate value (excepting opium, morphine, codeine orders obtained and thebaine), which are required to be transferred to the Government Opium Alkaloid Works Undertaking at Ghazipur or Neemuch, as the case may be) are required to be destroyed consistent with the guidelines issued under this order and not repugnant to the court's order.

Application of Customs Act ibid.

4.7 As bulk of seizures of drugs relate to illicit import and are made at the points of entry or exit or in transit traffic, such drugs are liable to seizure under section 110 of the Customs Act, 1962 and confiscation under sections 110 or 113 In such cases, it would be appropriate to initiate proceedings under the Customs Act also.

SECTION V

CONSTITUTION & FUNCTIONS OF DRUG DISPOSAL COMMITTEE

Constitution of Drug Committee

5.0 A three Member Committee of the respective enforcement agencies (both Central and States), known as the 'Narcotic Drugs and Psychotropic Substances Disposal Committee' should be constituted to discharged its functions from the Headquarters of the respective Heads of Departments. The Committee will be headed by an officer not below the rank of -

(i) Deputy Collector of Customs and Central Excise with two Members of the rank of Customs and central, Constitution Committee of Excise in the case of Customs and Central Excise Collectorate;

(ii) Deputy Narcotics Commissioner with two members of the rank of Assistant Narcotics Commissioner in the case of Narcotics Commissioner's organization;

(iii) Deputy Director of Revenue Intelligence with two members of the rank of Assistant Director in the case of Directorate of Revenue Intelligence;

(iv) Deputy Director and two other officers, as may be authorized by the Director General, Narcotics Control Bureau in the case of that organization;

(v) Deputy Inspector-General of Police with two members of the rank of Superintendent of Police in respect of State Police Organizations; and

(vi) Deputy Commissioner of Excise with two officers of the rank of Assistant Commissioners in respect of State Excise Organizations.

5.1 The Committee will be directly responsible to the Head of the Department concerned.

Functions

5.2 The functions of the Committee will be to:

(a) undertake detailed analysis of drugs pending disposal, and

(b) advise the respective investigation officer/supervisory officers on the steps to be initiated for expeditious disposal.

Meeting by the Committee

5.3 The Committee shall meet, as frequently as possible, as may be considered necessary for quick disposal of drugs and at least once in two months. While the Central agencies shall endorse a copy of the minutes of such meetings directly to the Narcotics Control bureau, the State enforcement agencies concerned shall report the same to their respective State Police Headquarters (CID), who, in turn, may keep the Narcotics Control Bureau informed of the progress made from time to time.

Procedure to be followed by the Committee with regard to disposal of drugs

5.4 The officers-in-charge of godowns shall prepare a list of all such drugs that have become ripe for disposal to the Chairman of the respective drug disposal committee. After examining that they are fit for disposal and satisfying that they for legal proceedings and the approval of the court has been obtained for the purpose, the Members of the respective drug disposal committee shall endorse necessary certificates to this effect. The committee shall, thereafter, physically examine and verify the drug consignments with reference to the seizure report and other documents like chemical analysis, etc., including its weighment and record its findings in each case.

Variation in chemical analysis report-Further action to be taken

5.5 The composite sample shall be drawn for getting the same tested by the Central Revenues Control Laboratory or the State Forensic Science Laboratory/State Drug Control Laboratory concerned. If no variation, either in the purity or quantity is found, the same shall be ordered for destruction by the Department.

Where any minor variations are noticed, a detailed report may be submitted to the Head of the Department of the enforcement agency concerned. In the case of wider variations, the matter should be immediately reported to the Narcotics Control Bureau indicating reported the following-up action taken in this regard. The destruction of drugs in such cases can be done only after obtaining the orders of the Head of the Department concerned.

5.6 Power of Committee

The Committee shall be empowered to order destruction of the seized drugs in the following cases:

For Destruction of Seized drugs

Name of drug Seized drugs		**Quantity(Kgs.)**
1.	Heroin	2
2.	Hashish (Charas)	50
3.	Hashish oil	10
4.	Ganja	500
5.	Cocaine	1
6.	Mandrax	150
7.	Other drugs	upto value of Rs. 5 lakhs

Intimation to Head of Department On destruction

5.7 The disposal Committee shall intimate the Head of the Department concerned the programme of destruction (giving complete details) in advance (at least 15 days before the date of destruction), so that, in case he deems fit, he may either himself conduct surprise checks, or depute an officer for conducting such surprise checks. The disposal Committee should inform the respective Heads of Departments in respect of every destruction made by indicating the date of destruction, quantities made by it indicating the date of destruction, quantities destroyed, etc

Quantities in excess of delegation-Procedure to be followed:

5.8 In those cases where the quantities exceed the above limits, destruction shall be ordered and take place only under the supervision by the Head of the Department himself along with the Chairman Members of the Drug Disposal Committee.

Mode of Disposal of Drugs

5.9 All drugs excepting opium, morphine, codeine and the baine shall be destroyed by incineration in such places where adequate facilities and security arrangements exist for the same after ensuring that this may not be a health Hazard from the point of view of pollution. Open destruction of such drugs may also be resorted to, wherever considered feasible and necessary, after due publicity to gain the confidence of public. Wide publicity, in such cases, would be consequential.

SECTION VI

MISCELLANEOUS

Certificate of destruction

6.0 A certificate of destruction (in triplicate) Annexure-III of containing all the relevant data like godown entry no., file no., gross and net weight of the drugs seized, etc., shall be prepared and duly endorsed by the signature of the Chairman as well as Members of the Committee. This could also serve the purpose of panchnama. The original copy shall be pasted in the godown register after making necessary entries to this effect, the duplicate to be retained in the seizure case file and the triplicate copy will be kept by the Disposal Committee.

The procedure as outlined above should be followed by all Central and State endorsement agencies concerned.

Other goods (including conveyance), ripe for disposal, may be disposed of by public auction or in such manner as is deemed convenient in the best interests of the Government.

TAMPERING WITH SAMPLES UNDER NDPS ACT

The PATNA High Court in [Cr. Misc. No.6651 of 2010] in the case of RADHEY PRASAD CHAURASIA v STATE OF BIHAR in ***its order dated 03.12.2010*** *has issued directions for the Samples collected in NDPS Cases and obtaining Reports from CFSL, which are put down as under:*

1. There has to be a total revamp of the existing system so far the procedure of seizure, sampling and sending of the seized articles to the FSL is concerned. For this reason, the learned Advocate General has assured this court that he will take steps to direct the Investigating Agency about the procedure which has to be strictly followed as provided by Standing Order No.1 of 1988 and 2 of 1988 issued by Narcotics Control Bureau, New Delhi and Standing Order No.1 of 1989 issued by the Government of India, Ministry of Finance, Department of Revenue, New Delhi.

2. This court further feels the necessity of directing the Investigating Agency to prepare duplicate samples of each seizure. The Special Courts shall order one to be forwarded to the Forensic Science Laboratory, Patna, and the duplicate to be sent to the Chemical Laboratory, Customs House, Kolkata, in view of the rampant tampering with samples, so that there is a provision of cross check. Till such time as the system is revamped at the FSL, Patna, and the Investigating Agencies are directed to prepare two samples, the Special Courts shall direct testing of samples at Chemical Laboratory, Customs House, Kolkata. As per the report of the Central Bureau of Narcotics, there has never been any complaint about the Chemical Laboratory, Customs House, Kolkata, in cases of this nature.

3. In addition, considering there is inordinate delay in sending samples for testing, when the Special Courts receive the First Information Report with regard to seizure of NDPS articles, they are directed to immediately issue orders for production of samples before the court and send the same to the Chemical Laboratory, Customs House, Kolkata. They shall also fix an outer limit for the examination of the samples.

4. The Commissioner of Narcotics submits that from the data collected at their end it appears that there are 754 samples pending for testing; 40% of exhibits were of the year 2006 and 34 % were of the year 2007. Altogether 57% of the samples are pending examination for the last four years resulting in delay in trial of NDPS cases. This is unfortunate to say the least.

   The Advocate General assures this court that immediate steps shall be taken with regard to posting of additional specialized officers at the Forensic Science Laboratory so that there is no further backlog of testing of samples.

5. As for checking despatch of fake reports from the end of the Forensic Science Laboratory, it is essential that system be changed and the archaic method of sending the report in briefcase which can be easily tampered should be discontinued with immediate effect. It is generally agreed that the system adopted by the Patna High Court in sending bail matters which has proven effective should be adopted in sending the reports from the Forensic Science Laboratory. For this reason, the Advocate General assures this court that steps shall be taken to place/replace FAX machines in the office of the Forensic Science Laboratory within a period of four weeks.

6. To further thwart designs of the nefarious persons in sending the fake reports to the court, the Advocate General is directed to supply the district wise list of the samples pending for examination supplied by the Narcotics Commissioner, to all the Superintendents of Police immediately so that they make enquiry at their end as to whether any fake reports have been submitted in those cases even while the samples were pending examination at the Forensic Science Laboratory.

Let a copy of this order be given to the Advocate General, Bihar, /Mr. Dwivedi Surendra, counsel for the Central Bureau of Narcotics for doing needful in the matter.

Let a copy of this order be sent to each of the Special Courts dealing with the NDPS Cases situated within the State of Bihar for information and necessary action at their end.

SECTION VI

APPLICABILITY

OF

SECTION 100

&

SECTION 165

OF

CR.P.C

Persons in charge of closed place to allow search

100 (1) Whenever any place liable to search or inspection under this Chapter is closed , any person residing in, or being in charge of, such place, shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

(2) If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in the manner provided by sub-section (2) of section 47.

(3) Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched and if such person is a woman, the search shall be made by another woman with strict regard to decency.

(4) Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do.

(5) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.

(6)The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person.

(7) When any person is searched under sub-section (3), a list of all things taken possession of shall be prepared, and a copy thereof shall be delivered to such person.

(8) Any person who, without reasonable cause, refuses or neglects to attend and witness a search under this section; when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Indian Penal Code (45 of 1860).

EXPLANATION ON THE PROVISIONS OF SECTION 100 CR.P.C.

The provisions of Section 100 Cr PC are not mandatory in nature. The Search may be irregular or illegal but the contraband recovered in pursuance of such a search may constitute an offence. Irregular or illegal search does not mean that the recovery effected, in pursuance thereof, if amounts to the commission of an offence, would also become illegal.

1. The object of Section 100 Cr PC is two-fold:

   It provides for the right of free ingress in case of closed premises on demand and on production of the warrant of search by the police officer; and

   It seeks to ensure that searches are conducted fairly and squarely and that there is no "planting" of articles by the police.

   i. In order to achieve this object the law makes it obligatory, that at least two independent and respectable witnesses of the locality should be present. Only if no such persons are available or willing to be witness to search, then two such persons of another locality may attend and witness the search. The word "independent and respectable" will equally govern the latter case.

   ii. The search should be made in their presence; and the list of things seized in the search should be signed by them.

   iii. The occupant of the place searched or his representative should be permitted to attend during the search, and to have a copy of the list prepared.

2. When provisions of this section and Section165 of the Code are contravened, the search can be resisted by the persons whose premises are sought to be searched.

3. When a search has been conducted under this section, evidence can be given regarding the things seized in the course of the search and regarding the place in which they were found, in addition to the evidence of the list which the law directs to be drawn up relating to the particulars of the property found.

4. The provisions of sub-sec. (4) do not apply to a person when searched on a public road. Where the allegations were that the accused was in possession of charas, the police did not intend to search any place. The accused was also not present in or about any place intended to be searched, held S. 100 (4) did not apply in the case.

5. Where it appears from the evidence of PWs that in spite of requests made none of the shopkeepers and people present were willing to join the search party, no adverse inference would be drawn against the prosecution for failure to examine independent witness of the locality to search.

6. **Police witnesses -** When all witnesses belong to the Police Department and no effort was made to associate independent persons of the locality, conviction is not sustainable. It is unsafe to rely on the statements of police officials to convict persons wherever independent witnesses from the locality can be joined before carrying out the search and recovery, but in exceptional cases if the police officer is so trustworthy his evidence can be acted upon.

7. Where independent witnesses are not joined to witness search and seizure, it would not always be fatal. Where official witnesses join and prove search and seizure and they have no animus or hostility towards the accused, the accused cannot be acquitted for non-compliance of S. 100 (4) Cr.P.C.

- ✓ The decision of the Supreme Court of India in the case of *Sunder Singh v State of UP [AIR 1956 SC 411]* needs to be referred to, where in during search & Seizure, two persons not belonging to the locality, had been joined, at the time of search. It was contended by the defense counsel that since the provisions of Section 100(4) Cr PC were not complied with, at the time of search, the search and the consequent recovery became illegal and could not be taken into consideration. The Supreme Court held that assuming the persons, who actually witnessed the search, were not respectable inhabitants of the locality, that circumstance would not invalidate the search. It would only affect the weight of the evidence, in support of search and recovery. Hence, at the highest, the irregularity in search and recovery, in so far as the terms of Section 100 had not been fully complied with would not affect the legality of the proceedings.

- ✓ The Supreme Court of India in the case of *Puran Mal v Director of Inspection [1974 1 SCC 345]* held that the material obtained by an illegal search, is not inadmissible into evidence and can be acted upon to record a conviction.

- ✓ The Supreme Court of India in the case of *State v Jasbir Singh [1974 1 SCC 345]* held that the evidence collected in breach of the mandatory requirements, does not become inadmissible.

- ✓ ***On the question of discharge of the accused, the Supreme Court in State of Himachal Pradesh v. Pirthi Chand and another*** has laid down the following principles:

"The evidence collected in a search in violation of law does not become inadmissible in evidence under the Evidence Act. The consequence would be, that evidence discovered would be to prove unlawful possession of the contraband under the Act. It is founded in Panchnama to seize the contraband from the possession of the suspect/accused. Though the search may be illegal but the evidence collected i.e. Panchnama etc. nonetheless would be admissible at the trial. At the stage of filing charge-sheet it cannot be said that there is no evidence and the Magistrate or the Sessions Judge would be committing illegality to discharge the accused on the ground that Section 50 or other provisions have not been complied with. At the trial an opportunity would be available to the prosecution to prove that the search was conducted in accordance with law. Even if search is found to be in violation of law, what weight should be given to the evidence collected is yet another question to be gone into. Under these circumstances, the learned Sessions Judge was not justified in discharging the accused, after filing of the charge-sheet holding that mandatory requirements of Section 50 had not been complied with".

Section 165 - Search by Police-Officer

(1) Whenever an officer in-charge of a police station or a police officer making an investigation has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorized to investigate may be found in any place within the limits of the police station of which he is in-charge, or to which he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief and specifying in such writing, so far as possible, the thing for which search is to be made, search, or cause search to be made, for such thing in any place within the limits of such station.

(2) A police officer proceeding under sub-section (1), shall, if practicable, conduct the search in person.

(3) If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may, after recording in writing his reasons for so doing, require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing, specifying the place to be searched, and so far as possible, the thing for which search is to be made; and such subordinate officer may thereupon search for such thing in such place.

(4) The provisions of this Code as to search-warrants and the general provisions as to searches contained in section 100 shall, so far as may be, apply to a search made under this section.

(5) Copies of any record made under sub-section (1) or sub-section (3) shall forthwith be sent to the nearest Magistrate empowered to take cognizance of the offence, and the owner or occupier of the place searched shall, on application, be furnished, free of cost, with a copy of the same by the Magistrate.

SEARCHES UNDER NDPS ACT 1985

1. The searches under the NDPS Act by virtue of Section 51 of the Act have to be carried out under the provisions of Cr.P.C., particularly Sections 100 and 165. The irregularities, if any, committed like independent witnesses not being associated with or the witnesses not from the locality, while carrying out the searches etc. would not vitiate the trial. *[State of Punjab v Balbir Singh (1994) 3 SC 299]*

2. The officer empowered under the Act though is expected to record reasons of belief as required by Section 165 Cr.P.C. However, failure to do so cannot vitiate the trial particularly when S. 41 and S. 42 of the NDPS Act do not mandate the officer to record reasons while making search. *[State of Punjab v Balbir Singh (1994) 3 SC 299]*

3. Even if there is some procedural illegality in conducting the search and seizure, the evidence collected thereby will not become inadmissible and the Court would consider all the circumstances and find out whether any serious prejudice has been caused to the accused. *[Khet Singh v Union of India (2002)].*

4. If the search and seizure was in complete defiance of the law and procedure and there was any possibility of the evidence collected likely to have been tempered with or interpolated during the course of such search or seizure, then, it could be said that the evidence is not liable to be admissible in evidence. *[Khet Singh v Union of India (2002)].*

SECTION VII

BAIL
UNDER
NDPS ACT

<u>PART A</u>

OBTAINING BAIL IF CHARGE-SHEET NOT FILED WITHIN 180 DAYS

The issue is whether the respondent has an undefeatable right to be released on bail under Section 167(2) if the charge-sheet is not filed within 180 days of the incident.

1. Section 167 (2) Cr.P.C reads as under:

   "(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not, jurisdiction to try the case, from time to time, authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

   Provided that-

   (a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days; if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding,-

   (i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

   (ii) sixty days, where the investigation relates to any other offence,

   and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(b) no Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorize detention in the custody of the police.

Explanation I – For the avoidance of doubts, it is hereby declared that, not with-standing the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail.

Explanation II – If any question arises whether an accused person was produced before the Magistrate as required under clause (b), the production of the accused person may be proved by his signature on the order authorizing detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be.

Provided further that in case of a woman under eighteen years of age, the detention shall be authorized to be in custody of a remand home or recognized social institution.

The special provisions relating to Offences under NDPS Act are contained in Section 36-A of the Act, which are reproduced hereunder:

36-A Offences triable by Special Courts:-(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-

(a) all offences under this Act which are punishable with imprisonment for a term of more than three years shall be triable only by the Special Courts constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the Government;

(b) where a person accused of or suspected of the commission of an offence under this Act is forwarded to a Magistrate under sub-section (2) or sub-section (2-A) of Section 167 of the Code of Criminal Procedure, 1973, such Magistrate may authorize the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole. Where such Magistrate is an Executive Magistrate:

Provided that in cases which are triable by the Special Court where such Magistrate considers-

(i) when such person is forwarded to him as aforesaid; or

(ii) upon or at any time before the expiry of the period of detention authorized by him,

that the detention of such person is unnecessary; he shall order such person be forwarded to the Special Court having jurisdiction;

(c) the Special Court may exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under Section 167 of the Code of Criminal Procedure, 1973, in relation to an accused person in such case who has been forwarded to him under that section;

(d) a Special Court may, upon perusal of police report of the facts constituting an offence under this Act or upon complaint made by an officer of the Central Government or a State Government authorized in this behalf, take cognizance of that offence without the accused being committed to it for trial.

(2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.

(3) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under Section 439 of the Code of Criminal Procedure, 1973, and the High Court may exercise such powers including the power under clause (h) of sub-section (1) of that section as if the reference to "Magistrate" in that section included also a reference to a "Special Court" constituted under Section 36.

(4) In respect of persons accused of an offence punishable under <u>Section 19 or Section 24 or Section 27-A or for offences involving commercial quantity</u> the references in sub-section (2) of Section 167 of the Code of Criminal Procedure, 1973 (2 of 1974) thereof to "ninety days", where they occur, shall be construed as reference to **"one hundred and eighty days"**:

Provided that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Special Court may extend the said period up-to one year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days.

(5) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offences punishable under this Act with imprisonment for a term of not more than three years may be tried summarily.

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COMMENTS

2. A perusal of above provision would show that the jurisdiction of the Magistrate to detain the accused in judicial custody arises only when the accused is produced before him. One time detention which the Magistrate can authorize is of 15 days and the total detention varies according to the nature of offence.

3. The Magistrate has power of detention of 180 days in respect of an offence under NDPS Act. Beyond the prescribed period of 180 days in case of an offence under NDPS Act the Magistrate has no power to extend detention unless challan is filed.

4. The power to authorize detention by the Magistrate extinguishes on 180^{th} day and the law provides that he shall pass an order of his release on bail and on accused furnishing bail bond as per order, he shall be released on bail.

5. The power of Magistrate to authorize detention again starts when challan is filed and the Magistrate takes cognizance of the offence.

6. Thus, after expiry of 180 days, the Magistrate has not to wait for bail application but has to pass an order for bail and ask the accused to furnish bail bonds so that he can be set at liberty.

7. However, if before the accused furnishes the bail bonds, the investigating agency files challan, the Magistrate per se has to take cognizance of the offence and take cognizance of the facts and circumstances under which the offence was allegedly committed by the accused and the investigating agency can very well press that since the bail bond of the accused has not been furnished, he be not released on bail under Section 167(2) Cr.P.C. and the accused be kept in custody and his bail application be decided on merits.

8. While the accused has a right to be released on bail after 60,90 or 180 days, as the case may be, the State also has a right to detain the accused on filing of challan and accused is entitled to bail only on merits.

9. This position was clarified by the Supreme Court in ***Sanjay Dutt* v *State* 1994(5) *SC 410*** whereby the Supreme Court observed that undefeatable right of the accused to be released on bail arising from the default in not producing the challan continues till filing of challan but does not survive thereafter and after filing of challan, grant of bail has to be decided on merits.

10. The judgment in the case of ***Uday Mohan Lal Acharya* v *State* of *Maharashtra, AIR 2001* SC *1910*** which is a judgment by three Judges Bench of Supreme Court and by a majority of 2:1, the Supreme Court observed that Sanjay Dutt's case has to be understood in the manner that Magistrate has to dispose of such application made by accused forthwith if the accused has been in custody without filing of charge sheet within the specified period and that accused was prepared to furnish bail bonds. If after filing of application by the accused, the charge sheet has been filed, still the right of the accused under Section 167(2) Cr.P.C shall continue.

11. ***Uday Mohan Lal's*** does not overrule Sanjay Dutt's case nor the smaller Bench could overrule law laid down by Constitutional Bench. The judgment given by the Constitutional Bench of Supreme Court (Five Judges) in Sanjay Dutt's case is very clear that his right of being released on bail without merits is available only after statutory period as given under Section 167(2) Cr.P.C. for extending remand has expired till the charge sheet is filed by the prosecution.

12. It is not the right of the accused which is defined in Section 167(2), it is the authority of the Magistrate to extend remand which is defined in Section 167(2).

13. The authority of Magistrate to extent remand of such an accused is up to 180 days in NDPS Cases, in absence of filing of charge sheet, but once the charge sheet is filed this authority again gets vested in the Magistrate and after filing of charge sheet, the Magistrate can decide the bail application only on the basis of merits i.e. facts and circumstances of the case.

14. The start of period of 180 days under Section 167(2) is to be considered from the date of production of accused before the Magistrate and not from the date of incident.

In Rajnikant jivanlal Patel and another v. Intelligence officer, Narcotic control Bureau, New Delhi the accused, arrested for offences punishable under sections 21, 23 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 *were enlarged on bail by magistrate on failure of the prosecution to present the challan within 90 days under proviso to section 167 (2) Cr.P.C. The High Court cancelled the bail order.*

***While upholding the order of the High Court, the Supreme Court of India observed*:**

"An order for release on bail under proviso (a) to S. 167 (2) may appropriately be termed as an, order-on-default. Indeed, it is a release on bail on the default of the prosecution in filing charge-sheet within the prescribed period the right to bail, under Sec.167 (2) proviso (a) thereto, is absolute. It is legislative command and not court's discretion. If the investigating agency fails to charge-sheet before the expiry of 90/60 days, as the case may be, the accused in custody should be released on bail. But at that stage merits of the case are not to be examined. Not at all In fact, the magistrate has no power to remand a person beyond the stipulated period of 90/60 days. He must pass an order of bail and communicate the same to the accused to furnish the requisite bail bonds. The accused cannot, therefore, claim any special right to remain on bail.If the investigation reveals that the accused has committed a serious offence and charge-sheet is filed, the bail granted under proviso (a) to s. 167 (2) could be cancelled".

PART B

GRANT OF REGULAR BAIL UNDER NDPS ACT

1. For understanding the bail provisions it is important to extract the relevant Section of the Act, which reads as under:

Section 37 - Offences to be cognizable and non-bailable - (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) –

(a) **every offence punishable under this Act shall be cognizable;**

(b) no person accused of an offence punishable for [offences under Section 19 or section 24 or section 27-A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail."

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.]

COMMENTS

2. The application for regular bail is moved to the Court under Section 439 of Criminal Procedure Code after filing of the charge-sheet in connection with the N.D.P.S. cases.

3. The body of Section 37 is silent as to whether an offence under the Narcotic Drugs and Psychotropic Substances Act is bailable or non bailable. Section 37(1)(b) speaks of a special provision in relation to certain offences under the Narcotic Drugs and Psychotropic Substances Act. Offences under Section 19 or 24 or 27A and also offences involving commercial quantity are governed by the special provisions stipulated in Section 37(1)(b) with regard to the grant of bail. Section 37(2) reiterates that the limitation in clause (b) is in addition to the limitations under the Cr.P.C.

Comments on the Head Note of Section 37 and the language of the Section

4. The head note of Section 37 clearly shows that all offences under the Narcotic Drugs and Psychotropic Substances act are cognizable and bailable. It is true that the head note read thus

   "***Offences to be Cognizable and non-bailable***"

   In the body of Section 37, there is nothing that declares that all offences under the Narcotic Drugs and Psychotropic Substances Act shall be non bailable but the head note suggests such a possibility. There is clear, apparent and evident incongruity between the head note and the body of Section 37.

   The question is what would prevail.

   The statements of objects and reasons in the amendment Act 2 of 1989 by which Section 37 was amended, does also make it clear that the legislative exercises of amendment was inter alai "<u>to provide that the offences shall be cognizable and non bailable</u>". Clause 2(vii) stipulates that the purpose of amendment was to provide that the offences shall be cognizable and non bailable. The earlier Section 37 was amended in 1989 to include this head note.

Thus it is seen that the objects and reasons as also the head note indicate and suggest that all offences under the Narcotic Drugs and Psychotropic Substances Act are non bailable whereas the clear and unambiguous stipulations in the body of Section 37 do not lead to such a conclusion.

It is not necessary to search for the principle of law applicable. It is axiomatic in the interpretation of statues that when the enacted provision of the statute in the body of the statutory provisions leads to a particular conclusion, the head note or the objects and reasons cannot nullify or modify the effect of the enacted provisions in the body of the statute. Where there is confusion or ambiguity arising from the words used in the statutory provisions, certainly external aids like head note and objects and reasons can be made use of. When the statutory provision is clear, cogent and unambiguous, it is impressible to resort to external aids like the head note, marginal note or the objects and reasons to come to a conclusion contrary to the conclusion which a plain reading of the statutory provisions yields.

The Supreme Court had occasion to consider this question in the decision in *Frick India Ltd v. Union of India [AIR 1990 S.C. 689]* in para 8 of the said decision, it is unambiguously held that the head-note cannot modify the plain meaning in the statutory provisions. The following words appear in para 8:

"It is well settled that the headings prefixed to sections or entries cannot control the plain words of the provision; they cannot also be referred to for the purpose of construing the provision when the words used in the provision are clear and unambiguous; nor can they be used for cutting down the plain meaning of the words in the provision. Only, in the case of ambiguity or doubt the heading or sub-heading may be referred to as an aid in construing the provision but even in such a case it could not be used for cutting down the wide application of the clear words used in the provision".

5. **BAILABLE OFFENCES WHERE PUNISHMENT IS LESS THAN THREE YEARS UNDER NDPS ACT**

- Going by section 36A of the Act, all offences under the act, punishable with imprisonment for a period of more than three years shall be tri-able only by the Special Court.

- Taking an example, an offence under the Act, involving small quantity, is punishable as per Section 20(A) with rigorous imprisonment for a term which may extend up-to six months only.

- The last entry in Part II of the Schedule to the Code of Criminal Procedure, 1973, provides that offences under laws other than Indian Penal Code, punishable with imprisonment for less than three years or with fine shall be 'Non-cognizable and 'Bail-able' to be tried by 'Any Magistrate'.

- The offence under the NDPS Act is made tri-able by a Special Court, in terms of Section 36A (1)(a) of the Act, if it is "punishable with imprisonment for a term of more than three years".

- Of course, all offences under the Act are cognizable going by Section 37(1) (a) of the Act, except to that extent, for trial of the offences, the provisions in the Code of Criminal Procedure, 1973, shall be applied going by Section 4(2) of that Code.

- So, the offences under the Act, which are punishable with imprisonment of a term not exceeding three years, are bail-able offences.

6. The Court is not required to appreciate and scrutinize the evidence in detail for the purpose of deciding the bail application. However, for deciding the prima-facie case suggesting the involvement of the applicant-accused, few facts and material are required to be considered.

JUDGMENT OF THE SUPREME COURT ON GRANT OF BAIL BEFORE THE 2001 AMENDMENT ACT

- ✓ On the question of grant of bail to the persons accused of the commission of the offences under the Act, in ***Narcotic Control Bureau v. Kishan Lal and others*** *the Supreme Court laid down the following propositions of law:-*

"Section 37 of the Narcotic Drugs and psychotropic substances act 1985 (as amended) starts with a non-obstinate clause stating that notwithstanding anything contained in the Code of Criminal Procedure, 1973, no person accused of an offence prescribed there in shall be released on bail unless the conditions contained therein are satisfied. The NDPS Act is a special enactment and was enacted with a view to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances. That being the underlying object and particularly when the provisions of section 37 of NDPS Act are in negative terms limiting the scope of the applicability of the provisions of Cr.P.C regarding bail, it cannot be said that High Court's powers to grant bail under section 439 Cr.P.C. are not subject to the limitations mentioned under Section 37 of the NDPS Act".

OFFENCES
UNDER
NDPS ACT

OFFENCES UNDER NDPS ACT

SECTION WISE TABLE FOR PUNISHMENTS

Sr. No.	Section	Nature of Offence	Punishment			
			Minimum		Maximum	
			Imprison-ment (R.I.)	Fine (In Rs.)	Imprison-ment (R.I.)	Fine (In Rs.)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	Section 15	Contravention in relation to poppy straw, involving:-				
		(i) Small quantity	-	-	6 months	10,000
		(ii) Qty. between Small and commercial	-	-	10 years	1,00,000
		(iii) Commercial quantity	10 years	1,00,000	20 years	2,00,000
2.	Section 16	Contravention in relation to coca plant and coca leaves	-	-	10 years	1,00,000
3.	Section 17	Contravention in relation to prepared opium, involving:-				
		(i) Small quantity	-	-	6 months	10,000
		(ii) Quantity between small and commercial	-	-	10 years	1,00,000
		(iii) Commercial quantity	10 years	1,00,000	20 years	2,00,000
4.	Section 18	Contravention in relation to opium poppy and opium, involving:-				
		(i) Small quantity	-	-	6 months	10,000
		(ii) Commercial quantity	-	-	20 years	2,00,000
		(iii) Cultivation of opium poppy or in any other case	10 years	1,00,000	10 years	1,00,000

5.	Section 19	Embezzlement of opium by cultivators.	10 years	1,00,000	20 years	2,00,000
6.	Section 20	Contravention in relation to cannabis plant and cannabis:- (i) Cultivation of cannabis plant (ii) Small quantity (iii) Quantity between small and commercial quantity (iv) Commercial quantity	 - - - 10 years	 - - - 1,00,000	 10 years 6 months 10 years 20 years	 1,00,000 10,000 1,00,000 2,00,000
7.	Section 21	Contravention in relation to manufactured drugs and preparations, involving:- (i) Small quantity (ii) Quantity between small and commercial quantity (iii) Commercial quantity	 - - 10 years	 - - 1,00,000	 6 months 10 years 20 years	 10,000 1,00,000 2,00,000
8.	Section 22	Contravention in relation to psychotropic substances involving:- (i) Small quantity (ii) Quantity between small & commercial quantity (iii) Commercial quantity	 - - 10 years	 - - 1,00,000	 6 months 10 years 20 years	 10,000 1,00,000 2,00,000

9.	Section 23	Illegal import into India, export from India or transsHipment of narcotic substances, involving:- (i) Small quantity (ii) Quantity between small & commercial quantity (iii) Commercial quantity	 - - 10 years	 - - 1,00,000	 6 months 10 years 20 years	 10,000 1,00,000 2,00,000
10.	Section 24	External dealings in narcotic drugs and psychotropic substances in contravention of Sec. 21	10 years	1,00,000	20 years	2,00,000
11.	Section 25	Allowing premises, etc. to be used for commission of an offence	Punishment same as provided for the offence, for the commission of which premises were used			
12.	Sec. 25-A	Contravention of orders made under Section 9-A	-	-	10 years	1,00,000
13.	Section 26	Certain act by licensee or his servant	-	-	3 years	unlimited fine
14.	Section 27	Consumption of any narcotic drugs or psychotropic substances:- (i) Narcotic drugs or psychotropic substances consumed is cocaine, morphine, diacetyl morphine or any other narcotic drugs or any psychotropic substance	 - 	 - 	 1 years	 20,000

		(ii) Narcotic drugs or psychotropic substance consumed is other is other than those specified in or under clause (a)	-	-	6 months	10,000
15.	Sec. 27-A	Financial illicit traffic and harbouring offenders	10 years	1,00,000	20 years	2,00,000
16.	Section 28	Attempts to commit offences	Punishment same as provided for the offence which was attempted			
17.	Section 29	Abetment and criminal conspiracy	Punishment same as provided for the offence which was abetted or for the criminal conspiracy			
18.	Section 30	Preparation (constitutes an offence punishable under Sections 19, 24, 27-A and for offences involving commercial quantity of any narcotic drugs or psychotropic substance)	5 years	50,000	10 years	1,00,000
19.	Section 31	Enhancement of punishment for offences after previous conviction:- (i) any person convicted for abetment or criminal conspiracy (ii) where person convicted referred to in sub section (1)	 - Half of the minimum terms	 - Half of the minimum amount of fine	 Half of the maximum term	 Half of the maximum amount of fine
20.	Sec. 31-A	Death penalty for certain offences after previous conviction- Financing, directly or indirectly, any of the activities specified in clause (a)	DEATH PENALTY			

21.	Section 32	Offence for which no punishment is provided	-	-	6 months	unlimited
22.	Section 58	For vexatious entry, search, seizure or arrest: (i) Vexatiously or unnecessarily detains, searches or arrest any person (ii) Maliciously giving false information for causing an arrest or search	 - -	 - -	 6 months 2 years	 1,000 unlimited
23.	Section 59	Failure of officer in duty at his connivance at the provisions of this Act- (i) seizes or refuses to perform or withdraw from his duties of his office (ii) Wilfully adds in, or connives at, the contravention of and provision of this Act, or any rule or order	 - 10 years	 - 1,00,000	 1 year 20 years	 unlimited 2,00,000
24.	Sec. 68-K	Fine in lieu of forfeiture	Fine equal to the market value of the illegally acquired property.			
25.	Sec. 68-Y	Acquiring property in relation to which proceedings have been taken under Chapter V-A of this Act.			5 years	50,000

DEFINING SMALL AND COMMERCIAL QUANTITIES

Commercial quantity as per Section 2 (vii-a), in relation to narcotic drugs and psychotropic substances, means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette;

Small quantity as per Section 2 (xiii-a), in relation to narcotic drugs and psychotropic substances, means any quantity lesser than the quantity specified by the Central Government by notification in the Official Gazette;

The Central Government has specified the Commercial and Small quantities vide Notification dated S.O. 1055(E), dated 19th October, 2001. In the Table given in the said notification, small and commercial quantities have been specified in Column (5) and (6) respectively.

Chapter 4

INVESTIGATIONS UNDER NDPS ACT

1. There are generally five stages in the investigation and trial of a case, under the NDPS Act.

   (a) Information
   (b) Investigation
   (c) Search, seizure and arrest
   (d) Submission of final report to the court and
   (e) Trial of the case in the Court.

2. In these the possession and search are of vital importance. As stringent punishments have been provided for the offences under the Narcotic Drugs and Psychotropic Substances Act, 1985 with minimum punishment of rigorous imprisonment for ten years and fine of rupees one lac for most of the offences, the Parliament, in its wisdom, has imposed corresponding strict special procedure to be adopted at the time of search, seizure and arrest of the culprits in Chapter V of the Act.

3. It is not out of place to mention here that the experience has shown that the Act has not yielded the desired results and a large number of cases instituted for various offences under the Act have ended in acquittal not on merits but on technical grounds of non-compliance of mandatory provisions of sections 42 and 50 of the Act and in some cases on the prejudice caused to the accused for non-compliance of the directory provisions of sections 52, 55 and 57 of the Act and the like.

4. The investigating officer must understand before starting the investigation of a case the Act that the investigation is not an end but means to find out the truth.

5. A good investigating officer must know right steps to be taken for conducting the search and seizure in strict conformity of the relevant provision. To avoid acquittal on technical grounds of non-compliance of mandatory or directory provisions, he should not only strictly comply with mandatory provisions of sections 42 and 50 of the Act but also the directory provisions incorporated in sections 52, 55, 57 and the like in the Code of Criminal Procedure as far as applicable.

6. Moreover, he must ensure that the LINK EVIDENCE of the Sample being analyzed by the chemical examiner, should be complete including taking of the sample and property to the S.H.O and sealing by S.H.O with his seal, deposit of the same intact in the malkhana and sending of the sample to chemical examiner etc.

FLOW CHART OF VARIOUS STAGES IN NDPS CASES

1. Receipt of Secret Information;
2. Recording the Information and Communicating to senior official;
3. Conducting Raid
4. Disclosure Statement to be obtained with Independent Witnesses;
5. Informing Higher Authorities – Gazetted Officer / Magistrate;
6. Samples to be taken vide Recovery Memo, Panchnama and attested by witnesses; Seals to be affixed;
7. Form No. 29 CFSL to be prepared on site
8. Ruqa to be sent to Police Station along with samples;
9. Site Plan to be prepared and statements to be recorded;
10. FIR to be registered;
11. Accused to be arrested after communicating grounds of arrest;
12. Charge Sheet to be presented before Empowered Court;
13. Examining the Prosecution Witnesses;
14. Got marking the Chemical Examiner's Report with no Missing Link;
15. Recording the statement of the accused u/s 313 Cr PC;
16. Closing the prosecution evidence.

SUGGESTIVE GUIDELINES FOR CONDUCTING RAID/SEARCH UNDER NDPS ACT

GENERAL GUIDELINES

1. All officers deployed for search should carry their Identity Cards.

2. Leader of each team should have a search authorization.

3. As far as possible there should be a pre-planning before carrying out the search/raid. Pre-Planning will include survey of the area/place, where the search/raid has to be undertaken. This pre-planning is essential for effective deployment of staff to achieve maximum result.

4. The officer-in-charge of the search should deploy his officers in such a manner that all the entrances/exists are properly guarded so as to prohibit any person coming in/going out of the premises.

5. All incoming telephone calls should be received by the searching officers only. No person within the premises should be allowed to talk on phone with any person outside.

6. Immediate on entering the premises, the occupants should be instructed not to converse about the business of search with each other.

7. The list of documents/records mentioned for recovery should be gone through carefully. The searching officers should examine every document and record and decide its worth for purposes of recovery.

8. Samples should be drawn.

9. The documents/records to be seized should be properly numbered serially and a brief description of the file/records and the period to which it belongs should be mentioned in the *Panchnama*.

10. The statements of the persons concerned should be recorded on the date of search itself, least they may be tutored by the party. For this purpose, a brief and immediate scrutiny of the records/documents should be done.

11. Soon after the commencement of the search the contact telephone number of the party should be given to the officer, who is monitoring the search/raid. He should be appraised about the commencement of the search and its progress from time to time and the important material have come to notice so far. Before withdrawal from the search as far as possible clearance from the same officer should be taken unless the search/raiding party has already briefed in this regard.

12. Seized documents/records should be handed over to the assigned' person under proper receipt. Each search/raid party should invariably carry with them a drug identification/testing kit / weighing scale from the Police Station, if possible and they should also have bag containing certain essentials like screw driver, torch, flash light, mirror, walkie-talkie, binocular, night vision devices, hand cuffs, seal /sealing materials, emergency medical kit, etc.

PANCHNAMA (SEIZURE MEMO)

1. Name, occupation, age and address of *panchas*.
2. Time, date and place of start of proceedings.
3. Reason for search.
4. Authority for search.
5. Identify yourself by showing identity card.
6. Mention names of a few other officers included in the search party.
7. Offer personal search of each member.
8. Mention presence of the occupants of the premises/person to be searched.
9. Before conducting personal search ask the person whether he would like to be taken before a gazetted officer or a magistrate. A letter by the officer conducting personal search of the persons should be given in writing and at the same time a written consent should also be taken from them.
10. Mention description of place to be searched e.g. area of flat, number of rooms, telephone no. etc.
11. Ask the person to be searched to give declaration of this baggage wherever necessary e.g. whether he is having any contraband.
12. Give graphic description of the search operation e.g. who opened the suitcase, who had the key, from where the incriminating documents or contraband was recovered, how it was concealed etc.
13. Test drugs with field testing kit and mention results.
14. Mention where and how the weighment of contraband goods was done. Give Gross weight, Net weight.
15. Mention value of contraband to be seized.

16. Mention no. of samples drawn and their weight, what identification marks were given to contraband exhibits, samples and documents proposed to be seized/taken over.

17. Mention "Nothing else was taken over" or "Religious feelings hurt."

18. Mention time of conclusion of PANCHNAMA.

19. Offer personal search on conclusion of search before leaving the place of search.

20. Take photographs, finger prints wherever possible.

21. Mention money and valuables given back to the person searched or seal them for handing over later in the court.

22. Seal contraband and exhibits mentioning seal Number.

23. Take signature of panchas, officer writing the *panchnama* and the person being searched on labels pasted on contraband, exhibits and documents.

24. Mention under what provisions the seizure was done.

25. Mention any important events taking place during search e.g. Arrival of more officers/persons etc.

26. Give a copy of *panchnama* of the persons searched and obtain his receipt.

DETAILS OF DRUGS SEIZED

1. Note the exact date and place of recovery. Record the weight and type of the drug.

2. Describe the wrapper: material, colour, trademark, subsequent markings, number of parcels making up the whole amount.

3. Note the means of transport used and the hiding place.

4. Seize the vehicle, and make a complete and thorough search of it.

SPECIAL POINTS IN CASE OF FOREIGN NATIONALS

1. Check his passport carefully. Are there any signs of alteration: e.g. Erasures (transparency), insertion, missing pages, restrictions on travel?
2. For nationals of certain countries: do they have appropriate visas?
3. Has he several different passports?
4. If they bear the photograph of person concerned, but give particulars of different identities?
5. From whom did he obtain these passports?

   Where and when did he obtain them?

   How much did he pay for them?

   For what purposes has he used them? Where? When?

   On what date did he enter the country?

   At which border check-point?

   Where has he stayed since?

6. Note the frontiers crossed (dates and places of Immigration /Emigration stamps).

   In case of Foreign Nationals, the information should be sent to all the countries that may be concerned, because of the nationality of the individuals arrested, their place of residence, the point of departure or destination of the drug, the place of transit, or for any other reason, all information liable to be of interest, or to suggest lines of enquiry which will produce useful results for the investigators working on the case. Do not fail to send the photographs and fingerprints of all persons arrested.

RECORDING STATEMENTS UNDER NDPS ACT

Questions to be asked while recording Statement under NDPS Act

(A) Basic Questions

a) Does he know the type of drug he was carrying?

b) Who gave it to him? Where? When?

c) Through which towns and along which roads did he travel before reaching the place where the drug was seized?

d) Where did he stay on the journey?

e) At which hotels?

(B) Further Details

a) To whom was he to have handed the drug? Where? When?

b) Is there a prearranged code so that the carrier and the intended recipient recognize each other *(e.g. Words, signs, or an article to show)*?

c) What was he to have been paid? When? Where?

d) Obtain details that can lead to the identification of the individuals involved *(First names, family names, description, accents, origins, etc.).*

Full use of all the information obtained during the investigations should be made.

PROCEDURAL ASPECTS OF NARCOTICS SEIZURE CASES

1. Statement of co-accused cannot be used unless corroborated by independent evidence.

2. Stock witness should be avoided. Choice of *panach* witness should be proper and generally from the place around the seizure or search. Absence of independent witness will adversely affect the prosecution for non compliance of the requirement of section 52 and 55 NDPS.

3. The seized goods should be sealed and deposited immediately within 24 hours of the seizure.

   Report of the seizure made should be sent immediately to the superior officer.

4. Provision of section 167(2) of the Cr.PC of enlarging on bail will not be applicable to NDPS. Charge Sheet is to be filed within 180 days.

5. The intelligence or information received must be recorded in writing and should be put up to his senior officer, as required under section 42 (2) of the NDPS Act.

   Generally the officer who receives intelligence should not conduct search and also do investigation.

   A report of arrest and seizure should be submitted to the immediate superior officer within 48 hours as required under section 57 of this Act.

   Therefore the officer receiving the information must put the date and time below, the report of recording the information, similarly the superior officer receiving this report should also put the date and time below his signature.

6. Suspicion is no substitute for proof. Even if we know that the person is involved, evidence has to be collected to prove that suspicion. Vagueness is not permitted as the benefit of doubt will go to the accused.

7. If narcotics have come to the accused from outside the border then the offence of importing is complete.

8. Non compliance of section 50 would vitiate the trial and render conviction unsustainable. The accused must be asked in writing his choice should be recorded and his signature obtained on that paper, and also the fact that he was given the choice of being taken before a gazetted Officer or Judicial Magistrate should be incorporated in the *panchanama*.

9. If several persons are residing in the place from where the drug is seized then the possession of the drugs from the accused should be proved and the control of the premises should be proved beyond doubt. If there is a possibility of more than person dealing with the goods the nexus must be proved between the accused and the object.

10. Under section 35 (2) and 54 the burden of proof will be on the accused from whose possession the drug was recovered. The possession factor will ensure punishment and ownership in that case need not proved.

    If seizure is not believed, the possession will not be believed by the court. Hence the panchanama should be correct when seizure is made. Possession of premises, and contraband was brought there and that he was dealing in it are the required ingredients.

11. Extra Judicial confession is not a voluntary statement.

12. Punishment under NDPS for contravention of psychotropic drugs is 10 years extendable upto 20 years and fine of 1 lakh extendable to 2 lakhs

13. It is required that the offence should have been committed knowingly with culpable mental state under section 36, 54 and 60 (3) and this should be proved by positive evidence or circumstantial evidence before *mens rea* can be established.

14. Section 107 and 120-B of I.P.C. deals with abetment and conspiracy, while section 120-A deals with criminal conspiracy.

    The requirements of an abettor:

    (1) There must be a abettor.
    (2) He must abet.
    (3) The abetment must be an offence.

    Investigation is tantamount to abetment.

    In order to constitute a conspiracy four things are necessary

    (1) At least two persons
    (2) They must engage in the commission of an act
    (3) The act or omission must have taken place in order to do a thing.
    (4) The act or omission must take place in pursuance of that conspiracy, knowledge or common design.

15. Draw up a rough sketch of the place from where the drugs are seized, this should be made a part of the *panchanama* and take the signatures of the witness and the person from whom the drugs are seized.

Landmark Judgment from Investigation Perspective

In state of Punjab v. Balbir Sinqh, the Constitution Bench of Supreme Court while examining the steps to be taken by the investigating officer went into the question as to which provisions are mandatory and which are directory and concluded thus-

(1) If a police officer without any prior information as contemplated under the provisions of the NDPS Act makes a search or arrests a person in the normal course of investigation into an offence or suspected offences as provided under the provisions of Cr.P.C and when such search is completed at that stage Section 50 of the NDPS Act would not be attracted and the question of complying with the requirements there under would not arise.

(2) If during such search or arrest there is a chance recovery of any narcotic drug or psychotropic substance then the police officer, who is not empowered, should inform the empowered officer who should thereafter proceed in accordance with the provisions of the NDPS Act If he happens to be an empowered officer also, then from that stage onwards, he should carry out the investigation in accordance with the other provisions the NDPS Act.

(3) Under Section 41 (1) only an empowered Magistrate can issue warrant for the arrest or for the search in respect of offences punishable under Chapter IV of the Act etc., when he has reason to believe that such offences have been committed or such substances are kept or concealed in any building, conveyance or place. When such warrant for arrest or for search is issued by a Magistrate who is not empowered then such search or arrest if carried out would be illegal.

(4) Likewise only empowered officer or duly authorized officers as enumerated in Sections 41 (2) and 42 (1) can act under the provisions of the NDPS Act. If such arrest or search is made under the provisions of the NDPS Act by anyone other than such officers, the same would be illegal.

(5) Under Section 41 (2) only the empowered officer can give the authorization to his subordinate officer to carry out the arrest of a person or search as mentioned therein. If there is a contravention, that would affect the prosecution case and vitiate the conviction.

(6) Under Section 42 (1) the empowered officer if has a prior information given by any person, that should necessarily be taken down in writing But if he has reason to believe from personal knowledge that offences under Chapter IV have been committed or materials which may furnish evidence of commission of such offences are concealed in any building etc., he may carry out the arrest or search without a warrant between sunrise and sunset and this provision does not mandate that he should record his reasons of belief. But under the proviso to Section 42 (1) if such officer has to carry out such search between sunset and sunrise, he must record the grounds of his belief.

To this extent these provisions are mandatory and contravention of the same would affect the prosecution case and vitiate the trial.

(7) Under Section 42 (2) such empowered officer who takes down any information in writing or records the grounds under proviso to Section 42 (1) should forthwith send a copy thereof to his immediate official superior. If there is total non-compliance of this provision the same affects the prosecution case. To that extent it is mandatory. But if there is delay whether it was undue or whether the same has been explained or not, will be a question of fact in each case.

(8) If a police officer even if he happens to be an "empowered" officer while effecting an arrest or search during normal investigation into offences purely under the provisions of Cr.PC fails to strictly comply with the provisions of Sections 100 and 165 Cr.PC including the requirement to record reasons, such failure would only amount to an irregularity.

(9) If an empowered officer or an authorized officer under Section 41 (2) of the Act carries out a search, he would be doing so under the provisions of Cr.PC namely Sections 100 and 165 Cr.PC and if there is no strict compliance with the provisions of Cr.PC then such search would not per se be illegal and would not vitiate the trial.

The effect of such failure has to be borne in mind by the courts while appreciating the evidence in the facts and circumstances of each case.

(10) On prior information the empowered officer or authorized officer while acting under Sections 41 (2) or 42 should comply with the provisions of Section 50 before the search of the person is made and such person should be informed that if he so requires, he shall be produced before a Gazetted Officer or a Magistrate as provided there under.

It is obligatory on the part of such officer to inform the person to be searched. Failure to inform the person to be searched and if' such person so requires, failure to take him to the Gazetted Officer or the Magistrate, would amount to non-compliance of Section 50 which is mandatory and thus it would affect the prosecution case and vitiate the trial. After being so informed whether such person opted for such a course or not would be a question of fact.

(11) The provisions of Sections 52 and 57 which deal with the steps to be taken by the officers after making arrest or seizure under Sections 41 to 44 are by themselves not mandatory. If there is non-compliance or if there are lapses

like delay etc. then the same has to be examined to see whether any prejudice has been caused to the accused and such failure will have a bearing on the appreciation of evidence regarding arrest or seizure as well as on merits of the case.

It may be pointed out at this stage that Kerala High Court in ***V. Mohd. Bashir v. State*** has misread the Judgment of the Supreme Court in holding that the search made under Section 43 in respect of Section 50 is not attracted.

The above discussion makes it clear that the empowered officers have important duties to perform under the provisions of the Act particularly when section 42 and section 50 are held mandatory. Even in respect of the provisions held directory they cannot slacken, although mandatory provisions of section 42 and section 50 are most important and must be complied with by the empowered officers.

The nature of non-compliance of section 50 leading to many acquittals has to be examined carefully. Section 50 lays down that any duly authorized officer who is about to search any person, if he so requires take him without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in section 42 or to the nearest magistrate and if such requisition is made by the person to be searched, the authorized officer concerned can detain him until he can produce him before such Gazetted Officer or the Magistrate and thereafter the search should be conducted.

It is held that it is a valuable right given to such a person and that though the section does not say so in clear terms yet the person must be told about his right and failure to do so results in non-compliance of section 50. Whether such person was informed or not would always be a question of fact depending upon the oral assertions and counter assertion made by the accursed and the searching officer and the non-compliance has led to many acquittals.

The other types of non-compliance resulting in acquittals as noticed by the, courts are of highly technical nature. In some cases, the accused were acquitted on the grounds that the notice given by the investigating officer only mentioned the word "magistrate" and in some cases only the word "gazetted officer" yet in other cases words magistrate or gazetted police officer.

In such Cases the accused were acquitted by holding that the notice was not complete and in consonance with the provisions of Section 50 of the Act.

Chapter V

PROSECUTION UNDER NDPS ACT

Difficulties observed in NDPC Cases by Prosecuting Agencies

Introduction

The Narcotics Drugs and Psychotropic Substances Act, 1985 was enacted as a special Act on the lines of socio-economic offences Acts where certain presumptions were incorporated in the favour of the prosecution- the unusual presumption in normal criminal laws. The Act gave enormous powers to the investigating officers with only few steps in procedure to be followed carefully. This law mandated severe punishments leaving little discretion to the courts in awarding punishment, if a man is found guilty. The courts came up with the maxim of *"strict proof for severe punishment"* and looked into all technical aspects before awarding punishment. The NDPS Act 1985 was, therefore, amended to rationalize the punishment with the quantum of drug seized and to do away with the misuse of the provisions by the enforcement agencies.

Enforcement agencies face numerous difficulties in the implementation of the Act which can be classified into:

(i) legal difficulties; and

(ii) field work related difficulties

Legal Difficulties

1. Difficulties in finding independent witnesses

It is rather difficult to find independent witnesses who volunteer themselves during searches and seizures due to a variety of reasons such as:

- Threats from the accused
- Long periods of time taken in attending courts
- Lack of concern for the problems posed by drugs to the society

Often, the accused even bribe the witnesses to turn hostile to the prosecution. Since nakas are organized at a number of places, it is difficult to associate an independent witness at every Naka. The law, however, requires an independent witness even to search a vehicle or person during a Naka. It is difficult to associate witnesses in each and every case.

2. Possession of precursor chemical is not an offence

A plain reading of Sections 9A, 25A and 54 of NDPS Act does not give the impression that unauthorized possession of a precursor chemical is an offence. The law only requires persons such as manufacturers, importers, exporters, consumers and dealers to maintain records and file reports to the Zonal Director of NCB. The seller only is responsible to ensure the identity and purpose of the buyer. He is under no obligation to intimate the purpose of the buyer to the Zonal Director of NCB.

On the other hand, if there is shortage of the precursor chemical, there is no adverse presumption against the person regarding it has been diverted for illegal manufacture of drugs. Thus, neither a person found with excess stocks of any Controlled Substance nor one found with deficient stocks of these substances can be prosecuted under the law. A rebuttable legal presumption must be introduced that if any person is found with unexplained stocks of a controlled substance, it shall be presumed to be meant for sale to illicit drug manufacturers. Conversely, if the stocks are found to be short, it should be presumed that the short precursors have been diverted for illicit manufacture of drugs.

3. Bail Provisions

One of the key features of the NDPS Act is stringent bail provisions. Courts cannot grant bail to those accused of offences under Sections 19, 24 or 27A and for offences involving commercial quantities. The term 'commercial quantity' applies only to drugs and not precursors under the NDPS Act. If precursor chemicals are seized in large quantities from a person, the strict bail provisions u/s 37 of the NDPS Act, 1985 do not apply. There is a need to include offences under Section 25A in Section 37 of the NDPS Act, 1985.

4. Pre-trial disposal

Section 52A of the NDPS Act provides for the pre-trial disposal of the narcotic drugs and psychotropic substances but not of controlled substances. Precursor chemicals are useful to the society and their early disposal avoids deterioration, minimizes wastage and contributes to the exchequer. Hence pre-trail disposal should be made applicable to controlled substances as well. If the accused are acquitted in the trial, the sale proceeds can be returned to the owner in lieu of the seized substance.

5. Disposal of vehicles

Often, vehicles are seized along with drugs or precursors. Section 52A which deals with pre-trial disposal does not apply to vehicles and as a result, vehicles keep lying with the enforcement agency for years, till the case is disposed. The vehicle not only depreciates in the interim but it also costs money to store it. Therefore, Section 52A may be made applicable for seized conveyances as well. The sale proceeds of the vehicle may be released to the owner if the court finally releases the vehicle.

Field work related difficulties

These difficulties can be removed if the Government pays more attention to the problems and provides funds and infrastructure.

1. Drug Detection Kits

Drug detection kits cost between Rs. 3,200/each and have a shelf life of 6 months from the date of manufacture. State police often do not have funds for the kits and when they are supplied. They expire with-in 3-4 months from the date of supply as some time is lost in supplying the kits to the field formations. Field officers are often not even trained in using these kits. Adequate supply of kits quick disbursal and training are essential for effective use of kits.

2. Lack of training in identification of precursors

Most police officers are not aware about precursors: fewer have ever seen any of them hence even if they find a precursor being diverted or transported. They may not even realize the significance of it. Police officers need to be trained on these issues.

3. Report of the doctor under Section 27 of NDPS Act, 1985

Consumption of narcotic drugs and psychotropic substances is an offence under the NDPS Act but no investigating officer knows how to prove it. Doctors in government hospitals are not trained in identifying whether the suspect consumed drugs. Secondly, by the time the doctor finds time to test the suspect it is too late to get an accurate report. Often doctors of government hospitals and dispensaries give reports only on the general medical condition of the accused which does not help in prosecuting the case in a court of law.

4. Malkhana

NCB issued detailed instructions on storage and disposal of seized drugs. These instructions require such drugs to be stored in a proper malkhanas under the supervision of a gazetted officer. State police often do not follow these instructions and store them in the malkhanas of the police stations which have inadequate storage facilities with little security.

5. Secret Service Funds

Secret Service Funds meant for collecting intelligence are grossly inadequate with the state police and if information has to be collected on any major syndicate, substantial money will he required. Unless the SSF with the state police is improved, not much can be achieved in terms of busting drug syndicates.

6. Reward for seizure of precursors:

Rewards are a major incentive both to informers and officers. However, as per the existing reward policy no reward is available for seizure of precursor chemicals. Precursors may be included in the reward scheme.

7. Longtime in completion of trials

Special Courts have been created to deal with the NDPS cases to avoid delays in trials. However, in many states, these courts are again being given additional responsibility of dealing with other cases as well. This is causing undue delays in disposal of NDPS cases.

IMPORTANT ASPECTS ABOUT PROSECUTION UNDER NDPS ACT

1. Procedure After Arrest or Seizure

Provisions of Section 52, Section 55 & Section 57 are relevant to be understood:

These sections come into operation after the arrest and seizure under the Act. The provisions of a statute creating public duties are generally speaking, 'directory' in nature. The provisions contained in these sections contain certain procedural instructions for strict compliance by the officers. However, if there is no strict compliance of any of these instructions that by it-self cannot render the acts done by the officers null and void and at the most it may affect probative value of the evidence regarding arrest or search. But such violation by itself does not invalidate the trial or the conviction if otherwise there is sufficient material. It has to be shown that such non-compliance has caused prejudice and resulted in failure of justice.

The police officers however cannot totally ignore these provisions and if there is no proper explanation for non-compliance or where the officers totally ignore the provisions then that will definitely have an adverse effect on the prosecution case and the Courts will have to appreciate the evidence and the merits of the case bearing these aspects in view. However, a mere non-compliance or failure to strictly comply by itself will not vitiate the trial.

The prosecution has to state about the disposal of the narcotics recovered and persons arrested under the provisions of the NDPS Act. In addition, it is to be explained when the samples were sent to FSL and where the samples were kept before being sent to FSL. A link evidence has to be proved.

Section 52- Disposal of person arrested and articles seized

(1) Any officer arresting a person under Section 41, Section 42, Section 43 or Section 44 shall, as soon as may be, inform him of the grounds for such arrest.

(2) Every person arrested and article seized under warrant issued under sub-section (1) of Section 41 shall be forwarded without unnecessary delay to the Magistrate by whom the warrant was issued.

(3) Every person arrested and article seized under sub-section (2) of Section 41, Section 42, Section 43 or Section 44 shall be forwarded without unnecessary delay to –

(a) the officer-in-charge of the nearest Police Station or

(b) the officer empowered under Section 53.

(4) The authority or officer to whom any person or article is forwarded under sub-section (2) or sub-section (3) shall, with all convenient dispatch, take such measures as may be necessary for the disposal according to law of such person or article.

Section 55- Police to take charge of articles seized and delivered

An officer-in-charge of a Police Station shall take charge of and keep in safe custody, pending the orders of the Magistrate, all articles seized under this Act within the local area of that Police Station and which may be delivered to him, and shall allow any officer who may accompany such articles to the Police Station or who may be deputed for the purpose, to affix his seal to such articles or to take samples of and from them and all samples so taken shall also be sealed with seal of the officer-in-charge of the Police Station.

57. Report of arrest and seizures

Whenever any person makes any arrest or seizure under this Act, he shall, within forty eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest to his immediate official superior.

A cogent reading of the above three sections leads to the following important observations:

1. The person to be arrested under NDPS has to be informed of the grounds of his arrest as soon as possible and has to be sent to the officer-in-charge of the nearest Police Station;

2. Every article seized under sub-section (2) of Section 41, Section 42, Section 43 or Section 44 has to be forwarded without unnecessary delay to the officer-in-charge of the nearest Police Station.

3. The officer-in-charge of the Police Station, with all convenient dispatch, take necessary measures as required under the law for the disposal of such articles as are deposited with him. Accordingly he will take measure to present the accused before the Magistrate as required under the Code of Criminal Procedure.

4. Further, the officer-in-charge shall take charge of and keep in safe custody, pending the orders of the Magistrate, all articles seized under the NDPS Act within the local area of his Police Station.

5. In the normal course of seizures, as per the Standing Order Nos 1/88 and 2/88, the samples are to be drawn at the spot of recovery. However, in case the vehicle/articles impounded are brought to the Police Station, the samples will have to be drawn at the Police Station. In such cases, the officer-in-charge of the Police Station shall allow any officer, accompanying such goods or vehicle etc to affix his seal to such articles or to take samples of the articles brought. The samples so taken at the Police Station shall also be sealed with the seal of the officer- in-charge of the Police Station.

   However, it needs to be reiterated that in case sealed samples from the spot of seizure are brought to be deposited at the Police Station, the officer-in- charge is not required to put his separate seals on such samples.

6. Any Police Officer, who makes any arrest or seizure under this Act, shall within 48 hours next after such arrest or seizure, has to make full report of all the particulars of such arrest to his immediate official superior.

2. REPORT OF THE EXPERT

(CFSL LABORATORY – SAMPLES)

a) It is made clear that any objection as to the mode of proof of document has to be taken at the time of trial and cannot be subsequently taken in appeal. *[Phool Kumar v Delhi Administration 1975 (1) SCC 797]*

b) Under Section 293 Cr PC, a report of an expert is *per se* admissible, without examination of the expert. Under Sub-Section (2), the Court may, if it thinks fit, summon and examine any such expert as to the subject matter of this report. Thus, it is not mandatory for the Court to examine the expert whose report is used as evidence in any inquiry, trial or other proceedings, nor it is obligatory for the Court to ask the accused if he wants to summon the expert.

c) The prosecution has to submit a copy of CFSL Report as an exhibit of the prosecution along with the Charge Sheet.

d) It is advisable that the prosecution puts this report to the Appellant at the time of his recording his Statement under Section 313 Cr. P.C. In case any prejudice is caused to the accused appellant by the non-examination of the expert or that it was tendered in his absence, the appellant accused must state the same in reply to the question posed to him under Section 313 Cr. P.C.

3. EVIDENCES COLLECTED AT THE TIME OF SEIZURE

a) F.S.L. Form No. 29, Panchnama, Seizure Memo, Fard Zama Talashi etc. have to be filled on the spot of recovery depending upon the mode of recovery. The samples are to taken for the contraband seized after affixing the seals.

b) The confiscated material is to be deposited in the Malkhana, where in the entry is required to be made in the DDR and Register No. 19 wherein full details of articles received with the marking of the seals is to be endorsed.

c) The CFSL Report is expected to state that *'seals were intact, and tallied with specimen seals impressions'*. The seals on the samples cannot be tallied except with the specimen seals on the FSL form. The endorsement of the FSL even if it does not mention specifically the receipt of Form No. 29 is automatic to presume that Form No. 29 had been received at FSL once this endorsement is tendered in the Court.

d) The delay, if any in sending the samples to CFSL is to be avoided under normal circumstances. However, the same may not prove fatal to the prosecution case if the recovery of the sample from the possession of the appellant stands proved and established by cogent and reliable evidence in the trial. What is to be proved is that till the date the parcles of sample were received by the FSL, the seal put on the said parcels was intact.

e) Once the original malkhana register (Register No. 19) is produced in the Court, which is seen and returned and copy thereof is exhibited, there is no mandatory requirement to produce the Road Certificate, especially, when the seals have been found to be intact.

4. Cross Examination of Witnesses

a) The accused has a right to cross-examine the prosecution witnesses. The said cross-examination can be made fully or partially by the accused of the prosecution witnesses. In the absence of cross-examination on any vital aspect put forth by the prosecution, the evidence remains un-challenged and out to be believed by the High Court.

b) Section 138 of the Evidence Act confers a valuable right of cross-examining the witness tendered in evidence by the opposite party. The scope of that provision is enlarged by Section 146 of the Evidence Act by allowing a witness to be questioned:

1. to test his veracity;
2. to discover who he is and what is his position in life; or
3. to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him or might expose or tend directly of indirectly to expose him to a penalty or forfeiture.

5. Mentioning FIR No. on the Seizure Documents

a) In the normal course, FIR is recorded after the seizure. The Investigating Officer should avoid mentioning the FIR No. on Seizure documents as it may be objected to as tampering of the documents by the opposite party.

b) However, the Supreme Court has held in *Radhey Sham v State of Haryana [2001 (10) SCC 206]* that mere writing of the FIR Number on the arrest and search memos cannot entirely falsify these documents.

c) The prudence says that it should be avoided to un-necessarily give an opportunity which may weaken the prosecution case.

CHAPTER VI

CHECKLIST

IN SEARCH & SEIZURE CASES UNDER NDPS ACT

1. An information describing the suspect and his modus operandi with specific details on the date time and place of drug deals should be prepared. It needs to be reduced into writing by the officer receiving the information and should be sent forthwith to the next superior officer. It is mandatory legal provision.

2. Search of a person, premises, conveyance leading to recovery of drug concealed in a packaging or a cavity of the vehicle. A search warrant *(issued by a Metropolitan Magistrate or a Magistrate of first class or any Magistrate of the second class specially empowered by the State Govt. in this behalf)* is executed in case the search is not to be conducted in a public place. All the requirements relating to the search as are provided in the code of criminal procedure have to be followed.

3. A notice in writing under Sec. 50 needs to be served on the person searched giving him the option of his getting searched in presence of a gazetted officer or a magistrate. The recovery would be illegal if such a notice has not been given.

4. The contraband is tested by way of a field testing kit which indicates the presence of drug in the recovered substance. It is a prima facie proof of the substance being of the drug type as is confirmed from the field testing kit.

A sample of the drug is drawn from the lot recovered and sealed with an official seal after taking the signatures of the panchas and the person from whom the recovery is made on the paper slip which is affixed on the packet containing the sample before the same is sealed with an official seal. Chemical analysis report received is the final word on the recovery of drug to be of a particular type that makes the person possessing it liable for punishment.

5. A report on the seizure and arrest has to be prepared and submitted to the next higher officer by the arresting officer under Sec. 57, within 48 hours of the arrest.

6. The arrested person is to be produced before the court within 24 hours of his arrest.

   He is to be conducted strictly in conformity with the law relating to the rights of the arrested person. His relative or friend should be notified of his arrest. In case the person is needed for effecting any further recovery of drug or for any other investigation he is remanded to the custody of the agency; otherwise the arrested person is sent to jail in judicial remand pending trial against him.

7. Follow up investigation is undertaken for collecting additional evidence corroborating the confessional statement and the seizure document. These could be verification of vehicle registration details, telephone dial out information, searches at other places from where the drug transited or originated etc. Statement of the panchas is recorded on anything additional they have to say to what is recorded in panchnama.

8. The investigations must be completed with 90 days of the arrest of the person. If there is delay in filing challan or complaint within this period then the accused gets right to be enlarged on Bail. A complaint is filed under the regular punitive sections of the Act enumerating the evidence in support of the complaint.

9. The court takes cognizance of the complaint and frames charges based on the complaint. If the accused denies the charges trial commences. Evidence is recorded by the prosecution in support of its charges.

   The court under section 313 of the Cr.P.C. records statement of the accused and he is given an opportunity to lead evidence in support of his statement.

   The Judgment is passed by the court on hearing the two parties after completing the evidence and accordingly if the charges are proved the accused is convicted.

CONCLUSIONS AND RECOMMENDATIONS

INFIRMITIES IN NDPS ACT

The drug traffickers are fighting guerilla war against humanity and therefore, deterrent punishment has been provided under the NDPS Act (as amended by Amendment Act No. 2 of 1989). The Act has provided for death penalty for specified offences by the previous convict and for forfeiture of property derived from, or use in illicit trafficking. However even these provisions have not yielded fruitful results in curbing and controlling illicit trafficking and use of narcotic drugs. Some of the infirmities found in the implementation of NDPS Act may be summarized below:-

(a) Lack of social awareness against offences of illicit trafficking and illicit use of narcotic drugs and psychotropic substances;

(b) The severe punishment for small quantity under section 27 of the Act if it is not for personal consumption;

(c) Non establishment of Special Courts for trial of the offences under the NDPS Act by some States in spite of specific directions in section 36 thereof;

(d) Wild growth of cannabis plant, coca plant or opium poppy and chances of cultivation of such plants in the guise of wild growth by unscrupulous smugglers;

(e) The inherent problems in the implementation of section 50 of the NDPS Act to make the search effective and meaningful;

(f) Frequent changes in officers investigating the offences and

(g) Non establishment of the centers for identification, treatment, education and after care of the addicts by the Government.

THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985

(Act No. 61 of 1985)

CHAPTER I

PRELIMINARY

1. Short, title, extent and commencement - This Act may be called Narcotic Drugs and Psychotropic Substances Act, 1985.

(2) It extends to the whole of India and it applies also-

(a) to all Citizens of India outside India,

(b) to all persons on ships and aircrafts registered in India, wherever they may be.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and for different States and any reference in any such provision to the commencement of this Act shall be construed in relation to any State as a reference to the coming into force of that provision in that State.

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

(i) "addict" means a person, who has dependence on any narcotic drug or psychotropic substance;

(ii) "Board" means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963);

(iii) "cannabis (hemp)" means-

(a) charas, that is the separated resin, in whatever form, whether crude or purified, obtained from the cannabis plant and also includes concentrated preparation and resin known as hashish oil or liquid hashish;

(b) *ganja,* that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated; and

(c) any mixture, with or without any neutral material, of any of the above forms of cannabis or any drink prepared therefrom;

(iv) *"cannabis plant"* means any plant of the genus cannabis;

(v) *"coca derivative"* means-

(a) crude cocaine, that is, any extract of coca leaf which can be used, directly or indirectly, for the manufacture of cocaine;

(b) ecgonine and all the derivatives of ecgonine from which it can be recovered;

(c) cocaine, that is, methyl ester of benzoyl-ecogonine and its salts; and

(d) all preparations containing more than 0.1 per cent of cocaine;

(vi) *"coca leaf"* means-

(a) the leaf of the coca plant except a leaf from which all ecgonine, cocaine and any other ecgonine alkaloids have been removed;

(b) any mixture thereof with or without any neutral material, but does not include any preparation containing not more than 0.1 per cent of cocaine;

(vii) *"coca plant"* means the plant of any species of the genus Erythroxylon;

(vii-a) "commercial quantity", in relation to narcotic drugs and psychotropic substances, means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette;

(vii-b) "controlled delivery" means the technique of allowing illicit or suspect consignments of narcotic drugs, psychotropic substances, controlled substances or substances substituted for them to pass out of, or through or into the territory of India with the knowledge and under the supervision of an officer empowered in this behalf or duly authorized under Section 50-A with a view to identifying the persons involved in the commission of an offence under this Act;

(vii-c) "corresponding law" means any law corresponding to the provisions of this Act;

(vii-d) "controlled substance" means any substance which the Central Government may, having regard to the available information as to its possible use in the production or manufacture of narcotic drugs and psychotropic substances or to the provisions of any International Convention, by notification in the Official Gazette, declare to be a controlled substance;

(viii) "conveyance" means a conveyance of any description whatsoever and includes any aircraft, vehicle or vessel;

(viii-a)"illicit traffic", in relation to narcotic drugs and psychotropic substances, means-

(i) cultivating any coca plant or gathering any portion of coca plant;

(ii) cultivating the opium poppy or any cannabis plant;

(iii) engaging in the production, manufacture, possession, sale, purchase, transportation, warehousing, concealment, use or consumption, import inter-State, export inter-State, import into India, export from India or transshipment of narcotic drugs or psychotropic substances;

(iv) dealing in any activities in narcotic drugs or psychotropic substances other than those referred to in sub-clause *(i)* to *(iii);* or

(v) handling or letting out any premises for the carrying on of any of the activities referred to in sub-clause *(i) to (iv);*

other than those permitted under this Act, or any rule or order made, or any condition of any license, term or authorization issued, thereunder, and includes-

(1) financing, directly or indirectly, any of the aforementioned activities;

(2) abetting or conspiring in the furtherance of or in support of doing any of the aforementioned activities; and

(3) harbouring persons engaged in any of the aforementioned activities;

(ix) *"International Convention"* means-

(a) the Single Convention on Narcotic Drugs, 1961 adopted by the United Nations Conference at New York in March, 1961;

(b) the protocol, amending the Convention mentioned in sub-clause *(a),* adopted by the United Nations Conference at Geneva in March, 1972;

(c) the Convention on Psychotropic Substances, 1971 adopted by the United Nations Conference at Vienna in February, 1971; and

(d) any other international convention, or protocol or other instrument amending an international convention, relating to narcotic drugs or psychotropic substances which may be ratified or acceded to by India after the commencement of this Act;

(x) *"manufacture",* in relation to narcotic drugs or psychotropic substances, includes-

(1) all processes other than production by which such drugs or substances may be obtained;

(2) refining of such drugs or substances;

(3) transformation of such drugs or substances; and

(4) making of preparation (otherwise than in pharmacy on prescription) with or containing such drugs or substances;

(xi) *"manufactured drug"* means-

(a) all coca derivatives, medicinal cannabis, opium derivatives and poppy straw concentrate;

(b) any other narcotic substance or preparation which the Central Government may, having regard to the available information as to its nature or to a decision, if any, under any International Convention, by Notification in the Official Gazette, declare to be a manufactured drug,

but does not include any narcotic substance or preparation which the Central Government may, having regard to the available information as to its nature or to a decision, if any, under any International Convention, by Notification in the Official Gazette, declare not to be a manufactured drug;

(xii) *"medicinal cannabis"* that is, medicinal hemp, means any extract or tincture of cannabis (hemp);

(xiii) *"Narcotics Commissioner"* means the Narcotics Commissioner appointed under Section 5;

(xxiii-a) *"small quantity"* in relation to narcotic drugs and psychotropic substances, means any quantity lesser than the quantity specified by the Central Government by notification in the Official Gazettee.

(xiv) *"narcotic drug"* means coca leaf, cannabis (hemp), opium, poppy straw and includes all manufactured drugs;

(xv) *"opium"* means-

(a) the coagulated juice of the opium poppy; and

(b) any mixture, with or without any neutral material, of the coagulated juice of the opium poppy,

but does not include any preparation containing not more than 0.2 per cent of morphine;

(xvi) *"opium derivative"* means-

(a) "medicinal opium, that is, opium which has undergone the processes necessary to adopt it for medicinal use in accordance with the requirements of the Indian Pharmacopoeia or any other pharmacopoeia notified in this behalf by the Central Government, whether in powder form or granulated or otherwise or mixed with neutral materials;

(b) prepared opium, that is, any product of opium obtained by any series of operations designed to transform opium into an extract suitable for smoking and the dross or other residue remaining after opium is smoked;

(c) phenanthrene alkaloids, namely, morphine, cocaine thebaine and their salts;

(d) diacetylmorphine, that is, the alkaloid also known as diamorphine or heroin and its salts; and

(e) all preparations containing more than 0.2 per cent of morphine or containing any diacetylmorphine;

(xvii) *"opium poppy"* means-

(a) the plant of the species papaver somniferum L; and

(b) the plant of any other species of *Papaver* from which opium or any phenanthrene alkaloid can be extracted and which

the Central Government may, by notification in the Official Gazette, declare to be opium poppy for the purpose of this Act;

(xviii) *"poppy straw"* means all parts (except the seeds) of the opium poppy after harvesting whether in their original form or cut, crushed or powdered and whether or not juice has been extracted there from;

(xix) "*poppy straw concentrate"* means the material arising when poppy straw has entered into a process for the concentration of its alkaloids;

(xx) *"preparation"* in relation to a narcotic drugs or psychotropic substance means any one or more such drugs or substances in dosage form or any solution or mixture, in whatever physical state, containing one or more such drugs or substances;

(xxi) *"prescribed"* means prescribed by rules made under this Act;

(xxii) *"production"* means the separation of opium, poppy straw, coca leaves or cannabis from the plants from which they are obtained;

(xxiii) *"psychotropic substance"* means any substance, natural or synthetic, or any natural material or any salt or preparation of such substance or material included in the list of psychotropic substances specified in the Schedule;

(xxiv) *"to import inter-State"* means to bring into a State or Union Territory in India from another State or Union Territory in India;

(xxv) *"to import into India"* with its grammatical variations and cognate expressions, means to bring into India from a place outside India and includes the bringing into any port or airport or place in India of a narcotic drug or a psychotropic substance intended to be taken out of India without being removed from the vessel, aircraft, vehicle or any other conveyance in which it is being carried.

Explanation:- "For the purpose of this clause and clause (xxvi), "India" includes the territorial waters of India;

(xxvi) *"to export from India"*, with its grammatical variations and cognate expressions, means to take out of India to a place outside India;

(xxvii) *"to export inter-State"* means to take out of a State or Union Territory in India to another State or Union Territory in India;

(xxviii) *"to transport"* means to take from one place to another within the same State or Union Territory;

(xxviii-a) *"use"* in relation to narcotic drugs and psychotropic substances, means any kind of use except personal consumption;

(xxix) words and expressions used herein and not defined but defined in the Code of Criminal Procedure, 1973 (2 of 1974) have the meanings respectively assigned to them in that Code.

Explanation:-For the purpose of clauses *(v), (vi), (xv) and (xvi)* the percentages in the case of liquid preparations shall be calculated on the basis that a preparation containing one percent of a substance means a preparation in which one gram of substance, if solid, or one milliliter of substance, if liquid, is contained in every one hundred milliliter of the preparation and so on in proportion for any greater or less percentage;

Provided that Central Government may, having regard to the developments in the field of methods of calculating percentages in liquid preparations prescribe, by rules, any other basis which it may deem appropriate for such calculation.

3. Power to add or to omit from the list of psychotropic substances - The Central Government may, if satisfied that it is necessary or expedient so to do on the basis of -

(a) the information and evidence which has become available to it with respect to the nature and effects of, and the abuse or the scope for abuse of, any substance (natural or synthetic) or natural material or any salt or preparation of such substance or material and

(b) the modification or provisions (if any) which have been made to, or in, any International Convention with respect to such substance, natural material or salt or preparation of such substance or material;

by notification in the Official Gazette, add to, or as the case may be, omit from, the list of psychotropic substances specified in the Schedule such substance or natural material or salt or preparation of such substance or material.

CHAPTER II

AUTHORITIES AND OFFICERS

4. Central Government to take measures for preventing and combating abuse of and illicit traffic in narcotic drugs, etc - (1) Subject to the provisions of this Act, the Central Government shall take all such measures as it deems necessary or expedient for the purpose of preventing and combating abuse of narcotic drugs and psychotropic substances and the illicit traffic therein.

(2) In particular and without prejudice to the generality of the provisions of sub-section (1), the measures which the Central Government may take under that sub-section include measures with respect to all or any of the following matters, namely -

(a) co-ordination of actions by various officers, State Governments and other authorities-

(i) under this Act, or

(ii) under any other law for the time being in force in connection with the enforcement of the provisions of this Act;

(b) obligations under the International Conventions;

(c) assistance to the concerned authorities in foreign countries and concerned international organizations with a view to facilitating co-ordination and universal action for prevention and suppression of illicit traffic in narcotic drugs and psychotropic substances;

(d) identification, treatment, education, after care, rehabilitation and social re-integration of addicts;

(e) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act preventing and combating the abuse of narcotic drugs and psychotropic substances and illicit traffic therein.

(3) The Central Government may, if it considers it necessary or expedient so to do for the purposes of this Act, by order, published in the Official Gazette constitute an authority or hierarchy of authorities of such name or names as may be specified in the order for the purpose of exercising such of the powers and functions of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order, and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise the powers and take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers and take such measures.

5. Officers of Central Government:-(1) Without prejudice to the provisions of sub-section (3) of Section 4, the Central Government shall appoint a Narcotics Commissioner and may also appoint such other officer with such designations as it thinks fit for the purposes of this Act.

(2) The Narcotics Commissioner shall, either by himself or through officers subordinate to him, exercise all powers and perform all functions relating to the superintendence of the cultivation of the opium poppy and production of opium and shall also exercise and perform such other powers and functions as may be entrusted to him by the Central Government.

(3) The officers appointed under sub-section (1) shall be subject to the general control and direction of the Central Government or, if so directed by that Government, also of the Board or any other authority or officer.

6. The Narcotic Drugs and Psychotropic Substances Consultative Committee: - (1) The Central Government may constitute, by notification in the Official Gazette, an advisory committee to be called, "The Narcotic Drugs and Psychotropic Substances Consultative Committee", (hereinafter in this section referred to the Committee) to advise the Central Government on such matters relating to the administration of this Act as are referred to it by that Government from time to time.

(2) The Committee shall consist of a Chairman and such other members, not exceeding twenty, as may be appointed by the Central Government.

(3) The Committee shall meet when required to do so by the Central Government and shall have power to regulate its own procedure.

(4) The Committee may, if it deems it necessary so to do for the efficient discharge of any of its functions, constitute one or more sub-committees and may appoint to any such sub-committee, whether generally or for the consideration of any particular matter, any person (including a non-official) who is not a member of the Committee.

(5) The term of office of, the manner of filling casual vacancies in the offices of and allowances, if any, payable to, the Chairman and other members of the Committee, and the conditions and restrictions subject to which the Committee may appoint a person who is not a member of the Committee as a member of any of its sub-committees, shall be such as may be prescribed by rules made by the Central Government.

7. Officers of State Government - (1) The State Government may appoint such officers with such designations as it thinks fit for the purposes of this Act.

(2) The officers appointed under sub-section (1) shall be subject to the general control and direction of the State Government, or, if so directed by that Government, also of any other authority or officer.

CHAPTER II-A

NATIONAL FUND FOR CONTROL OF DRUG ABUSE

7-A. National Fund for Control of Drug Abuse - (1) The Central Government may, by notification in the Official Gazette, constitute a Fund to be called the National Fund for Control of Drug Abuse (hereafter in this Chapter referred to as the Fund) and there shall be credited thereto-

(a) an amount which the Central Government may, after due appropriation made by Parliament by law in this behalf, provide;

(b) the sale proceeds of any property forfeited under Chapter V-A;

(c) any grants that may be made by any person or institution;

(d) any income from investment of the amounts credited to the Fund under the aforesaid provisions.

(2) The Fund shall be applied by the Central Government to meet the expenditure incurred in connection with the measures taken for,-

(a) combating illicit traffic in narcotic drugs psychotropic substances or controlled substances;

(b) controlling the abuse of narcotic drugs and psychotropic substances;

(c) identifying, treating, rehabilitating addicts;

(d) preventing drug abuse;

(e) educating public against drug abuse; and

(f) supplying drugs to addicts where such supply is a medical necessity.

(3) The Central Government may constitute a Governing Body as it thinks fit to advise that Government and to sanction money out of the said Fund subject to the limit notified by the Central Government in the Official Gazette.

(4) The Governing Body shall consist of a Chairman (not below the rank of an Additional Secretary to the Central Government) and such other members not exceeding six as the Central Government may appoint.

(5) The Governing Body shall have the power to regulate its own procedure.

7-B. Annual report of activities financed under the Fund:-The Central Government shall, as soon as may be, after the end of each financial year, cause to be published in the Official Gazette, a report giving an account of the activities financed under Section 7-A during the financial year, together with a statement of accounts.

CHAPTER III

PROHIBITION, CONTROL AND REGULATION

8. Prohibition of certain operations.-No person shall-

   (a) cultivate any coca plant or gather any portion of coca plant; or

   (b) cultivate the opium poppy or any cannabis plant; or

   (c) produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into India, export from India or transship any narcotic drug or psychotropic substance,

except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the rules or orders made thereunder and in a case where any such provisions, imposes any requirement by way of license, permit or authorization also in accordance with the terms and conditions of such license, permit or authorization:

Provided that, and subject to the other provisions of this Act and the rules made thereunder, the prohibition against the cultivation of the cannabis plant for the production of *ganja* or the production, possession, use, consumption, purchase, sale, transport, warehousing, import inter-State and export inter-State of ganja for any purpose other than medical and scientific purpose shall take effect only from the date which the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided further that nothing in this section shall apply to the export of poppy straw for decorative purposes

8-A A Prohibition of certain activities relating to property derived from offence- No person shall,-

(a) convert or transfer any property knowing that such property is derived from an offence committed under this Act or under any other corresponding law of any other country or from an act of participation in such offence, for the purpose of concealing or disguising the illicit origin of the property or to assist any person in the commission of an offence or to evade the legal consequences; or

(b) conceal or disguise the true nature, source, location, disposition of any property knowing that such property is derived from an offence committed under this Act or under any other corresponding law of any other country; or

(c) knowingly acquire, possess or use any property which was derived from an offence committed under this Act, or under any other corresponding law of any other country.

9. Power of Central Government to permit, control & regulate:-

(1) Subject to the provisions of Section 8, the Central Government may, by rules-

(a) permit and regulate -

(i) the cultivation, or gathering of any portion (such cultivation or gathering being only on account of the Central Government) of coca plant, or the production, possession, sale, purchase, transport, import, inter-State, export inter-State, use or consumption of coca leaves;

(ii) the cultivation (such cultivation being only on account of Central Government) of the opium poppy;

(iii) the production and manufacture of opium and production of poppy straw;

(iv) the sale of opium and opium derivatives from the Central Government factories for export from India or sale to State Government or to manufacturing chemists;

(v) the manufacture of manufactured drugs (other than prepared opium) but not including manufacture of medicinal opium or any preparation containing any manufactured drug from materials which the maker is lawfully entitled to possess;

(vi) the manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption or use of psychotropic substances;

(vii) the import into India and export from India and transshipment of Narcotic Drugs and Psychotropic substances.

(b) prescribe any other matter requisite to render effective the control of the Central Government over any of the matters specified in clause (a).

(2) In particular and without prejudice to the generality of the foregoing power, such rules may-

(a) empower the Central Government to fix from time to time the limits within which licenses may be given for the cultivation of the opium poppy;

(b) require that all opium, the produce of land cultivated with the opium poppy, shall be delivered by the cultivators to the officers authorized in this behalf by the Central Government;

(c) prescribe the forms and conditions of licenses for cultivation of the opium poppy and for production and manufacture of opium; the fees that may be charged there for; the authorities by which such licenses may be granted, withheld, refused or cancelled and the authorities before which appeals against the order of withholding refusal or cancellation of licenses shall lie;

(d) prescribe that opium shall be weighed, examined and classified according to its quality and consistence by the officers authorized in this behalf by the Central Government in the presence of the cultivator at the time of delivery by the cultivator;

(e) empower the Central Government to fix from time to time the price to be paid to the cultivator for the opium delivered;

(f) provide for the weighment, examination and classification, according to the quality and consistence, of the opium received at the factory and the deductions from or additions (if any) to the standard price to be made in accordance with the result of such examination; and the authorities by which the decisions with regard to the weighment, examination, classification, deductions or additions shall be made and the authorities before which appeals against such decisions shall lie;

(g) require that opium delivered by a cultivator, if found as a result of examination in the Central Government factory to be adultered, may be confiscated by the officers authorized in this behalf;

(h) prescribe the forms and conditions of licenses for the manufacture of manufactured drugs, the authorities by which such licenses may be granted and the fees that may be charged therefor;

(i) prescribe the forms and conditions of licenses or permits for the manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption or use of Psychotropic substances, the authorities by which such licenses or permits may be granted and the fees that may be charged therefor;

(j) prescribe the ports and other places at which any kind of Narcotic Drugs or Psychotropic Substances may be imported into India or exported from India or transshipped; the forms and conditions of certificates, authorizations or permits, as the case may be, for such import, export or transshipment; the authorities by which such certificates, authorizations or permits may be granted and the fees that may be charged therefor.

9-A. Power to control and regulate controlled substances:-(1) If the Central Government is of the opinion that, having regard to the use of any controlled substance in the production or manufacture of any Narcotic Drug or Psychotropic Substance, it is necessary or expedient so to do in the public interest, it may, by order, provide for regulating or prohibiting the production, manufacture, supply and distribution thereof and trade and commerce therein.

(2) Without prejudice to generality of the power conferred by sub-section (1), an order made thereunder may provide for regulating by license, permits or otherwise, the production, manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption, use, storage, distribution, disposal or acquisition of any controlled substance.

10. Power of State Government to permit, control and regulate-(1) Subject to the provisions of Section 8, the State Government may, by rules-

(a) permit and regulate-

(i) the possession, transport, import inter-State, export inter-State, warehousing, sale, purchase, consumption and use of poppy straw;

(ii) the possession, transport, import inter-State, export inter-State, sale, purchase, consumption and use of opium;

(iii) the cultivation of any cannabis plant, production, manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption or use of cannabis (excluding charas);

(iv) the manufacture of medicinal opium or any preparation containing any manufactured drug from materials which the maker is lawfully entitled to possess;

(v) the possession, transport, purchase, sale, import inter-State, export inter-State, use or consumption of manufactured drugs other than prepared opium and of coca leaf and any preparation containing any manufactured drug;

(vi) the manufacture and possession of prepared opium from opium lawfully possessed by an addict registered with the State Government on medical advice for his personal consumption:

Provided that save in so far as may be expressly provided in the rules made under sub-clauses (iv) and (v), nothing in Section 8 shall apply to the import inter-State, export inter-State, transport, possession, purchase, sale, use or consumption of manufactured drugs which are the property and in the possession of the Government:

Provided further that such drugs as are referred to in the preceding proviso shall not be sold or otherwise delivered to any person who, under the rules made by the State Government under the aforesaid sub-clauses, is not entitled to their possession;

(b) prescribe any other matter requisite to render effective the control of the State Government over any of the matters specified in clause *(a)*.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may-

(a) empower the State Government to declare any place to be a warehouse wherein it shall be the duty of the owners to deposit all such poppy straw as is legally imported inter-State and is intended for export inter-State or export from India; to regulate the safe custody of such poppy straw warehoused and the removal of such poppy straw for sale or export inter-State or export from India; to levy fees for such warehousing and to prescribe the manner in which and the period after which the poppy straw warehoused shall be disposed of in default of payment of fees.

(b) provide that the limits within which licenses may be given for the cultivation of any cannabis plant shall be fixed from time to time by or under the orders of the State Government;

(c) provide that only the cultivators licensed by the prescribed authority or the State Government shall be authorized to engage in cultivation of any cannabis plant;

(d) require that all cannabis, the produce of land cultivated with cannabis plant, shall be delivered by the cultivators to the officers of the State Government authorized in this behalf;

(e) empower the State Government to fix from time to time, the price to be paid to the cultivators for the cannabis delivered;

(f) prescribe the forms and conditions of licenses or permits for the purposes specified in sub-clauses (i) to (vi) of clause (a) of sub-section (1) and the authorities by which such licenses or permits may be granted and the fees that may be charged therefor.

11. Narcotic drugs and psychotropic substances, etc., not liable to distress or attachment:-Notwithstanding anything to the contrary contained in any law or contract, no narcotic drug, psychotropic substance, coca plant, the opium poppy or cannabis plant shall be liable to be dis-trained or attached by any person for the recovery of any money under any order or decree of any court or authority or otherwise.

12. Restrictions over external dealings in narcotic drugs and psychotropic substances: - No person shall engage in or control any trade whereby a narcotic drug or psychotropic substances is obtained outside India and supplied to any person outside India save with the previous authorization of the Central Government and subject to such conditions as may be imposed by that Government in this behalf.

13. Special provisions relating to coca plant and coca leaves for use in the preparation of flavouring agent:-Notwithstanding anything contained in Section 8, the Central Government may permit, with or without conditions, and on behalf of Government, the cultivation of any coca plant or gathering of any portion thereof or the production, possession, sale, purchase, transport, import inter-State, export inter-State or import into India of coca leaves for use in the preparation of any flavouring agent which shall not contain any alkaloid and to the extent necessary for such use.

14. Special provision relating to cannabis:- Notwithstanding anything contained in Section 8, Government may, by general or special orders and subject to such conditions as may be specified in such order, allow cultivation of any cannabis plant for industrial purposes only of obtaining fibre or seed or for horticultural purposes.

CHAPTER IV

OFFENCES AND PENALTIES

15. Punishment for contravention in relation to poppy straw:- Whoever, in contravention of any provisions of this Act or any rule or order made or condition of a licence granted thereunder, produces, possesses, transports, imports inter-State, exports inter-State, sells, purchases, uses or omits to warehouse poppy straw or removes or does any act in respect of warehoused poppy straw shall be punishable-

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both;

(b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years, and with fine which may extend to one lakh rupees;

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years, and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees.

Provided that the Court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

16. Punishment for contravention in relation to coca plant and coca leaves:-Whoever, in contravention of any provision of this Act or any rule or order made or condition of license granted thereunder, cultivates any coca plant or gathers any portion of a coca plant or produces, possesses, sells, purchases, transports, imports inter-State, export inter-State or uses coca leaves shall be punishable with rigorous imprisonment for a term which may extend to ten years, and with fine which may extend to one lakh rupees.

17. Punishment for contravention in relation to prepared opium:- Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State exports inter-State or uses prepared opium shall be punishable-

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both; or

(b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years, and with fine which may extend to one lakh rupees; or

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years, and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the Court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

18. Punishment for contravention in relation to opium poppy and opium:- Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, cultivates the opium poppy or produces, manufactures, possesses, sells, purchases, transports, imports inter-State exports inter-State or uses prepared opium shall be punishable-

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both; or

(b) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees which may extend to two lakh rupees:

Provided that the Court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees;

(c) in any other case, rigorous imprisonment which may extend to ten years and with fine which may extend to one lakh rupees.

19. Punishment for embezzlement of opium by cultivator:-Any cultivator licensed to cultivate the opium poppy on account of the Central Government who embezzles or otherwise illegally disposes of the opium produced or any part thereof, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees.

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

20. Punishment for contravention in relation to cannabis plant and cannabis:-Whoever in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder-

(a) cultivates any cannabis plant; or

(b) produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis,

shall be punishable,-

(i) where such contravention relates to Clause (a) with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine which may extend to one lakh rupees; and

(ii) where such contravention relates to sub-clause (b)-

(A) and involves small quantity with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees or with both;

(B) and involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years, and with fine which may extend to one lakh rupees;

(C) and involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the Court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

21. Punishment for contravention in relation to manufactured drugs and preparations:- Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any manufactured drug or any preparation containing any manufactured drug shall be punishable.-

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both;

(b) where the contravention involves quantity, lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years, and with fine which may extend to one lakh rupees;

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years, and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

22. Punishment for contravention in relation to psychotropic substances:- Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any psychotropic substance shall be punishable-

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both;

(b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees;

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees;

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

23. Punishment for illegal import into India, export from India or transshipment of narcotic drugs and psychotropic substances –

Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted or certificate or authorization issued thereunder, imports into India or exports from India or transships any narcotic drug or psychotropic substance shall be punishable-

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both;

(b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees;

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees;

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

24. Punishment for external dealings in Narcotic Drugs and Psychotropic Substances in contravention of Section 12- Whoever engages in or controls any trade whereby a Narcotic Drug or Psychotropic substance is obtained outside India and supplied to any person outside India and supplied to any person outside India without the previous authorization of the Central Government or otherwise than in accordance with the conditions (if any) of such authorization granted under Section 12, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but may extend to two lakh rupees;

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

25. Punishment for allowing premises, etc. to be used for commission of an offence-Whoever, being the owner or occupier or having the control or use of any house, room, enclosure, space, place, animal or conveyance, knowingly permits it to be used for the commission by any other person of an offence punishable under any provisions of this Act, shall be punishable with the punishment provided for that offence.

25-A. Punishment for contravention of Orders, made under Section 9-A- If any person contravenes an order made under Section 9-A, he shall be punishable with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine which may extend to one lakh rupees:

Provided that the Court may, for reasons to be recorded in the judgment, impose a fine exceeding one lakh rupees.

26. Punishment for certain acts by licensee or his servants:-If the holder of any licence, permit or authorization granted under this Act or any rule or order made thereunder or any person in his employ and acting on his behalf-

(a) omits, without any reasonable cause, to maintain accounts or to submit any return in accordance with the provisions of this Act, or any rule made thereunder;

(b) fails to produce without any reasonable cause such licence, permit or authorization on demand of any officer authorized by the Central Government or State Government in this behalf;

(c) keeps any accounts or makes any statement which is false or which he knows or has reason to believe to be incorrect; or

(d) wilfully and knowingly does any act in breach of any of the conditions of licence, permit or authorization for which a penalty is not prescribed elsewhere in this Act,

he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

27. Punishment for consumption of any narcotic drug or psychotropic substance:-Whoever, consumes any narcotic drug or psychotropic substance shall be punishable-

(a) where the narcotic drug or psychotropic substance consumed is cocaine, morphine, diacetyl-morphine or any other narcotic drug or any psychotropic substance as may be specified in this behalf by the Central Government by notification in the Official Gazette, with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both; and

(b) where the narcotic drug or psychotropic substance consumed is other than those specified in or under Clause (a), with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.

27-A. Punishment for financing illicit traffic and harbouring offenders-Whoever indulges in financing, directly or indirectly, any of the activities specified in sub-clauses (i) to (v) of clause (viii) a) of Section 2 or harbours any person engaged in any of the aforementioned activities, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

28. Punishment for attempts to commit offences:-Whoever attempts to commit any offence punishable under this Chapter or to cause such offence to be committed and in such attempt does any act towards the commission of the offence shall be punishable with the punishment provided for the offence.

29. Punishment for abetment and criminal conspiracy:-(1) Whoever abets, or is a party to a criminal conspiracy to commit, an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in Section 116 of the Indian Penal Code (45 of 1860), be punishable with the punishment provided for the offence.

(2) A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning of this section, who, in India abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which,-

(a) would constitute an offence if committed within India; or

(b) under the laws of such place, is an offence relating to Narcotic Drugs or Psychotropic Substances having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it an offence the same as or analogous to the legal condition required to constitute it an offence punishable under this Chapter, if committed within India.

30. Preparation:-If any person makes preparation to do or omits to do anything which constitutes an offence punishable under any of the provisions of Sections 19, 24 and 27-A and for offences involving commercial quantity of any narcotic drug or psychotropic substance and from the circumstance of the case, it may be reasonably inferred that he was determined to carry out his intention to commit the offence but had been prevented by circumstances independent of his will, he shall be punishable with rigorous imprisonment for a term which shall not be less than one half of the minimum term (if any), but which may extend to one half of the maximum term, of imprisonment with which he would have been punishable, in the event of his having committed such offence, and also with a fine which shall not be less than one half of the minimum amount (if any), of fine with which he would have been punishable but which may extend to one-half of the maximum amount of fine with which he would have ordinarily (that is to say in the absence of special reasons) been punishable, in the event aforesaid:

Provided that the Court may, for reasons to be recorded in the judgment, impose a higher fine.

31. Enhanced punishment for certain offences after previous conviction:-(1) If any person who has been convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, any of the offences punishable under this Act is subsequently convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, an offence punishable under this Act with the same amount of punishment shall be punished for the second and every subsequent offence with rigorous imprisonment for a term which may extend to one-half of the maximum term of imprisonment, and also be liable to fine which shall extend to one-half of the maximum amount of fine.

(2) Where the person referred to in sub-section (1) is liable to be punished with a minimum term of imprisonment and to a minimum amount of fine, the minimum punishment for such person shall be one-half of the minimum term of imprisonment and one-half of the minimum amount of fine:

Provided that the Court may, for reasons to be recorded in the judgment, impose a fine exceeding the fine for which a person is liable.

(3) Where any person is convicted by a competent Court of criminal jurisdiction outside India under any corresponding law, such person, in respect of such conviction, shall be dealt with for the purposes of sub-sections (1) and (2) as if he had been convicted by a Court in India.

31-A Death penalty for certain offences after previous conviction:- (1) Notwithstanding anything contained in Section 31, if any person who has been convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, any of the offences punishable under Section 24, Section 27-A and for offences involving commercial quantity of any narcotic drug or psychotropic substance, is subsequently convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, an offence relating to,-

(a) engaging in the production, manufacture, possession, transportation, import into India, export from India or transshipment, of the Narcotic Drugs or Psychotropic Substances specified under column (1) of the Table below and involving the quantity which is equal to or more than the quantity indicated against each such drug or substance, as specified in column (2) of the said Table:

Sr. No.	**Particulars of Narcotics Drug/Psychotropic Substances**	**Quantity**
i.	Opium	10 kgs
ii.	Morphine	1kg.
iii.	Heroin	1kg.
iv.	Codeine	1kg.
v.	Thebaine	1kg.
vi.	Cocaine	500 gms.
vii.	Hashish	20 kgs.
viii.	Any mixture with or without any natural material of any of the above drugs	Lesser of the quantity between the quantity given against the respective narcotics drugs or psychotropic mentioned above forming part of the mixture
ix.	LSD, LSD-25 (+) -N, N-Diethyllysergamide (d-lysergic-acid-diethylmide)	500 gms.
x.	THC (Tetrahydrocannabinols, the following isomers: 6a (10a), 6a (7), 7,8,9, (11) and their stereo chemical variants	500 gms.
xi.	Methamphetamine (+) -2-Methulamine-1-Phenylopropane	1500 gms.
xii.	Methaqualone (2-Methyl-3o-toly1-4(3H)- -quinazolinone	1500 gms.
xiii.	Amphetamine (+)-2-amino-1-Pheylopropane	1500 gms.
xiv.	Salts and preparations of the Psychotropic Substances mentioned in (ix) and (xii)	1500 gms.

(b) financing directly or indirectly, any of the activities specified in clause (a) shall be punishable with death;

(2) Where any person is convicted by a competent Court of criminal jurisdiction outside India under any law corresponding to the provisions of Section 19, Section 24 or Section 27-A and for offences involving commercial quantity of any narcotic drug or psychotropic substance, such person, in respect of such conviction, shall be dealt with for the purposes of sub-section (1) as if he had been convicted by a Court in India.

32. Punishment for offence for which no punishment is provided:- Whoever contravenes any provision of this Act or any rule or order made, or any condition of any licence, permit or authorization issued thereunder for which no punishment is separately provided in this Chapter, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

32-A. No suspension, remission or commission in any sentence awarded under this Act:-Notwithstanding anything contained in the Court of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force but subject to the provisions of Section 33, no sentence awarded under this Act (other than Section 27) shall be suspended or remitted or commuted.

32-B. Factors to be taken into account for imposing higher than the minimum punishment:-Where a minimum term of imprisonment or amount of fine is prescribed for any offence committed under this Act, the Court may, in addition to such factors as it may deem fit, take into account the following factors for imposing a punishment higher than the minimum term of imprisonment or amount of fine, namely:

(a) the use or threat of use of violence or arms by the offender;

(b) the fact that the offender holds a public office and that he has taken advantage of that office in committing the offence;

(c) the fact that the minors are affected by the offence or the minors are used for the commission of an offence;

(d) the fact that the offence is committed in an educational institution or social service facility or in the immediate vicinity of such institution or faculty or in other place to which school children and students resort for educational, sports and social activities;

(e) the fact that the offender belongs to organized international or any other criminal group which is involved in the commission of the offence; and

(f) the fact that the offender is involved in other illegal activities facilitated by commission of the offence.

33. Application of Section 360 of the Code of Criminal Procedure, 1973 and of the Probation of Offenders Act, 1958:-Nothing contained in Section 360 of the Code of Criminal Procedure, 1973 (2 of 1974) or in the Probation of Offenders Act, 1958 (20 of 1958) shall apply to a person convicted of an offence under this Act unless such person is under eighteen years of age or that the offence for which such person is convicted is punishable under Section 26 or Section 27.

34. Security for abstaining from commission of offence:-(1) Whenever any person is convicted of an offence punishable under any provision of Chapter IV and the Court convicting him is of opinion that it is necessary to require such person to execute a bond for abstaining from the commission of any offence under this Act, the Court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties, for abstaining from commission of any offence under Chapter IV during such period not exceeding three years as it thinks fit to fix.

(2) The bond shall be in such form as may be prescribed by the Central Government and the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall, in so far as they are applicable, apply to all matters connected with such bond as if it were a bond to keep the peace ordered to be executed under Section 106 of that Code.

(3) If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

(4) An order under this section may also be made by an appellate Court or by the High Court or Sessions Judge when exercising the powers of revision.

35. Presumption of culpable mental state:-(1) In any prosecution for an offence under this Act, which requires a culpable mental state of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the Act charged as an offence in that prosecution.

Explanation:-In this section 'culpable mental state' includes intention, motive, knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purpose of this section, a fact is said to be proved only when the Court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability.

36. Constitution of Special Courts:-(1) The Government may, for the purpose of providing speedy trial of the offences under this Act, by Notification in the Official Gazette, constitute as many Special Courts as may be necessary for such areas as may be specified in the notification.

(2) A Special Court shall consist of a single Judge who shall be appointed by the Government with the concurrence of the Chief Justice of the High Court.

*Explanation:-*In this sub-section, "High Court" means the High Court of the State in which the Sessions Judge or the Additional Sessions Judge of a Special Court was working immediately before his appointment as such Judge.

(3) A person shall not be qualified for appointment as a Judge of a Special Court unless he is, immediately before such appointment, a Sessions Judge or an Additional Sessions Judge.

36-A Offences triable by Special Courts -(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-

(a) all offences under this Act which are punishable with imprisonment for a term of more than three years shall be triable only by the Special Courts constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the Government;

(b) where a person accused of or suspected of the commission of an offence under this Act is forwarded to a Magistrate under sub-section (2) or sub-section (2-A) of Section 167 of the Code of Criminal Procedure, 1973, such Magistrate may authorize the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole. Where such Magistrate is an Executive Magistrate:

Provided that in cases which are triable by the Special Court where such Magistrate considers-

(i) when such person is forwarded to him as aforesaid; or

(ii) upon or at any time before the expiry of the period of detention authorized by him,

that the detention of such person is unnecessary; he shall order such person be forwarded to the Special Court having jurisdiction;

(c) the Special Court may exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under Section 167 of the

Code of Criminal Procedure, 1973, in relation to an accused person in such case who has been forwarded to him under that section;

(d) a Special Court may, upon perusal of police report of the facts constituting an offence under this Act or upon complaint made by an officer of the Central Government or a State Government authorized in this behalf, take cognizance of that offence without the accused being committed to it for trial.

(2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.

(3) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under Section 439 of the Code of Criminal Procedure, 1973, and the High Court may exercise such powers including the power under clause (h) of sub-section (1) of that section as if the reference to "Magistrate" in that section included also a reference to a "Special Court" constituted under Section 36.

(4) In respect of persons accused of an offence punishable under Section 19 or Section 24 or Section 27-A or for offences involving commercial quantity the references in sub-section (2) of Section 167 of the Code of Criminal Procedure, 1973 (2 of 1974) thereof to "ninety days", where they occur, shall be construed as reference to "one hundred and eighty days":

Provided that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Special Court may extend the said period upto one year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days.

(5) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offences punishable under this Act with imprisonment for a term of not more than three years may be tried summarily.

36-B. Appeal and revision:-The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 (2 of 1974), on a High Court as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

36-C. Application of Code to proceedings before a Special Court:-

Save as, otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) (including the provisions as to bail and bonds) shall apply to the proceeding before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor.

36-D Transitional provisions:-(l) Any offence committed under this Act on or after the commencement of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1988, which is triable by a Special Court shall, until a Special Court is constituted under Section 36, notwithstanding anything contained in the Code of Criminal Procedure, 1973, be tried by a Court of Session.

(2) Where any proceedings in relation to any offence committed under this Act on or after the commencement of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1988 are pending before a Court of Session, then, notwithstanding anything contained in sub-section (I), such proceeding shall be heard and disposed of by the Court of Session:

Provided that nothing contained in this sub-section shall affect the power of the High Court under Section 407 of the Code of Criminal Procedure, 1973 to transfer any case or class of cases taken cognizance by a Court of Session under sub-section (1).

37. Offences to be cognizable and non-bailable:-(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under Section 19 or Section 24 or Section 27-A and also for offences involving commercial quantity shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974), or any other law for the time being in force on granting of bail.

38. Offences by companies:-(l) Where an offence under Chapter IV has been committed by a company, every person, who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under Chapter IV has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any

director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.-For the purposes of this section,-

(a) "company" means any body corporate and includes a firm or oHler association of individuals; and

(b) "director", in relation to a firm means a partner in the firm.

39. Power of Court to release certain offenders on probation:-(1) When any addict is found guilty of an offence punishable under Section 27 or for offences relating to small quantity of any narcotic drug or psychotropic substance and if the Court by which he is found guilty is of the opinion, regard being had to the age, character, antecedents or physical or mental condition of the offender, that it is expedient so to do then, notwithstanding anything contained in this Act or any other law for the time being in force, the Court may, instead of sentencing him at once to any imprisonment, with his consent, direct that he be released for undergoing medical treatment for de-toxification or de-addiction from a hospital or an institution maintained or recognized by Government and on his entering into a bond in the form prescribed by the Central Government, with or without sureties, to appear and furnish before the Court within a period not exceeding one year, a report regarding the result of his medical treatment and, in the meantime, to abstain from the commission of any offence under Chapter IV.

(2) If it appears to the Court, having regard to the report regarding the result of the medical treatment furnished under subsection (1), that it is expedient so to do, the Court may direct the release of the offender after due admonition on his entering into a bond in the form prescribed by the Central Government, with or without sureties, for abstaining from the commission of any offence under Chapter IV during such period not exceeding three years as the Court may deem fit to specify or on his failure so to abstain, to appear before the Court and receive sentence when called upon during that period.

40. Power of Court to publish names, place of business, etc. of certain offenders.-(l) Where any person is convicted of any of the offences punishable under Section 15 of Section 25 (both inclusive), Section 28, Section 29 or Section 3D, it shall be competent for the Court convicting the person to cause the name and place of business or residence of such person, nature of the contravention, the fact that the person has been so convicted and such other particulars as the Court may consider to be appropriate In the circumstances of the case, to be published at the expense of such person in such newspapers or in such manner as the Court may direct.

(2) No publication under sub-section (1) shall be made until the period for preferring an appeal against the orders of the Court has expired without any appeal having been preferred, or such appeal, having been preferred, has been disposed of.

(3) The expenses of any publication under sub-section (1) shall be recoverable from the convicted person as if it were a fine imposed by the Court.

CHAPTER V

PROCEDURE

41. Power to issue warrant and authorization.- (l) A Metropolitan Magistrate or a Magistrate of the first class or any Magistrate of the second class specially empowered by the State Government in this behalf, may issue a warrant for the arrest of any person whom he has reason to believe to have committed any offence punishable under this Act, or for the search, whether by day or by night, of any building, conveyance or place in which he has reason to believe any narcotic drug or psychotropic substance or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V-A of this Act is kept or concealed.

(2) Any such officer of gazetted rank of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including the para-military forces or the armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government if he has reason to believe from personal knowledge or information given by any person and taken in writing that any person has committed an offence punishable under this Act or that any narcotic drug or psychotropic substance or controlled substance in respect of which any offence under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V-A of this Act is kept or concealed in any building, conveyance or place, may authorize any officer subordinate to him but superior in rank to a peon, sepoy or a constable to arrest such a person or search a building, conveyance or place whether by day or by night or himself arrest such a person or search a building, conveyance or place.

(3) The officer to whom a warrant under sub-section (1) is addressed and the officer who authorized the arrest or search or the officer who is so authorized under sub-section (2) shall have all the powers of an officer acting under Section 42.

42. Power of entry, search seizure and arrest without warrant or authorization.-(l) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V-A of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,-

(a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and other article and an animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the

commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V-A of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to nave committed any offence punishable under this Act:

Provided that if such officer has reason to believe that a search warrant or authorization cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.

43. Power of seizure and arrest in public place - Any officer of any of the departments mentioned in Section 42 may-

(a) seize in any public place or in transit, any narcotic drug or psychotropic substance or controlled substance in respect of which he has reason to believe an offence punishable under this Act has been committed, and, along with such drug or substance, any animal or conveyance or article liable to confiscation under this Act, any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V-A of this Act;

(b) detain and search any person whom he has reason to believe to have committed an offence punishable under this Act, and if such person has any narcotic drug or psychotropic substance or

controlled substance in his possession and such possession appears to him to be unlawful, arrest him and any other person in his company.

Explanation:-For the purposes of this section, the expression "public place" includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to, the public.

44. Power of entry, search seizure and arrest in offences relating of coca plant, opium poppy and cannabis plant:- The provisions of section 41 ,42 and 43 shall so far as may be, apply in relation to the offences punishable under chapter IV and relating to coca plant, the opium poppy or cannabis plant and for this purpose references in these section to narcotic drugs, or under the Act. if cognizance of a case is taken by the Session Court, during transitional psychotropic substance, or controlled substance shall be construed as including references to coca plant, the opium poppy and cannabis plant.

45. Procedure where seizure of good liable to confiscation not practicable:-Where it is not practicable to seize any goods (including standing crop) which are liable to confiscation under this Act, any officer duly authorized under section 42 may serve on the owner or person in possession of the goods, an order that he shall not remove, part with otherwise deal with the goods except with the previous permission of such officer.

46. Duty of land holder or give information of illegal cultivation:- Every holder of land shall give immediate information to any officer of the Police or any of departments mentioned in section 42 of all the opium poppy, cannabis plant or coca plant which may be illegally cultivated within his land and every such holder of land who knowingly neglects to give such information, shall be liable to punishment.

47. Duty of certain officers to give information of illegal cultivation:- Every officer of the government and every *panch, sarpanch* and other village officer of whatever description shall give immediate information to any officer of the police or of any of the departments mentioned in the Section 42 when it may come to his knowledge that any land has been illegally cultivated with the opium poppy , cannabis plant or coca plant and every such officer of the Government, *panch, sarpanch* and other village officer who neglects to give such information shall be liable to punishment.

48. Power of attachment of crop illegally cultivated:-Any metropolitan Magistrate, Judicial Magistrate of the First class or any Magistrate specially empowered in this behalf by the State Government or any officer of a Gazetted rank empowered under Section 42 may order attachment of any opium poppy, cannabis plant or coca plant which he has reason to believe to have been illegally cultivated and while doing so may pass such order (including an order to destroy the crop) as he thinks fit.

49. Power of stop and search conveyance:- Any officer authorized under Section 42 , may, if he has reason to suspect that any animal or conveyance is, or is about to be, used for the transport of any narcotic drug or psychotropic substance, or controlled substance in respect of which he suspects that any provision of this Act has been, or is being, or is about to be, contravened at any time, stop such animal or conveyance or, in the case of an aircraft, compel it to land and-

(a) rummage and search the conveyance or part thereof;

(b) examine and search any goods on the animal or in the conveyance;

(c) if it becomes necessary to stop the animal or the conveyance , he may use all lawful means for stopping it, and where such means fail, the animal of the conveyance may be fired upon.

50. Conditions under which search of persons shall be conducted:-

(1) When any officer duly authorized under Section 42 is about to search any person under the provisions of section 41, Section 42, or section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officers of any of the departments mentioned in Section 42 or to the nearest Magistrate.

(2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in sub-section (1).

(3) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search forthwith discharge the person but otherwise shall direct that search be made.

(4) No female shall be searched by anyone excepting a female.

(5) When an officer duly authorized under Section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under Section 100 of the Code of Criminal Procedure,1973 (2 of 1974).

(6) After a search is conducted under sub-section (5), the officer shall record the reasons for such search and within seventy-two hours send a copy there of to his immediate official superior.

50-A. Power to undertake controlled delivery:-The Director General of Narcotics Control Bureau constituted under sub-section (3) of section 4 or any other officer authorized by him in this behalf, may notwithstanding anything contained in this Act undertake controlled delivery of any consignment to -

(a) any destination in India

(b) a foreign country, in consultation with the competent authority of such foreign country to which such consignment is destined, in such manner as may be prescribed.

51. Provisions of the Code of Criminal Procedure, 1973 to apply to warrants, arrests, searches, and seizures.- The provisions of the Code of Criminal Procedure 1973 (2 of 1974) shall apply, in so far as they are not inconsistent with the provisions of this Act, to all warrants issued and arrests, searches and seizures made under this Act.

52. Disposal of person arrested and articles seized:-(1) Any officer arresting a person under Section 41, Section 42, Section 43 or Section 44 shall, as soon as may be, inform him of the grounds for such arrest.

(2) Every person arrested and article seized under warrant issued under sub-section (1) of Section 41 shall be forwarded without unnecessary delay to the Magistrate by whom the warrant was issued.

(3) Every person arrested and article seized under sub-section (2) of Section 41, Section 42, Section 43 or Section 44 shall be forwarded without unnecessary delay to -

(a) the officer-in-charge of the nearest Police Station or

(b) the officer empowered under Section 53.

(4) The authority or officer to whom any person or article is forwarded under sub-section (2) or sub-section (3) shall, with all convenient dispatch, take such measures as may be necessary for the disposal according to law of such person or article.

52-A Disposal of seized narcotic drugs and psychotropic substances-

(1) The Central Government may, having regard to the hazardous nature of any psychotropic substances, their vulnerability to theft, substitution, constraints of proper storage space or any other relevant consideration by notification published in the Official Gazette, specify such narcotic drugs and psychotropic substance or class of narcotic drugs or class or psychotropic substances which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may, from time to time, determine after following the procedure hereinafter specified.

(2) Where any narcotic drug or psychotropic substance has been seized and forwarded to the officer-in-charge of the nearest Police Station or to the officer empowered under Section 53, the officer referred to in sub-section (1) shall prepare an inventory of such narcotic drugs or psychotropic substances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs or psychotropic substances or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identify of the narcotic drugs or psychotropic substances in any proceedings under this Act and make an application , to any Magistrate for the purpose of -

(a) certifying the correctness of the inventory so prepared, or

(b) taking, in the presence of such Magistrate, photographs of such drugs or substances and certifying such photographs as true; or

(c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.

(3) Where an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application.

(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872) or the Code of Criminal Procedure, 1973 (2 of 1974), every Court trying an offence under this Act, shall treat the inventory, the photographs of narcotic drugs or psychotropic substances and any list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence.

53. Power to invest officers of certain department with powers of an officer-in-charge of a police station:-(1) The Central Government, after consultation with the State Government, may by notification published in the Official Gazette, invest any officer of the department of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces or any class of such officers with the powers of an officer-in-charge of a police station for the investigation of the offences under this Act.

(2) The State Government may, by notification published in the Official Gazette, invest any officer of the department of drugs control, revenue or excise or any other department or any class of such officers with the powers of an officer-in-charge of a police station for the investigation of offences under this Act.

53-A Relevancy of statements under certain circumstances:-(1) Statement made and signed by a person before any officer empowered under Section 53 for the investigation of offences, during the course of any enquiry proceedings by such officer, shall be relevant for the purposes of proving in a prosecution for an offence under this Act, the truth of the facts which contains,-

(a) when the person who made statement is dead or cannot be found, or incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expenses which, under the circumstances of the case, the court considers unreasonable;

(b) when the person who made the statement is examined as a witness in the case before the Court and the Court is of the opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice.

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceedings under this Act or the rules or orders made thereunder, other than a proceedings before a Court, as they apply in relation to a proceeding before a Court.

54. Presumption from possession of illicit articles - In trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under this Act in respect of,

(a) any narcotic drug or psychotropic substance or controlled substance;

(b) any opium, poppy, cannabis plant or coca plant growing on any land which he has cultivated.

(c) any apparatus specifically designed or any group of utensils specially adopted for the manufacture of any narcotic drug or psychotropic substance or controlled substance; or

(d) any materials which have undergone any process towards the psychotropic substance or controlled substance, or any residue left of the materials from which any narcotic drug or psychotropic substance or controlled substance has been manufactured,

for the possession of which he fails to account satisfactorily.

55. Police to take charge of articles seized and delivered:-An officer-in-charge of a Police Station shall take charge of and keep in safe custody, pending the orders of the Magistrate, all articles seized under this Act within the local area of that Police Station and which may be delivered to him, and shall allow any officer who may accompany such articles to the Police Station or who may be deputed for the purpose, to affix his seal to such articles or to take samples of and from them and all samples so taken shall also be sealed with seal of the officer-in-charge of the Police Station.

56. Obligation of officers to assist each other:-All officers of the several departments mentioned in Section 42 shall, upon notice given or request made, be legally bound to assist each other in carrying out the provisions of this Act.

57. Report of arrest and seizures:-Whenever any person makes any arrest or seizure under this Act, he shall, within forty eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest to his immediate official superior.

58. Punishment for vexatious entry, search, seizure or arrest - (1) Any person empowered under Section 42 or Section 43 or Section 44 who-

(a) without reasonable ground of suspicion enters or searches, or causes to be entered or searched, any building, conveyance or place;

(b) vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for any narcotic drug or psychotropic substance or other article liable to be confiscated under this Act, or of seizing any document or other article liable to be seized under Section 42, Section 43 or Section 44; or

(c) vexatiously and unnecessarily detains, searches or arrests any person,

shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.

(2) Any person willfully and maliciously giving false information and so causing an arrest or a search being made under this Act shall be punishable with imprisonment for a term which may extend to two years or with fine or with both.

59. Failure of officer in duty or his connivance at the contravention of the provisions of this Act - (l) Any officer, on whom any duty has been imposed by or under this Act and who ceases or refuses to perform or withdraws himself from the duties of his office shall, unless he has obtained the express written permission of his official superior or has other lawful excuse for so doing, be punishable with imprisonment for a term which may extend to one year or with fine or with both.

(2) Any officer on whom any duty has been imposed by or under this Act or any person who has been given the custody of-

(a) any addict; or

(b) any other person who has been charged with an offence under this Act,

and who wilfully aids in, or connives at, the contravention of any provision of this Act or any rule or order made thereunder, shall be punishable with rigorous imprisonment, for a term which shall not be less than ten years but which may extend to twenty years, and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees.

Explanation:-For the purposes of this sub-section the expression "officer" includes any person employed in hospital or institution maintained or recognized by the Government or a local authority under Section 64-A for providing de-addiction treatment.

(3) No Court shall take cognizance of any offence under sub-section (1) or sub-section (2) except on a complaint in writing made with the previous sanction of the Central Government, or as the case may be, the State Government.

60. Liability of illicit drugs, substances, plants, articles and conveyances to confiscation-(1) Whenever any offence punishable under this Act has been committed, the narcotic drug, psychotropic substance, controlled substance, opium poppy, coca plant; canniabis plant, materials, apparatus and utensils in respect of which or by means of which such offence has been committed, shall be liable to confiscation.

(2) Any narcotic drug or psychotropic substance or controlled substance lawfully produced, imported inter-State, exported inter-State, imported into India, transported, manufactured, possessed, used, purchased or sold along with, or in addition to, any narcotic drug or psychotropic substance or controlled substance which is liable to confiscation under sub-section (1) and the receptacles, packages and coverings in which any narcotic drug or psychotropic substance or controlled substance, materials, apparatus or utensils liable to confiscation under sub-section (1) is found, and the other contents, if any, of such receptacles or packages shall likewise be liable to confiscation.

(3) Any animal or conveyance used in carrying any narcotic drug or psychotropic substance or controlled substance, or any article liable to confiscation under sub-section(1) or sub-section (2) shall be liable to confiscation, unless the owner of the animal or conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in-charge of the animal or conveyance and that each of them had taken all reasonable precautions against such use.

61. Confiscation of goods used for concealing illicit drugs or substances:-Any goods used for concealing any narcotic drug or psychotropic substance or controlled substance which is liable to confiscation under this Act shall be liable to confiscation.

Explanation – In this section 'goods' does not include conveyance as a means of transport.

62. Confiscation of sale proceeds of illicit drugs or substances:- Where any narcotic drug or psychotropic substance or controlled substance is sold by a person having knowledge or reason to believe that the drug or substance is liable to confiscation under this Act, the sale proceeds thereof shall be liable to confiscation.

63. Procedure in making confiscations - (1) In the trial of offences under this Act, whether the accused is convicted or acquitted or discharged, the Court shall decide whether any article or thing seized under this Act is liable to confiscation under Section 60 or Section 61 or Section 62 and, if it decides that the article is so liable, it may order confiscation accordingly.

(2) Where any article or thing seized under this Act appears to be liable to confiscation under Section 60 or Section 61 or Section 62, but the person who committed the offence in connection therewith is not known or cannot be found, the Court may inquire into and decide such liability, and may order confiscation accordingly:

Provided that no order for confiscation of an article or thing shall be made until the expiry of one month from the date of seizure, or without hearing any person who may claim any right thereto and the evidence, if any, which he produces in respect of his claim.

Provided further that if any such article or thing, other than a narcotic drug, psychotropic substance, or controlled substance, the opium poppy, coca plant or cannabis plant is liable to speedy and natural decay, or if the Court is of opinion that its sale would be for the benefit of its owner, it may at any time direct it to be sold; and the provisions of this sub-section shall, as nearly as may be practicable, apply to the net proceeds of the sale.

64. Power to tender immunity from prosecution:-(l) The Central Government or the State Government may, if it is of opinion (the reasons for such opinion being recorded in writing) that with a view to obtaining the evidence of any person appearing to have been directly or indirectly concerned in or privy to the contravention of any of the provisions of this Act or of any rule or order made there-under, it is necessary or expedient so to do, tender to such person immunity from prosecution for any offence under this Act or under the Indian Penal Code (45 of 1860) or under an other Central Act or State Act, as the case may be, for the time being in force, on condition of his making a full and true disclosure of the whole circumstances relating to such contravention.

(2) A tender of immunity made to, and accepted by, the person concerned, shall, to the extent to which the immunity extends, render him immune from prosecution for any offence in respect of which the tender was made.

(3) If it appears to the Central Government or, as the case may be, the State Government, that any person to whom immunity has been tendered under this section has not complied with the conditions on which the tender was made or is willfully concealing anything or is giving false evidence, the Central Government or, as the case may be, the State Government, may record a finding to that effect and thereupon the immunity shall be deemed to have been withdrawn and such person may be tried for the offence in respect of which the tender of immunity was made or for any other offence of which he appears to have been guilty in connection with the same matter.

64-A. Immunity from prosecution to addicts volunteering for treatment-Any addict, who is charged with an offence punishable under Section 27 or with offence involving small quantity of narcotic drugs or psychotropic substances, who voluntarily seeks to undergo medical treatment for de-addiction from a hospital or undergoes such treatment shall not be liable to prosecution under Section 27 or under any other section for offences involving small quantity of narcotic drugs or psychotropic substances:

Provided that the said immunity from prosecution may be withdrawn if the addict does not undergo the complete treatment for de-addiction.

65. Deleted

66. Presumption as to documents in certain cases:-Where any document-

(i) is produced or furnished by any person or has been seized from the custody or control of any person, in either case, under this Act, or under any other law, or

(ii) has been received from any place outside India (duly authenticated by such authority or person and in such manner as may be prescribed by the Central Government) in the course of investigation of any offence under this Act alleged to have been committed by a person,

and such document is tendered in any prosecution under this Act in evidence against him, and any other person who is tried jointly with him, the Court shall-

(a) presume, unless the contrary is proved, that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting; and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence;

(c) in a case falling under clause (i), also presume, unless the contrary is proved, the truth of the contents of such document.

67. Power to call for information, etc:-Any officer referred to in Section 42 who is authorized in this behalf by the Central Government or a State Government may, during the course of any enquiry in connection with the contravention of any provision of this Act-

(a) call for information from any person for the purpose of satisfying himself whether there has been any contravention of the provisions of this Act or any rule or order made there-under;

(b) require any person to produce or deliver any document or thing useful or relevant to the enquiry;

(c) examine any person acquainted with the facts and circumstances of the case.

68. Information as to commission of offences - No officer acting in exercise of powers vested in him under any provision of this Act or any rule or order made there-under shall be compelled to say whence he got any information as to the commission of any offence.

CHAPTER V-A

FORFEITURE OF PROPERTY DERIVED FROM, OR USED IN ILLICIT TRAFFIC

68-A. Application - (1) The provisions of this Chapter shall apply only to the persons specified in sub-section (2).

(2) The person referred to in sub-section (1) are the following namely:-

(a) every person who has been convicted of an offence punishable under this Act with imprisonment for a term of ten years or more;

(b) every person who has been convicted of a similar offence by a competent Court of criminal jurisdiction outside India;

(c) every person in respect of whom an order of detention has been made under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (46 of 1988), or under the Jammu and Kashmir Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (J & K Act XXIII of 1988):

(cc) every person who has been arrested or against whom a warrant or authorization of arrest has been issued for the commission of an offence punishable under this Act with imprisonment for a term of ten years or more, and every person who has been arrested or against whom a warrant or authorization of arrest has been issued for the commission of a similar offence under any corresponding law of any other country;

(d) every person who is a relative of a person referred to in clause *(a)* or clause *(b)* or clause *(c)* or clause *(cc);*

(e) every associate of a person referred to in clause *(a)* or clause *(b)* or clause *(c)* or clause *(cc);*

(f) any holder (hereafter in this clause referred to as the "present holder" of any property which was at any time previously held by a person referred to in clause *(a)* or clause *(b)* or clause *(c)* or clause *(cc)* unless the present holder or, as the case may be, anyone who held such property after such person and before the present holder, or was a transferee in good faith for adequate consideration.

68-B. Definitions - In this Chapter, unless the context otherwise requires,-

(a) *"Appellate Tribunal"* means the Appellate Tribunal for Forfeited Property constituted under Section 68-N;

(b) *"associate"* in relation to a person whose property is liable to be forfeited under this Chapter means,-

(i) any individual who has been or is residing in the residential premises (including out-houses) of such person;

(ii) any individual who had been or is managing the affairs or keeping the accounts of such person;

(iii) any association of persons, body of individuals, partnership firm or private company within the meaning of the Companies Act, 1956 (1 of 1956), of which such person had been or is a member, partner or director;

(iv) any individual who had been or is a member, partner or director of an association of persons, body of individuals, partnership firm or private company referred to in sub-clause (iii) at any time when such person had been or is a member, partner or director of such association, body, partnership firm or private company;

(v) any person, who had been or is managing the affairs, or keeping the accounts, of any association of persons, body of individuals, partnership firm or private company referred to in sub-clause (iii);

(vi) the trustee of any trust, where,-

(1) the trust has been created by such person; or

(2) the value of the assets contributed by such person (including the value of the assets, if any, contributed by him earlier) to the trust amounts on the date on which contribution is made, to not less than twenty per cent of the value of the assets of the trust on that date;

(vii) where the competent authority, for reasons to be recorded in writing, considers that any properties of such person are held on his behalf by any other person, such other person;

(c) *"competent authority"* means an officer of the Central Government authorized by it under Section 68-D;

(d) *"concealment"* means the concealment or disguise of the nature, source, disposition, movement or ownership of property and includes the movement or conversion of such property by electronic transmission or by any other means;

(e) *“freezing"* means temporarily prohibiting the transfer, conversion, disposition or movement of property by an order issued under Section 68-F;

(f) *"identifying"* includes establishment of proof that the property was derived from, or used in, the illicit traffic;

(g) *"illegally acquired property"* in relation to any person to whom this Chapter applies, means,-

(i) any property acquired by such person, whether before or after the commencement of this Chapter, wholly or partly out of or by means of any income, earnings or assets derived or obtained from or attributable to the contravention of any provisions of this Act; or

(ii) any property acquired by such person, whether before or after the commencement of this Chapter, for a consideration, or by any means, wholly or partly traceable to any property referred to in sub clause *(i)* or the income or earning from such property,

and includes,-

(A) any property held by such person which would have been, in relation to any previous holder thereof, illegally acquired property under this clause if such previous holder had not ceased to hold it, unless such person or any other person who held the property at any time after such previous holder or, where there are two or more such previous holders, the last of such previous holders is or was a transferee in good faith for adequate consideration;

(B) any property acquired by such person, whether before or after the commencement of this Chapter, for a consideration, or by any means, wholly or partly traceable to any property falling under item (A), or the income or earnings therefrom;

(h) *"property"* means property and assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and deeds and instruments evidencing title to, or interest in, such property or assets derived from, or used in, the illicit traffic;

(i) *"relative"* means,-

(1) spouse of the person;

(2) brother or sister of the person;

(3) brother or sister of the spouse of the person;

(4) any lineal ascendant or descendant of the person;

(5) any lineal ascendant or descendant of the spouse of the person;

(6) spouse of a person referred to in sub-clause (2), sub clause (3), sub-clause (4) or sub-clause (5);

(7) any lineal descendant of a person referred to in sub clause (2) or sub-clause (3);

(j) *"tracing"* means determining the nature, source, disposition, movement, title or ownership of property;

(k) *"trust"* includes any other legal obligation.

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

(2) Where any person holds any illegally acquired property in contravention of the provisions of sub-section (1), such property shall be liable to be forfeited to the Central Government in accordance with the provisions of this Chapter:

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

68-D. Competent authority:-(1) The Central Government may, by order published in the Official Gazette, authorize any Collector of Customs or Collector of Central Excise or Commissioner of Income Tax or any other officer of the Central Government of equivalent rank to perform the functions of the competent authority under this Chapter.

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

68-E. Identifying illegally acquired property:-(1) Every officer empowered under Section 53 and every officer-in-charge of a police station shall, on receipt of information is satisfied that any person to whom this Chapter applies holds any illegally acquired property, he may, after recording reasons for doing so, proceed to take all steps necessary for tracing and identifying such property.

(2) The steps referred to in sub-section (1) may include any inquiry, investigation or survey in respect of any person, place, property, assets, documents, books of account in any bank or public financial institution or any other relevant matters.

(3) Any inquiry, investigation or survey referred to in subsection (2), shall be carried out by an officer mentioned in subsection (1) in accordance with such directions or guidelines as the competent authority may make or issue in this behalf.

68-F. Seizure or freezing of illegally acquired property:-(l) Where any officer conducting an inquiry or investigation under Section 68-E has reason to believe that any property in relation to which such inquiry or investigation is being conducted is an illegally acquired property and such property is likely to be concealed, transferred or dealt with in any manner which will result in frustrating any proceeding relating to forfeiture of such property under this Chapter, he may make an order for seizing such property and where it is not practicable to seize such property, he may make an order that such property shall not be transferred or otherwise, dealt with, except with the prior permission of the officer making such order, or of the competent authority and a copy of such order shall be served on the person concerned:

Provided that the competent authority shall be duly informed of any order made under this sub-section and a copy of such an order shall be sent to the competent authority within forty-eight hours of its being made.

(2) Any order made under sub-section (1) shall have no effect unless the said order is confirmed by an order of the competent authority within a period of thirty days of its being made.

Explanation:-For the purposes of this section, "transfer of property" means any disposition, conveyance, assignment, settlement, delivery, payment or other alienation of property and, without limiting the generality of the foregoing, includes-

(a) the creation of a trust in property;

(b) the grant or creation of any lease, mortgage, charge, easement licence, power, partnership or interest in property;

(c) the exercise of a power of appointment of property vested in any person, not the owner of the property, to determine its disposition in favour of any person other than donee of the power; and

(d) any transaction entered into by any person with intent thereby to diminish directly or indirectly the value of his own property and to increase the value of the property of any other person.

68.G. Management of properties seized or forfeited under this Chapter:-(l) The Central Government may, by order published in the Official Gazette appoint as many of its officers (not below the rank of a Joint Secretary to the Government) as it thinks fit, to perform the functions of an Administrator.

(2) The Administrator appointed under sub-section (1) shall receive and manage the property in relation to which an order has been made

under sub-section (1) of Section 68-F or under Section 68-I in such manner and subject to such conditions as may be prescribed.

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

68-H. Notice of forfeiture of property:-(1) If, having regard to the value of the properties held by any person to whom this Chapter applies, either by himself or through any other person on his behalf, his known sources of income, earnings or assets, and any other information or material available to it as a result of a report from any officer making an investigation under Section 68-E or otherwise, the competent authority has reason to believe (the reasons for such belief to be recorded in writing) that all or any of such properties are illegally acquired properties, it may serve a notice upon such person (hereinafter referred to as the person affected) calling upon him within a period of thirty days specified in the notice to indicate the sources of his income, earning or assets, out of which or by means of which he had acquired such property, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties, as the case may be, should not be declared to be illegally acquired properties and forfeited to the Central Government under this Chapter.

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

Provided that no notice for forfeiture shall be served upon any person referred to in Clause (cc) of sub-section (2) of Section 68-A or relative of a person referred to in that clause or associate of a person referred to in that clause or holder of any property which was at any time previously held by a person referred to in that clause.

68-I. Forfeiture of property in certain cases:-(1) The competent authority may, after considering the explanation, if any, to the show-cause notice issued, under Section 68-H, and the materials available before it and after giving to the person affected (and in a case where the person affected holds any property specified in the notice through any other person, to such other person also) a reasonable opportunity of being heard, by order, record a finding whether all or any of the properties in question are illegally acquired properties:

Provided that if the person affected (and in a case where the person affected holds any property specified in the notice through any other person such other person also) does not appear before the competent authority or represent his case before it within a period of thirty days specified in the show-cause notice, the competent authority may proceed to record a finding under this sub-section *ex parte* on the basis of evidence available before it.

(2) Where the competent authority is satisfied that some of the properties referred to in the show-cause notice are illegally acquired properties but is not able to identify specifically such properties, then, it shall be lawful for the competent authority to specify the properties which, to the best of its judgment, are illegally acquired properties and record a finding accordingly under sub-section (1).

(3) Where the competent authority records a finding under this section to the effect that any property is illegally acquired property, it shall declare that such property shall, subject to the provisions of this Chapter, stand forfeited to the Central Government free from all encumbrances.

Provided that no illegally acquired property of any person who is referred to in Clause (cc) of sub-section (2) of Section 68-A or relative of a person referred to in that clause or associate of a person referred to in that clause or holder of any property which was at any time previously held by a person referred to in that clause shall stand forfeited.

(4) Where any shares in a company stand forfeited to the Central Government under this Chapter, then, the company shall, notwithstanding anything contained in the Companies Act, 1956 or the

articles of association of the company, forthwith register the Central Government as the transferee of such shares.

68-J. Burden of proof:-In any proceedings under this Chapter, the burden of proving that any property specified in the notice served under Section 68-H is not illegally acquired property shall be on the person affected.

68-K. Fine in lieu of forfeiture:-(l) Where the competent authority makes a declaration that any property stands forfeited to the Central Government under Section 68-I, and it is a case where the source of only a part of the illegally acquired property has not been proved to the satisfaction of the competent authority it shall make an order giving an option to the person affected to pay, in lieu of forfeiture, of fine equal to the market value of such part.

(2) Before making an order imposing a fine under sub-section (1), the person affected shall be given a reasonable opportunity of being heard.

(3) Where the person affected pays the fine due under sub-section(1) within such time as may be allowed in that behalf, the competent authority may, by order, revoke the declaration of forfeiture under Section 68-I and thereupon such property shall stand released.

68-L. Procedure in relation to certain trust properties:-In the case of any person referred to in sub-clause (vi) of clause (b) of Section 68-B, if the competent authority on the basis of the information and materials available to it, has reason to believe (the reasons for such belief to be recorded in writing) that any property held in trust is illegally acquired property, it may serve notice upon the author of the trust or, as the case may be, the contributor of the assets out of or by means of which such property was acquired by the trust and the trustees, calling upon them within a period of thirty days specified in the notice, to explain the source of money or other assets out of or by means of which such property was acquired or as the case may be, the source of money or other assets which were contributed to the trust for acquiring such property and thereupon such notice shall be deemed to be a notice served under Section 68 and all the other provisions of this Chapter shall apply accordingly.

Explanation:-For the purposes of this section "illegally acquired property", in relation to any property held in trust, includes,-

(i) any property which if it had continued to be held by the author or the trust or the contributor of such property to the trust would have been illegally acquired property in relation to such author or contributor;

(ii) any property acquired by the trust out of any contribution made by any person which would have been illegally acquired property in relation to such person had such person acquired such property out of such contributions.

68-M. Certain transfers to be null and void:-Where after the making of an order under sub-section (1) of Section 68-F or the issue of a notice under Section 68-H or under Section 68-L, any property referred to in the said order a notice is transferred by any mode whatsoever such transfer shall, for the purposes of the proceedings under this Chapter, be ignored and if such property is subsequently forfeited to the Central Government under Section 68-I, then, the transfer of such property shall be deemed to be null and void.

68-N. Constitution of Appellate Tribunal:-(1) The Central Government may, by notification in the Official Gazette, constitute an Appellate Tribunal to be called the Appellate Tribunal for Forfeited Property consisting of a Chairman and such number of other members (being officers of the Central Government not below the rank of a Joint Secretary to the Government) as the Central Government thinks fit, to be appointed by that Government for hearing appeals against the orders made under Section 68-F, Section 68-I, sub-section(1) of Section 68-K or Section 68-L.

(2) The Chairman of the Appellate Tribunal shall be a person who is or has been or is qualified to be a Judge of the Supreme Court or of a High Court.

(3) The terms and conditions of service of the Chairman and other members shall be such as may be prescribed.

68-0. Appeals:-(1) Any officer referred to in sub-section (1) of Section 68-E or any person aggrieved by an order of the competent authority made under Section 68-F, Section 68-I, sub-section (1) of Section 68-K or Section 68-L, may, within forty-five days from the date on which the order is served on him, prefer an appeal to the Appellate Tribunal:

Provided that the Appellate Tribunal may entertain an appeal after the said period of forty-five days, but not after sixty days, from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under sub-section(1), the Appellate Tribunal may, after giving an opportunity to the appellant to be heard, if he so desires, and after making such further inquiry as it deems fit, confirm, modify or set aside the order appealed against.

(3) The power and functions of the Appellate Tribunal may be exercised and discharged by Benches consisting of three members and constituted by the Chairman of the Appellate Tribunal.

(4) Notwithstanding anything contained in sub-section (3), where the chairman considers it necessary so to do for the expeditious disposal of appeals under this section, he may constitute a Bench of two members and a Bench so constituted may exercise and discharge the powers and functions of the Appellate Tribunal:

Provided that if the members of a Bench so constituted differ on any point or points, they shall state the point or points on which they differ and refer the same to a third member (to be specified by the Chairman) for hearing of such point or points shall be decided according to the opinion of that member.

(5) The Appellate Tribunal may regulate its own procedure.

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

68-P. Notice of order not to be invalid for error in description:-No notice issued or served, no declaration made, and no order passed, under this Chapter 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.

68-Q. Bar of jurisdiction:-No order passed or declaration made under this Chapter shall be appealable except as provided therein and no civil Court shall have jurisdiction in respect of any matter which the Appellate Tribunal or any competent authority is empowered by or under this Chapter to determine, and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Chapter.

68-R. Competent authority and Appellate Tribunal to have powers of civil Court:-The competent authority and the Appellate Tribunal shall have all the powers of a civil Court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any Court or office;

(e) issuing commission for examination of witnesses or documents;

68-S. Information to competent authority:-(1) Notwithstanding anything contained in any other law, the competent authority shall have power to require any officer or authority of the Central Government or a State Government or a local authority to furnish information in relation to such persons, points or matters as in the opinion of the competent authority will be useful for, or relevant to, the purposes of this Chapter.

(2) Every officer referred to in Section 68-T may furnish *suo motu* any information available with him to the competent authority if in the opinion of the officer such information will be useful to the competent authority for the purpose of this Chapter.

68-T. Certain officers to assist Administrator, competent authority and Appellate Tribunal:-For the purposes of any proceedings under this Chapter, the following officers are hereby empowered and required to assist the Administrator appointed under Section 68-G, competent authority and the Appellate Tribunal, namely-

(a) officers of the Narcotics Control Bureau;

(b) officers of the Customs Department;

(c) officers of the Central Excise Department;

(d) officers of the Income-Tax Department;

(e) officers of Enforcement appointed under the Foreign Exchange Regulation Act, 1973 (46 of 1973);

(f) officers of police;

(g) officers of the Narcotics Department;

(h) officers of the Central Economic Intelligence Bureau;

(i) officers of the Directorate of Revenue Intelligence;

(j) such other officers of the Central or State Government as are specified by the Central Government in this behalf by notification in the Official Gazette.

68-U. Power to take possession:-(1) Where any property has been declared to be forfeited to the Central Government under this Chapter, or where the person affected has failed to pay the fine due under sub-section (1) of Section 68-K within the time allowed therefore under sub-section (3) of that section, the competent authority may order the person affected as well as any other person who may be in possession of the property to surrender or deliver possession thereof to the Administrator appointed under Section 68-G or to any person duly authorized by him in this behalf within thirty days of the service of the order.

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

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

68-V. Rectification of mistakes:-With a view to rectifying any mistakes is apparent from record, the competent authority or the Appellate Tribunal, as the case may be, may amend any order made by it within a period of one year from the date of order.

Provided that if any such amendment is likely to affect any person prejudicially, it shall not be made without giving to such person a reasonable opportunity of being heard.

68-W. Findings under other laws not conclusive for proceedings under this Chapter:-No findings of any officer or authority under any other law shall be conclusive for the purposes of any proceedings under this Chapter.

68-X. Service of notices and orders:-Any notice or order issued or made under this Chapter shall be served:-

(a) by tendering the notice or order or sending it by registered post to the person for whom it is intended or to his agent;

(b) if the notice or order cannot be served in the manner provided in clause (a), by affixing it on a conspicuous place in the property in relation for which the notice or order is issued or made or on some conspicuous part of the premises in which the person for whom it is intended is known to have last resided or carried on business or personally worked for gain.

68-Y Punishment for acquiring property in relation to which proceedings have been taken under this Chapter:- Any person who knowingly acquired, by any mode, whatsoever any property in relation to which proceedings are pending under this Chapter shall be punishable with imprisonment for a term, which may extend to five years and with fine which may extend to fifty thousand rupees.

69-Z Release of property in certain cases:-(1) Where the detention order of a detenue is set aside or withdrawn, properties seized or frozen under this Chapter shall stand released.

(2) Where any person referred to in Clause (a) or Clause (b) or Clause (c) of sub section (2) of Section 68-A has been acquitted or discharged from the charges under this Act or any other corresponding law of any other country and the acquittal was not appealed against or when appealed against, the appeal was disposed of as a consequence of which such property could not be forfeited or warrant of arrest or authorization of arrest issued against such person has been withdrawn, then, property seized or frozen under this Chapter shall stand released.

CHAPTER VI

MISCELLANEOUS

69. Protection of action taken in good faith:-No suit, prosecution or other legal proceeding shall lie against the Central Government or a State Government or any officer of the Central Government or the State Government or any other person exercising any powers or discharging any function or performing any duties under this Act, for anything in good faith done or intended to be done under this Act or any rule or order made thereunder.

70. Central Government and State Government to have regard to international conventions while making rules:-Wherever under this Act the Central Government or the State Government has been empowered to make rules, the Central Government or the State Government, as the case may be, subject to other provisions of this Act, may while making the rules have regard to the provisions of the Single Convention on Narcotic Drugs, 1961, the Protocol of 1972 amending the said Convention and of the Convention on Psychotropic Substances Act, 1971 to which India is a party and to the provisions of any other international convention relating to narcotic drugs or psychotropic substances to which India may become a party.

71. Power of Government to establish centres for identification, treatment, etc., of addicts and for supply of narcotic drugs and psychotropic substances:-(1) The Government may, in its discretion, establish as many centres as it thinks fit for identification, treatment, education, after-care, rehabilitation, social re-integration of addicts and for supply, subject to such conditions and in such manner as may be prescribed, by the concerned Government of any narcotic drugs and psychotropic substances to the addicts registered with the Government and to others where such supply is a medical necessity. .

(2) The Government may make rules consistent with this Act providing for the establishment, appointment, maintenance, management and superintendence of, and for supply of narcotic drugs and psychotropic substances from, the centres referred to in sub-section (1) and for the appointment, training, powers, duties and persons employed in such centres.

72. Recovery of sum due to Government:-(1) In respect of any licence fee or other sum of any kind payable to the Central Government or to the State Government under any of the provisions of this Act or of any rule or order made thereunder, the officer of the Central Government or the State Government, as the case may be, who is empowered to require the payment of such sum, may deduct the amount of such sum from any money owing to the person from whom such sum may be recoverable or due or may recover such amount or sum by attachment and sale of the goods belonging to such persons and if the amount of the same is not so recovered, the same may be recovered from the person or from his surety (if any) as if it were an arrears of land revenue.

(2) When any person, in compliance with any rule made under this Act, gives a bond (other than a bond under Section 34 and Section 39) for the performance of any act, or for his abstention from any act, such performance or abstention shall be deemed to be as public duty within the meaning of Section 74 of the Indian Contract Act, 1872 (9 of 1872); and upon breach of the conditions of such bond by him, the whole sum named therein as the amount to be paid in case of such breach may be recovered from him or from his surety (if any) as if it were an arrear of land revenue.

73. Bar of jurisdiction:-No civil Court shall entertain any suit or proceeding against any decision made or order passed by any officer or authority under this Act or under any rule made hereunder on any of the following matters, namely:

(a) withholding, refusal or cancellation of any licence for the cultivation of the opium poppy;

(b) weighment, examination and classification according to the quality and consistence of opium and any deductions from, or addition to, the standard price made in accordance with such examination;

(c) confiscation of opium found to be adulterated with any foreign substance.

74. Transitional provisions:-Every officer or other employee of the Government exercising or performing immediately before the commencement of this Act, any powers or duties with respect to any matters provided for in this Act, shall, on such commencement, be deemed to have been appointed under the relevant provisions of this Act to the same post and with the same designation as he was holding immediately before such commencement.

74-A. Power of Central Government to give directions:-The Central Government may give such directions as it may deem necessary to a State Government regarding the carrying into execution of the provisions of this Act, and the State Government shall comply with such direction.

75. Power to delegate:-(1) The Central Government may, by notification in the Official Gazette, delegate, subject to such conditions and limitations as may be specified in the notification, such of its powers and functions under this Act (except the power make rules) as it may deem necessary or expedient, to the Board or any other authority or the Narcotics Commissioner.

(2) The State Government may, by notification in the Official Gazette, delegate, subject to such conditions and limitations as may be specified in the notification, such of its powers and functions under this Act (except the power to make rules) as it may deem necessary or expedient, to any authority or officer of that Government.

76. Powers of Central Government to make rules:-(1) Subject to the other provisions of this Act, the Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(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 method by which percentages in the case of liquid preparations shall be calculated for the purposes of clauses (v), (vi), (xiv) and (xv) of Section 2;

(b) the form of bond to keep the peace to be executed under Section 34;

(c) the form of bond to be executed for release of an addict convict for medical treatment under sub-section (1) of Section 39 and the bond to be executed by such convict before his release after due admonition under sub section (2) of that section;

(c-a) the manner in which "controlled delivery" under Section 50-A is to be undertaken;

(d) the authority or the person by whom and the manner in which a document received from any place outside India shall be authenticated under clause (ii) of Section 66;

(d-a) the manner in which and the conditions subject to which properties shall be managed by the Administrator under sub-section (2) of Section 68-G;

(d-b) the terms and conditions of service of the Chairman and other members of the Appellate Tribunal under subsection (3) of Section 68-N;

(d-c) the fees which shall be paid for the inspection of the records and registers of the Appellate Tribunal or for obtaining the certified copy of any part thereof under sub-section (6) of Section 68-0;

(d-d) the powers of a civil Court that may be exercised by the competent authority and the Appellate Tribunal under clause (f) of Section 68-R;

(d-e) the disposal of all articles or things confiscated under this Act;

(d-f) the drawing of samples and testing and analysis of such samples;

(d-g) the rewards to be paid to the officers, informers and other persons;

(e) the conditions and the manner in which narcotic drugs and psychotropic substances may be supplied for medical necessity to the addicts registered with the Central Government and to others under sub-section (1) of Section 71;

(f) the establishment, appointment, maintenance, management and superintendence of centres established by the Central Government under sub-section and duties of persons employed in such centres;

(g) the term of office of, the manner of filling casual vacancies of, and the allowances payable to, the Chairman and members of the Narcotic Drugs and Psychotropic Substances Consultative Commiton (1) of Section 71 and appointment, training, powers tee and the conditions and restrictions subject to which a non member may be appointed to a sub-committee under sub-section (5) of Section 6;

(h) any other matter which is to be, or may be, prescribed.

77. Rules and notifications to be laid before Parliament:-Every rule made under this Act by the Central Government and every notification or order issued under clause (vii-a), clause (xi), clause (xxiii-a) of Section 2, Section 3, Section 7-A, Section 9-A and clause (a) of Section 27 shall be laid, as soon as may be, after it is made or issued 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 session aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule or notification should not be made or issued, the rule or the notification 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 notification.

78. Power of State Government to make rules:-(1) Subject to the other provisions of this Act, the State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

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

(a) the conditions and the manner in which narcotic drugs and psychotropic substances shall be supplied for medical necessity to the addicts registered with the State Government and others under sub-section (1) of Section 71;

(b) the establishment, appointment, maintenance, management, superintendence of centres established under sub-section (1) of Section 71 and appointment, training, powers and duties of persons employed in such centres;

(c) any other matter which is to be, or may be, prescribed.

(3) Every rule made by a State Government under this Act shall be laid, as soon as may be after it is made, before the Legislature of that State.

79. Application of the Customs Act, 1962 - All prohibitions and restrictions imposed by or under this Act on the import into India, the export from India and transshipment of narcotic drugs and psychotropic substances shall be deemed to be prohibitions and restrictions imposed by or under the Customs Act, 1962 (52 of 1962), and the provisions of that Act shall apply accordingly:

Provided that, where the doing "of anything is an offence punishable under that Act and under this Act, nothing in that Act or in this section shall prevent the offender from being punished under this Act.

80. Application of the Drugs and Cosmetics Act, 1940 not barred:- The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Drugs and Cosmetics Act, 1940 (23 of 1940) or the rules made thereunder.

81. Saving of State and Special Laws:-Nothing in this Act or in the rules made thereunder shall affect the validity of any provincial Act or an Act of any State Legislature for the time being in force, or of any rule made thereunder which imposes any restriction or provides for a punishment not imposed by or provided for under this Act or imposes a restriction or provides for a punishment greater in degree than a corresponding restriction imposed by or a corresponding punishment provided for by or under this Act for the cultivation of cannabis plant or consumption of, or traffic in, any narcotic drug or psychotropic substances within India.

82. Repeal and savings - (1) The Opium Act, 1857 (13 of 1857) the Opium Act, 1878 (1 of 1878) and the Dangerous Drugs Act, 1930 (2 of 1930) are hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken or purported to have been done or taken under any of the enactments repealed by sub-section (1) shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.

83. Power to remove difficulties:-It any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by 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 on which this Act receives the assent of the President.

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

84. Application of this Act to pending cases:-(1) Notwithstanding anything contained in sub-section (2) of Section 1, all cases pending before the Courts or under investigation at the commencement of this Act shall be disposed of in accordance with the provisions of the principal Act as amended by this Act and accordingly, any person found guilty of any offence punishable under the principal Act, as it stood immediately before such commencement, shall be liable for a punishment which is lesser than the punishment for which he is otherwise liable at the date of the commission of such offence:

Provided that nothing in this section shall apply to cases pending in appeal

(2) For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this Act has not come into force. (Vide Sec. 41 of the Act 9 of 2001, Sec. 41)