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Chapter 10

HUMAN RIGHTS AND POLICING

Introduction

Good policing involves respecting human rights and upholding the *Rule of Law.* This has been strongly emphasized by the Supreme Court and the National Human Rights Commission. As protectors of people's rights, police officers are expected to display integrity, transparency, accountability and most of all respect for human dignity. *Rule of Law* requires that the police - an integral part of the criminal justice system - must respect and uphold the rights and liberty of individuals.

However, despite democracy and freedom for over sixty years now, there still is a lot of distrust between the public and the police. People see the police as an authoritarian organization, removed from society, with little or no respect for the rights of the ordinary person. However, today we live in a democratic country and the police as a vital component of the State must operate according to democratic norms. Individual rights' occupy a pride of place in our constitutional culture. Any encroachment upon them, whether it is non-registration of a First Information Report [FIR]; launching a malicious investigation; illegally detaining suspected persons or their families; carrying out an improper arrest; using excessive force; or torturing suspects to extract confessions goes against the basic principles of democratic policing.

Sharing information with the public, securing their cooperation in policing, and acknowledging that individuals have a right to privacy and security of their person are essential elements of democratic policing- the furtherance of which, is the aim of this compilation.

In a democratic society, the police serve to protect, rather than impede, freedoms. The very purpose of the police is to provide a safe, orderly environment in which these freedoms can be exercised. A democratic police force is not concerned with people's beliefs or associates, their movements or conformity to state ideology. It is not even primarily concerned with the enforcement of regulations or bureaucratic regimens. Instead, the police force of a democracy is concerned strictly with the preservation of safe communities and the application of criminal law equally to all people, without fear or favour. ***(United Nations International Police Task Force, 1986)***

Code of Conduct for the Police in India

1. The police must bear faithful allegiance to the Constitution of India and respect and uphold the rights of the citizens as guaranteed by it.

2. The police should not question the propriety or necessity of any law duly enacted. They should enforce the law firmly and impartially, without fear or favour, malice or vindictiveness.

3. The police should recognize and respect the limitations of their powers and functions. They should not usurp or even seem to usurp the functions of the judiciary and sit in judgement on cases to avenge individuals and punish the guilty.

4. In securing the observance of law or in maintaining order, the police should as far as practicable, use the methods of persuasion, advice and warning. When the application of force becomes inevitable, only the irreducible minimum of force required in the circumstances should be used.

5. The prime duty of the police is to prevent crime and disorder and the police must recognize that the test of their efficiency is the absence of both and not the visible evidence of police action in dealing with them.

6. The police must recognize that they are members of the public, with the only difference that in the interest of the society and on its behalf they are employed to give full time attention to duties which are normally incumbent on every citizen to perform.

7. The police should realize that the efficient performance of their duties will be dependent on the extent of ready cooperation that they receive from the public. This, in turn, will depend on their ability to secure public approval of their conduct and actions and to earn and retain public respect and Confidence.

8. The police should always keep the welfare of the people in mind and be sympathetic and considerate towards them. They should always be ready to offer individual service and friendship and render necessary assistance to all without regard to their wealth and / or social standing.

9. The police should always place duty before self, should maintain calm in the face of danger, scorn or ridicule and should be ready to sacrifice their lives in protecting those of others.

10. The police should always be courteous and well-mannered; they should be dependable and impartial; they should possess dignity and courage; and should cultivate character and the trust of the people.

11. Integrity of the highest order is the fundamental basis of the prestige of the police. Recognizing this, the police must keep their private lives scrupulously clean, develop self-restraint and be truthful and honest in thought and deed, in both personal and official life, so that the public may regard them as exemplary citizens.

12. The police should recognize that their full utility to the State is best ensured only by maintaining a high standard of discipline, faithful performance of duties in accordance with law and implicit obedience to the lawful directions of commanding ranks and absolute loyalty to the force and by keeping themselves in the state of constant training and preparedness.

13. As members of a secular, democratic state, the police should strive continually to rise above personal prejudices and promote harmony and the spirit of common brotherhood amongst all the people of India, transcending religious, linguistic or sectional diversities and to renounce practices derogatory to the dignity of women and disadvantaged sections of society.

United Nations Code of Conduct for Law Enforcement Officials

Article 1

Law enforcement officials shall at all times fulfill the duty imposed upon them by law, by serving the community and by protecting all persons illegal acts, consistent with the high degree of responsibility required by their profession.

Article 2

In the performance of their duty law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

Article 3

Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

Article 4

Matters of a confidential nature in the possession of law enforcement officials shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise.

Article 5

No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

Article 6

Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.

Article 7

Law enforcement officials shall not commit any act of corruption. They shall also rigorously oppose and combat all such acts.

Article 8

Law enforcement officials shall respect the law and the present Code. They shall also, to the best of their capability, prevent and rigorously oppose any violation of them.

Law enforcement who have reasons to believe that a violation of the present Code has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.

NATIONAL HUMAN RIGHTS COMMISSION

Human Rights

INTRODUCTION

Human Rights are those rights which are inherent in human existence and belong to all human persons irrespective of gender, race, caste, ethnicity, religion etc. The oxford Companion to Philosophy says that in their strongest sense, rights are justified claims to the protection of persons' important interests. Human rights are not the gift or bounty of any political superior. The laws are meant to reaffirm and recognize human rights and to provide the mechanism for their enforcement. The upholding of rights is essential for maintaining human dignity.

Louis Henkin regarded rights as 'claims' rather than appeals to charity. Ronald Dworkin regards them as 'trumps' that set limits on state action whenever it encroached upon individual liberty. Jack Donnely pointed out that human rights are the new standard of civilization. 'All human rights for all' is the goal of the century and the aim is to ensure that human rights are universally accepted and respected. The seven freedoms essential are:

1.	Freedom from discrimination	-	by gender, race, ethnicity, national origin or religion
2.	Freedom from want	-	to enjoy a decent standard of living
3.	Freedom to develop and realize one's human potential		
4.	Freedom from fear	-	of threats to personal security, from torture, arbitrary arrest and other violent acts
5.	Freedom from injustice and violations of the rule of law		
6.	Freedom of thought and speech and to participate in decision making and form associations		
7.	Freedom for decent work	-	without exploitation

HUMAN RIGHTS UNDER
INTERNATIONAL COVENANTS & CONSTITUTION OF INDIA

Human rights are indivisible, inter-dependent and inter-related having a clear linkage with human development; and both share a common vision with a common purpose. The emphasis on human dignity is laid in the UN Charter, Universal Declaration of Human Rights and several International Covenants. Same is the emphasis in the Constitution of India which assures dignity of the individual as a core value in its Preamble. The Constitution of India was drafted nearly at the same time as the UDHR and contains similar provisions. Part-III of the Constitution containing the fundamental rights corresponds to articles 2-21 of the UDHR and the directive principles of State Policy in Part-IV of the Constitution correspond to articles 22-28 of the UDHR. The International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR), both of 1966 are a further elaboration of these rights.

The constitutional remedy of enforcement of fundamental rights is provided in article 32. It is a fundamental right in the Constitution, which is the original jurisdiction of the Supreme Court of India. A similar power is given to the High Courts in article 226 of the Constitution. Article 32 was described by Dr. B.R. Ambedkar as the *soul* of the Constitution; and Patanjali Sastri C.J. called the Supreme Court of India the *sentinel on the qui vive.*

This is the significance of the fundamental rights of the individuals guaranteed in Part-III of the Constitution, which are the basic human rights. To ensure that the provisions guaranteeing the fundamental rights are not mere rhetoric, article 32 is also contained in the same chapter emphasizing the significant role of the judiciary for the protection of human rights. Judicial review is also a basic feature of the Constitution and therefore, a part of the basic structure which cannot be taken away by amendment.

HUMAN RIGHTS & DIRECTIVE PRINICIPLES

The directive principles of state policy contained in Part-IV of the Constitution are principles fundamental in governance as mentioned in article 37, which also says that they are not justiciable. However, the Supreme Court in its decisions has relied on the directive principles to enlarge the scope and content of the fundamental rights, thereby bringing them within the ambit of justiciable rights.

Concept of Eqaulity – Article 14

The concept of equality in article 14 and the meaning of the words 'life' 'liberty' and 'law' in article 21 have been considerably enlarged by judicial decisions. Anything which is not 'reasonable, just and fair' is not treated to be equal and is, therefore, violative of article 14.

Rule of non-arbitrariness is a facet of equality in article 14. Thus, any arbitrary state action is struck-down as violative of article 14.

The word 'life' in article 21 has been construed to mean life with dignity and not mere physical existence; 'liberty' has been construed in the manner envisaged in the Preamble, that is, liberty consistent with social norms; and the word 'law' means a law which is fair in content and in procedure.

It has been held that the validity of a law contemplated by article 21 must satisfy the test of articles 14 and 19 as well. The requirement that every state action must satisfy the test of fairness; consideration of every legitimate expectation in decision making is necessary to satisfy the rule of non-arbitrariness; and absolute power in any individual is anti democratic, are judicially evolved principles which form part of the constitutional law.

It is significant that even though, to begin with, in A.K. *Gopalan,* the Supreme Court construed the meaning of word 'law' in article 21 narrowly, in later decisions the requirement of substantive and procedural fairness was held essential for the validity of a law contemplated by article 21.

- Right to speedy trial has been held to fall within the guarantee of article 21.

- Right to privacy in telephonic conversation, so that unauthorized telephone tapping is illegal, has been accepted.

- Domiciliary visit by the police without authority of law was held to be violative of article 21, assuming right to privacy as a fundamental right derived from the freedom of movement under article 19 (1) (d) as well as personal liberty under article 21.

Fundamental Rights available to Non Citizens also

It has been held that the fundamental rights guaranteed under articles 14 and 21 of the Constitution are available even to non-citizens and not merely to citizens.To this extent, the right even of the refugees before recognition of their status has been upheld by the Court.

Child Labour

Abolition of child labour has been held to be the obligation of the State and the practice of child labour has been held to be a violation of the basic human rights. Right against exploitation as a 'bonded labour' and to rehabilitation after release has been recognized under article 24.

Rights of offenders

The State has the obligation to preserve the life of every person, including an offender by providing adequate medical aid. A prisoner is entitled to the bare necessities of life such as adequate nutrition, clothing, shelter, facilities for reading, writing etc. and meeting his family and friends, subject to the prison regulations.

Doctrine of Public Trust

The doctrine of public trust has been introduced by judicial decisions in the enforcement of fundamental rights to give protection from arbitrariness and misfeasance of public authorities in exercise of public power. Distribution of state largesse by Ministers inconsistent with this principle has been held to be violative of article 14 of the Constitution; and the Minister responsible for the violation has been held personally liable for payment of compensation to be credited to the public exchequer.

Preservation of Ecology and Environment

Preservation of ecology and environment based on the principle of sustainable development to reconcile the conflicting interest of development with the preservation of healthy environment has been recognized as a facet of right to life. The principle adopted is that ecology and environment are not objects of ownership but are nature's gift intended to be preserved in trust for the future generation.

In a large number of cases covering different facets of ecology and environment, the Court has intervened to arrest further degradation and pollution. Air pollution, water pollution, deforestation and degradation of biodiversity are being checked by Court's intervention. The ban on import of hazardous wastes based on Basel Convention is also under consideration of the Court. The polluter pays principle and that of strict liability have been applied. Similarly ban on manufacture and sale of drugs which have proved to be injurious to human life and health has also been imposed.

Right to Corruption Free Governance

Right to corruption free governance is also a human right. Non-discrimination or the right to equality is undoubtedly an essential human right. Corruption in the institutions of governance derogates the human dignity of the people and also adversely affects them in many ways violating their human rights.

The effect is greater in developing countries where the development programmes and the right to development of every individual get impaired by prevalent corruption resulting in denial to the people of their legitimate rights.

It is on this basis that the Supreme Court of India took up this issue for enforcing probity in public life and accountability of public men in the Hawala case because, the Central Bureau of Investigation was discriminating by not investigating the allegations of corruption made against highly placed public functionaries.

The Supreme Court treated it as a violation, 'inter alia' of the people's right to equality (article 14) which right can be enforced in the Supreme Court under article 32 of the Constitution, and orders necessary for doing complete justice can be made with the aid of article 142. The quality of governance determines the realization of the human rights of the people. Good governance transcending to the level of humane governance is the people's right. Corruption negates good governance. Right to corruption-free governance, particularly in developing nations, must be a basic human right upon which the other rights depend.

Role of International Conventions

International conventions and norms, in case of void in the domestic law, when there is no inconsistency between them have been used to fill the void or enlarge the meaning and content of the fundamental rights, as a canon of construction.

Award of Compensation

The award of compensation as a public law remedy, distinct from, and in addition to the private law remedy in tort for damages, has been held to be a mode of enforcement of a fundamental right. The doctrine of sovereign immunity has been held to be inapplicable in the public law remedy against violation of a fundamental right.

In this manner, award of compensation as a remedy in public law for custodial death has been recognized. This is also the principle underlying section 18(3) of the Protection of Human Rights Act, 1993 empowering the Human Rights Commission to award 'immediate interim relief' for the violation of a human right.

Sexual Harassment

Recently, in view of the wide prevalence of sexual harassment, the Court in exercise of its power under article 32 of the Constitution has formulated guidelines and norms to curb this social evil which is an acknowledged global phenomenon. It has been held that the guidelines and norms are law declared and enforceable under article 141 of the Constitution, and would avail till the enactment of suitable legislation to occupy the field.

This is how the void in existing legislation has been filled. The international conventions and norms in CEDAW have been relied on and incorporated substantially in these guidelines. The Beijing Principles of Independence of Judiciary have also been referred to impress the role of judiciary in this sphere.

Reliance on Article 32 of the Constitution by the Supreme Court

The Supreme Court has relied on article 32 read with article 142 to make such orders as may be necessary for doing complete justice in any cause or matter before it. Resort to article 142 has enabled expansion of the jurisdiction under article 32.

In some cases, the High Court's also resorted to similar progressive interpretation in exercise of its power under article 226.

The practice of purification of members of the Scheduled Castes before permitting them entry in the Nathdwara Temple was held to be discriminatory and the Government was held bound to ensure that no untouchability is practiced for entry into a public temple.

A provision giving benefit only to a son was held applicable also to a daughter relying on the General Clauses Act wherein reference to a 'male' includes a 'female'. The view was supported on the ground that the object of the enactment did not permit any distinction between a son and a daughter and a different construction is violative of the equality guaranteed under the Constitution.

NATIONAL HUMAN RIGHTS COMMISSION

VIS A VIS

ROLE & RESPONSIBILITY OF POLICE

INTRODUCTION

1. The ultimate objective of implementing the mandate of Constitution is to secure justice, liberty, equality and dignity to the people of India. It is, therefore, important that there is synergy in efforts of N.H.R.C. and State Police force.

2. The role of the Police in protecting and promoting the human rights of the people, in particular, the vulnerable sections of the society, is extremely challenging in the present scenario of growing violence and terrorism. The police, as the first point of contact for the victims of violations of human rights, have to be sensitive to the plight of the common man. The diversity of culture, language, custom, and socio-economic conditions in our country adds to their responsibility.

CONSTITUTION OF NHRC

3. The National Human Rights Commission of India has been constituted under the Protection of Human Rights Act, 1993. Section 12 of this Act, among other functions, enjoins upon the Commission to inquire into violations of human rights or abetment thereof, as also negligence in the prevention of such violations by public servants.

4. NHRC has endeavoured to give a positive meaning and content to the objectives set out in the Act. The Commission has worked vigorously to create awareness about human rights and to sensitize public authorities in promoting and protecting the human rights of the people.

INITITATIVES OF NHRC

5. For the realisation of economic, social and cultural rights, the Commission has taken important initiatives with regard to the issues concerning Right to health, Right to education, Rights of women, children, persons with disabilities, displaced persons, and detainees. The Commission has also made special efforts in the field of human rights education and training.

NHRC ON POLICE REFORMS

6. In addition to all this, the Commission has directed its efforts to press for systemic reforms in the police, in the custodial justice system and indeed the criminal justice system.

The NHRC had made detailed submissions to the Supreme Court in the matter of **Prakash Singh vs. Union of India & others.**

The Supreme Court, while delivering the judgment in this case on police reforms, had asked the states to choose any of the models recommended by NHRC and two other Committees for the constitution of State Security Commissions.

NHRC ON TERRORIST THREATS

7. On the request of the Supreme Court, the NHRC along with others, examined the issue of threats emanating from international terrorism and organised crimes and submitted its considered views regarding identification of certain offences as Federal Crimes and the importance of their investigation by a Central Agency.

NHRC ON POLYGRAH TESTS

8. The procedure outlined in the NHRC 'Guidelines for the Administration of Polygraph Test (Lie Detector Test) on an Accused' published in 2000 was afforded the force of law by the Supreme Court in the recent judgment in the case of **Smt. Selvi & others vs. State of Karnataka** when it was held that "these guidelines should be strictly adhered to and similar safeguards should be adopted for conducting the 'Narcoanalysis technique' and the 'Brain Electrical Activation Profile' test", wherever permissible.

TRAINING PROGRAMME IN S.V.P.N.P.A. HYDERABAD

9. As a result of the efforts of the Commission, human rights have been introduced as part of the training programme for police officers at the Sardar Vallabhbhai Patel National Police Academy in Hyderabad. The States too have now included the subject of human rights in their police training programmes.

The NHRC has developed a three-tier model training syllabus for Constables, Sub-Inspectors, Inspectors, Deputy Superintendents of Police and other senior officers. The same has also been circulated to all the States for adoption so that standards of professional

conduct of the police as well as their sensitivity are enhanced with regard to respecting the human rights of the people with whom they deal.

TRAINING & ORIENTATION PROGRAMMES FOR STATE POLICE FORCES

10. The NHRC also assists in sensitizing and imparting training to State police forces, para-military forces and armed forces in the country. Debate competitions on human rights issues are organised for the state police forces and the central police organisations. Similarly, training programmes/ workshops, seminars and programmes for civil servants, prison officials, judicial officers and NGOs are organized throughout the year.

ONLINE AWARENESS PROGRAMME FOR POLICE PERSONNEL

11. Recently, the Commission and IGNOU have jointly signed an MOU for developing an online human rights awareness programme for police personnel. The project has been launched on 1.2.2011 by Mr. Justice K.G. Balakrishnan, Chairperson NHRC, initially as a pilot project in three Police Training Academies of Uttar Pradesh, Delhi and Haryana. Later on the project will be expanded in phases to cover all the districts of the country.

EXPECTATIONS FROM THE POLICE FORCES

12. As enforcers of the law, the police are commonly seen as the trusted embodiment of law, meant to protect the innocent, find the guilty and bring them to trial, and promote the means and ends of justice. They are expected to uphold the rule of law and adhere to its letter and spirit.

13. A common man, when he is a victim of an offence, expects that the police will listen to his grievance sympathetically and set in motion the legal machinery to redress his grievance and afford him justice. Once an FIR is registered, he expects that justice will be delivered through impartial and competent investigation resulting in a fair trial and judgement. The citizens also expect the police to provide them a safe and a secure environment by preventing offences which may cause gross violations of rights of individuals or communities. The right to life and to property is a basic human right.

14. In the fast developing social scenario, social legislation is growing at a staggering pace. The success of its implementation will depend on the attitudinal changes in the police. The police are expected to show special consideration and sensitivity while dealing with cases of

violations of human rights of the weaker sections of our society viz. women, children scheduled castes & scheduled tribes, persons with disabilities, and senior citizens.

15. The expectations from the police are truly enormous. However, the delivery of service by the police in our country leaves much to be desired.

COMPLAINTS AGAINST THE POLICE FORCES IN NHRC

16. A very large proportion of the complaints received in the Commission relate to allegations of violations of human rights by police personnel. In the last three years, more than a lakh complaints received in the Commission pertained to allegations of various kinds of violations of human rights by the police. Majority of these complaints related to failure to take lawful action, abuse of power, false implication, and illegal detentions of accused, suspects and their relatives. The trauma faced by the person, especially the one who has been lifted just on suspicion or because he happens to be related to someone wanted by the police, leaves a long lasting impact on the personality of the victim, nay the character of our society.

NATURE OF COMPLAINTS

17. The police are the ultimate vanguards of human rights. Two areas, where police performance besmirches their shining image are that of complaints of police encounters and custodial violence.

FAKE ENCOUNTERS

18. During the past three years, the Commission received 212 complaints of deaths in alleged 'fake encounters' by the police. There are instances where the complaints of 'fake encounters' have been substantiated on investigations; leading to the impression that such encounters have been used for elimination of 'hard core criminals' without following the due process of law. In several cases, the Commission ordered financial relief and other action. These instances seriously erode the credibility of police. They do not have impact on the crime situation in terms of acting as a deterrent or controlling crime.

DEATHS IN POLICE ACTIONS & REVISED GUIDELINES

19. The Commission is conscious of the fact that it is not possible to completely avoid death in police action; in fact the law itself provides for use of force in certain circumstances as well as the

right to private defence. However, it is very important that the police action and the subsequent investigation are transparent, to establish the bonafides of such action.

The Commission has, in May 2010, issued revised guidelines in this regard. As per the revised guidelines, all incidents of deaths in police action are now required to be intimated to the Commission within 48 hours. In the cases of exchange of gun fire, the guidelines provide for forensic examination of 'hand wash' of the deceased and the ballistics examination of the seized weapons alleged to have been used by the deceased and his companions.

CUSTODIAL DEATHS

20. Another area, which has emerged as an area of serious concern, is that of custodial violence. It is true that certain offences cannot be prevented even after best efforts by the police, but the crime of custodial violence can certainly be prevented by police themselves.

It is to be ensured that, as the very first step, policemen do not, directly or indirectly, become violators of human rights. Only then they can act as protectors of human rights. They should be sensitive and sympathetic to the plight of victims of crime who, many a times, are from the weaker sections of the society.

Many of the complaints of misbehaviour or ill-treatment by police are received from the poor, the SCs & STs and other weaker sections of the society. It is required to ensure appropriate training of the police officers of various ranks in public dealing, during the basic as well as refresher courses. There can be no alternative to the sensitization and continuous training of our policemen so that the human rights of common people are respected.

ROLE OF SENIOR POLICE OFFICERS IN PROTECTION OF HUMAN RIGHTS

21. The role of senior officers is crucial to protect the human rights of all the people. It has to be understood that a misplaced protective approach, towards the acts of omission and commission by their subordinates, breeds an attitude of impunity, which is very harmful in long run. They need to ensure that their subordinates work with the spirit to promote rule of law which alone can serve as a guarantee against violations of human rights. As leaders of the police, it is required to ensure the welfare and wellbeing of all the policemen and police officers. The Commission is alive to ensuring the human rights of the policemen and has advocated their cause.

Guaranteeing the basic human rights of the police and basic amenities of the service is the best way to motivate them to discharge the herculean task.

CONCLUSION

22. At the heart of all reforms lies the need to create effective mechanisms of accountability – the transparency and impartiality of these mechanisms create strength and credibility for the police. In other words, a democratic country like India needs democratic policing. Democratic policing is based on the idea of the police as protectors of the rights of citizens and the rule of law, while ensuring the safety and security of all equally. It further requires the police to create the security environment which best promotes democracy and good governance.

LAUNCHING OF

ONLINE TRAINING PROGRAMME ON HUMAN RIGHTS

ON 1ST FEBRUARY, 2011

The National Human Rights Commission and the Indira Gandhi National Open University have developed an Online Training Programme for Police Personnel. The main focus of this programme is to sensitize and spread awareness about human rights.

The basic programme, which is specifically designed to target Constables to Sub Inspectors, is the first initiation of the Indira Gandhi National Open University and the National Human Rights Commission. The programme will be further developed into an Advanced Programme for higher level target groups and finally to a Training of Trainers Programme, focusing on the needs of the trainers.

The first basic programme has been initially launched in three states - Delhi, Haryana and Uttar Pradesh at their respective police academies. After a successful launch in these academies, the programme will be extended to districts and eventually to all the police stations.

Aims and objectives of the programme

- To spread awareness on Human Rights Issues
- To sensitize police personnel towards Human Rights Issues
- To equip them to apply Human Rights in their day-to-day interaction with the public
- Sensitizing the police force
- Creating Human Rights awareness and understanding the core issues
- Interacting with police personnel and sharing their practical difficulties and experiences
- Bridging the gap between police and common police
- Creating informed and self-regulated police personnel
- Explaining the role of motivation and positive appreciation in a quest to become a good citizen

Features of the Programme

- This is a tailor made programme, keeping in view the tight schedule of the police personnel.
- The online programme can be accessed as and when required.
- The police personnel can access the programme in the archive even if they miss a session.
- The units are interactive and multimedia tools and flashes have been used in designing the units to make them simple, interesting and interactive, followed by case studies and discussions.
- The duration of the programme is five days.
- On the first three days, participants will be taught all the six units i.e. two units each day, through interactive lectures by the resource persons.
- On fourth and fifth day, interactive counseling session will be held, wherein all the participants and the program coordinator/resource person will interact with each other through the web-conferencing mode.

Comments of the Chair-person NHRC on the Programme

Justice Balakrishnan said that it is the duty of the Commission to sensitize officers and the people about the human rights. This kind of focused training module becomes all the more important given the fact that various provisions of law and amendments therein sometimes take long to reach the police officers, down the hierarchy, whose responsibility is to maintain the law and order.

In a democratic country, police have major responsibilities in not only maintaining the law and order but also supporting the criminal justice system among others. The NHRC Chairperson said that IGNOU has evolved as an international learning centre and that is why NHRC has collaborated with it for developing the online training programme for police personnel.

Comments of the Chair-person NHRC on the Programme

Mr. P.C. Sharma, Member, NHRC said that human rights never received such a focus as it is now in the police training curriculum. He said that senior police officers have a duty to orient their subordinates towards human rights. Crime detection, investigation and human rights go hand in hand. Human rights are linked with the dignity of an individual. Senior officers will need to shed feudal approach in their functioning and supervise their subordinate officers and staff with a collaborative approach.

He said that going by the number of complaints received in the Commission, sometimes it feels that the police forces are growing insensitive. They need to change their attitude towards women, children, dalits and helpless people. Nevertheless, Mr. Sharma said that NHRC while advocating for the promotion and protection of human rights of the people also cares for the human rights concerns of the police personnel and their tough and demanding service conditions, and it has taken up the issue of reforms in their service conditions time and again with the concerned authorities.

NATIONAL

HUMAN

RIGHTS

COMMISSION

GUIDELINES

NATIONAL HUMAN RIGHTS COMMISSION [NHRC] GUIDELINES ON ARREST November 22, 1999

Concerned with the large number of complaints about abuse of police powers, particularly in relation to arrest and detention, the National Human Rights Commission has drawn up a set of guidelines. They are based on constitutional provisions, existing laws, Supreme Court decisions and National Police Commission recommendations.

The Commission has said that these guidelines should be translated into regional languages and made available in all police stations throughout the country. They have also said that the police must set up a complaints redressal mechanism to promptly and effectively investigate complaints regarding violation of NHRC guidelines.

Procedure to be followed prior to arrest

The Supreme Court has laid down in Joginder Kumar's case that arrest without warrant should be carried out only after reasonable satisfaction is reached about the genuineness of a complaint; a person's complicity in the offence; and the need to make an arrest.

The National Human Rights Commission on its part has asserted that arrests in bailable offences must be avoided unless there is a strong possibility that the person will run away. A police officer must be able to justify an arrest. An arrest without warrant can be justified only in the following circumstances:

i. Where the case involves a grave offence such as murder, dacoity, robbery, rape etc. and it is necessary to arrest the suspect to prevent her/him from escaping or evading the process of law; and/or

ii. Where the suspect is given to violent behaviour and likely to commit more offences; and/or

iii. Where the suspect needs to be prevented from destroying evidence; interfering with witnesses; or warning other suspects who have not yet been arrested; and/or

iv. The suspect is a habitual offender, who unless arrested is likely to commit similar or further offences. [3rd Report of the National Police Commission]

Procedure to be followed at the time of arrest

Human dignity must be upheld and minimal force should be used while arresting and searching suspects.

- As a rule, use of force should be avoided while making an arrest.
- In case the person being arrested offers resistance, minimum force should be used and care should be taken to see that injuries are avoided.
- Dignity of the arrested person should be protected. Public display or parading of the arrested person is not permitted.
- Search of the arrested person should be carried out with due respect for her/his dignity and privacy. Searches of women should only be done by women, with strict regard to decency.
- Women should not be arrested between sunset and sunrise. As far as practicable, women police officers should be associated when the person being arrested is a woman.
- Force should never be used while arresting children or juveniles. Police officers should take the help of respectable citizens to ensure children and juveniles are not terrorised, and the need to use coercive force does not arise.
- The arrested person should be immediately informed about the grounds of arrest in a language s/he understands.
- In case a person is arrested for a bailable offence, s/he must be informed about her/his right to be released on bail.
- Information regarding arrest and detention should be communicated without delay to the police control room and to the district and state headquarters. A round-the clock monitoring mechanism should be put in place in this regard.

Procedure to be followed after arrest

Constitutional and legal provisions requiring an arrested person to be informed about the grounds of arrest, her/his right to be represented by a lawyer and to be promptly produced before a court must be strictly followed.

Article 22 (1) of the Constitution lays down that an arrested person must be informed as soon as possible about the grounds of arrest; s/he must not be denied the right to consult and be defended by legal counsel of her/his choice. Section 50 (1) of the Cr.P.C. requires a police officer to communicate to the arrested person, grounds of the arrest and full particulars of the offence under which s/he is being arrested.

Article 22 (2) requires an arrested person to be produced before the nearest magistrate within 24 hours. Section 57 of the Cr.P.C. says that an arrested person cannot be in kept in custody for more than 24 hours without the order of a magistrate.

Procedure in respect of interrogation

Methods of interrogation must be consistent with individual rights relating to life, liberty and dignity.

- Torture and degrading treatment of suspects is prohibited.
- Interrogation of an arrested person should be conducted in a clearly identifiable place, which has been notified for the purpose by the government.
- The place of interrogation must be accessible. Relatives or a friend of the arrested person must be informed where s/he is being interrogated.
- An arrested person should be permitted to meet a lawyer at any time during the interrogation.

NHRC Directions on Mandatory Reporting of Custodial Death/ Rape and Video-Filming of Post Mortem Examinations

All cases of custodial death and custodial rape whether in police lock-up or in jail must be reported to the NHRC within 24 *hours of occurrence by the concerned District Magistrate or Superintendent of Police. Failure to report promptly will give rise to the presumption that there is an attempt to suppress the incident.*

All post-mortem examinations in respect of custodial deaths should be video-filmed and a copy of the recording should be sent to the NHRC along-with the post mortem report.

Autopsy Report forms prescribed by the NHRC should be used to record the findings of the post-mortem examination.

Encounter Deaths

NATIONAL HUMAN RIGHTS COMMISSION [NHRC] GUIDELINES ON ENCOUNTER DEATHS March 29, 1997 and REVISED GUIDELINES December 2, 2003

The Andhra Pradesh Civil Liberties Committee [APCLC] complained to the NHRC that the police was killing people whom they suspected to be members of the People's War Group, a militant organization, in fake encounters. The police said that the deaths took place when armed militants resisted arrest but the Andhra Pradesh Civil Liberties Committee insisted that these were extra-judicial killings amounting to unjustified and unprovoked murders. They gave details of 285 such incidents. The NHRC was unable to take up all the cases because many of them had occurred prior to one year, which is the limitation period for taking up complaints by human rights commissions. Ultimately six cases involving the death of seven people were taken up by the NHRC and guidelines detailing the procedure in respect of encounter deaths were issued in 1997.

However, in 2003, the NHRC noting that matters in respect of encounter deaths were not encouraging - as the guidelines were not being followed in their true spirit - made some additions to its existing guidelines. The Commission also expressed concern that all states were not sending information about deaths in encounters and asserted that availability of proper statistics was necessary for the effective protection of human rights and discharge of the NHRC 's duties.

Under the law, no one including the police has an unqualified right to take the life of another person. Death of a person by a police officer amounts to culpable homicide not amounting to murder, unless it is established that the causing of death is not an offence in law. If a police officer kills someone in an encounter, s/he must prove that the death was caused either in the legitimate exercise of the right of private defence or in the use of force, proportional to the resistance offered, while arresting a person accused of an offence punishable with death or life imprisonment. This can only be ascertained by a proper investigation and not otherwise.

First Information Reports [FIR] recorded at police stations invariably say that, on sighting the police, the other party opened fire with a view to kill. They give the impression that the concerned officers are justified in causing death, exercising their right of self-defence. So, no attempts are made by the police to find out whether officers who fire the bullets are justified in law to doing so.

Responding to public concerns that in reported encounters, sufficient efforts are not made to ascertain the cause of death and whether the deceased have committed any offences, the National Human Rights Commission has directed all states and union territories to ensure adherence to proper police procedure and conduct of impartial investigations.

NHRC Guidelines

1. As soon as information about death being caused in a police encounter is received, the officer in-charge of a police station must record it in the appropriate register.

2. It is desirable that the investigation should be handed over to an independent investigation agency such as the Criminal Investigation Department [CID], if members of the encounter party belong to the same police station.

3. Whenever a specific complaint is made against the police for committing a criminal act that amounts to culpable homicide, an FIR should be registered under appropriate sections of the Indian Penal Code and investigation should invariably be handed over to the CID.

4. A magisterial inquiry must invariably be held in all cases where death has occurred in the course of police action. The next of kin of the dead person must invariably be associated with the inquiry.

5. Prompt prosecution and disciplinary action must be initiated against the officers found guilty in the magisterial inquiry/police investigation.
6. The question of compensation being given to the dependents of the dead person will depend on the facts and circumstances of each case.

7. No out of turn promotion or instant gallantry rewards will be given to the concerned officers soon after the occurrence. It must be ensured at all costs that they are given only after the gallantry of the officer concerned is proven beyond doubt.

8. A six monthly statement of all cases of deaths in police action in the state shall be sent by the Director General of Police to the NHRC by January 15 and July 15 every year. The statement may be sent in the

following format along-with postmortem reports and inquest reports [wherever available] and also the inquiry reports:

(i) Date and place of occurrence
(ii) Police station and district
(iii) Circumstances leading to death:
  (a) self defence in encounter
  (b) in the course of dispersal of unlawful assembly
  (c) in the course of effecting arrest
(iv) Brief facts of the incident
(v) Criminal case number
(vi) Investigating agency
(vii) Finding of the magisterial inquiry/inquiry by senior officers:
  (a) disclosing in particular names and designations of police officials if found responsible for the deaths; and
  (b) whether use of force was justified and action taken was lawful.

Eliminating suspected members of outlawed or militant organizations by staging fake encounters amounts to murder. Article 21 of the Constitution lays down that no one shall be deprived of life or personal liberty, except according to the procedure established by law. The Supreme Court has said that "even a person under death sentence has human rights which are non-negotiable and even a dangerous prisoner, standing trial has basic liberties which cannot be bartered away."

(Sunil Batra vs. Delhi Administration 1978 SCC 494)

NATIONAL HUMAN RIGHTS COMMISSION [NHRC] GUIDELINES ON POLICE - PUBLIC RELATIONS December 22, 1999

National Human Rights Commission guidelines on police-public relations are of particular relevance to officers at the cutting edge level, i.e. those who are posted at police stations. These guidelines have been communicated to all chief secretaries and police chiefs. They are in an invaluable aid for police officers to perform their duties in a manner compatible with prevailing human rights standards.

Toll free telephone number for the public to convey crime information to the public

Police services of all states should set up a toll free telephone number for the public's convenience. In Kerala, this number is 1090. The National Human Rights Commission has recommended that for the purpose of uniformity, all states should have the same number i.e. 1090. They have advocated that:

- The number should be dedicated to public use and installed in the Police Control Room/Police Station/Sub-Divisional Office.

- The number should be toll free within the state, enabling people from remote parts or interiors of districts to access it.

- Callers should not be compelled to reveal their identity. They may be given a code number to identify themselves to know the result of the investigation.

- Callers should be rewarded for their public-spirited service by issuing commendation certificates if the information results in detection of crimes.

Registration of offences and information about progress in investigation

Transparency in the investigation process must be maintained. The Commission has stressed that complainants must have access to information about their cases. They have said that:

- A First Information Report [FIR] should be registered promptly on receiving a complaint about a cognizable offence.

- A copy of the FIR should be given to the complainant and an entry about this should be made in the First Case Diary.

- If the complaint does not make out a cognizable offence, the police should explain to the complainant, the reasons why the complaint cannot be registered.

- If investigation is not completed within three months of the FIR being registered, the complainant should be informed in writing giving specific reasons for the delay.

- Proof of having informed the complainant [postal acknowledgement or written acknowledgement] about reasons for the delay in investigation should be kept on the Case Diary file.

- If investigation is not completed within six months of registering the FIR, the complainant should be informed again in writing about the reasons for non-completion of investigation, and the acknowledgement should be kept on the Case Diary file.

- If the investigation is not completed within one year, a more detailed intimation [memo] should be prepared by the investigating officer giving reasons for the delay to the complainant. The intimation should be endorsed by a gazetted officer who directly supervises the work of the investigating officer. The gazetted officer should personally verify the reasons for delay given by the investigating officer. A record of the intimation and its acknowledgement by the complainant should be kept on the Case Diary file.

- The complainant should be informed once the investigation is completed and a charge-sheet is filed before the court. A copy of the charge-sheet should be given to the complainant by the police. In case the complainant is not available for some reason, her/his family should be informed.

Meeting of Station House Officers with the Public

In order to strengthen police-public relations, Station House Officers [SHO] must hold regular monthly meetings in areas falling under their jurisdiction. This will enable people to voice their grievances to the SHO.

It will also give the police an opportunity to inform people about law and order issues and enlist their cooperation in maintaining peace and preventing crime. The Commission has advocated that senior officers should also take part in these meetings along-with Station House Officers.

In a democratic nation, people's participation in governance is of utmost importance. As a vital component of the governmental machinery, the police too, are under an obligation to take into account community aspirations and tailor policing to serve the community's needs best. Transparency and openness in functioning are excellent ways to break barriers and engage in people-oriented policing.

NATIONAL HUMAN RIGHTS COMMISSION [NHRC] GUIDELINES ON POLYGRAPH [LIE DETECTOR] TESTS January 11, 2000

Complaints came to the NHRC that the police, without explaining to people, the full implications of a lie detector test - which requires prior injection a drug - was making them take it, in violation of their fundamental right against self-incrimination.

Since lie detector or polygraph tests are not regulated by any particular law as such, the NHRC has laid down guidelines for the conduct of these tests. While issuing these guidelines, the NHRC followed the principle: 'in the absence of a specific 'law', any intrusion into fundamental rights must be struck down as constitutionally invidious (violative).

Lie detector tests can become an instrument to compel the accused to be a witness against her/himself, in violation of Article 20 (3) of the Constitution [Right against Self-Incrimination].

The NHRC said that it was aware that lie detector tests have been held consistent with due process of law by courts in the United States, on grounds that they are a part of everyday life. However, in India's context the immunity from invasiveness [as an aspect of Article 21- Right to Life and Personal Liberty] and from self-incrimination must be read together.

General powers of the State cannot intrude upon the liberty or constitutional rights of a person. The invasiveness of a lie detector test overrules the argument of the police that the authority to use lie detector tests comes from their powers under the Code of Criminal Procedure to question and interrogate suspects.

Holding of such tests is the prerogative of the individual and not an empowerment of the police....it must perforce be regarded as illegal and unconstitutional unless it is voluntarily undertaken under non-coercive circumstances.

NHRC Guidelines

1. Lie detector tests must not be carried out without the consent of the accused.

2. If the accused volunteers to take a lie detector test, s/he must be given access to a lawyer to explain the physical, emotional and legal implications of the test. The implications must also be explained by the police.

3. Consent to take a lie detector test must be recorded before a Judicial Magistrate.

4. The magistrate must take into account, the time the accused has been in detention and the nature of her/his interrogation. This should be done to find out whether the accused is being coerced into giving consent.

5. At the time of recording consent, the accused must be represented by a lawyer. The lawyer will explain that the statement [given during the test] does not have the status of a confessional statement given to a magistrate. It will have the status of a statement made to the police.

6. The actual recording of the lie detector test should be done by/in an independent agency (such as a hospital) and in the presence of a lawyer.

7. A full medical and factual narration of the manner in which information is received must be taken on record.

Forcing a person to take a lie-detector test is illegal. Consent must be taken before subjecting a person to a lie-detector test. Also, there is no scientific evidence to prove that results obtained from polygraph tests are conclusive. Failing a lie-detector test does not mean that the person is guilty. Polygraph tests measures response on the premise, that a person is being untruthful, if there are sudden changes in her/his breathing, heart and blood pressure rates. A truthful person can fail the test if s/he is nervous, has health problems or is just surprised by the question.

SUPREME COURT

OF

INDIA'S

DIRECTIVES

ON

HUMAN RIGHTS

&

POLICING

Registration of FIR

STATE OF HARYANA V BHAJAN LAL & OTHERS AIR 1992 SC 604

A First Information Report (FIR) was registered by the Haryana Police against Ch. Bhajan Lal, on a complaint by a private person that he possessed assets disproportionate to his known sources of income. Bhajan Lal - Union Minister and former Chief Minister of Haryana - went to the High Court asking for the FIR to be cancelled, saying that it was registered because of the political rivalry that existed between Ch. Devi Lal, the existing Chief Minister of Haryana and him.

The High Court ordered cancellation of the FIR and all proceedings undertaken on its behalf, on the ground that the allegations did not make up a cognizable offence to start a lawful investigation. The State of Haryana appealed to the Supreme Court against the order of the High Court.

Supreme Court Observations

The Supreme Court said that the order of the High Court cancelling the FIR was bad both in law and on the facts. They asserted that everyone, whether individually or collectively, must abide by the law and even the judiciary cannot interfere with the investigation process unless police officers improperly and illegally exercise their investigatory powers. However, the Supreme Court cautioned that where a police officer transgresses the circumscribed limits and causes serious prejudice to the personal liberty and the property of a citizen, courts will step in and issue appropriate orders.

Section 154 (1) of the Code of Criminal Procedure, 1973 [Cr.P.C.] says that if any information disclosing a cognizable offence is given at the police station, the officer in-charge must register it. The Supreme Court asserted that it is not open to the police to question the reasonableness or credibility of the information at this stage. An FIR should be registered immediately and even before proceeding with a preliminary investigation.

The Court also commented on Section 157 CrPC which says that two conditions must be satisfied before a police officer starts an investigation:

(i) *S/he should have 'reason to suspect' the commission of a cognizable offence.*

The reason to suspect' must arise from the allegations made in the first information given to a police officer and at this stage the question of adequate proof of facts alleged in the FIR does not arise.

(ii) *S/he should satisfy her/himself about the credibility of the information*
A police officer has to draw his [her] satisfaction [about the credibility of information] only on materials which were placed before him [her] at that stage namely the first information together with the documents, if any, enclosed.

Supreme Court Directives

1. An FIR must be registered as soon as information about a cognizable offence is received.

2. Before starting an investigation, police officers should make a 'rational inference' that a cognizable offence has been committed. The inference should be made solely on the basis of facts mentioned in the FIR.

3. Courts will not as a rule, interfere in the investigation process except in the following circumstances when the High Court can cancel the FIR and other proceedings carried out by the police:

    i. Where the allegations in the FIR do not constitute any cognizable offence or justify an investigation by the police.

    ii. Where the allegations made in the FIR and the evidence collected by the police in support of the allegations do not point towards the guilt of the accused.

    iii. Where investigation has been carried out by the police in a non-cognizable offence without the order of a magistrate.

    iv. Where the CrP.C. or any other law expressly prohibits carrying out criminal proceedings against the accused.

    v. Where criminal proceedings have been started with dishonest intent to take revenge from the accused.

Non-registration of First Information Reports [FIR] is one of the most serious, frequent and common grievances against the police. This problem is compounded when the person against whom a complaint is made is rich and powerful. Article 14 of the Constitution, guarantees to all persons, 'equality before the law and equal protection of the laws', within the territory of India. Police officers must register an FIR immediately on receiving information about a cognizable offence. Persons aggrieved by non-registration of FIR can approach the District Superintendent of Police or the concerned Magistrate to get their complaints registered. Alternatively complaints in this regard an also be filed before the National or concerned State Human Rights Commission.

Basis of Investigation

STATE OF WEST BENGAL V SWAPAN KUMAR GUHA & OTHERS
1982 SCC 561

Sanchaita Investments of Calcutta was offering extraordinarily high rates of interest to attract cash deposits from the public. The Commercial Tax Officer, Bureau of Investigation suspected some fraud was being committed. He asked the police to register a First Information Report [FIR] on the grounds that such high rates of interest could not be sustained, therefore the deposit scheme was being promoted with the intention of making quick or easy money, in violation of the Prize Chits and Money Circulations Schemes [Banning] Act, 1978.

The police registered an FIR and started an investigation on the basis of the Commercial Tax Officer's suspicions. However, the High Court cancelled the FIR and subsequent police proceedings, saying that they were illegal and without jurisdiction. The State of West Bengal appealed to the Supreme Court against the decision of the High Court.

Supreme Court Observations

The police do not have unfettered discretion to start an investigation. Unlimited discretion, the Supreme Court said is a ruthless destroyer of personal freedom. An investigation cannot be started on mere unfounded suspicion. They emphasized that fundamental principles of justice are based on the logic that the process of investigation cannot be used to harass people against whom no offence is disclosed. Carrying out investigation without a proper basis imperils the personal liberty and property of the individual, which are sacred and sacrosanct.

The right of the police to conduct an inquiry must be conditioned by the existence of reason to suspect the commission of a cognizable offence. Such reason can be established only if facts in the FIR point towards an offence being committed. The Supreme Court laid down that an FIR which does not allege or disclose that the essential requirements of the penal provision are *prima facie* [on the face of it] satisfied cannot form the foundation or constitute the starting point of a lawful investigation.

This case also re-examined the question of when the courts can interfere in the investigation process. The Supreme Court said, that if after considering all relevant aspects, the courts are satisfied that an offence has been committed, they will allow the investigation to proceed without interference. However, if no offence is disclosed, courts are under a duty to interfere and stop the investigation to prevent any kind of uncalled for and unnecessary harassment to an individual.

Supreme Court Directives

1. It is essential before starting an investigation that facts mentioned in the FIR disclose all the elements that go to makeup a cognizable offence.

2. Powers of investigation must be exercised in strict accordance with constitutional guarantees and legal provisions.

3. Courts have a duty to intervene in the investigation process to prevent harassment of individuals if their rights are being violated and correct procedure is not being followed.

Police officers often find themselves under pressure to register cases on flimsy grounds. The Supreme Court has laid down that a just balance has to be struck between fundamental rights of citizens and the expansive power of the police to investigate an offence. Subjecting a person to a police investigation on the basis of vague and unverified information is a violation of fundamental rights. It will only lead to censure and ordering of inquiry against the errant officer by the courts who are under a duty to ensure innocent people are not harassed by the investigative process.

T.T ANTHONY V STATE OF KERALA AIR 2001 SC 2637

In a well-known incident in Kannur district of Kerala, five persons were killed and several injured in police firing. The police fired in order to control activists belonging to the opposition, protesting the visit of a minister in the ruling UDF coalition. Cases were registered against eight named and many unidentified persons belonging to the opposition party for creating the disturbances that led to the police action. Meanwhile, due to public uproar, the UDF Government instituted a judicial inquiry into the incident In the intervening period, the UDF lost the election and the opposition came to power. The report of the Commission of Inquiry, which was released after the new government came to power held the Executive Magistrate and the Deputy Superintendent of Police responsible for the deaths. The findings of the commission were accepted by the new government and cases were registered against the Executive Magistrate and the police officials involved in the firing. The Executive Magistrate and the police officials appealed to the Supreme Court after the High Court turned down their request for cancelling the cases against them.

The appeals raised two significant questions of law: (i) whether a second First Information Report [FIR] can be registered in respect of an offence that has already been registered, and if it can form the basis of afresh investigation (ii) whether the report of a Commission of Inquiry into the same incident is binding upon the investigating agency.

Supreme Court Observations

(i) FIR [First Information Report] is the record of the information received first in time and is written and registered on the basis of that information. In other words, it is the record of the earliest information received about a cognizable offence. Therefore, the Supreme Court affirmed that the question of having a second FIR does not arise.

However, it is possible that more than one piece of information may be received from time to time and from different people in respect of the same incident. In such a situation, the Court clarified, that before submitting the Magistrate's report, the officer in charge of a police station must investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence They said that, if after filing the investigation report before the magistrate, the investigating officer comes across further information or material, he [she] need not register a fresh FIR,

he [she] is empowered to make further investigation, normally with the leave of the court to collect further evidence.

(ii) The Supreme Court said that the police is not bound by the findings of a Commission of Inquiry. The government for varied reasons of its own sets up a Commission of Inquiry and it is for them to endorse or reject the findings or recommendations. However, the police as an independent investigating agency of the State must act only in accordance with the law and on the evidence before it. Nevertheless the police can take advantage of the facts and findings of a Commission of Inquiry as a factor in its own investigations but the findings should not preclude the investigating agency from a different opinion if the evidence obtained by it supports such a conclusion.

Supreme Court Directives

1. There can only be one FIR in respect of an incident.

2. If any additional information is received after the FIR is registered, the police can investigate on it and mention the result in the report to the magistrate II submitted by the investigating officer.

3. If the investigating officer comes across any evidence after the report to the magistrate has been sent, s/he can carry out further investigation and send supplementary reports to the magistrate.

4. Report of a Commission of Inquiry is not binding upon the investigating agency. The investigating agency can form a different opinion on the basis of evidence collected by it.

Registration of more than one FIR in respect of a particular incident has been disallowed by the Supreme Court. However, if any additional information is received in connection with the incident, it should be recorded under Sec 161 of the Code of Criminal Procedure,1973 (CrPC) and mentioned in the charge-sheet. The Supreme Court has categorically said that the police is under a duty to investigate not only the cognizable offences that are made out in the FIR but also any other offences that may have been committed in the same incident or transaction.

NANDINI SATPATHY V P.L. DANI AIR 1978 SC 1025

Nandini Satpathy -former Chief Minister of Orissa - against whom a case had been registered under the Prevention of Corruption Act, was asked to appear before the Deputy Superintendent of Police [Vigilance] for questioning. The police wanted to interrogate her by giving her a string of questions in writing. She refused to answer the questionnaire, on the grounds that it was a violation of her fundamental right against self-incrimination. The police insisted that she must answer their questions and booked her under Section 179 of the Indian Penal Code, 1860, which prescribes punishment for refusing to answer any question asked by a public servant authorized to ask that question.

The issue before the Supreme Court was whether Nandini Satpathy had a 'right to silence' and whether people can refuse to answer questions during investigation that would point towards their guilt.

Supreme Court Observations

Article 20 (3) of the Constitution lays down that no person shall be compelled to be a witness against her/himself. Section 161 (2) of the Code of Criminal Procedure, 1973 [Cr.PC], casts a duty on a person to truthfully answer all questions, except those which establish personal guilt to an investigating officer.

The Supreme Court accepted that there is a rivalry between societal interest in crime detection and the constitutional rights of an accused person. They admitted that the police had a difficult job to do especially when crimes were growing and criminals were out witting detectives. Despite this, the protection of fundamental rights enshrined in our Constitution is of utmost importance, the Court said. In the interest of protecting these rights, we cannot afford to write off fear of police torture leading to forced self incrimination.

While any statement given freely and voluntarily by an accused person is admissible and even invaluable to an investigation, use of pressure whether subtle or crude, mental or physical, direct or indirect but sufficiently substantial by the police to get information is not permitted as it violates the constitutional guarantee of fair procedure. The Supreme Court affirmed that the accused has a right to silence during interrogation if the answer exposes her/him into admitting guilt in either the case under investigation or in any other offence. They pointed out that ground realities were such that a police officer is a commanding and authoritative figure and therefore, clearly in a position to exercise influence over the accused.

Supreme Court Directives

1. An accused person cannot be coerced or influenced into giving a statement pointing to her/his guilt.

2. The accused person must be informed of her/his right to remain silent and also of the right against self incrimination.

3. The person being interrogated has the right to have a lawyer by her/his side if s/he so wishes.

4. An accused person must be informed of the right to consult a lawyer at the time of questioning, irrespective of the fact whether s/he is under arrest or in detention.

5. Women should not be summoned to the police station for questioning in breach of Section 160 (1) Cr.PC.

An essential element of a fair trial is that the accused cannot be forced to give evidence against her/himself. Forcing suspects to sign statements admitting their guilt violates the constitutional guarantee against self incrimination and breaches provisions of the Code of Criminal Procedure, 1973 *[Cr.PC]. It is also inadmissible as evidence in a court of law. In addition, causing 'hurt' to get a confession is punishable by imprisonment up to seven years.*

PEOPLE'S UNION FOR CIVIL LIBERTIES (PUCL) V. UNION OF INDIA AND ANOTHER AIR 1997 SC 568

The People's Union for Civil Liberties [PUCL] filed a writ petition with the Supreme Court challenging the constitutional validity of Section 5(2) of the Indian Telegraph Act, 1882, which authorizes the government to intercept messages "on the occurrence of any public emergency or in the interest of public safety" if it is satisfied that it is "necessary or expedient to do so" in five given situations. PUCL approached the Court on the basis of a report on tapping of politicians' telephones by the Central Bureau of Investigation [CBI]. It asked for the provisions of Section 5(2) to be interpreted in the light of fundamental rights and read down to include procedural safeguards that would discount arbitrariness and prevent indiscriminate phone tapping by law enforcement or investigating agencies.

Supreme Court Observations

The right to have a telephone conservation in the privacy of one's home or office is part of the Right to Life and Personal Liberty enshrined in Article 21 of the Constitution, which cannot be curtailed except according to the procedure established by law. The Supreme Court asserted that telephone tapping amounts to an invasion of privacy in violation of this core right.

The Freedom of Speech and Expression guaranteed by Article 19 of the Constitution includes the right to express one's convictions and opinions freely by word of mouth. When a person is talking on the telephone s/he is exercising this freedom.

Article 17 of the International Covenant on Civil and Political Rights, 1966 expressly forbids arbitrary interference with privacy, family, home or correspondence and stipulates that everyone has the right to protection of the law against such intrusions. The Supreme Court affirmed that international law, if it does not conflict with national legislation will be deemed as municipal (domestic/national) law.

Elaborating the scope of Section 5 (2) of the Indian Telegraph Act, 1882 the Court clarified that this section does not confer unguided and unbridled power on investigating agencies to invade a person's privacy. Telephone tapping is only permitted in the following two circumstances:

(i) '*on the occurrence of a Public Emergency'* : This means the prevailing of a sudden condition or state of affairs affecting the people at large calling for immediate action.

(ii) '*in the interest of Public Safety'* : This means the state or condition of freedom from danger for the people at large.

The test of whether the above circumstances exist would be apparent to a reasonable person. The Supreme Court strongly asserted that if the two circumstances are not in existence, the Central or State Government or their duty authorized officers cannot resort to phone tapping.

Supreme Court Directives

1. Tapping of telephones is prohibited without an authorizing order from the Home Secretary, Government of India or the Home Secretary of the concerned State Government.

2. The order, unless it is renewed shall cease to have authority at the end of two months from the date of issue. Though the order may be renewed, it cannot remain in operation beyond six months.

3. Telephone tapping or interception of communications must be limited to the address (es) specified in the order or to address (es) likely to be used by a person specified in the order.

4. All copies of the intercepted material must be destroyed as soon as their retention is not necessary under the terms of Section 5 (2) of the Indian Telegraph Act, 1882.

The right to privacy is a sacred and cherished right. There must be strong, cogent and legally justifiable reasons for law enforcement agencies to interfere with this right. Even then, proper procedure must be followed as intrusion into a person's home, professional or family life in the name of investigation or domiciliary visits - without a proper basis - is not permitted.

DELHI DOMESTIC WORKING WOMEN'S FORUM V UNION OF INDIA & OTHERS 1995 SCC 14

The Delhi Domestic Working Women's Forum was pursuing a case in which six girls - belonging to a tribal community - travelling by train from Ranchi to New Delhi were molested and raped by a group of army men in their compartment. Though they were beaten and threatened by the culprits, the girls did register a First Information Report {FIR]. However, because the investigations and trial dragged on for over six months, the girls who worked in New Delhi as domestic help were not able to actively assist in the prosecution of the case, which was being carried out in Aligarh, Uttar Pradesh.

Concerned over unnecessary delays, particularly in the investigation and trial of rape cases, the Forum petitioned the Supreme Court to frame guidelines for ensuring a speedy trial so that rape victims are not needlessly harassed and allowed to get on with their lives.

Supreme Court Observations

Speedy trial is one of the essential requisites of law, the Court asserted. In rape cases; the course of justice cannot be frustrated by prolonged investigations. They said that it is important that investigations and trials should be carried out expeditiously; otherwise the guarantee of equal protection of law under Article 14 and the guarantee of life and personal security under Article 21 of the Constitution are meaningless.

Noting the seriousness of the crime, the Supreme Court said that rape shakes the very foundations of victims' lives. For many, its effects are long-term and so sustained that they face difficulty in having personal relationships; their behaviour and values are altered; and they suffer from constant fear and anxiety.

In addition to the trauma of rape itself, victims have to suffer further agony during legal proceedings as complaints are handled roughly and not given the attention that they deserve. Victims are more often than not humiliated by the police and the experience of giving evidence in court is so distressing, that it puts severe psychological stress on them. Because, many of them feel re-victimized after reporting the crime, the Supreme Court laid down specific guidelines on how to deal with rape victims, which are given below:

Supreme Court Directives

1. As soon a rape victim reports the crime at the police station, she must be informed about her right to get a lawyer before any questions are asked of her. The fact that she was informed of this right must be mentioned in the police report.

2. The police should make arrangements to provide the victim with a lawyer if she does not have access to one.

3. Every police station must maintain a list of lawyers capable enough to explain the nature of proceedings to the victim; prepare her for the case; assist her in court and in the police station; and provide guidance on agencies and organizations that help in counselling and rehabilitation of rape victims.

4. The lawyer so chosen by the police to assist the victim must be approved by the court. However, in order to ensure victims are questioned without undue delay, the lawyer may be authorized to act at the police station before permission of the court is taken.

5. In all rape trials, anonymity of the victim must be maintained.

Rape cases require extra sensitivity from the police. Care must be taken to see that the victim is not made to feel small or uncomfortable and her statement is recorded by a woman. Unnecessary references and passing of derogatory remarks that the victim contributed to the crime is not permitted. A rape is a rape no matter what the reputation or profession of the victim is.

The law favours protection of the victim. It lays down that inquiry and trial of rape cases should be held 'in camera', [closed court] and that her identity should not be disclosed to the media.

Basis of Arrest

JOGINDER KUMAR V. STATE OF U.P. AND OTHERS 1994 SCC 260

Joginder Kumar, a young lawyer aged 28 was called to the office of the Senior Superintendent of Police [SSP], Ghaziabad in connection with "some inquiries". He was accompanied by friends and his brother, who were told by the police that he would be released in the evening. But Joginder Kumar was taken to a police station with the assurance that he would be released the next day. Next day, too he was not released as the police wanted his help in making "further inquiries". When his family went to the police station on the third day, they found that he had been taken to an undisclosed location. In effect, Joginder Kumar was illegally detained over a period of five days.

His family had to file a habeas corpus writ petition with the Supreme Court to find out his whereabouts. The Court issued notices to the State of Uttar Pradesh and to the SSP to immediately produce Joginder Kumar and answer why he was detained for five days without a valid reason; why his detention was not recorded by the police in its diary; and why he was not produced before a magistrate.

Supreme Court Observations

Rejecting the police version that Joginder Kumar was cooperating with them out of his own free will, the Court said that the law of arrest is one of balancing individual rights, liberties and privileges on the one hand and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties of the single individual and those of individuals collectively.

They pointed out that the Third Report of the National Police Commission, identifies wrongful use of arrest powers as one of the chief sources of corruption in the police and that nearly 60% arrests made by police officers are unnecessary and unjustified. Strongly opposing the practice of carrying out indiscriminate arrests, the Supreme Court said that an arrest cannot be made simply because it is lawful for a police officer to do so. The existence of the power to arrest is one thing the justification for the exercise of it is quite another….the police officer must be able to justify the arrest.

Arrest and detention in police lock up can cause incalculable harm to the reputation and self-esteem of a person. Therefore, arrests should not be made in a routine manner on mere allegation that a person has committed an offence. If police officers do not wish to face legal or disciplinary action,

they should see that arrests are made only after reaching a reasonable satisfaction about the complaint being true and the case being *bona-fide* [genuine]. Even then, the Court said that the officer making the arrest must function under a Reasonable belief both as to the person's complicity in committing the offence and the need to effect an arrest.

Supreme Court Directives

1. Arrests are not be made in a routine manner. The officer making the arrest must be able to justify its necessity on the basis of some preliminary investigation.

2. An arrested person should be allowed to inform a friend or relative about the arrest and where s/he is being held. The arresting officer must inform the arrested person when s/he is brought to the police station of this right and is required to make an entry in the diary as to who was informed.

3. It is the duty of the magistrate before whom the arrested person is produced to satisfy her/himself that the above requirements have been complied with.

Arrests should not be made, unless they are absolutely necessary and there is no other way except arresting the accused to ensure her/his presence before the criminal justice system or to prevent her/him from committing more crimes or tampering with evidence or intimidating witnesses. Unnecessary and unjustified arrests lead to harassment and loss of faith in the system. They also account for 43.2 % *expenditure in jails according to the Third Report of the National Police Commission.*

On the other hand, corruptly or maliciously detaining people without recording an arrest is punishable by a maximum sentence of seven years.

Arrest Procedure, Custodial Violence and Compensation

D.K BASU V STATE OF WEST BENGAL AIR 1997 SC 610

D.K Basu - Executive Chairman of Legal Aid Services, West Bengal - wrote a letter to the Chief Justice of India, saying that torture and deaths in police custody are widespread and efforts are often made by the authorities to hush up the matter. Because of this custodial crime goes unpunished and therefore "flourishes". Some newspaper reports published in the Telegraph, Statesman and Indian Express newspapers were also attached to support the contention. Basu urged the Supreme Court to examine the issue in depth and (i) develop 'custody jurisprudence' and lay down principles for awarding compensation to the victims of police atrocities (ii) formulate means to ensure accountability of those responsible for such occurrences.

The Supreme Court treated the letter as a writ petition. While the writ was under consideration, the Supreme Court received another report about a death in police custody in Uttar Pradesh. This prompted the Court to issue notices to all state governments and the Law Commission of India to submit suggestions on how to combat this all-India problem.

Supreme Court's Observations

"Custodial torture is a naked violation of human dignity, the Supreme Court said. The situation is aggravated when violence occurs within the four walls of a police station by those who are supposed to protect citizens. The Court accepted that the police have a difficult task in light of the deteriorating law and order situation; political turmoil; student unrest; and terrorist and underworld activities. They agreed that the police have a legitimate right to arrest a criminal and to interrogate her/him in the course of investigation. However, the law does not permit the use of third degree methods or torture on an accused person. Actions of the State must be right, just and fair; torture for extracting any kind of confession would neither be right nor just & fair.

(i) The Right to Life guaranteed by our Constitution includes the right to live with human dignity. The State is not only obliged to prosecute those who violate fundamental rights, it also has a duty to pay monetary compensation to repair the wrong done by its agents in not being able to discharge their public duty of upholding people's rights. Compensation, the Court said, is not be paid by way of damages as in a civil case [the victim is free to file a civil case to privately recover damages from the wrongdoer for loss of earning capacity] but under public law for breach of duty by the State in not being

able to protect its citizens. However, there can be no strait-jacket formula as each case has its own peculiar facts and circumstances.

(ii) The Court recognized that the worst violations of human rights take place during investigation when the police use torture and third degree methods to get confessions. In such instances, arrests are either disguised by not recording them or showing detention as prolonged interrogation. The Court stressed that no matter what the circumstances, the State or its agents are not allowed to assault or torture people. They then laid down an elaborate set of guidelines in respect of arrest and interrogation. The Court directed that the guidelines - which are given below - should be circulated to the Director General of Police and the Home Secretary of every state and union territory and it shall be their obligation to have them put up in every police station at a conspicuous place.

Supreme Court Directives

1. Use of third degree methods or any form of torture to extract information is not permitted.

2. Police personnel carrying out arrest and interrogation must bear accurate, visible and clear identification/name tags with their designations.

3. Particulars of all personnel handling interrogation of an arrested person must be recorded in a register.

4. A memo of arrest stating the time and place of arrest must be prepared by the police officer carrying out an arrest. It should be attested by at least one witness who is either a family member of the arrested person or a respectable person from the locality where the arrest is made. The memo should also be counter-signed by the arrested person.

5. The arrested or detained person is entitled to inform a friend, relative or any other person interested in her/his welfare about the arrest and place of detention as soon as practicable. The arrested person must be made aware of this right as soon as s/he is arrested or detained.

6. The arrested person may be allowed to meet her/his lawyer during interrogation but not throughout the interrogation.

7. The time, place of arrest and venue of custody of the arrested person must be notified by telegraph to next friend or relative of the arrested person within 8-12 hours of arrest in case such person lives outside the district or town. The information should be given through the District Legal Aid Organisation and police station of the area concerned.

8. An entry must be made in the diary at, the place of detention in regard to the arrest. The name of the friend/relative of the arrested person who has been informed and the names of the police personnel in whose custody, the arrested person is being kept should be entered in the register.

9. The arrested person should be examined by a medical doctor at the time of arrest if s/he so requests. All bodily injuries on the arrested person should be recorded in the 'inspection memo' which should be signed by both the arrested person and the police officer making the arrest. A copy of the memo should be provided to the arrested person.

10. The arrested person should be subject to a medical examination every 48 hours by a trained doctor who has been approved by the State Health Department.

11. Copies of all documents relating to the arrest including the memo of arrest should be sent to the Area Magistrate for her/his record.

12. A police control room should be provided at all district and state headquarters where information regarding arrests should be prominently displayed. The police officer making the arrest must inform the police control room within 12 hours of the arrest.

13. Departmental action and contempt of court proceedings should be initiated against those who fail to follow above-mentioned directives.

Failure to follow proper procedure while arresting and interrogating suspects is a very serious matter. D.K. Basu's case lays down specific guidelines that must be followed while arresting and interrogating suspects. These guidelines are based on Code of Criminal Procedure, 1973 [Cr.P.C.] provisions and are very much a part of regulations laid down in police manuals and rule books. The Supreme Court has said that failure to comply with these guidelines not only renders an officer liable for punishment through departmental action but also amounts to 'contempt of court'

Treatment of Women and Legal Aid

SHEELA BARSE V STATE OF MAHARASHTRA 1983 SCC 96

Sheela Barse - a journalist and activist for prisoners' rights - wrote to the Supreme Court saying that of the 15 *women prisoners interviewed by her in Bombay Central Jail, five admitted that they had been assaulted in police lock-up. Given the seriousness of the allegations, the Court admitted a writ petition on the basis of the letter and asked the College of Social Work, Bombay to visit the Central Jail to find out whether the allegations were true. The College submitted a detailed report which, in addition to admitting that excesses against women were taking place, pointed out that, arrangements for providing legal assistance to prisoners were inadequate.*

Supreme Court Observations

Failure to provide legal assistance to poor and impoverished persons violates constitutional guarantees. Article 39-A [Directive Principle of State Policy] casts a duty on the State to secure the operation of a legal system that promotes justice on the basis of equal opportunity. The right to legal aid is also a fundamental right under articles 14 [Equality before Law] and 21 [Right to Life and Personal Liberty].

The Court expressed serious concern about the plight of prisoners, unable to afford legal counsel to defend themselves. They said that not having access to a lawyer was responsible for individual rights against harassment and torture not being enforced.

Stressing the urgent need to provide legal aid not only to women prisoners but to all prisoners whether they were under trials or were serving sentences, the Court said that an essential requirement of justice is that every accused person should be defended by a lawyer. Denial of adequate legal representation is likely to result in injustice, and every act of injustice corrodes the foundations of democracy and rule of law.

Expressing serious concern about the safety and security of women in police lock-up, the Supreme Court directed that a woman judge should be appointed to carry out surprise visits to police stations to see that all legal safeguards are being enforced.

Supreme Court Directives

1. Female suspects must be kept in separate lock-ups under the supervision of female constables.

2. Interrogation of females must be carried out in the presence of female police persons.

3. A person arrested without a warrant must be immediately informed about the grounds of arrest and the right to obtain bail.

4. As soon as an arrest is made, the police should obtain from the arrested person, the name of a relative or friend whom s/he would like to be informed about the arrest. The relative or friend must then be informed by the police.

5. The police must inform the nearest Legal Aid Committee as soon as an arrest is made and the person is taken to the lock-up.

6. The Legal Aid Committee should take immediate steps to provide legal assistance to the arrested person at State cost, provided such person is willing to accept legal assistance.

7. The magistrate before whom an arrested person is produced shall inquire from the arrested person whether s/he has any complaints against torture and maltreatment in police custody. The magistrate shall also inform such person of her/his right to be medically examined.

Women in custody are particularly vulnerable to physical and sexual abuse. Courts take a very serious view of complaints regarding custodial rape or harassment. Of late, the National and State Human Rights Commissions and the Women's Commission are also playing an increasingly proactive role to see such instances do not go *unpunished. It is the duty of the officer in-charge of a police station/post to ensure that women are not harmed and searches of their person are carried out only by women with strict regard to decency.*

ICCHU DEVI CHORARIA V UNION OF INDIA 1980 SCC 531

Mahendra Choraria, who was accused with smuggling, was put in preventive detention by the Customs Department under a special Act [COFEPOSA]. The Customs Department detained him on the basis of two tape-recorded conversations, some documents and statements of several persons.

Choraria argued before the Supreme Court in a writ petition, that his detention was illegal, because he was not provided with copies of statements documents and other materials that were being relied upon to detain him. The petition maintained that undue delay in providing these materials amounted to denying him an opportunity to make a representation before a court against his detention.

Supreme Court Observations

Article 22 (5) of the Constitution lays down that whenever a person is preventively detained under a special law, the detaining authority should as soon as possible communicate to the arrested person, the grounds of detention and afford her/him the earliest opportunity to make a representation against the detention.

The Supreme Court asserted that if the detaining authority wants to preventively detain a person, it must do so [in accordance with the provisions of the Constitution and the law and if there is any breach of any such provision, the rule of law requires that the detenu [detained person] must be set at 1iberty. They said that it was the duty of the courts to satisfy them-selves that all procedural safeguards have been observed in this respect.

Though COFEPOSA was framed to eradicate the evil of smuggling, the Court said that it must not be forgotten that the power of preventive detention is a draconian power, justified only in the interest of public security and order and it is tolerated in a free society only as a necessary evil. Detaining people without trial constitutes an encroachment on personal liberty - one of the most cherished values of humankind. They said that personal liberty is a most precious possession, life without it would not be worth living. Therefore, the courts have a duty to uphold it.

Prescribing the under-mentioned procedure, the Supreme Court affirmed that the law laid down in this case would be equally applicable in the event of preventive detention under any other Act.

Supreme Court Directives

1. The detained person must be supplied copies of documents, statements and other materials on the basis of which s/he is being detained, without delay.

2. The authorities who have preventively detained a person must consider the representation of the detained person against the detention as soon as possible.

3. The burden of proving that the detention is in accordance with the procedure established by law lies on the detaining authority.

Preventive detention is not allowed under normal circumstances. It has to be authorized under a special Act. Even if an Act specifically provides for preventive detention, the officer who has preventively detained a person must furnish convincing proof to the magistrate that the detained person constitutes a threat to society, and all the procedural requirements of the Act have been satisfied. The detaining officer must also provide the detained person copies of the statements, documents or other proof on the basis of which s/he has been preventively detained. This is part of the detained person's fundamental right to make a representation against the detention.

Preventive Arrest and Bonds for Good Behaviour

GOPALANACHARI V. STATE OF KERALA 1980 SCC 649

Gopalanachari, a 71, year old man wrote to the Supreme Court that he was wrongly imprisoned in Kottayam sub-jail, Kerala after being picked up by the police. He was charged under Section 110 of the Code of Criminal Procedure, 1973 (Cr.PC). This section is supposed to be used by the police for making people whom they believe to be "habitual offenders, desperate or dangerous persons" execute a bond for "good behaviour" before the Executive Magistrate. Gopalanachari wrote that though he could not hear or see properly and constituted no threat to the community, yet he was taken before the magistrate. The police told the magistrate that he was an ex-criminal, trying to conceal his presence from a night patrol and on being questioned did not give his correct name and address. Therefore, he should only be released after he executed a bond that he will not indulge in any criminal or anti-social activities over the next two years.

Because, he was unable to immediately arrange for bail and execute the bond, the magistrate sent Gopalanachari to prison. The Supreme Court admitted his petition and asked the State of Kerala give a list of prisoners charged under Section 110 Cr.P.C in Kottayam sub-jail. The Court was informed that there were six such prisoners in the sub-jail and some of them had been lodged there for several months.

Supreme Court Observations

Police powers must be exercised in accordance with the Right to Life and Personal Liberty guaranteed by Article 21 of the Constitution. Actions of the State or its agents must be right, just and fair; and not arbitrary; fanciful or oppressive the Supreme Court asserted.

Using Section 110 Cr.PC to harass innocent people violates the spirit of the law. Shocked to discover that there were others like Gopalanachari, the Court said that if men can be whisked away by the police and imprisoned for long months and the court can keep the cases pending without thought.....fundamental rights remain symbolic and scriptural.....

They said, unless this section is prevented from misuse, many a poor person can be imprisoned by being labelled habitual, desperate or dangerous. It is not permitted in our free Republic to pick up homeless people or have-nots under the pretext of Section 110 Cr.PC. To be poor is not a crime in this country.

The Supreme Court directed magistrates to be vigilant and ensure Section 110 is not used randomly as a matter of routine. Courts must insist on convincing testimony and should not accept readily produced, made to order testimony as was given by the police in this case. To call a man dangerous is in itself dangerous, to call a man desperate is to affix a desperate adjective; to stigmatize a person as hazardous to the community is itself a judicial hazard; unless compulsive testimony carrying credence is abundantly available.

Supreme Court Directives

1. The person being charged under Section 110 and other preventive sections of the Cr.PC must constitute a clear and present danger to society.

2. The police must layout specific facts before the magistrate showing why the person is a threat to the community and should be made to sign a bond for good behaviour.

3. The person undergoing proceedings under Section 110 Cr.PC must be provided with legal aid.

4. The magistrate is under a duty to make sure that Section 110 Cr.PC is not misused by the police.

Preventive powers under Sections 107, 109 & 110 Cr.P.C. should be exercised with due caution. Care must be taken to ensure innocent persons are not harassed and presented before magistrates for executing good behaviour bonds under the garb that they are suspected persons or habitual offenders. Power of preventive arrest under Section 151 Cr.PC should not be used randomly by the police to pick people off the streets, especially those belonging to economically weaker sections of society. Unjustified use of these sections can invite judicial scrutiny. Magistrates have a duty to ensure that preventive sections are not being misused by police officers.

Handcuffing

PREM SHANKAR SHUKLA V. DELHI ADMINISTRATION 1980 SCC 526

Prem Shankar Shukla - an undertrial prisoner at Tihar Jail - sent a telegram to the Supreme Court that he and some other prisoners were being forcibly handcuffed when they were escorted from prison to the courts. Shukla pleaded that routine handcuffing and chaining of prisoners was continuing despite the Supreme Court directive in Sunil Batra's case that fetters/handcuffs should only be used if a person "exhibits a credible tendency for violence or escape".

Supreme Court Observations

Using handcuffs and fetters [chains] on prisoners violates the guarantee of basic human dignity, which is part of our constitutional culture, the Supreme Court said. This practice does not stand the test of articles 14 [Equality before law], 19 [Fundamental Freedoms] and 21 [Right to Life and Personal Liberty].

To bind a man hand and foot; fetter his limbs with hoops of steel; shuffle him along in the streets; and to stand him for hours in the courts, is to torture him; defile his dignity; vulgarize society; and foul the soul of our constitutional culture. Strongly denouncing handcuffing of prisoners as a matter of routine, the Supreme Court said that to manacle a man is more than to mortify him; it is to dehumanize him; and therefore to violate his very personhood.....

They rejected the argument of the State that handcuffs are necessary to prevent prisoners from escaping. Insurance against escape does not compulsorily require handcuffing. There are other methods whereby an escort can keep safe custody of a detenu [detained person] without the indignity and cruelty implicit in handcuffs and other iron contraptions.

The Supreme Court asserted that even orders from superiors are not a valid justification for handcuffing a person. Constitutional rights cannot be suspended under the garb of following orders issued by a superior officer. There must be reasonable grounds to believe the prisoner is so dangerous and desperate that s/he cannot be kept in control except by handcuffing.

Supreme Court Directives

1. Handcuffs are to be used only if a person is:

   a) involved in serious non-bailable offences, has been previously convicted of a crime; and/or

   b) is of desperate character-violent, disorderly or obstructive; and/or

   c) is likely to commit suicide; and/or

   d) is likely to attempt escape.

2. The reasons why handcuffs have been used must be clearly mentioned in the Daily Diary Report. They must also be shown to the court.

3. Once an arrested person is produced before the court, the escorting officer must take the court's permission before handcuffing her/him to and from the court to the place of custody.

4. The magistrate before whom an arrested person is produced must inquire whether handcuffs or fetters have been used. If the answer is yes, the officer concerned must give an explanation.

Use of handcuffs, chains or ropes to bind prisoners amounts to inhuman treatment. The rule regarding handcuffs is that they should never be used as a matter of routine. Their use is permitted only in exceptional cases and that too with judicial permission, on the grounds that the person poses a 'clear and present' danger and there are genuine reasons to believe that s/he will attempt escape.

CITIZENS FOR DEMOCRACY V STATE OF ASSAM 1995 SCC 743

Kuldip Nayar - eminent journalist and president of 'Citizens for Democracy' - wrote to the Supreme Court that he saw seven TADA detainees handcuffed and tied to a hospital bed in Guwahati. He said that this was done despite the fact that the room in which they were being held, had iron bars, was locked and was guarded by a posse of armed policemen.

Nayar wrote that he failed to understand how the Assam Government could treat people in this manner despite court directives to the contrary. The government in its defence said that the detainees were hardcore terrorists belonging to the United Liberation Front of Assam [ULFA] and many dreaded members of this organization had previously escaped from custody.

Supreme Court Observations

Reiterating the principle in Premshankar Shukla's case, the Supreme Court said that indiscriminate use of handcuffs is inhuman, unreasonable and arbitrary.

Relevant considerations for putting a prisoner in chains are character, antecedents and propensities. Peculiar and special characteristics of each individual have to be taken into consideration. Laying down the law on use of handcuffs, the Court said that the nature and length of sentence; or number of convictions; or gruesome character of the crime are not by themselves relevant considerations.

The Supreme Court said it understood that the police and jail authorities have a public duty to ensure safe custody of prisoners and must prevent them from escaping. However, prisoners' rights guaranteed by the Constitution cannot be trampled upon. While suitable measures can be taken to reduce the likelihood of detainees' escaping, use of fetters or chains purely at the whims or subjective discretion of authorities is not permissible.

As a rule, handcuffs or fetters must not be used on an under trial or on a convicted prisoner whether in jail or when being taken to court, without authorization of a magistrate. This authorization may be given in cases where the police or jail authorities' have a well grounded basis for drawing a strong inference that a particular prisoner is likely to jump jailor break out of custody.

Supreme Court Directives

1. It is necessary to take the magistrate's permission before handcuffing a person who has been remanded to judicial or police custody.

2. A person arrested in the execution of an arrest warrant [issued by a magistrate] must not be handcuffed unless prior permission has been taken from the magistrate.

3. In an arrest without warrant, the police is only allowed to handcuff on the basis of concrete proof that the person is prone to violence; has a tendency to escape; or is so dangerous and desperate that there is no other practical way to restrain her/his movement. Even then the officer may use handcuffs only till the time the person is taken to the police station and thereafter to the magistrate's court.

4. Violation of the Court's directives by a police officer of whatever rank or any member of the jail establishment is punishable summarily under Contempt of Courts Act, 1971 in addition to other provisions of the law.

Handcuffing without a magistrate's approval is not permitted, save in rare instances. In such instances, the burden of proving that the use of handcuffs was warranted lies on the police. If the detaining authority or escort party fail to satisfy the court about the genuineness of the danger or threat posed by the person who was handcuffed, they will be liable under law.

Note: The detailed order is given in the next Section of this Chapter.

HUSSAINARA KHATOON AND OTHERS V HOME SECRETARY STATE OF BIHAR AIR 1979 SC 1360

The Supreme Court admitted a writ petition to look into the administration of justice in Bihar after the Indian Express published a series of news items about appalling conditions in Bihar jails. The paper reported that a large number of people, including women and children had been in prison for years without trial. Even though some of them were charged with minor offences carrying punishment for a few months or couple of years at best, these people had been in jail awaiting trial for periods ranging from three to ten years.

Supreme Court Observations

Article 21 of the Constitution lays down that no one shall be deprived of their life or personal liberty except according to the procedure established by law. The procedure should be reasonable, fair and just otherwise such deprivation would be illegal.

The Supreme Court said that it is a travesty of justice that certain persons end up spending extended time in custody, not because they are guilty but because the courts are too busy to try them, and they as the accused are too poor to afford bail. Poor people find it difficult to arrange for bail, because quite often the bail amount fixed by the magistrate or the police is unrealistically excessive. This happens due to bail being given using a property-oriented approach. Such an approach is based on the wrong assumption that risk of monetary loss is the only deterrent that prevents a person from fleeing the judicial process.

The Supreme Court said that it was saddened that even after re-enactment in 1974, the Code of Criminal Procedure, 1973 [CrPC] continues to require people to be released on a personal bond that pledges a certain amount of money. While they expressed the hope that the Parliament would bring about suitable amendments in the law, the Court asserted that even under the law as it stands today, courts must abandon the antiquated concept under which pre-trial release is ordered only against bail with sureties. They affirmed that what they have said in relation to the courts also applies to the police.

Supreme Court Directives

1. If the accused have roots in the community that would deter them from fleeing, they may be released on bail by furnishing a personal bond without sureties. The following facts may be taken into account in this regard:

i. the length of residence of the accused in the community.

ii. the employment status and history of the accused.

iii. family ties and relationships of the accused.

iv. the reputation, character and monetary condition of the accused.

v. any prior criminal record including record of prior release on bail.

vi. the existence of responsible persons in the community who can vouch for the reliability of the accused.

vii. the nature of the offence that the accused is charged with; probability of conviction; and likely sentence insofar as these are relevant to risk of non-appearance of the accused

2. The bond amount should not be based merely on the nature of the charge but should be fixed keeping in mind the individual financial circumstances of the accused.

If the offence is bailable, the police is duty bound to release the arrested person if s/he is willing to give bail. In addition, the amount of bail should be decided keeping in *mind the paying capacity of the accused. Far too many people spend time* in *prison simply because the bail amount is fixed too high, and they are unable to arrange for the money. Police officers and magistrates have a duty to* see *that bail conditions are not so harsh, that the* very *purpose behind giving bail is defeated. The High Court and the Sessions Court are empowered to reduce the bail amount fixed by the police* or *the magistrate.*

MOTIRAM AND OTHERS V STATE OF M.P AIR 1978 SC 1594

Motiram, a mason appealed to the Supreme Court that despite being granted bail by the Court, he was unable to secure his release because the Chief Judicial Magistrate fixed an exorbitant sum of Rs. 10,000, as the surety amount. Motiram said that the magistrate rejected the suretyship offered by his brother simply because his brother resided in another district and his assets were located there. Motiram wanted the Supreme Court to either reduce the surety amount or order his release on a personal bond.

The Court had to decide: (i) whether a person can be released on bail under the Code of Criminal Procedure, 1973 *[CrPC] on a personal bond, without having to get people to stand as surety for her/him (ii) the criteria for fixing the bail amount (iii) whether a surety offered by a person can be rejected because s/he resides in a different district or state or because her/his property is situated in a different district or state.*

Supreme Court Observations

Article 14 [Equality before Law] of the Constitution protects all citizens within the territory of India, the Supreme Court asserted. Many a poor person is forced into cellular servitude for little offences because trials never conclude and bail amounts are fixed beyond their meagre means.

The Court observed that the poor were being priced out of their liberty in the justice market. Whenever, excessive amounts are fixed as surety for bail, the victims invariably happen to be from disadvantaged sections of society; belong to linguistic or other minorities; or are from far corners of the country.

(i) Bail provisions contained in Chapter XXXIII of the CrPC must be liberally interpreted in the interest of social justice, individual freedom and indigent person's rights to enable release of poor and impoverished people on a personal bond without having to arrange for surety.

(ii) Bail amounts should be fixed after ascertaining the paying capacity and monetary condition of the accused. The Court said that it shocks one's conscience to ask a mason to furnish a sum as high as Rs. 10,000 for release on bail.

(iii) There is no sanction in any law to make geographical discriminations such as not accepting sureties from another part of the country or not accepting an affirmation in a language other than the one spoken in the region. India is one and not a conglomeration of districts untouchably apart. A person accused of a crime in a place distant from her/his native residence cannot be expected to produce sureties who own property in the same district as the trial court. The Supreme Court asserted that provincial or linguistic divergence cannot be allowed to obstruct the course of justice.

Supreme Court Directives

1. Bail should be given liberally to poor people simply on a personal bond, if reasonable conditions are satisfied.

2. The bail amount should be fixed keeping in mind the financial condition of the accused.

3. The accused person should not be required to produce a surety from the same district especially when s/he is a native of some other place.

The Supreme Court has strongly condemned the practice of asking migrants or tourists to arrange for financially sound sureties from the same district to stand bail for them. It is unreasonable and leads to unnecessary and undue harassment. Many a time, poor people go to jail despite being granted bail because no one comes forward to stand as surety for them. If it can be found out that the accused is connected to the community through family or other emotional ties, which will prevent her/him from fleeing, bail should be given simply on a personal undertaking to abide by bail conditions.

NILABATI BEHERA V STATE OF ORISSA 1993 SCC 746

Nilabati Behera, a distressed mother, wrote a letter to the Supreme Court asking that she be monetarily compensated for the death of her 22 year old son in police custody. She said that her son, Suman Behera was beaten to death at a police post after being detained in connection with a theft

The Supreme Court immediately admitted a writ petition on her behalf and took up the case. Rejecting the police version that Suman Behera was killed by a running train after he escaped from police custody, the Court asserted that the post-mortem report clearly showed that he died as a result of being beaten up. The question before the Court was whether Nilabati Behera had a right to claim compensation for the wrongful acts of the policemen who caused her son's death.

Supreme Court Observations

Article 9 (5) of the International Covenant on Civil and Political Rights, 1966 lays down that anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation. This Covenant has been ratified by India, which means that the State has undertaken to abide by its terms.

The Supreme Court asserted that convicts, prisoners or under trials are not denuded of their fundamental rights under Article 21 [Right to Life and Personal Liberty] of the Constitution and there is a corresponding responsibility on the police and prison authorities to make sure that persons in custody are not deprived of the Right to Life.

The State has a duty of care to ensure that the guarantee of Article 21 is not denied to anyone. This 'duty of care' is strict and admits no exceptions the Court said. The State must take responsibility by paying compensation to the near and dear ones of a person, who has been deprived of her/his life by the wrongful acts of its agents. However, the Court affirmed that the State has a right to recover the compensation amount from the wrongdoers.

They said that the purpose of law is not only to civilize public power but also to assure people that they live under a legal system which protects their interests and preserves their rights. Therefore the High Courts and the Supreme Court as protectors of civil liberties not only have the power and jurisdiction but also the obligation to repair the damage caused by officers of the State to fundamental rights of citizens.

Supreme Court Directives

1. The State has an obligation to give compensation to a victim or to the heirs of a victim whose fundamental rights have been violated by its agents.

2. The State has a right to recover the compensation amount from the guilty officials after appropriate proceedings or inquiry.

3. An order of compensation by the State in a criminal case does not prevent the victims or their heirs from claiming further compensation in a civil case [for loss of earning capacity].

While it is mandatory to conduct a magisterial inquiry into every case of custodial death, the State also has a duty not only to register criminal cases, but also to pay monetary compensation where human rights are violated by its officers. Courts and human rights commissions regularly give directions to the government to monetarily compensate victims or their families for incidents of custodial death, rape, violence or assaults on dignity. In the majority of these cases, compensation amounts are recovered from the salaries and other benefits of the guilty officials.

A copy of letter No. D.No.40/95/SC/PIIC, Supreme Court of India New Delhi dated 19th May 1995 to Home Secretary, Dept. of Home and Affairs Punjab, CHG and endst No. 11/96/95-5J/12026 dt. 21.6.95 addressed to DGP/Punjab, Chandigarh.

IN THE SUPREME COURT OF INDIA CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 22 OF 1995

Citizen for Democracy through its president

..... Petitioner

Versus

State of Assam and Others

..... Respondent

JUDGMENT

Kuldip Singh, J.

"we clearly declare and it shall be obeyed from the Inspector General of Police and Inspector General of prisons to the escort constable and the Jail warder that the rule, regarding a prisoner in transit between prison house and court house, is freedom from handcuffs and the exception, under conditions of judicial supervision, we have indicated earlier, will be restraints with irons, to be justified before or after. We mandate the judicial officer before whom the prisoner is produced to interrogate the prisoner, as a rule, whether he has been subjected to handcuffs or other "irons" treatment and, if he has been, the officials concerned shall be asked to explain the action forthwith in the light of this judgment. " Ordained this court speaking through V.R. Krishna Iyer, J.in Prem Shanker Shukla vs Delhi Administration (1980) 3 S.C.R.855).

In Sunil Batra etc. vs Delhi Administration Ors. etc. (1979) 1.S.C.R.392) this court pronounced that under trials shall be deemed to be in custody not undergoing punitive imprisonment , Fetters, especially bar fetter, shall be shunned as violation of human dignity, within and without prisons. The indiscriminate resort to handcuffs when accused persons are taken to and from court and the expedient of for irons on prison inmates are illegal and shall be stopped forthwith save in small category of cases where an under trial has a credible tendency for violence and escape. A humanely graduated degree of "iron" restraint is permissible if other disciplinary alternatives are unworkable. The burden of proof of the ground is the custodian and if he fails, he will liable in law. Reckless handcuffing and chaining in public, degrades, puts to shame finer sensibilities and is a slur on our culture.

The law declared by this court in Shukla's case and Batra case is a mandate under Articles 141 and 144 of the Constitution of India and all concerned are bound to obey the same. We are constrained to say that the guidelines laid down by this court and the directions issued repeatedly regarding handcuffs of under-trials and convicts are not being followed by the police, jail authorities and even by the subordinate judiciary. We make that the law laid down by this court in the above said two judgments and the directions issued by us are binding on all concerned and any violation or circumvention shall attract the provisions of the contempt of Court Act apart from other penal consequences under law.

Mr. Kuldip Nayar, an eminent journalist in his capacity as President of "Citizens for democracy" wrote a letter dated Dec. 22, 1994 to one of us wherein he stated as under:-

> "A few days ago when I was in Guwahati I went to see a patient at the Govt. Hospital. To my horror, I found 7 TADA detenues put in one room, handcuffed to their bed. This was despite the facts that the room in which they were locked had bars and was locked. Outsides a posse of policemen stood with guns on their shoulders. After talking to the detenues I found that they had to pay for the medicine from their own pocket. I fail to understand the Assam Government could do all this in spite of various court orders. I drew the attention of the State Chief Minister through a letter but got no reply. May I approach you to intervene.

This court treated the letter as a petition under Articles 32 of the constitution of India and issued noticed to the State of Assam, through its Chief Secretary, Home Secretary and Secretary, Health.

The State of Assam has filed counter by way of affidavit of Mr. B.V.P. Rao, Home Secretary Govt. of Assam. The relevant part of the affidavit is reproduced here under:-

> "It is necessary to state and bring to the notice of the Hon'ble Court that during the period 1991-94 there have been as many as fifty one cases of escape and /or rescue of terrorists from police and judicial custody including thirteen terrorists who escaped and /or were rescued from different hospitals of the state. Of them seven escaped from Guwahati Medical college, Hospital where the above seven detenues are presently lodged. The following three instances are significant to point out to the Hon'ble court how TADA detunes from the hospitals when not in handcuff:

(a) on 1.5.91 at about 10.30 hrs one Mahinder Dihingia @ Bipul Das, an ULFA activist in custody escaped from the Hospital of Assam Medical College, Dibrugarh while he was taken to operation theatre

(b) on 11.12.93 an ULFA terrorists awaiting trial for serious offences including murder, named Jatin Bora @ Nripen was admitted in the Guwahati Medical College Hospital for treatment as an under trial prisoner. He was kept in the hospital without any handcuff but under police guard. While so lodged , he killed the constable guarding him in the hospital and escaped

(c) on 14.3.94 one inkong Ao, belonging to the notorious terrorists organization known as NSCN lodged in Guwahati Medical College Hospital climbed up a duct approachable from the lavatory and reached the roof of the hospital building to escape.

It is stated that in all the above mentioned three instances, these detenues have escaped from the hospital when they were not in handcuff. The seven detenues in question mentioned in Shri Kuldip Nayar's letter were lodged in Guwahati Medical College Hospital. As the Guwahati Medical College Hospital is not a part of any jail, a part of the ward of the said hospital was set apart with a collapsing gate for their lodgment in the Hospital under police guard. When inside the ward they were bound by long ropes tied to one of their hands with a handcuff, which allowed them to move freely within the ward, but prevented their escape which was a very real apprehension having regard to the number of TADA detenues escaping from police, Judicial and Hospital custody as mentioned above. As stated above, these seven detenues are hardcore activists of ULFA which is notorious for insurgent and secessionist activities. These seven detenues are all accused of terrorists and disruptive activities, murder, extortion, hoarding and smuggling of arms and ammunitions and other allied offences.

Mr Harish Bonowal Secretary, Health Government of Assam has also filed on affidavit. Paras 3 and 4 of the affidavit are as under:-

"That the seven detenus are allowed to go without handcuff to the lavatories in the hospitals designated for them outside the ward when, they may be kept under police guard and also during the routine check up and treatment. They are also allowed morning and evening walk as per advice of Doctors. That while they are lodged

within the ward, their escape is prevented by one of their hands being tied with a long rope tied to their respective beds and attached to a handcuffs which allows them free movement including movement of hands and at the same time prevent the chance of their escape or of their being rescued."

The health Secretary has further stated in affidavit that the Govt. of Assam, Health and Family welfare department has issued a notification dated January 30, 1995 by which the Director, Medical Supdts. Etc. of Govt. Medical Colleges, have been directed to provide all medical facilities to prisoners/under trials prisons who are admitted to Govt. Medical Hospitals on recommendation of attending doctors. It is also averred that the notification further provides that the hospital authorities shall make all the necessary drugs/medically available to such prisoners by making local purchase. The Home Secretary in his affidavit dated January 21, 1995 stated as a matter of fact all the seven detenues were provided all required medicines which were available in the hospital drug store."

The undisputed facts are that while lodged in the ward of the Guwahti Medical college Hospital the seven detenues were handcuffed and on top of that tied with a long rope to contain their movement. The material whatsoever in the two affidavits filed on behalf of the State Govt. to draw an inferences the detenues were likely to jump or break out custody. The reasons for keeping the detunes under fetters are that they are hardcore ULFA activities and earlier during the period 1991-94 as many as 51 detenues escaped from custody which included 13 terrorists who escaped and /or were rescued from different hospitals when one of them escaped from Guwahati Medical College Hospital. This court has categorically held that the relevant considerations for putting a prisoner in fetters are the character, antecedents and propensities of the prisoners. The peculiar and special characteristics of each individual prisoner have to be taken into consideration. The nature or length of sentence or the number of convictions of the gruesome character of the crime the prisoner is alleged to have committed are not by themselves relevant consideration. Krishna Iyer, J. in Sunil Patra's case observed as under:-

"The defense of the state is that high-risk prisoners even the under-trials cannot be allowed to bid for escape and when circumstances justified and result oriented measure, including fetters is legally permissible A synthetic grasp of the claims of custodial security and prison humanity is essential to solve the dilemma posed by the Additional Solicitor General. If we are soft on security, escapes wills escalate. So be stern, 'red in tooth and claw' is the submission.

Security First and Security last is an argument with a familiar and fearful ring with Dwyer list memories and recent happenings. To cry 'wolf' as a cover for official violence upon helpless prisoners is a cowardly act. Chaining all prisoners amputating many, caging some, can all be fobbed off if every under trial or convict were painted as a potentially dangerous manic. Assuming a few are likely to escape would you shot a hundred prisoners or ship everyone everyday or fetter all suspects to prevent one jumping jails? These wild apprehensions have no value in our human order, if Articles 14, 19 and 21 are the prime actors in the constitutional play, we just cannot accede to arguments intended to stampede courts into vesting unlimited power in risky hands with no convincing mechanism for prompt impartial check, a sober balance, a realistic system with monitoring of abuses and reverence for human rights that along will fill the constitutional bill. "

This Court in Shukla's case categorically held that handcuffing is prime facie in human, unreasonable arbitrary and as such repugnant to Articles 21 of the constitution of India. To prevent the escape of under trial is no doubt, in public interest but, to bind a man hand-and-foot fetter his limbs hoops steel, shuffle him along in the streets and stand him for hours in the courts is to torture him, defile his dignity, vulgarize society and foul the soul of our constitutional culture."

This court in Shukla's case speaking through Krihna Iyer, J. laid down the law as under:-

"Insurance against escape does not compulsorily require hand-cuffing. There are other measures whereby an escort keep safe custody of a detenu without the indignity and cruelty implicit in hand-cuffs or other iron contraptions. Indeed, binding together either the hands or the feet or both has not merely a preventive impact, but also a punitive hurtfulness. Manacles are may harm the human person and inflict humiliation on the bearer. The encyclopedia Britannica, Vol-II (1973 Edn.) at P.53 stated

"handcuffs and fetters are instruments for security the hands or feet of prisoners under arrest, or as a means of punishment. "

The three components of "Irons" forced on the human persons must be distinctly understood. Firstly to handcuff is to hoop harshly. Further, to handcuff is to punish humiliatingly and to vulgarize the viewers also. Iron straps are insult and pain writ large, animalize the

victim and keeper. Since there are other ways of ensuring security, it can be laid down as a rule that handcuffs or other fetters shall not be forced on the persons of an under trial prisoners ordinarily. We lay down as necessarily implicit in Articles 14 and 19 that when there is no compulsive need to fetter a person's limps. It is sadistic capricious, despotic and demoralizing to humble a man by manacling him such arbitrary conduct surely slaps Art. 14 on the face. The minimal freedom of movement which even a detainee is entitled to under Art 19 (See Sunil Batra, supra) cannot be cut down cruelly by applications of handcuffs or other hoops. It will be unreasonable so do unless the state is able to make out that no other practical way of forbidding escape is available the prisoners being so dangerous and desperate and the circumstances so hostile to safe-keeping. But even here, the policemen's easy assumption or search apprehension or subjective satisfaction of likely escape if fetters are not enough. The heavy deprivations of person's liberty must be justifiable as reasonable restriction in the circumstances. Ignominy, in humanity and affliction implicit in chains and shackles are permissible as not unreasonable, only if, every other less cruel mean is fraught with risks or beyond availability. So it is that to be consistent with Arts. 14 and 19, handcuffs must be the last refuge, not the routine regimen. If a few more guards will suffice, then no handcuffs. If a close watch by armed policemen will do then no handcuffs. If alternative measures may be provided, then no iron bondage. This is the legal norm".

Further elaborating the legal norm laid down by this court in Shukla's case, it was observed as under:-

"The conclusion following from these considerations is that there must first be well founded basis for drawing a strong inference that the prisoner is likely to jump jail or break out the custody or play the vanishing trick. The belief in this behalf must be based on antecedents which must be recorded and probability to violence must be authentic. Vague surmises or general averment that the under trial is a crook or desperado, rowdy or maniac, cannot suffice. In short, save in rare cases of concrete proof readily available of the dangerousness of the prisoner in transit-the onus of proof of which is him who was the person under irons-the police escort will be committing personal assault or mayhem if he handcuffs or fetters his charge. It is disgusting to see the mechanical way in which callous policemen cavalier fashion, handcuff prisoner in their charge, indifferently keeping them company assured by the thought that the detainee us under 'iron' restraint. Even orders of superiors are no

valid justification as constitutional rights cannot be kept in suspense by superior orders unless there is material, sufficiently stringent to satisfy a reasonable mind that dangerous and desperate is the prisoner who is being transported and further that by adding to the escort party or other strategy he cannot be kept under control."

It is not necessary to burden this judgement by quoting further paragraphs from the judgement of this court in Shukla's case. Suffice it to say that this court, has clearly and firmly laid down that the police and the jail authorities are under a public duty to prevent the escape of prisoners and provide them with safe custody but at the same time, the rights of the prisoners guaranteed to them under Articles 14, 19 and 21 of the Constitution of India cannot be infracted. The authorities are justified in taking suitable measures, legally permissible to safeguard the custody of the prisoners but the use of fetters purely at the whims or subjective discretion of the authorities is not permissible.

This Court is Batra's case and Shukla's case elaborately dealt with the extreme situation when police and jail authorities can resort to handcuff. Hover it is observed that the authorities have miserable failed to restrain the use of handcuffs and other fetters indiscriminately and without any justification. It had, therefore, become compulsive to give directions for carrying out enforcement meticulously.

We have elaborately narrated the facts of the present case. We are of the view that there is no basis whatsoever for drawing an inference that the seven detenues, who were lodged inside the ward of a hospital were likely to escape from custody. The antecedents of the detenues are not known. There is nothing on the record to show that they are prone to violence. General averments that the detenues are hard-core activities of ULFA and that they are accused of terrorists and disruptive activities murder, extortion, holding and smuggling of arms and ammunition are not sufficient to place them under fetters and ropes while lodged in a closed ward of the hospital as patients. Security guards were posted outside the ward. It is not disputed that while in Jail, the detenues were not handcuffed. They cannot be in a worst condition while in hospital under treatment as patients. In any case to safe guard any attempt to escape extra armed guards can be deployed around the ward of the hospital where the detenues are lodged. The handcuffing and in addition tying with ropes of the patients-prisoners who are lodged in the hospital is, the least we can

say, in human and in utter violation of the human rights guaranteed to an individual under the International Law and the law of the land. We are, therefore, of the view that the action of the respondents was wholly unjustified and against law. We direct that the detenues- in case they are still in hospital-be relieved from the fetters and the ropes with immediate effect.

We declare, direct and lay down as a rule that handcuffs or other fetters shall not be forced on a prisoner convicted or under-trial while lodged in a jail anywhere in the country or while transporting or in transit from one jail to another or from jail to court and back. The police and the jail authorities on their own, shall have no authority to direct the handcuffing of any inmate of a jail in the country or during transport from one jail to another or from jail to court and back.

Where the police or the jail authorities have well grounded basis for drawing strong inference that a particular prisoner is likely to jump jail or break out of the custody then the said prisoner be produced before the Magistrate concerned and a prayer for permission to handcuff the prisoner the made before the said Magistrate. Save in rare cases of concentrate proof regarding proneness of the prisoner to violence, his tendency to escape, he being so dangerous/desperate the finding that no other practical way of forbidding escape is available, the Magistrate may grant permission to handcuff the prisoner.

In all cases where a person arrested by police, is produced before the Magistrate and remand - judicial or non-judicial is given by the Magistrate, the person concerned shall not be handcuffed unless special orders in that respect are obtained from the Magistrate at the time of the grant of the remand.

When the police arrests a person in execution warrant of arrest obtained from a Magistrate, the person so arrested shall not be handcuffed unless the police has also obtained orders from the Magistrate for the handcuffing of the person to be so arrested.

Where a person is arrested by the police without warrant the police officer concerned may if he is satisfied on the basis of the guide-lines given by us in para above, that it is necessary to handcuff such a person, he may be so till the time he is taken to the police station and thereafter his production before the Magistrate. Further use of fetters thereafter can only be under the orders of the Magistrate as already indicated by us.

We direct, all ranks of police and the prison authorities to meticulously obey the above mentioned directions. Any violation of any of the directions issued by us by any rank of police in the country or member of the jail establishment shall be summarily punishable under the Contempt of Court's Act apart from other penal consequences under law. The writ petition is allowed in the above terms. No. costs.

Copy of this judgment be sent to Govt. of India, Ministry of Home Affairs and to all the State and Union Territory Govt. through Home Secretary.

OFFICE OF INSPECTOR GENERAL OF POLICE, CRIME, PUNJAB, CHANDIGARH

No. 15381-400/CR-1 dt. CHG 1.8.95

A copy is forwarded to all distt. SSsP in Punjab for compliance.

for Inspector General of Police,
Crime, Punjab.

OFFICE OF THE DIRECTOR GENERAL OF POLICE, PUNJAB, CHANDIGARH.

No 10337/CR-CELL Dated Chandigarh, the 9-5-07

CIRCULAR

Hon'ble Chief Minister, Punjab has directed categorically that Police officials shall be held accountable and responsible for maintenance of law and order situation in their area of jurisdiction. He has also desired that respect for human rights be observed.

In this connection detailed instructions in the light of the Judgment of Hon'ble Supreme Court of India in writ petition (Crl) No. 639 of 1986 between Sh. D.K. Basu v/s West Bengal with writ petition (Crl) No. 592 of 1987 between Ashok K. Johri v/s State of U.P. have already been issued vide Memo. No. 21002-35/CR-1 dt. 29.10.97 (copy enclosed as Annexure- A)

You are therefore, requested to ensure that above instructions are complied with meticulously.

For Director General of Police,
Punjab

No. 10338-437/CR-Cell dt. CHG the 9.5.07

A copy of the above is forwarded to all Heads of Police offices in Punjab for meticulous compliance.

For Director General of Police,
Punjab

Guidelines issued by the S.C. in case of arrest/detention

(CWP 539 OF 86 592 OF 87- D.K. Basu Vs State of W.B.)

1 Arresting/Investigation officer to wear name plate and rank.

2 Arrest memo containing date & time of arrest to be signed by at least one member of family or respectable of the mohalla. Signatures of officials arresting and the person arrested should be taken on the Arrest memo.

3 Information of arrest and place where he is detained to be sent to a family member/friend/well wisher.

4 Info. about arrest and place of detention to be given to Legal aid authority within 8/12 hrs.

5 Arrested person to be told about his right to inform anybody about his arrest.

6 DDR entry to be made including name of relation/friend who has been informed about the arrest. Name of police custodian will also be mentioned.

7 Upon request, he will be subjected to medical examination. Any injury major/minor should be recorded in the arrest memo.

8 48 hourly medical examination of the arrested person, to be conducted by a doctor on the panel approved by DHS.

9 Copies of arrest memo and other documents to be sent to Ilaqa Magistrate.

10 Arrested person should be allowed to meet his lawyer.

11 PCRs should be instituted in all Distt. hqrs. and State hqrs. where information of arrest should be displayed prominently on a board.

From

The Addl. Director General of Police,

Crime, Punjab, Chandigarh.

To

All Districts SSsP in Punjab.

No. 16583-607/CR/LA-1 dated Chandigarh 10.7.07

Subject **Hon'ble Supreme Court of India's orders and directions regarding handcuffing in writ petition (civil) No. 22 of 1995 Citizens for democracy Vs the State of Assam & others.**

Memo.

Please refer to the office endst No. 15381-400/CR-1 dt. 1.8.95, on the subject cited above.

2 The Judgments of Courts including Hon'ble Supreme Court of India regarding strict illegality of handcuffing of arrested persons has been conveyed to you time and again. It has come to notice that these instructions are not followed by the officers/officials. It is matter of grave concern and it is directed that SSsP will be personally responsible for any aberration of this court orders.

for Addl. Director General of Police,

Crime, Punjab, Chandigarh.

From

The Addl. Director General of Police,
Crime, Punjab, Chandigarh.

To

1 All Range IGP/Zone in the State of Punjab
2 All Range DIsG/Range in the State of Punjab
3 All SSsP/in the State of Punjab.

No. 3068-3100/CR-LA-1 Dated CHG 2.2.09

Subject: Reg. CWP No. 9650 of 2007 - titled as World Human Rights Protection Council vs State of Punjab etc. decided on 24.9.08

Memo

Please refer to the subject noted above.

2 Hon'ble Pb. & Haryana High Court at Chandigarh has passed the order dt. 24.9.08 in the above cited CWP mentioned in the subject. The operative part of the order is reproduced as under:-

"In the totality of the above circumstances, therefore, we dispose of the present writ petition, with a direction to the Director General of Police, State of Punjab & Haryana and Inspector General of Police, UT, Chandigarh to issue appropriate directions to all those concerned with the production of the under trials in the courts, to strictly abide by the directions issued by the Hon'ble Supreme Court and to forbid them from handcuffing the prisoners, except in accordance with the permission of the Magistrate concerned. We further direct that the Registry shall circulate the copy of this order to all the Judicial Officers in the States of Punjab, Haryana and UT Chandigarh and would impress upon them the need for strict compliance of the directions issued by their Lordships of the Hon'ble Supreme Court. No costs.

It is therefore, requested that orders of the Hon'ble High Court may be complied meticulously.

for Addl. Director General of Police,
Crime, Punjab, Chandigarh

No. Dated, Chg. the:

A copy of the above is forwarded to the Director General of Police, Punjab, Chandigarh, for their information please.

for Addl. Director General of Police,
Crime, Punjab, Chandigarh

THE PROTECTION OF HUMAN RIGHTS ACT, 1993

[As amended by the Protection of Human Rights (Amendment Act, 2006)]

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement

(1) This Act may be called the Protection of Human Rights Act, 1993.

(2) It extends to the whole of India.

Provided that it shall apply to the State of Jammu and Kashmir only in so far as it pertains to the matters relatable to any of the entries enumerated in List I or List III in the Seventh Schedule to the Constitution as applicable to that State

(3) It shall be deemed to have come into force on the 28th day of September, 1993.

2. Definitions

(1) In this Act, unless the context otherwise requires-

(a) "armed forces" means the naval, military and air forces and includes any other armed forces of the Union;

(b) "Chairperson" means the Chairperson of the Commission or of the State Commission, as the case may be;

(c) "Commission" means the National Human Rights Commission under section 3;

(d) "human rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.

(e) "Human Rights Court" means the Human Rights Court specified under section 30;

(f) "International Covenants" means the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural rights adopted by the General Assembly of the United Nations on the 16th December, 1966 and such other Covenant or Convention adopted by the General Assembly of the United Nations as the Central Government may, by notification, specify;

(g) "Member" means a Member of the Commission or of the State Commission, as the case may be;

(h) "National Commission for Minorities" means the National Commission for Minorities constituted under section 3 of the National Commission for Minorities Act, 1992;

(i) "National Commission for the Scheduled Castes" means the National Commission for the Scheduled Castes referred to in Article 338 of the Constitution;

(ia) "National Commission for the Scheduled Tribes" means the National Commission for the Scheduled Tribes referred in Article 338 A of the Constitution;

(j) "National Commission for Women" means the National Commission for Women constituted under section 3 of the National Commission for Women Act, 1990;

(k) "Notification" means a notification published in the official Gazette;

(l) "Prescribed" means prescribed by rules made under this Act;

(m) "Public servant" shall have the meaning assigned to it in section 21 of the Indian Penal Code;

(n) "State Commission" means a State Human Rights Commission constituted under section 21.

(2) Any reference in this Act to a law, which is not in force in the State of Jammu and Kashmir, shall, in relation to that State, be construed as a reference to a corresponding law, if any, in force in that State.

CHAPTER II

THE NATIONAL HUMAN RIGHTS COMMISSION

3. Constitution of a National Human Rights Commission

(1) The Central Government shall constitute a body to be known as the National Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to it, under this Act.

(2) The Commission shall consist of:

(a) a Chairperson who has been a Chief Justice of the Supreme Court;

(b) one Member who is or has been, a Judge of the Supreme Court;

(c) one Member who is, or has been, the Chief Justice of a High Court;

(d) two Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.

(3) The Chairperson of the National Commission for Minorities, the National Commission for the Scheduled Castes, the National Commission for the Scheduled Tribes and the National Commission for Women shall be deemed to be Members of the Commission for the discharge of functions specified in clauses (b) to (j) of section 12.

(4) There shall be a Secretary-General who shall be the Chief Executive Officer of the Commission and shall exercise such powers and discharge such functions of the Commission except judicial functions and the power to make regulations under section 40 B, as may be delegated to him by the Commission or the Chairperson as the case may be.

(5) The headquarters of the Commission shall be at Delhi and the Commission may, with the previous approval of the Central Government, establish offices at other places in India.

4. Appointment of Chairperson and other Members

(1) The Chairperson and the Members shall be appointed by the President by warrant under his hand and seal;

Provided that every appointment under this sub-section shall be made after obtaining the recommendations of a Committee consisting of–

(a) The Prime Minister — Chairperson

(b) Speaker of the House of the People — Member

(c) Minister in-charge of the Ministry of Home Affairs in the Government of India — Member

(d) Leader of the Opposition in the House of the People — Member

(e) Leader of the Opposition in the Council of States — Member

(f) Deputy Chairman of the Council of States — Member

Provided further that no sitting Judge of the Supreme Court or sitting Chief Justice of a High Court shall be appointed, except after consultation with the Chief Justice of India

(2) No appointment of a Chairperson or a Member shall be invalid merely by reason of any vacancy of any member in the Committee referred to in the first proviso to sub-section (1).

5. Resignation and removal of Chairperson and Members

(1) The Chairperson or any Member may, by notice in writing under his hand addressed to the President of India, resign his office.

(2) Subject to the provisions of sub-section (3), the Chairperson or any Member shall only be removed from his office by order of the President of India on the ground of proved misbehaviour or incapacity after the Supreme Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf by the Supreme Court, reported that the Chairperson or the Member, as the case may be, ought on any such ground to be removed.

(2) Notwithstanding anything in sub-section (2), the President may, by order, remove from office the Chairperson or any Member if the Chairperson or such Member, as the case may be–

(a) is adjudged an insolvent; or

(b) engages during his term of office in any paid employment outside the duties of his office; or

(c) is unfit to continue in office by reason of infirmity of mind or body; or

(d) is of unsound mind and stands so declared by a competent court; or

(e) is convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude.

6. Term of office of Chairperson and Members

(1) A person appointed as Chairperson shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier.

(2) A person appointed as a Member shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for re-appointment for another term of five years.

Provided that no Member shall hold office after he has attained the age of seventy years.

(3) On ceasing to hold office, a Chairperson or a Member shall be ineligible for further employment under the Government of India or under the Government of any State.

7. Member to act as Chairperson or to discharge his functions in certain circumstances

(1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the President may, by notification, authorise one of the Members to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy.

(2) When the Chairperson is unable to discharge his functions owing to absence on leave or otherwise, such one of the Members as the President may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

8. Terms and conditions of service of Chairperson and Members

The salaries and allowances payable to, and other terms and conditions of service of, the Chairperson and Members shall be such as may be prescribed.

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson or a Member shall be varied to his disadvantage after his appointment.

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

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

10. Procedure to be regulated by the Commission

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

(2) Subject to the provisions of this Act and the rules made thereunder, the Commission shall have the power to lay down by regulations its own procedure.

(3) All orders and decisions of the Commission shall be authenticated by the Secretary-General or any other officer of the Commission duly authorized by the Chairperson in this behalf.

11. Officers and other staff of the Commission

(1) The Central Government shall make available to the Commission:

(a) an officer of the rank of the Secretary to the Government of India who shall be the Secretary-General of the Commission; and

(b) such police and investigative staff under an officer not below the rank of a Director General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the Commission.

(2) Subject to such rules as may be made by the Central Government in this behalf, the Commission may appoint such other administrative, technical and scientific staff as it may consider necessary.

(3) The salaries, allowances and conditions of service of the officers and other staff appointed under sub-section (2) shall be such as may be prescribed.

CHAPTER III

FUNCTIONS AND POWERS OF THE COMMISSION

12. Functions of the Commission

The Commission shall perform all or any of the following functions, namely:-

(a) inquire, suo motu or on a petition presented to it by a victim or any person on his behalf or on a direction or order of any court, into complaint of

(i) violation of human rights or abetment thereof; or

(ii) negligence in the prevention of such violation, by a public servant;

(b) intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;

(c) visit, notwithstanding anything contained in any other law for the time being in force, any jail or other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates thereof and make recommendations thereon to the Government;

(d) review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;

(e) review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures;

(f) study treaties and other international instruments on human rights and make recommendations for their effective implementation;

(g) undertake and promote research in the field of human rights;

(h) spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;

(i) encourage the efforts of non-governmental organisations and institutions working in the field of human rights;

(j) such other functions as it may consider necessary for the protection of human rights.

13. Powers relating to inquiries

(1) The Commission shall, while inquiring into complaints under this Act, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908, and in particular in respect of the following matters, namely :

(a) summoning and enforcing the attendance of witnesses and examining them on oath;

(b) discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses or documents;

(f) any other matter which may be prescribed.

(2) The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 and section 177 of the Indian Penal Code. (45 of 1960)

(3) The Commission or any other officer, not below the rank of a Gazetted Officer, specially authorised in this behalf by the Commission may enter any building or place where the Commission has reason to believe that any document relating to the subject matter of the inquiry may be found, and may seize any such document or take extracts or copies there from subject to the provisions of section 100 of the Code of Criminal Procedure, 1973, in so far as it may be applicable.

(4) The Commission shall be deemed to be a civil court and when any offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1973, forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under section 346 of the Code of Criminal Procedure, 1973.

(5) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code, and the Commission shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

(6) Where the Commission considers it necessary or expedient so to do, it may, by order, transfer any complaint filed or pending before it to the State Commission of the State from which the complaint arises, for disposal in accordance with the provisions of this Act;

Provided that no such complaint shall be transferred unless the same is one respecting which the State Commission has jurisdiction to entertain the same.

(7) Every complaint transferred under sub-section (6) shall be dealt with and disposed of by the State Commission as if it were a complaint initially filed before it.

14. Investigation

(1) The Commission may, for the purpose of conducting any investigation pertaining to the inquiry, utilize the services of any officer or investigation agency of the Central Government or any State Government with the concurrence of the Central Government or the State Government, as the case may be.

(2) For the purpose of investigating into any matter pertaining to the inquiry, any officer or agency whose services are utilized under subsection (1) may, subject to the direction and control of the Commission:-

(a) summon and enforce the attendance of any person and examine him;

(b) require the discovery and production of any document; and

(c) requisition any public record or copy thereof from any office.

(3) The provisions of section 15 shall apply in relation to any statement made by a person before any officer or agency whose services are utilized under sub-section (1) as they apply in relation to any statement made by a person in the course of giving evidence before the Commission.

(4) The officer or agency whose services are utilized under subsection (1) shall investigate into any matter pertaining to the inquiry and submit a report thereon to the Commission within such period as may be specified by the Commission in this behalf.

(5) The Commission shall satisfy itself about the correctness of the facts stated and the conclusion, if any, arrived at in the report submitted to it under sub-section (4) and for this purpose the Commission may make such inquiry (including the examination of the person or persons who conducted or assisted in the investigation) as it thinks fit.

15. Statement made by persons to the Commission

No statement made by a person in the course of giving evidence before the Commission shall subject him to, or be used against him in, any civil or criminal proceeding except a prosecution for giving false evidence by such statement:

Provided that the statement:-

(a) is made in reply to the question which he is required by the Commission to answer; or

(b) is relevant to the subject matter of the inquiry.

16. Persons likely to be prejudicially affected to be heard

If, at any stage of the inquiry, the Commission:-

(a) considers it necessary to inquire into the conduct of any person; or

(b) is of the opinion that the reputation of any person is likely to be prejudicially affected by the inquiry;

it shall give to that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence:

Provided that nothing in this section shall apply where the credit of a witness is being impeached

CHAPTER IV

PROCEDURE

17. Inquiry into complaints

The Commission while inquiring into the complaints of violations of human rights may–

(i) call for information or report from the Central Government or any State Government or any other authority or organization subordinate thereto within such time as may be specified by it:-

Provided that–

(a) if the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint on its own;

(b) if, on receipt of information or report, the Commission is satisfied either that no further inquiry is required or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complainant accordingly;

(ii) without prejudice to anything contained in clause (i), if it considers necessary, having regard to the nature of the complaint, initiate an inquiry.

18. Steps during and after inquiry-

The Commission may take any of the following steps during or upon the completion of an inquiry held under this Act, namely:-

(a) where the inquiry discloses the commission of violation of human rights or negligence in the prevention of violation of human rights or abetment thereof by a public servant, it may recommend to the concerned Government or authority –

i. to make payment of compensation or damages to the complainant or to the victim or the members of his family as the Commission may consider necessary;

ii. to initiate proceedings for prosecution or such other suitable action as the Commission may deem fit against the concerned person or persons;

iii. to take such further action as it may think fit;

(b) approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;

(c) recommend to the concerned Government or authority at any stage of the inquiry for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary;

(d) subject to the provisions of clause (5), provide a copy of the inquiry report to the petitioner or his representative;

(e) the Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority and the concerned Government or authority shall, within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission;

(f) the Commission shall publish its inquiry report together with the comments of the concerned Government or authority, if any, and the action taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission.

19. Procedure with respect to armed forces

1) Notwithstanding anything contained in this Act, while dealing with complaints of violation of human rights by members of the armed forces, the Commission shall adopt the following procedure, namely :-

(a) it may, either on its own motion or on receipt of a petition, seek a report from the Central Government;

(b) after the receipt of the report, it may, either not proceed with the complaint or, as the case may be, make its recommendations to that Government.

(2) The Central Government shall inform the Commission of the action taken on the recommendations within three months or such further time as the Commission may allow.

(3) The Commission shall publish its report together with its recommendations made to the Central Government and the action taken by that Government on such recommendations.

(4) The Commission shall provide a copy of the report published under sub-section (3) to the petitioner or his representative.

20. Annual and special reports of the Commission

(1) The Commission shall submit an annual report to the Central Government and to the State Government concerned and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report.

(2) The Central Government and the State Government, as the case may be, shall cause the annual and special reports of the Commission to be laid before each House of Parliament or the State Legislature respectively, as the case may be, along with a memorandum of action taken or proposed to be taken on the recommendations of the Commission and the reasons for non-acceptance of the recommendations, if any.

CHAPTER V

STATE HUMAN RIGHTS COMMISSIONS

21. Constitution of State Human Rights Commissions

(1) A State Government may constitute a body to be known as the..... (name of the State) Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to, a State Commission under this chapter.

(2) The State Commission shall, with effect from such date as the State Government may by notification specify, consist of –

(a) a Chairperson who has been a Chief Justice of a High Court;

(b) one Member who is, or has been, a Judge of a High Court or District Judge in the State with a minimum of seven years experience as District Judge;

(c) one Member to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.

(3) There shall be a Secretary who shall be the Chief Executive Officer of the State Commission and shall exercise such powers and discharge such functions of the State Commission as it may delegate to him.

(4) The headquarters of the State Commission shall be at such place as the State Government may, by notification, specify.

(5) A State Commission may inquire into violation of human rights only in respect of matters relatable to any of the entries enumerated in List II and List lll in the Seventh Schedule to the Constitution:

Provided that if any such matter is already being inquired into by the Commission or any other Commission duly constituted under any law for the time being in force, the State Commission shall not inquire into the said matter:

Provided further that in relation to the Jammu and Kashmir Human Rights Commission, this sub-section shall have effect as if for the words and figures “List II and List III in the Seventh Schedule to the Constitution”, the words and figures “List III in the Seventh Schedule to the Constitution as applicable to the State of Jammu and Kashmir and in respect of matters in relation to which the Legislature of that State has power to make laws” had been substituted.

(6) Two or more State Governments may, with the consent of a Chairperson or Member of a State Commission, appoint such Chairperson or, as the case may be, such Member of another State Commission simultaneously if such Chairperson or Member consents to such appointment:

Provided that every appointment made under this sub-section shall be made after obtaining the recommendations of the Committee referred to in sub-section (1) of Section 22 in respect of the State for which a common Chairperson or Member, or both, as the case may be, is to be appointed.

22. Appointment of Chairperson and Members of State Commission

(1) The Chairperson and Members shall be appointed by the Governor by warrant under his hand and seal:

Provided that every appointment under this sub-section shall be made after obtaining the recommendation of a Committee consisting of

(a) the Chief Minister — Chairperson

(b) Speaker of the Legislative Assembly — Member

(c) Minister in-charge of the Department of Home, in that State— Member

(d) Leader of the Opposition in the Legislative Assembly — Member

Provided further that where there is a Legislative Council in a State, the Chairman of that Council and the Leader of the Opposition in that Council shall also be members of the Committee

Provided also that no sitting Judge of a High Court or a sitting District Judge shall be appointed except after consultation with the Chief Justice of the High Court of the concerned State

(2) No appointment of a Chairperson or a Member of the State Commission shall be invalid merely by reason of any vacancy of any Member in the Committee referred to in sub-section(1).

23. Resignation and Removal of Chairperson or a Member of the State Commission

(1) Subject to the provisions of sub-section (2), the Chairperson or any Member of the State Commission shall only be removed from his office by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf by the Supreme Court, reported that the Chairperson or such Member, as the case may be, ought on any such ground to be removed.

(2) Notwithstanding anything in sub-section (1A), the President may by order remove from office the Chairperson or any Member if the Chairperson or such Member, as the case may be –

(a) is adjudged an insolvent; or

(b) engages during his term of office in any paid employment outside the duties of his office; or

(c) is unfit to continue in office by reason of infirmity of mind or body; or

(d) is of unsound mind and stands so declared by a competent court; or

(e) is convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude.

24. Term of office of Chairperson and Members of the State Commission

(1) A person appointed as Chairperson shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier;

(2) A person appointed as a Member shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for re-appointment for another term of five years;

Provided that no Member shall hold office after he has attained the age of seventy years.

(3) On ceasing to hold office, a Chairperson or a Member shall be ineligible for further employment under the Government of a State or under the Government of India.

25. Member to act as Chairperson or to discharge his functions in certain circumstances

(1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the Governor may, by notification, authorise one of the Members to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy.

(2) When the Chairperson is unable to discharge his functions owing to absence on leave or otherwise, such one of the Members as the Governor may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

26. Terms and conditions of service of Chairperson and Members of the State Commissions

The salaries and allowances payable to, and other terms and conditions of service of, the Chairperson and Members shall be such as may be prescribed by the State Government;

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson or a Member shall be varied to his disadvantage after his appointment.

27. Officers and other staff of the State Commission

(1) The State Government shall make available to the Commission

(a) an officer not below the rank of a Secretary to the State Government who shall be the Secretary of the State Commission; and

(b) such police and investigative staff under an officer not below the rank of an Inspector General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the State Commission.

(2) subject to such rules as may be made by the State Government in this behalf, the State Commission may appoint such other administrative, technical and scientific staff as it may consider necessary.

(3) The salaries, allowances and conditions of service of the officers and other staff appointed under sub-section (2) shall be such as may be prescribed by the State Government.

28. Annual and special reports of State Commission

(1) The State Commission shall submit an annual report to the State Government and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report.

(2) The State Government shall cause the annual and special reports of the State Commission to be laid before each House of State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House along with a memorandum of action taken or proposed to be taken on the recommendations of the State Commission and the reasons for on-acceptance of the recommendations, if any.

29. Application of certain provisions relating to National Human Rights Commission to State Commissions

The provisions of sections 9, 10, 12, 13, 14, 15, 16, 17 and 18 shall apply to a State Commission and shall have effect, subject to the following modifications, namely:-

(a) references to "Commission" shall be construed as references to "State Commission";

(b) in section 10, in sub-section (3), for the word "Secretary General", the word "Secretary" shall be substituted;

(c) in section 12, clause (f) shall be omitted;

(d) in section 17, in clause (i), the words "Central Government or any" shall be omitted;

CHAPTER VI

HUMAN RIGHTS COURTS

30. For the purpose of providing speedy trial of offences arising out of violation of human rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district a Court of Session to be a Human Rights Court to try the said offences.

Provided that nothing in this section shall apply if

(a) a Court of Session is already specified as a special court; or

(b) a special court is already constituted, for such offences under any other law for the time being in force.

31. Special Public Prosecutor

For every Human Rights Court, the State Government shall, by notification, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.

CHAPTER VII

FINANCE, ACCOUNTS AND AUDIT

32. Grants by the Central Government

(1) The Central Government shall after due appropriation made by Parliament by law in this behalf, pay to the Commission by way of grants such sums of money as the Central Government may think fit for being utilised for the purposes of this Act.

(2) The Commission may spend such sums as it thinks fit for performing the functions under this Act, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).

33. Grants by the State Government

(1) The State Government shall, after due appropriation made by Legislature by law in this behalf, pay to the State Commission by way of grants such sums of money as the State Government may think fit for being utilised for the purposes of this Act.

(2) The State Commission may spend such sums as it thinks fit for performing the functions under Chapter V, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).

34. Accounts and Audit

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

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

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

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

35. Accounts and Audit of State Commission

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

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

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

(4) The accounts of the State Commission, as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded annually to the State Government by the State

Commission and the State Government shall cause the audit report to be laid, as soon as may be after it is received, before the State Legislature.

CHAPTER VIII

MISCELLANEOUS

36. Matters not subject to jurisdiction of the Commission

(1) The Commission shall not inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force.

(2) The Commission or the State Commission shall not inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed.

37. Constitution of special investigation teams

Notwithstanding anything contained in any other law for the time being in force, where the Government considers it necessary so to do, it may constitute one or more special investigation teams, consisting of such police officers as it thinks necessary for purposes of investigation and prosecution of offences arising out of violations of human rights.

38. Protection of action taken in good faith

No suit or other legal proceeding shall lie against the Central Government, State Government, Commission, the State Commission or any Member thereof or any person acting under the direction either of the Central Government, State Government, Commission or the State Commission in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or any order made thereunder or in respect of the publication by or under the authority of the Central Government, State Government, Commission or the State Commission of any report paper or proceedings.

39. Members and officers to be public servants

Every Member of the Commission, State Commission and every officer appointed or authorised by the Commission or the State Commission to exercise functions under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

40. Power of Central Government to make rules

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

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

(a) the salaries and allowances and other terms and conditions of service of the Chairperson and Members under section 8;

(b) the conditions subject to which other administrative, technical and scientific staff may be appointed by the Commission and the salaries and allowances of officers and other staff under subsection (3) of section 11;

(c) any other power of a civil court required to be prescribed under clause (f) of sub-section (1) of section 13;

(d) the form in which the annual statement of accounts is to be prepared by the Commission under sub-section (1) of section 34; and

(e) any other matter which has to be, or may be, prescribed.

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

40 A. Power to make rules retrospectively -

The power to make rules under clause (b) of sub-section (2) of Section 40 shall include the power to make such rules or any of them retrospectively from a data not earlier than the date on which this Act received the assent of the President, but no such retrospective effect shall be given to any such rule so as to prejudicially affect the interests of any person to whom such rule may be applicable.

40 (B) Power of Commission to make Regulations -

(1)Subject to the provisions of this Act and the rules made thereunder, the Commission may, with the previous approval of the Central Government, by notification, make regulations to carry out the provisions of this Act.

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

(a) the procedure to be followed by the Commission under sub-section (2) of Section 10;

(b) the returns and statistics to be furnished by the State Commission;

(c) any other matter which has to be, or may be, specified by regulations

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

41. Power of State Government to make rules

(1) The State Government may, by notification, make rules to carry out the provisions of this Act.

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

(a) the salaries and allowances and other terms and conditions of service of the Chairperson and Members under section 26;

(b) the conditions subject to which other administrative, technical and scientific staff may be appointed by the State Commission and the salaries and allowances of officers and other staff under sub-section (3) of Section 27;

(c) the form in which the annual statement of accounts is to be prepared under sub-section (1) of section 35.

(3) Every rule made by the State Government under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

42. Power to remove difficulties

(1) If 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 the period of two years from the date of commencement of this Act

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

43. Repeal and Savings

(1) The Protection of Human Rights Ordinance, 1993 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of this Act.

THE PROTECTION OF CIVIL RIGHTS ACT, 1955

(Act No. 22 of 1955)

(8TH MAY, 1955)

An Act to prescribe punishment for the preaching and practice of "Untouchability" for the enforcement of any disability arising there from for matters connected therewith.

Be it enacted by Parliament in the Sixth Year of the Republic of India as follows:-

1. Short title, extent and commencement (1) This Act may be called the Protection of Civil Rights Act, 1955.

(2) It extends to the whole of India.

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

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

(a) "civil rights" means any right accruing to a person by reason of the abolition of "untouchability" by article 17 of the Constitution.

(aa) "hotel" includes a refreshment room, a boarding house, a lodging house, a coffee house and a café.

(b) "place" includes a house, building and other structure and premises, and also includes a tent, vehicle and vessel.

(c) "place of public entertainment" includes any place to which the public are admitted and in which an entertainment is provided or held.

Explanation- "Entertainment" includes any exhibition, performance, game, sport and any other form of amusement.

(d) "place of public worship" means a place, by whatever name known, which is used as a place of public religious worship or which is dedicated generally to, or is used generally by, persons professing any religion or belonging to any religious denomination or any section thereof, for the performance of any religious service, or for offering prayers therein and include -

(i) all lands subsidiary shrines appurtenant or attached to any such place,

(ii) a privately owned place of worship which is in fact, allowed by the owner thereof to be used as a place of public worship, and

(iii) such land or subsidiary shrine appurtenant to such privately owned place of worship as is allowed by the owner thereof to be used as a place of public religious worship;

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

(db) "Scheduled Castes" has the meaning assigned to it in clause (24) of article 366 of the Constitution;

(e) "shop" means any premises where goods are sold either wholesale or by retail or both wholesale and by retail and includes-

(i) any place from where goods are sold by a hawker or vendor or from a mobile van or cart.

(ii) a laundry and a hair cutting saloon,

(iii) any other place where services are rendered to customers.

3. Punishment for enforcing religious disabilities:- Whoever on the ground of "untouchability" prevents any person -

(a) from entering any place of public worship which is open to other persons professing the same religion of any section thereof, as such person; or

(b) from worshipping or offering prayers or performing any religious service in any place of public worship, or bathing in, or using the waters of, any sacred tank, well, spring or water-course river or lake or bathing at any ghat of such tank, water-course, river or lake in the same manner and to the same extent as is permissible to the other persons professing the same religion or any section thereof, as such person;

shall be punishable with imprisonment for a term of not less than one month and not more than six months and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees.

Explanation - For the purposes of this section and section 4 persons professing the Buddhist, Sikh or Jaina religion or persons professing the Hindu religion in any of its forms or developments including Virashaivas, Lingayats, Adivasis, followers of Brahmo, Prarthana, Arya Samaj and the Sawaminarayan Sampraday shall be deemed to be Hindus

4. Punishment for enforcing social disabilities:- Whoever on the ground of "untouchability" enforces against any person any disability with regard to –

(i) access to any shop, public restaurant, hotel or place of public entertainment; or

(ii) the use of any utensils, and other articles kept in any public restaurant, hotel, *dharmshala, sarai or musafirkhana* for the use of the general public or of any section thereof; or

(iii) the practice of any profession or the carrying on of any occupation, trade or business or employment in any job; or

(iv) the use of, or access to, any river, stream, spring, well, tank, cistern, water-tap or other watering place, or any bathing ghat, burial or cremation ground, any sanitary convenience, any road, or passage, or any other place of public resort which other members of the public, or any section thereof have a right to use or have access to; or

(v) the use of, access to, any place used for a charitable or a public purpose maintained wholly or partly out of State funds or dedicated to the use of the general public or any section thereof; or

(vi) the enjoyment of any benefit under a charitable trust created for the benefit of the general public or of any section thereof; or

(vii) the use of, or access to, any public conveyance; or

(viii) the construction, acquisition, or occupation of any residential premises in any locality, whatsoever; or

(ix) the use of any *dharmshala, sarai or musafirkhana* which is open to the general public, or to any section thereof; or

(x) the observance of any social or religious custom, usage or ceremony or taking part in, or taking out, any religious, social or cultural procession; or

(xi) the use of jewellery and finery;

shall be punishable with imprisonment for a term of not less than one month and not more than six months and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees.

Explanation - For the purposes of this section, "enforcement of any disability" includes any discrimination on the ground of "untouchability".

5. Punishment for refusing to admit persons to hospitals, etc.-

Whoever on the ground of "untouchability" –

(a) refuses admission to any person to any hospital, dispensary, educational institution or any hostel, if such hospital, dispensary, educational institution or hostel is established or maintained for the benefit of the general public or any section thereof: or

(b) does any act which discriminates against any such person after admission to any of the aforesaid institutions;

shall be punishable with imprisonment for a term of not less than one month and not more than six months and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees.

6. Punishment for refusing to sell goods or render services-

Whoever on the ground of "untouchability" refuses to sell any goods or refuses to render any service to any person at the same time and place and on the same terms and conditions at or which such goods are sold or service are rendered to other persons in the ordinary course of business shall be punishable with imprisonment for a term of not less than one month and not more than six months and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees.

7. Punishment for other offences arising out of "untouchability".

(1) Whoever-

(a) prevents any person from exercising any right accruing to him by reason of the abolition of "untouchability" under article 17 of the Constitution; or

(b) molests, injures, annoys, obstructs or causes or attempts to cause obstruction to any person in the exercise of any such right or molests, injures, annoys or boycotts any person by reason of his having exercised any such right; or

(c) by words, either spoken or written, or by signs or by visible representations or otherwise, incites or encourages any person or class of persons or the public generally to practice "untouchability" in any form whatsoever; or

(d) insults or attempts to insult, on the ground of "untouchability" a member of a Scheduled Caste.

shall be punishable with imprisonment for a term of not less than one month and not more than six months, and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees.

[Explanation 1] - A person shall be deemed to boycott another person who-

(a) refuses to let such other person or refuses to permit such other person, to use or occupy any house or land or refuses to deal with, work for hire for, or do business with, such other person or to render to him or receive from him any customary service, or refuses to do any of the said things on the terms on which such things would be commonly done in the ordinary course of business; or

(b) abstains from such social, professional or business relations as he would ordinarily maintain with such other person.

Explanation II -- For the purpose of clause *(c)* a person shall be deemed to incite or encourage the practice of "untouchability" -

(i) if he, directly or indirectly, preaches "untouchability" or its practice in any form; or

(ii) if he justifies, whether on historical philosophical or religious grounds or on the ground of any tradition of the caste system or on any other ground, the practice of untouchability in any form.

(1A) Whoever commits any offence against the person or property of any individual as a reprisal or revenge for his having exercised any right accruing to him by reason of the abolition of "untouchability" under article 17 of the Constitution, shall, where the offence is punishable with imprisonment for a term exceeding two years, be punishable with imprisonment for a term which shall not be less than two years and also with fine.

(2) Whoever-

(i) denies to any person belonging to his community or any section thereof any right or privilege to which such person would be entitled as a member of such community or section, or

(ii) takes any part in the ex-communication of such person, on the ground that such person has refused to practice "untouchability" or that such person has done any act in furtherance of the objects of this Act.

shall be punishable with imprisonment for a term of not less than one month and not more than six months, and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees.

7A. Unlawful compulsory labour when to be deemed to be a practice of "untouchability"

(1) Whoever compels any person, on the ground of "untouchability", to do any scavenging or sweeping or to remove any carcass or to flay any animal or to remove the umbilical cord or to do any other job of a similar nature, shall be deemed to have enforced a disability arising out of "untouchability".

(2) Whoever is deemed under sub-section (1) to have enforced a disability arising out of "untouchability" shall be punishable with imprisonment for a term which shall not be less than three months and not more than six months and also with fine which shall not be less than one hundred rupees and not more than five hundred rupees.

Explanation - For the purposes of this section, compulsion includes a threat of social or economic boycott.

8. Cancellation or suspension of license in certain cases.

When a person who is convicted of an offence under section 6 holds any licence under any law for the time being in force in respect of any profession, trade, calling or employment in relation to which the offence is committed, the court trying the offence may, without prejudice to any other penalty to which such person may be liable under that section, direct that the licence shall stand cancelled or be suspended for such period as the court may deem fit, and every order of the court so cancelling or suspending licence shall have effect as if it had been passed by the authority competent to cancel or suspend the licence under any such law.

Explanation- In this section," licence" includes a permit or permission.

9. Resumption or suspension of grants made by Government.

Where the manager or trustee of a place of public worship or any educational institution or hostel which is in receipt of a grant of land or money from the Government is convicted of an offence under this Act and such conviction is not reversed or quashed in any appeal or revision, the Government may, if in its opinion the circumstances of the case warrant such a course, direct the suspension or resumption of the whole or any part of such grant.

10. Abetment of the offence

Whoever abets any offence under this Act shall be punishable with punishment provided for the offence.

Explanation - A public servant who willfully neglects the investigation of any offence punishable under this Act shall be deemed to have abetted an offence punishment under this Act.

10A Power of state Government to impose collective fine

(1) If, after an inquiry in the prescribed manner, the State Government is satisfied that the inhabitants of an area are concerned in or abetting the commission of, any offence punishable under this Act, or harbouring persons concerned in the commission of such offence or failing to render all the assistance in their power to discover or apprehend the offender or

offenders or suppressing material evidence of the commission of such offence, the State Government may, by notification in the Official Gazette, impose a collective fine on such inhabitants and apportion such fine amongst the inhabitants who are liable collectively to pay it, and such apportionment shall be made according to the State Government judgment of the respective means of such inhabitants and in making any such apportionment the State Government may assign a portion of such fine to a Hindu undivided family to be payable by it:

Provided that the fine apportioned to an inhabitant shall not be realized until the petition, if any, filed by him under sub-section (3) is disposed of.

(2) The notification made under sub-section *(1)* shall be proclaimed in the area by beat of drum or in such other manner as the State Government may think best in the circumstances to bring the imposition of the collective fine to the notice of the inhabitants of the said area.

(3) (a) Any person aggrieved by the imposition of the collective fine under sub-section (1) or by the order of apportionment, may, within the prescribed period, file a petition before the State Government or such other authority as that Government may specify in this behalf for being exempted from such fine or for modification of the order of apportionment:

Provided that no fee shall be charged for filing such petition

(b) The State Government or the authority specified by it shall, After giving to the petitioner a reasonable opportunity of being heard, pass such order as it may think fit:

Provided that the amount of the fine exempted or reduced under this section shall not be realizable from any person, and the total fine imposed on the inhabitants of an area under sub-section *(1)* shall be deemed to have been reduced to that extent.

(4) Notwithstanding anything contained in sub-section (3), the State Government may exempt the victims of any offence punishable under this Act or any person who does not, in its opinion, fall within the category of persons specified in sub-section (I), from the liability to pay the collective fine imposed under sub-section (I) or any portion thereof.

(5) The portion of collective fine payable by any person including a Hindu undivided family may be recovered in the manner provided by the Code of Criminal Procedure, 1973 (2 of 1974), for the recovery of fines imposed by a Court as if such portion were a fine imposed by a Magistrate.

11. Enhanced penalty on sub-or- sequent conviction.

Whoever having already been convicted of an offence under this Act or of an abetment of such offence is again convicted of any such offence abetment, shall, on conviction, be punishable-

(a) for the second offence, with imprisonment for a term of not less than six months and not more than one year, and also with fine which shall be not less than two hundred rupees and not more than five hundred rupees;

(b) for the third offence or any offence subsequent to the third offence, with imprisonment for a term of not less than one year and not more than two years, and also with fine which shall be not less than five hundred rupees and not more than one thousand rupees.

12. PRESUMPTION BY COURTS IN CERTAIN CASES

Where any act constituting an offence under this Act is committed in relation to a member of a Scheduled Caste, the court shall presume, unless the contrary is proved, that such act was committed on the ground of "untouchabilily"

13. LIMITATION OF JURIDICTION OF CIVIL COURTS

(1) No civil court shall entertain or continue any suit or proceeding or shall pass any decree or order or execute wholly or partially any decree or order if the claim involved in such suit or proceeding or if the passing of such decree or order or if such execution would in any way be contrary to the provisions of this Act.

(2) No court shall, in adjudicating any matter or executing any decree or order, recognize any custom or usage imposing any disability on any person on the ground of "untouchability"

14. Offences by companies

(1) If the person committing an offence under this Act is a company, every person who at the time the offence was committed was a charge of, and was responsible to, the company for the conduct of the business of 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 exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section *(1),* where an offence under this Act has been committed with the consent of any director or manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation - For the purpose of this section,-

(a) "company" means anybody corporate and includes a firm or other association of individuals; and

(b) "director" in relation to a firm means a partner in the firm.

14A. Protection of action taken in good faith

(1) No suit, prosecution or other legal proceeding shall lie against Central Government or a State Government for anything which is in good faith done or intended to be done under this Act.

(2) No suit or other legal proceeding shall lie against the Central Government or a State Government for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act.

15. Offences to be cognizable and triable summarily

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be cognizable and every such offence, except where it is punishable with

imprisonment for a minimum term exceeding three months, may be tried summarily by a Judicial Magistrate of the first class or in a metropolitan area by a Metropolitan Magistrate in accordance with the procedure specified in the said Code.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), when any public servant is alleged to have committed the offence of abetment of an offence punishable under this Act, while acting or purporting to act in the discharge of his official duty, no court shall take cognizance of such offence of abetment except with the previous sanction-

(a) of the Central Government, in the case of a person employed in connection with the affairs of the Union; and

(b) of the State Government, in the case of a person employed in connection with the affairs of a State.

15A. Duty of State Government to ensure that the rights accruing from the abolition of "untouchabiity" may be availed of by the concerned persons

(1) Subject to such rules as the Central Government may make in, this behalf, the State Government shall take such measures as may be necessary for ensuring that the rights arising from the abolition of "untouchability" are made available to, and are availed of by, the persons subjected to any disability arising out of the "untouchability"

(2) In particular, and without prejudice to the generality of the provisions of sub-section *(1),* such measures may include-

(i) the provision of adequate facilities, including legal aid, to the persons subjected to any disability arising out of "untouchability" to enable them to avail themselves of such rights;

(ii) the appointment of officers for initiating or exercising supervision over prosecutions for the contravention of the provisions of this Act;

(iii) the setting up of special courts for the trial of offences under this Act;

(iv) the setting up of Committees at such appropriate levels as the State Government may think fit to assist the State Government in formulating or implementing such measures;

(v) provision for a periodic survey of the working of the provisions of this Act with a view to suggesting measures *for* the better implementation of the provisions of this Act;

(vi) The identification of the areas where persons are under any disability arising out of "untouchability" and adoption of such measures as would ensure the removal of such disability from such areas.

(3) The Central Government shall take such steps as may be necessary to co-ordinate the measures taken by the State Governments under subsection (1).

(4) The Central Government shall, every year, place on the Table of each House of Parliament, a report on the measures taken by itself and by the State Governments in pursuance of the provisions of this section.

16. Act to override other laws.

Save as otherwise expressly provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, or any customs or usage or any instrument having effect by virtue of any such law or any decree or order of any court or other authority.

16A. Probation of Offenders Act, 1958, not to apply to persons above the age of fourteen years

The provisions of the Probation of Offenders Act, 1958(20 of 1958) shall not apply to any person above the age of fourteen years who is found guilty of having committed any offence punishable under this Act.

16B. Power to make rules (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised

in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

17. Repeal

The enactments specified in the Schedule are hereby repealed to the extent to which they or any of the provisions contained therein correspond or are repugnant to this Act or to any of the provisions contained therein.

PROTECTION OF CIVIL RIGHTS RULES, 1977

SO 3006, dated the 15th September, 1977. - In exercise of the powers conferred by section 16B of the Protection of Civil Rights Act, 1955 (22 of 1955), the Central Government hereby makes the following rules, namely:-

1. ***Short title and commencement*** - (1) These rules may be called the Protection of Civil Rights Rules, 1977.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. ***Definitions.***-In these rules, unless the context otherwise requires,-

(a) "Act" means the Protection of Civil Rights Act, 1955 (22 of 1955);

(b) "section" means a section of the Act.

3. ***Manner of inquiry under sub-section*** **(1)** ***of section 10A.***- (1) The State Government' may appoint an officer not below the rank of a Sub-divisional Magistrate for the purpose of making an inquiry referred to in sub-section (1) of section 10A.

(2) The officer appointed under sub-rule (1) (hereinafter in this rule referred to as the inquiry officer) shall issue a public notice specifying the date, time, place and the purpose of such inquiry and calling upon all the residents of the area in respect of which the inquiry is to be held to furnish such information and materials, including documents in their possession, as may be relevant for the purposes of the inquiry.

(3) The Public notice referred to in sub-rule (2) shall be in the local language or languages of the area and the same shall be-

(i) published on the notice board in the offices of the District Magistrate, the District Superintendent of Police, the Village Panchayat or Municipal Committee of the area and such other places as the inquiry officer deems fit and at least in one daily newspaper circulating in the area; and

(ii) proclaimed in the area by beat of drum or in such other manner as the inquiry officer may think best in the circumstances to bring the contents of the public notice to the notice of inhabitants of the area.

(4) The inquiry officer, while making such inquiry shall follow as nearly as practicable, the procedure for summary trials including the recording of evidence as laid down in Chapter XXI of the Code of Criminal Procedure, 1973 (2 of 1974).

(5) The inquiry officer shall complete the inquiry as expeditiously as possible and submit his report to the State Government within such period, not exceeding six weeks, as may be specified by the State Government in the order appointing the inquiry officer:

Provided that the State Government may, having regard to the nature of the inquiry, extend the period of submission of the report by such period, not exceeding two months in total, as it may consider necessary.

4. ***Period for filing*** **a** ***petition under sub-section*** **(3)** ***of section 10A***- (1) Any person aggrieved by the imposition of a collective fine under sub-section (1) of section 10A or by the order of apportionment, may within a period of thirty days from the date of proclamation of the notification under sub-section (2) of that section file a petition before the State Government or the authority specified by it;

Provided that where the State Government or the authority, as the case may be, may entertain the petition after the expiry of the said period if it is satisfied that the petitioner was prevented by sufficient cause from filing the petition in time.

(2) The State Government or the authority before which the petition is filed shall dispose of the petition as expeditiously as possible.

5. ***Reports by the State Governments.***- Every State Government shall, for the purpose of enabling the Central Government to place the report referred to in sub-section (4) of section 15A, on the Table of each House of Parliament, furnish to that Government before the 15th day of February, each year, a summary of the measures taken by it under sub-section (1) and (2) of that section during the preceding calendar year and shall also furnish such other information as may be required by the Central Government from time to time.

Chapter 11

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.

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- 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.

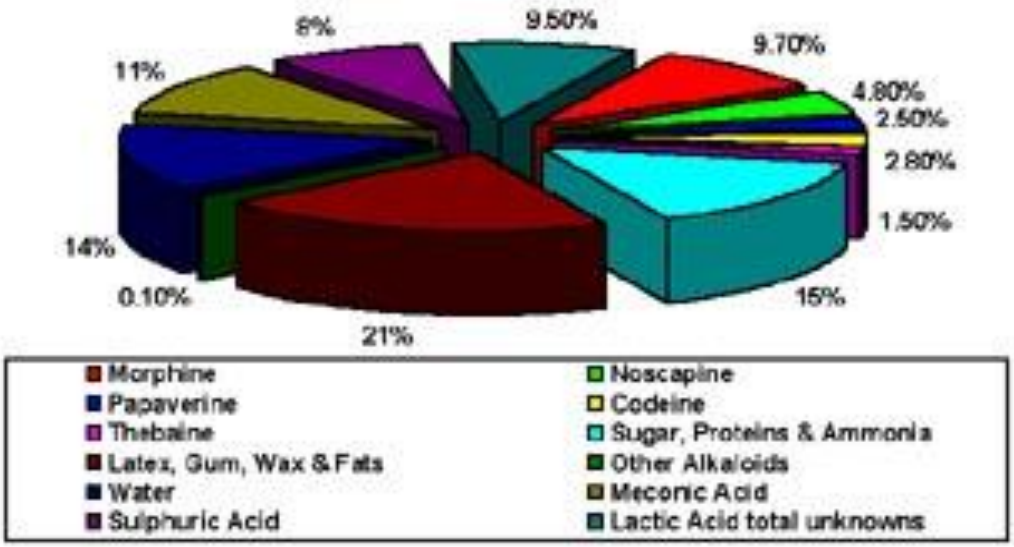
Opium Poppy

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.

PART 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.

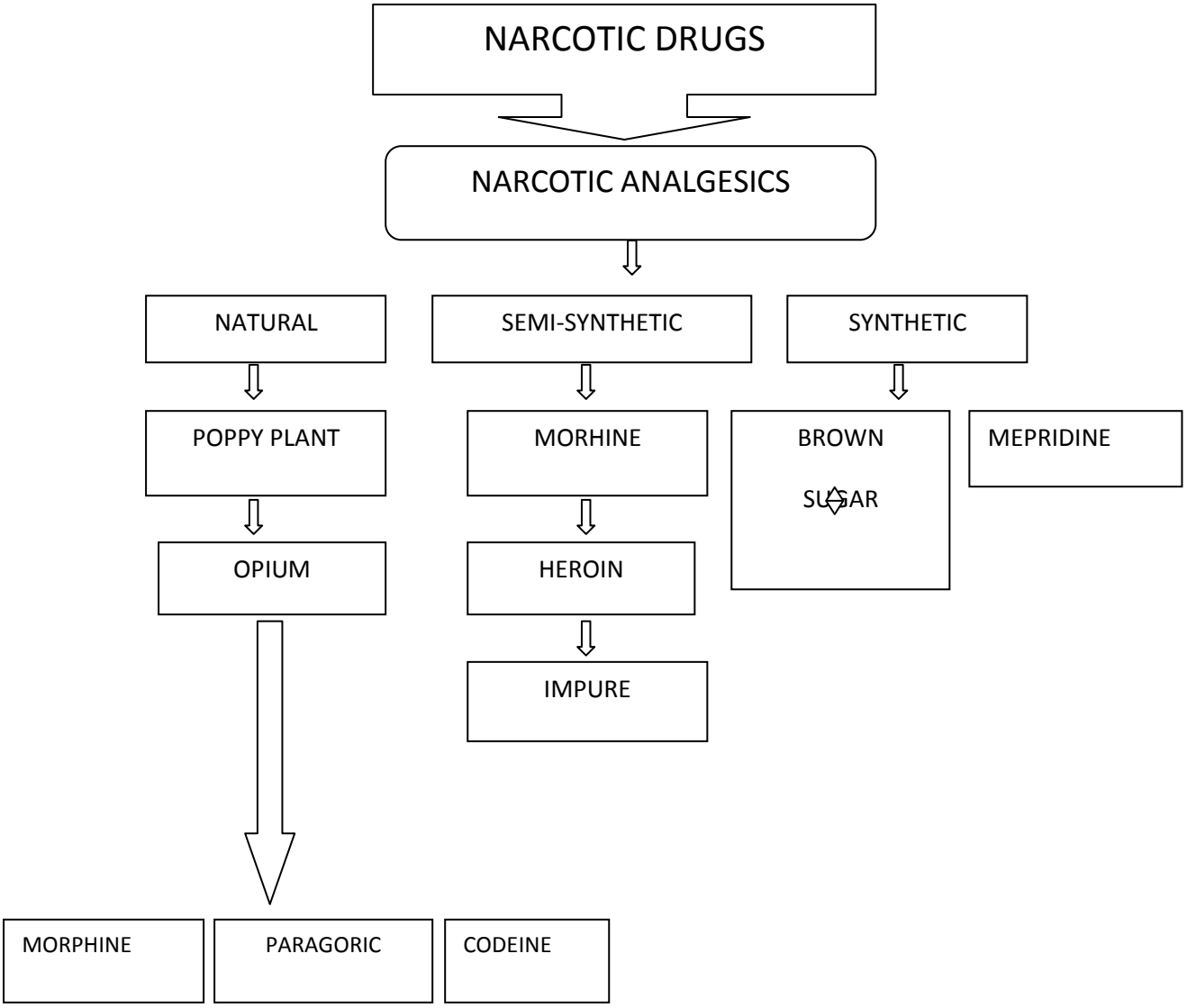
6. Further, an order will have effect only when it is confirmed by the Competent Authority by an order within 30 days of its being made. Thereupon, the Competent Authority will initiate the forfeiture proceeding under Section 68-H & 68- I of the said Act.

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.

PART 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 any oral evidence of the police officer will not be in compliance with the provisions of Section 42(2) of the Act."*

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 were found in possession of the same (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 **found driving the car** 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 **is not a public transport vehicle**.

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 no question regarding possession was put to the accused in the examination under Section 313 of the Code of Criminal Procedure, 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, to affix his seal to such articles or take samples of and from them and all samples so taken are also required to be sealed with the seal of the Officer in charge of the Police Station.

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 sealed properly. Such sealed envelopes 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.

6. This envelope along with TEST MEMO should be kept in another envelope, which should also be sealed 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 the seals 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:

Date:

Time:

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

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 correct-ness 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 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

SEARCHES UNDER NDPS ACT 1985

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

(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.

SECTION VII

BAIL
UNDER
NDPS ACT

PART A

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 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 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.

****

COMMENTS

1. 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.

2. 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.

3. The power to authorize detention by the Magistrate extinguishes on 180th 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.

4. The power of Magistrate to authorize detention again starts when challan is filed and the Magistrate takes cognizance of the offence.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. ***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.

11. 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).

12. 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.

13. 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 "to provide that the offences shall be cognizable and non bailable". 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	-	-	10 years	1,00,000
		(ii) Small quantity	-	-	6 months	10,000
		(iii) Quantity between small and commercial quantity	-	-	10 years	1,00,000
		(iv) Commercial quantity	10 years	1,00,000	20 years	2,00,000
7.	Section 21	Contravention in relation to manufactured drugs and preparations, involving:-				
		(i) Small quantity	-	-	6 months	10,000
		(ii) Quantity between small and commercial quantity	-	-	10 years	1,00,000
		(iii) Commercial quantity	10 years	1,00,000	20 years	2,00,000
8.	Section 22	Contravention in relation to psychotropic substances involving:-				
		(i) Small quantity	-	-	6 months	10,000
		(ii) Quantity between small & commercial quantity	-	-	10 years	1,00,000
		(iii) Commercial quantity	10 years	1,00,000	20 years	2,00,000

9.	Section 23	Illegal import into India, export from India or transshipment of narcotic substances, involving:-				
		(i) Small quantity	-	-	6 months	10,000
		(ii) Quantity between small & commercial quantity	-	-	10 years	1,00,000
		(iii) Commercial quantity	10 years	1,00,000	20 years	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	-	-	6 months	1,000
		(ii) Maliciously giving false information for causing an arrest or search	-	-	2 years	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	-	-	1 year	unlimited
		(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	20 years	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.

Part 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 Singh, 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.

PART 5

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.

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.

10. 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 distrained 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-O. 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)

DRUG ABUSE

CIRCULAR NO.2

It has been observed from critical assessment of monthly reports regarding seizure of narcotics received in this office that investigation work in the NDPS cases is not satisfactory as the local police is not taking keen interest for the follow up seizure of contrabands in the State. On 10.10.03, Moga police had seized 230 injections of Morphine and a big bottle containing diazepam from a person. Even on sizable recovery as is apparent from the quantity, serious efforts are not being made to track down the sources, transportation routes and modus operandi, distribution net work of dealers and paddlers and targeted groups of customers, like farm labour/student/employees, etc. Furthermore, it is necessary to zero down all nodal points of sale for narcotics.

Hence, it is directed that the SSsP/Range DIsG/IsG Zonal will closely monitor the progress of the investigation of the cases and ensure systematic and intensive efforts and follow up on these lines in all investigations of commercial quantity of recoveries.

for Addl. Director General of Police,
Crime, Punjab, Chandigarh.

No. 3160-92/CR-2 Dated, the 20.2.04

1 All IGsP/Zonal, Punjab.
2 All Range DIsG in Punjab.
2 All Distt. SSsP in Punjab.
2 AIG/GRP, Punjab, Patiala.

From

The Addl. Director General of Police,
Crime, Punjab, Chandigarh.

To

All Districts SSsP in Punjab
AIG, GRP, Patiala

No. 18288-302/CR-4 Dated Chandigarh 6.10.05

Subject **Combating the menace of drug abuse**

Memo.

Director Social Security, Punjab has formulated an action plan for combating menace of drug abuse in the state of Punjab. You are directed to take following steps to check the drug abuse:-

1 Police officials be sensitized to handle the problems and as well drug abusers.

2 Regular patrolling be done by the police at strategic points.

3 Drug cell be formed to register the complaints/reports by drug Inspectors and appropriate action be initiated immediately.

4 Seizure of property of smuggling and public auction.

5 Non advertisement of cost of drugs seized.

6 To break the police/political nexus of drugs seized.

7 Warn the hawkers in front of schools not to self/promote intoxicants.

8 Start an intensive campaign to check the inflow of drug from the neighboring states and take effective steps to break the nexus between drug Mafia and unscrupulous police officials.

A quarterly report regarding the registration of cases under NDPS Act with its present status be sent to this office in future for onward submission to the Director Security, Punjab.

for Addl. Director General of Police,
Crime, Punjab, Chandigarh.

No. 18303-04/CR-4 dated Chandigarh the 6-10-05

A copy of the above is forwarded to the following w.r.t. Home. Dept. letter No. 9/62-2005-3HIII/3227 dt 29.9.05.

1 The Principal Secretary to Govt. of Punjab, Dept. of Home Affairs & Justice (Home-III Branch) CHG for information.

2 The Director Social Security, Punjab, CHG. A quarterly return regarding the registration of cases under the NDPS Act during the quarter and their present status be sent to your office in future.

for Addl. Director General of Police,
Crime, Punjab, Chandigarh.

OFFICE OF THE ADDL. DIRECTOR GENERAL OF POLICE, PB., CHG.

CIRCULAR ORDER NO. 3

In continuation to this office memo No. 18288-352/CR-4 dated 6.10.05 regarding combating the menace of drug abuse. This office has already issued instructions which are re-produced :-

1. Police officials be sensitized to handle the problem and as well drug abuse.

2. Regular patrolling be done by the police at strategic points.

3. Drug cell be formed to register the complaints/reports by drug Inspectors and appropriate action to be initiated immediately.

4. Seizure of property of smugglers and public auction.

5. Non advertisement of cost of drugs seized.

6. To break the police/political nexus of drug trade.

7. Warn the hawkers in front of schools not to self/promote intoxicants.

8. Start an intensive campaign to check the inflow of drug from the neighboring states and take effective steps to break the nexus between drug Mafia and unscrupulous police officials.

9. A quarterly report regarding the registration of cases under NDPS Act with its present status be sent to this in future for onward submission to the Director Social Society, Punjab.

You are again directed to put maximum pressure on drug paddlers & smugglers and take necessary follow-up action where ever required.

for Addl. Director General of Police,
Crime, Punjab, Chandigarh.

No. 13276-309/CR-2 dt. CHG the 28.7.06

A copy of the above is forwarded to the following for information and necessary action please:-

1. All IGsP/Zonal, Punjab.
2. All Range DIsG in Punjab.
3. All Distt. SSsP in Punjab.
4. AIG/GRP, Punjab, Patiala.

for Addl. Director General of Police,
Crime, Punjab, Chandigarh.

CHAPTER 12

FINGER PRINT BUREAU

History

Finger Print Bureau started as an Anthropometric unit of police in 1892/93. Mr. Rundle the then Principal of Police Training School took personal interest in developing the Antheo unit at Phillaur. And to build this system he took Deputy Inspector Shamsher Singh an Sergeant Ahmad Khan both instructors in the Police Training School to Calcutta in 1893 where Anthropometric system had been adopted for human identification. These officers, qualified themselves as measurers from Calcutta and on return to Phillaur started the system in 1894 in selected districts of Punjab. This unit had a record of 15,500 cards at the close of the year1894. And, 18 Persons were reported as previous convicts during the year 1896 with the help of this system. The staffing pattern of this unit at that time was as under:

Inspectors	Sub-Inspectors	Head-Constable
1	2	1

Inspector Shamsher Singh was the first technical head of this office. This office was a nucleolus to suggest improved ways and means to improve this system. After sometime on the suggestion of this office thumb impression was added on the Anthropometric Card.

The year 1898 saw further innovation as ten digit fingerprints were also added along with anthropometric measurements on the Card. This addition made the preparation of the card cumbersome and time consuming and in the year 1900 only Finger Prints were recorded on the card for determining identity of persons. There were 51,027 cards on record in the office at that time.

Sir E.R. Henry then an employee of the East India Co. with the help of Mr. Haque who was very strong and proficient in mathematics and Mr. Hem Chander Bose took up the problem of classification of fingerprints very seriously. They devised the present system of ten digit classification and handed over the papers to Mr. Henry who unflinchingly monopolized all the credit for the new system and never mentioned their names *in* his Book. However, the system prevalent at that time was "Natives labour performed for the English belonged to the English. (1957 Patna journal of Medicine).

A committee of A. Pedlar and General Strham was constituted to explore if identification of persons by fingerprint be adopted in India. The Governor General in council decided in the year 1897 that the system of identification of criminals by finger prints be adopted in British India and E.R. Henry's system of classification who was at that time Inspector General of Police, Bengal was circulated to all the states.

In Punjab order of the local government regarding introduction of this system was published by Inspector General of Police. Punjab in the Punjab Police gazette on 11th Oct. 1899.

With the adoption of fingerprint system, name of Anthropometric Bureau was changed to Bureau Criminal Investigation in the year 1902 which was later on again changed and named as Punjab Finger Print Bureau. There were 74,673 record slips on record in the year 1901. The Bureau became technical Branch of the Punjab CID in the year1904.

The post of Inspector in-charge finger Print Bureau was, elevated to that of Dy. Superintendent of police in the year 1924 and Sardar Bahadur Sardar Harnam Singh was the first officer to occupy this seat.

The strength of the staff was augmented in the year 1962 and it stood as under:-

DSP	Inspector	SI's	ASI's	HCs	Constables
1	3	23	6	7	4

The post of Director then occupied by Sh. S.M.S. Bha1la was elevated to that of Superintendent of Police in the year 1978 and the strength of the staff augumented as mentioned below:-

SP	Inspector	SI's	ASI's	HCs	Constables
1	6	44	7	9	5

The overall Administrative Control of the Bureau which was with the ADGP, Computer was changed and entrusted to ADGP, Crime from the year 2009.

Law

The Identification of Prisoners Act 1920 empowers police to take Measurements including Finger Prints of suspects and arrested persons.

Indian Evidence Act (Section 3), defines fact in issue

It is an enabling provision for an expert to carry out comparison.

Section 9, 45 and Section 73

Indian Evidence act, section45 was sent regarding opinion on Finger Prints. It was in the year 1899 that section 45 and 73 of the Indian Evidence Act was amended by act V of 1899 so as to include Expert Opinion on Finger Prints.

Article 20 of the Constitution

This article lays down that no person shall be forced to be a witness against himself. It was held by some judicial pronouncement that forcing an under trial or suspect to give finger impressions amounted to creating of evidence against himself.

This controversy has been laid at rest by various judicial 'pronouncements holding that it does not amount to manufacturing or creating of evidence against the criminals rather it is seizing of some available material on the body of a criminal or under trial. Justice Holmes made significant observation in this context;

"The prohibition of compelling a man in a criminal case to be a witness against himself is prohibition of the use of physical and moral compulsion to extract communication from him, not an exclusion of his body as evidence, when it may be material."

Organizational Setup of Finger Print System in the State

Charge of the Finger Print Bureau

The State Finger Print Bureau a Scientific unit of Punjab Police, shall function under the administrative control of Director preferably in the rank of Dy. Superintendent of Police an officer with known integrity, established honestly with unblemished record of service and enjoying reputation of a mature Finger Print Expert of tall stature. In case the Director holds the rank of Dy. Superintendent of Police, he shall enjoy all powers vested in a District Superintendent of Police as laid down in PPR 1.8. The overall control of the Bureau shall be with the Additional Director General of Police, Crime, Punjab, Chandigarh.

The Bureau is having six branches namely:

1.	Search Section	2.	Record Section
3.	Document Section	4.	Photo Section
5.	State/NCRB Section	6.	Computer Section

Duties of Inspector in the State Finger Print Bureau

The Director (Dy. Superintendent of police) shall be assisted by Inspector in the disposal of work of the bureau.

1) The Inspector shall be responsible for receipt of daily dak including cases under personal supervision of Director. The documents of case work received for opinion shall be personally handed over by the Director to the officer lncharge entrusted with the custody of such documents. This officer shall keep files of the case work in the safe having duplicate keys - one in the custody of the officer and the second key with the Director.

2) The in charge of the case work shall distribute the casework for initiation amongst Finger Print Experts (Inspectors/SIs).

3) This officer shall give case files of those references where experts have recommended photographs to the photographer under proper receipt.

4) The cases after complete scrutiny shall be submitted to the Director for approval by the in-charge of case work.

5) The disposal of the cases with opinion shall be done by the Director under his own signature and dispatch by the in charge case work to the quarters concerned under his personnel supervision under registered cover or insured cover as per the requirement of the reference.

Distribution of Classification of F.P. (R) Slips & Search Slips

The inspector in-charge nominated by the Director shall distribute daily work to the staff for :-

1. Classification
2. Testing of Finger Print (R) Slips.
3. Rummaging of Finger Print (R) Slips in search work.
4. Miscellaneous work i.e. entry of Finger Print (R) Slips in registers before filing and actual filing of record slips in the stored record.

The Duties of Experts and staff

I. To receive and examine all Finger Print Slips and ensure that the impressions on them, are clear, complete and in proper order and that the entries are correctly fined in. If not fit for record it shall be returned with a Memo (Form No.6) explaining what is required for its completion or correction.

II. According to the separate instructions issued in the prescribed forms of chart of sub classification and method of sub classification to classify and arrange in its proper pigeon hole and in its proper order every Finger Print Slip received for record after checking its classification number and indexing the slip.

III. To search for the finger Print Slips of unidentified persons whose Finger Print Slips are received in the bureau for identification. If he received any search slip in F.P.B. from other countries vide Section 17, Part-II, then he will transmitted to the C.F.P.B. G.O.I., Delhi after necessary check under a list in triplicate proforma which is mentioned below for onward transmission to the concerned foreign Bureau:-

Sr. No.	District	Court if available	Registration U.R. No. I i.e. FIR No., Date, Section of Law, Police Station, District	Remarks
1	2	3	4	5

IV. To revise the Finger Print Slips already stored and classified with a view to checking and correcting mistakes in the classification arrangement or filling of records. F.P. slips of re-convicted convicts, received under Section 26(7). Part V shall take the place of the former slips on record and the latter shall then be destroyed.

V. To give expert opinion on all impressions received in the bureau for opinion.

VI. Expert evidence in courts.

VII. Preparation of Finger Print Slips from the dissected skin pieces of the unidentified dead bodies received from the various districts.

VIII. Visiting scene of crime for the detection/development of chance prints.

IX. Development of chance prints on crime articles received in the bureau.

X. Imparting training to Finger Print professional police officers, judicial officers, administrator and others.

XI. Training regarding photography, proficiency, head proficient, basic course and promotional courses.

XII. To maintain and keep up the following registers in the prescribed forms

1. Register of Search Slips received. (Form 4A).

2. Register of Traced Search Slips (Form 4B).

3. Register of Finger Print Slips received for record (Form 4C).

4. File book of information, received regarding death of persons whose slips are on record (prescribed by Section 15 of this chapter).

5. Index Register of Finger Print Slips received from other states. (prescribed by Section 16.of this chapter).

6. Order book.

7. Inspector's Daily Diary.

8. Register of Requisitions for Finger Print Slips (Form 4D).

9. Register of Proficients and Experts (Form 4E).

Photographic Studio

The photographic department of the Finger Print Bureau will be under the charge of a specially qualified Finger Print Expert officer of the staff not below the rank of Inspector. This unit will function under the direct supervision of the Director Finger Print Bureau.

Duties of the photographer

It is the duty of the photographer:-

A. to undertake all photographic work in connection with finger prints.

B. to instruct all students of the Police Department deputed to the bureau for a course of photography.

C. to maintain in proper working order all apparatus provided by Government in connection with the Photographic Department of the bureau.

D. to keep clean and in order the "Darkrooms" attached to the Studio and to keep up to requirements a sufficient supply of chemicals, plates, paper etc.

E. to maintain and keep up such stock registers as may from time to time, be ordered by the Superintendent of Police/Dy. Superintendent of Police-cum-Director.

The Photographic Expert will not be allowed to undertake any private work without the sanction of the Superintendent of Police/ Dy. Superintendent of Police-cum-Director.

Modernization

Presently Finger Print Bureau is fully computerized with FACTS for the purpose of recording, matching and searching Finger Prints. In this modem era the Finger Print Bureau will also be upgraded by AFIS which will prove helpful for speedy, results of comparison of chance prints at the scene of crime etc. Other modern Finger Print equipments Digital Camera, Scanner and Laptop are also in the pipe line to be provided to the Finger Print Experts. The computer section of Finger Print Bureau shall be under the charge of Inspector working under the personal supervision of the Director, Finger Print Bureau, Phillaur.

Duties of Inspector I/C Computer Section

1. To supervise the work of all experts working on computer.

2. To maintain stock register of computer related equipments.

Duties of server operator

1. To take time to time monthly FP Data Backup.

2. For Cleanliness of all computers and other equipments.

3. For maintenance of *A/C,* Computers and UPS etc.

4. To maintain register of Data Backup Storage Device and give report to Director Finger Print Bureau.

5. To give daily report to Director, Finger Print Bureau through Incharge Computer.

6. To show working of FACTS in Finger Print work to all the visitors and trainees being run by the Academy.

Posting of Finger Print Experts at Range/Districts

Finger Print Experts at Range/District level will be posted by the Director, Finger Print Bureau, Phillaur and will function under the administrative control of Director, Finger Print Bureau, Phillaur. District Expert will supervise work of Head Proficient and Assistant Head Proficient at District and Sub-Divisional Courts level.

The Staff of the Pocket Bureau will assist local police for preserving clues found at scene of crime. Senior Superintendent of Police of respective district will provide suitable office accommodation to them.

CHAPTER 13

FORENSIC SCIENCES

ROLE OF FORENSIC EXPERTS IN CRIME SCENE MANAGEMENT

Resolution of a criminal case is perfectly co-related with strategic evidence collections with greater accuracy from the scene of offence. It requires a patient, calculative and careful effort to collect substantial linking evidences to establish the crime in the court of law at beyond reasonable doubt. With the criminal activities getting modernized in recent years, the Crime Scene Manager too is required to plan out accordingly regarding the precautions and strategies that are needed to be taken care of before proceeding to the scene of crime for collection of evidence.

1. Nature of crime:

The work schedule of a Crime Scene Manager is dependant on the nature of crime occurred. Different natures of crime demand different procedures and precautions of scientific evidence collection. Crimes can be of various natures like.

- Heinous Crimes – Murders, Assaults
- Bomb Explosions
- Terrorist Attacks
- Burglaries, Thefts - Normal Crimes
- Economic offences
- Cyber Crimes etc

a) In each of these cases, planning shall be different almost in all Stages starting from the construction of the team of experts.

b) Further, the demands with relation to the scientific equipments to be carried to the scene of crime, nature of chemicals and nature of transportation means of scientific evidences to the laboratory shall change.

c) The Crime Scene Manager is required to organize the things suitably before proceeding to the scene of crime.

d) In most of the cases, the crime scene requires a multi-disciplinary examination for example a case of biological offence could also require expertise from the disciplines like Fingerprints, Ballistics (if fire-arms are involved).

2. Area Selection:

1. The probable areas where linking evidences at the scene of crime could be found are to be determined by the Crime Scene Manager before getting into action of exploring the scene of crime. This can best be drawn by thorough consultation with the Investigation Officer as well as the local witnesses. Understanding the history of the crime helps to a great extent to determine the probable areas where search operations can be operated.

2. Further, logical calculations of areas to be examined are to be drawn by the Crime Scene Manager for deriving circumstantial evidences at the scene of crime. For example, if a crime occurred in a house the logical calculations can be the bath-rooms, dust-bins, ash trays, backyards of the house etc. because after committing the offence, the suspect could have moved to the bathroom for washing, could have thrown certain evidences in the dustbin, could have left the cigarette butts in the ash tray or could have thrown the weapons in the back yard of the house.

3. The selection of area of search once again varies with the Nature of crime. For example, in case of explosion and ballistics related crime, the entire shock area and the probable path of ricochet are of great interest from investigation point of view. Effective area selection at the scene of crime also plays an important role with comparison of control samples with the evidence samples as it very frequently happens in cases of physical examinations like matching of control soil samples with the evidence soil samples.

3. Protection of evidence from further destruction:

a) In a country like India usually the public reaches the scene of crime before the experts reach the spot if it is assessable.

b) At the same time India being a hot and humid country, degradation of biological chemical evidences occurs very fast.

c) In a situation like this, the first and foremost step of a Crime Scene Manager should be to protect the available evidences from further contaminations and degradation.

The step-wise precautions to be taken in this direction are:

(i) Suspected area must be cordoned off and protected from public interference;

(ii) Suspected areas to be photographed thoroughly;

(iii) Document any people entering the area;

(iv) Not to use phones or bath-rooms in the scene area;

(v) Not to eat, drink and smoke in the scene area;

(vi) To mark the areas having maximum probability of obtaining evidence sample properl;

(vii) Selection of non-contaminated areas for obtaining control samples;

(viii) Provide protection to the available evidence samples from environmental hazards like heat, sunlight water etc. as and when possible;

(ix) Document the total area of interest with respect to area volume, identifying points, distance from the crime scene of offence etc.

4. To be well equipped:

1. Very often resolution of the crime cases depend upon the results obtained from analysis of trace materials that were ejected as a result of interaction between the accused and the victim at the scene of crime. Collection of such trace materials require the involvement of sophisticated equipments, machineries and tools so that the complete material is recovered as well as the downstream applications with respect to these materials do not hamper. Common example of such equipments are powerful flash lights, poly lights, ultra violet scanners, high capacity magnets, vacuum cleaners etc. Application of all such equipments depends upon the nature of crime as well as position/place of crime.

2. Further, use of machineries like big size earth movers, fire brigade machines, big size sieves etc. also become very important when evidences are to be searched from bigger areas and when the materials are disposed particularly under the earth or waste canals.

3. The application of such machineries can be very well exemplified in cases like Godhra and Nithari Killings. In Godhra case, the evidences were buried under the earth and were to be excavated with the help of earth movers. The contents of forensic importance were sieved out for further analysis. In Nithari Killing case, as the evidences were disposed in the waste drains (Nallahs) the contents of the drain were removed with the help of earth movers, then washed with flush water from water canons of fire brigades and contents of forensic importance were sieved out for further analysis.

4. Similarly involvement of sophisticated macro as well as micro tools is also required for absolute collection of evidence materials. Handy tools like magnifying glasses, needles, forceps, scissors, spatula, wash bottles, collection tubes/containers and kit boxes are to be properly organized by the Crime Scene Manager before proceeding to the crime scene investigation.

   Micro/Sophisticated Tools

   Micro/Handy Tools

5. Neat observations:

1. Focused observation of the Crime Scene Manager to the scene of crime reveals many secrets which may show some path for resolution of the case. The observation can be mechanized by using flash lights and magnifying glasses whenever required.

2. The best way for observing the scene of crime thoroughly is to sub-divide the entire area of the scene of crime to small sectors and observe the entire area sector wise. Sectors can be made by drawing virtual geometrical lines.

6. Strategic calculations:

1. Probability of finding areas of evidence material is to be strategically calculated by the Crime Scene Manager. These calculations could be still stronger with analysis of the case history and local enquiries.

2. The following are some main factors that influence the strategic calculations at the scene of crime for selection of finding areas.

(i) Environmental Factors:

a) If a body or a weapon or some explosive materials etc are dumped in a canal having flowing water, calculation of the velocity of water flow, direction of flow, possible distance traveled by the evidence material with respect to the velocity of flow and its body weight, probable areas where the samples could have been accumulated are the major areas of calculation.

b) Similarly in case of fire accidents, the flow of wind, direction of wind, environmental temperature are to be calculated logically to arrive at a point of area selection with maximum probability of collecting the evidence samples.

c) Further, calculation of environmental factors is also required to determine the degree of degradation, destruction and disposal of the samples of forensic importance.

(ii) Movement factor:

a) The shortest and safest distance that could have been used by the accused for disposal of the evidence samples are to be logically derived by the Crime Scene Manager during the investigation.

b) There has always been a high degree of probability of trace samples like blood, explosives, footprints, prints of tyres of vehicles, and other physical evidences.

(iii) Feasibility factors:

a) Feasibility of dumping particular evidence at a particular area is always to be calculated with great strategies. This avoids wastage of time and labour.

b) Further feasibility is to be calculated to establish the causative factors of crime like if it is feasible to burn the area with petrol, kill so many people without using weapons etc.

c) Feasibility study has always been a sensitive area of calculation for pin-pointed recovery of evidence samples.

7. Scientific collection and preservation:

1. The entire labour of planning and collection goes waste if the collection procedures of forensic evidence samples are not followed strictly.

2. Validated scientific procedures of collection of samples must be adopted to ensure a productive result out of the analysis of the materials collected Collection procedures varies greatly depending upon the nature of evidence samples from biological samples to physical samples to chemical and ballistic samples.

3. The common precautions to be taken care of are as follows:

(i) Avoid contaminating the evidence area by not touching it with bare hands or sneezing and coughing over the evidence.

(ii) Use clean latex gloves for collecting each item of evidence. Gloves should be change between handling of different item of evidence.

(iii) Each item of evidence must be packed separately.

(iv) Blood stains, semen stains and other type of stains must be thoroughly air dried prior to sealing and packing.

(v) Sample should be packed in paper envelope after drying and should be clearly marked with case no, item no etc.

(vi) Stains on immovable surfaces (such as tables and floors) may be transferred with sterile cotton swabs and distilled water.

Rub the stained area with the moist swab until the stain is transferred to the swab. Allow the swab to air dry without touching and pack properly.

(vii) Collect materials in sterilized bags/containers.

(viii) Avoid cross-contaminations.

(ix) Collect separate evidence samples separately with proper documentation/markings.

(x) Precautions to avoid further degradation of samples.

(xi) Temperature controlled packing of temperature sensitive samples.

(xii) Control evidence samples must be collected when ever required.

(xiii) Collection/Preservation of evidence samples

8. Documentation:

1. The proceedings of a crime scene are to be documented properly. Documentation with respect to list of exhibits collected, control samples collected, mode of collection, quantity of collection, date and time of collection, witness of collection, environmental conditions during the time of collection etc are to be recorded which helps to a great deal during post collection analysis as well as in the court of law.

2. Further proper documentation is also required for specialized samples collection procedures like the Biological sample collection formats and formats related to cyber as well as economic offences where the required forms are to be filled up as directed and to be recorded.

9. Forwarding to Laboratory:

1. The collected evidences are to be packed as per the prescribed protocols, sealed properly with through security measures. The name of the exhibits, FIR No, Police Station, Under Section and other related information's are required to be written on the parcels.

2. Steps are necessarily to be taken for avoiding any further degradation of the samples like the Biological, Toxicological, explosive samples by maintaining such evidence samples in proper temperature conditions still the same reaches the laboratory for examination.

RECENT TRENDS USED IN

MEDICAL FORENSIC SCIENCE & INDIAN LAW

INTRODUCTION

Forensic science (often shortened to forensics) is the application of a broad spectrum of sciences to answer questions of interest to a legal system. This may be in relation to a crime or a civil action. Besides its relevance to a legal system, more generally forensics encompasses the accepted scholarly or scientific methodology and norms under which the facts regarding an event, or an artifact, or some other physical item (such as a corpse) are ascertained as being the case. In that regard the concept is related to the notion of authentication, where by an interest outside of a legal form exists in determining whether an object is what it purports to be, or is alleged as being. The word forensic comes from the Latin adjective forensis, meaning "of or before the forum".

FORENSIC IDENTIFICATION THROUGH DNA ANALYSIS

Any type of organism can be identified by examination of DNA sequences unique to that species. Identifying individuals within a species is less precise at this time, although when DNA sequencing technologies progress farther, direct comparison of very large DNA segments, and possibly even whole genomes, will become feasible and practical and will allow precise individual identification. To identity individuals, forensic scientists scan 13 DNA regions, or loci, that vary from person to person and use the data to create a DNA profile of that individual (sometimes called a DNA fingerprint). There is an extremely small chance that another person has the same DNA profile for a particular set of 13 regions.

DNA TECHNOLOGIES USED IN FORENSIC INVESTIGATION

Restriction Fragment Length Polymorphism (RFLP)

1. RFLP is a technique for analyzing the variable lengths of DNA fragments that result from dissecting a DNA sample with a special kind of enzyme. This enzyme, a restriction endonuclease, cuts DNA at a specific sequence pattern know as a restriction endonuclese recognition site.

2. The presence or absence of certain recognition sites in a DNA sample generates variable lengths of DNA fragments, which are separated using gel electrophoresis. They are then hybridized with DNA probes that bind to a complementary DNA sequence in the sample. RFLP was one of the first applications of DNA analysis to forensic investigation.

3. With the development of newer, more efficient DNA analysis techniques, RFLP is not used as much as it once was because it requires relatively large amounts of DNA. In addition, samples degraded by environment factors, such as dirt or mold, do not work well with RFLP.

PCR Analysis

1. Polymerase chain reaction (PCR) is used to make millions of exact copies of DNA from a biological sample. DNA amplification with PCR allows DNA analysis on biological samples as well as a few skin cells.

2. With RFLP, DNA samples would have to be about the size of a quarter. The ability of PCR to amplify such tiny quantities of DNA enables even highly degraded samples to be analyzed.

3. Great care, however, must be taken to prevent contamination with other biological materials during the identifying, collection, and preserving of a sample.

STR Analysis

1. Short Tandem Repeat (STR) technology is used to evaluate specific regions (loci) within nuclear DNA. Variability in STR regions can be used to distinguish one DNA profile from another.

2. The Federal Bureau of Investigation (FBI) uses a standard set of 13 specific STR regions for CODIS.

3. CODIS is a software program that operates local, state, and national databases of DNA profiles from convicted offenders, unsolved crime scene evidence, and missing persons. The odd that two individuals will have the same I3-loci DNA profile is about one in a billion.

Mitochondrial DNA Analysis

1. Mitochondrial DNA analysis (mtDNA) can be used to examine the DNA from samples that cannot be analyzed by RFLP or STR.

2. Nuclear DNA must be extracted from samples for use in RFLP, PCR, and STR; however, mtDNA analysis uses DNA extracted from another cellular organelle called a mitochondrion.

3. While older biological samples that lack nucleated cellular material, such as hair, bones, and teeth, cannot be analyzed with STR and RFLP, they can be analyzed with mtDNA. In the investigation of cases that have gone unsolved for many years, mtDNA is extremely valuable.

    - All mothers have the same mitochondrial DNA as their offspring. This is because the mitochondrion of each new embryo comes from the mother's egg cell. The father's sperm contributes only nuclear DNA. Comparing the mtDNA profile of unidentified remains with the profile of a potential maternal relative can be an important technique in missing-person investigations.

Y-Chromosome Analysis

1. The Y chromosome is passed directly from father to son, so analysis of genetic markers on the Y chromosome is especially useful for tracing relationships among males or for analyzing biological evidence involving multiple male contributors.

2. In the human body, there are normally 46 chromosomes, two sex chromosomes and 22 chromosome pairs, for which one copy is inherited from each parent at conception.

3. The sex chromosomes are called the X and the Y chromosome. Everyone needs at least one X chromosome to survive. Females normally have two X chromosomes whereas males typically have one X and one Y chromosome. In the absence of a Y chromosome, babies will develop as females. When the Y chromosome is present, they will develop as males.

4. The Y chromosome is different from all of the other chromosomes in a couple of different ways.

    a) First it contains the fewest number of genes of any chromosome, far fewer than chromosome 21, the next smallest chromosome.

    b) Second, the vast majority of the Y chromosome is composed of heterochromatin, a form of DNA that does not contain functional genes.

    c) Third, the genes that are present on the Y chromosome are critically important in sexual development. As only males have a Y chromosome, and the presence of the Y chromosome determines male sexual development, the pattern of inheritance is that fathers uniformly transmit the Y chromosome to their sons at conception, and never to their daughters.

    d) This allows a tracing of inheritance patterns for genes and other markers on the Y chromosome from father to son down through many generations.

e) Because the Y chromosome has so much noncoding DNA, there are many different DNA sequence variants that may be identified on the Y chromosome. These non-coding DNA sequences have a very high rate of mutation, and many potentially informative short tandem repeat (STR) sequences that permit a detailed study of paternity and other forensic testing based on DNA sequences.

f) The Y chromosome has a distinctive pattern of fluorescence (light emission) naturally and also when using certain organic dyes. These properties can be exploited in various ways to identify the presence of semen based on natural fluorescence, or to identify Y-bearing sperm and separate them from X-bearing sperm.

g) Furthermore, chromosomal analysis for the sex chromosomes can be used to predict the sex of a baby prenatally.

h) It is not considered ethical to use chromosome analysis prenatally to facilitate sex selection for parents who desire either a boy or a girl unless there is a sex-linked genetic disease risk.

SOME INTERESTING USES OF DNA FORENSIC IDENTIFICATION

Identifying World Trade Center- September 11, Victims

1. Identifying the victims of the September 11, 2001, World Trade Center attack presented a unique forensic challenge because the number and identity of the victims were unknown and many victims were represented only by bone and tissue fragments.

2. At the time of the attack, no systems were in place for rapidly identifying victims in disasters with more than 500 fatalities. The National Institute of Justice assembled a panel of experts from the National Institute of Health and other institutions to develop processes to identify victims using DNA collected at the site.

3. Panel members produced forms and kits needed to enable the medical examiner's office to collect reference DNA from victims' previously stored medical specimens. These specimens were collected and entered into a database.

4. The medical examiner's office also received about 20,000 pieces of human remains from the World Trade Center site, and a database of the victims' DNA profiles was created. New information technology infrastructure was developed for data transfer between the state police and medical examiner's office and to interconnect the databases and analytical tools used by panel members.

5. In 2005 the search was declared at an end because many of the unidentified remains were too small or too damaged to be identified by the DNA extraction methods available at that time. Remains of only 1585, of the 2792 people known to have died had been identified. In 2007, the medical examiner's office reopened the search after the Bode Technology Group developed a new methodology of DNA extraction that required much less sample material than previously necessary.

6. The victim DNA database and the new methods have allowed more victims to be identified, and further identifications will be possible as forensic DNA technology improves.

A case in Italy involving the murder of a woman used this technique to identify a suspect

1. The woman's body was discovered partially covered by sand on a beach in Sicily. Investigators suspected a prominent businessman, whose car was seen in the area the night of the murder. A search of the suspect's home produced no substantial evidence, apart from a mosquito blood meal stain on the wall.

2. Technicians absorbed the stain onto wet filter paper and then scratched the rest of the blood material off the wall. They also collected the insect's remains in a tube for species identification. They extracted DNA from the blood sample and performed PCR. They identified the DNA as the victim's, which placed the victim in the vicinity, if not in, the suspect's home.

3. Experts identified the mosquito as C. Pipiens, a species not known to travel far distances, such as between the suspect's home and the crime scene. This evidence, along with grains of sand and leaf fragments on the suspect's clothing that matched samples from the beach, helped convict the suspect of second degree murder.

4. This also relates forensic entomology and the law.

6 Year Old Rape Case Solved by DNA (2009)

1. The Snohomish County Sheriff's Office arrested a 40-year-old man from Lynwood for the sexual assault in Washington of a 13-year-old girl. The rape case was 6 years old, and DNA evidence recently surfaced that linked the man to the crime.

2. The man was arrested near his apartment without incident. The Lynwood man had been arrested for drunk driving in 2008, and agreed to give a DNA sample at that time. The sample was put into the FBI database, and was declared a match to DNA samples found at the scene of the rape, which occurred at the victim's house.

3. Though the man had previously been convicted of burglary, he had never been charged with a sex crime.

4. According to the police report, the man broke into the home and sexually assaulted the girl while two of her friends slept soundly nearby. The man threatened the victim, raped her, and then fled the scene of the incident.

5. Though DNA evidence has been gathered at the scene, police were unable to link the evidence to any individual who was currently in their database, and the case eventually grew stagnant until the emergence of matching evidence from the drunken driving arrest.

Forensic Entomology

a) Forensic entomology is the application and study of insect and other arthropod biology to criminal matters.

b) Forensic entomology is primarily associated with death investigations; however, it may also be used to detect drugs and poisons, determine the location of an incident, detect the length of a period of neglect in the elderly or children, and find the presence and time of the infliction of wounds.

Forensic entomology can be divided into three subfields:

- Urban;
- Stored product; and
- Medico-Legal/Medico-Criminal Entomology.

Urban forensic entomology

i. Urban forensic entomology typically concerns pest infestations in buildings or gardens that may be the basis of litigation between private parties and service providers such as landlords or exterminators.

ii. Urban forensic entomology studies may also indicate the appropriateness of certain pesticide treatments and may also be used in stored products cases where it can help to determine chain of custody, when all points of possible infestation are examined in order to determine who is at fault.

Stored-product forensic entomology

i. Stored-product forensic entomology is often used in litigation over infestation or contamination of commercially distributed foods by insects.

ii. Stored product entomology is most commonly used in lawsuits over the contamination or infestation of foods by insects, usually in the commercial sector.

iii. Although stored product entomology may seem a lesser-known subject, this branch of forensic entomology is extremely important, as it encompasses all cases involving the finding of insects in any food products. A stored product entomologist's job is determining if the product was truly infested before it was shipped, or purchased by the consumer, and whether or not legal action should be taken against the producer.

iv. These entomologists are so important, and these cases so common, that many large food companies actually hire a forensic entomologist to keep on staff to assist in court proceedings involving a contaminated product. Companies are required by the U.S. Food and Drug Administration (FDA) to have no more than a certain number of larva/insects/insect fragments in their product, and it is when this defect action level is exceeded that a consumer can prosecute.

Medico-legal forensic entomology

i. Medico-legal forensic entomology covers evidence that may be gathered through arthropod studies at events such as murder, suicide, rape, physical abuse and contraband trafficking.

ii. In murder investigations it deals with which insects lay eggs when and where, and in what order they appear in dead bodies. This can be helpful in determining a post mortem interval (PMI) and location of a death in question.

iii. Since many insects exhibit a degree of endemism (occurring only in certain places), or have a well-defined phenology (active only at a certain season, or time of day), their presence in association with other evidence can demonstrate potential links to times and locations where other events may have occurred.

iv. Another area covered by medico-legal forensic entomology is the relatively new field of entomotoxicology. This particular branch involves the utilization of entomological specimens found at a scene in order to test for different drugs that may have possibly played a role in the death of the victim.

There are many different types of insects studied in forensic entomology. The insects listed below are mostly necrophagous (corpse-eating) and are particularly relevant to medico-legal entomological investigations.

Some of the insects are:

Flies, beetles, mites, moths, wasps, ants and bees.

Application of Forensic Entomology

Crime Scene Insects Reveal the Time of Death of a Corpse

Sequence:

i. When a suspicious death occurs, a forensic entomologist may be called to assist in processing the crime scene.

ii. Insects found on or near the body may reveal important clues about the crime, including the victim's time of death. Insects colonize cadavers in a predictable sequence, also known as insect succession.

iii. The first to arrive are the necrophagous species, drawn by the strong scent of decomposition. Blow flies can invade a corpse within minutes of death, and flesh flies follow close behind.

iv. Soon after come the dermestid beetles, the same beetles used by taxidermists to clean skulls of their flesh.

v. More flies gather, including house flies.

vi. Predatory and parasitic insects arrive to feed on the maggots and beetle larvae.

vii. Eventually, as the corpse dries, hide beetles and clothes moths find the remains.

Processes in the Laboratory:

1. Forensic entomologists collect samples of crime scene insects, making sure to take representatives of every species at their latest stage of development. Because arthropod development is linked directly to temperature, they also gather daily temperature data from, the nearest available weather station.

2. In the lab, the scientist identifies each insect to species, and determines their exact developmental stage.

3. Since identification of maggots can be difficult, the entomologist usually raises some of the maggots to adulthood to confirm their species.

4. Blow flies and flesh flies are the most useful crime scene insects for determining the postmortem interval, or time of death.

5. Through laboratory studies, scientists have established the developmental rates of necrophagous species, based on constant temperatures in a laboratory environment.

6. These databases relate a species life stage to its age when developing at a constant temperature, and provide the entomologist with a measurement called accumulated degree days, or ADD (Accumulated Degree Days). ADD represents physiological time.

Crime Scene Insects Prove That Drugs or Toxins Played a Role in a Death

i. When a suspicious death is investigated, the medical examiner usually takes soft tissue samples to test for the presence of drugs or toxins. Because soft tissues decompose quickly, it may be impossible to obtain samples for standard toxicology tests.

ii. Insects present on the corpse, however, may provide evidence to whether drugs or toxins played a role the death. Because certain insects feed on the soft tissues of the human cadaver, these insects also consume whatever substances reside within those tissues, including drugs or poisons.

iii. When human tissues are no longer present, tests on the insects themselves may reveal any illicit or therapeutic drugs or other unnatural substances that were present at the time of death. In some instances, even insect feces or castings can prove the presence of toxins or drugs.

Evolution of Entomotoxicology

i. Entomotoxicology, as this branch of forensic entomology is known, effectively began with a case study by J.C. Meyer, published in 1980. In this case, the body of a 22-year-old woman was found, along with an empty prescription bottle for Phenobarbital.

ii. The woman had a history of suicide attempts, and had left a note suggesting she planned to take her own life. Authorities suspected she died of an intentional overdose on Phenobarbital.

iii. However, her body had been exposed to the elements for two weeks, leaving no usable tissue to test for a drug overdose. Secondary screw-worm maggots collected from the corpse were tested instead, and proved to be full of Phenobarbital. Cause of death? Overdose. Case closed.

Forensic studies on insects can also provide information about toxins in a cadaver, which can help determine where the victim has been.

- In another interesting case, this one from Finland, insects helped police determine the identity of a victim. Again, the body was too decomposed to provide useful tissue samples, but insects were collected from the corpse.

- Tests on the insects showed the victim's tissues contained several contaminants, including mercury. The contaminants were not present in these levels at the site where the body was found.

- Investigators learned, though, of another region of the country where similar contaminants were known to exist.

- A sketch of the victim was shown to people in the mercury-contaminated community, and the victim was positively identified.

Forensic Odontology

1. Forensic dentistry or Forensic odontology is the proper handling, examination and evaluation of dental evidence, which will be then presented in the interest of justice.

2. The evidence that may be derived from teeth, is the age (in children) and identification of the person to whom the teeth belong.

3. This is done using dental records or ante-mortem (prior to death) photographs. Forensic odontology is derived from Latin, meaning forum or where legal matters are discussed.

4. The first forensic dentist in the United States was Paul Revere who was known for the identification of fallen revolutionary soldiers.

5. The other type of evidence is that of bite marks, left on either the victim (by the attacker), the perpetrator (from the victim of an attack), or on an object found at the crime scene.

6. Bite marks are often found on children who are abused.

   Forensic dentists are responsible for six main areas of practice:

   - Identification of found human remains
   - Identification in mass fatalities
   - Assessment of bite mark injuries
   - Assessment of cases of abuse (child, spousal, elder)
   - Civil cases involving malpractice
   - Age estimation.

7. Forensic odontology is the study of dental applications in legal proceedings. The subject covers a wide variety of topics including individual identification, mass identification, and bite mark analysis.

8. The study of odontology in a legal case can be a piece of incriminating evidence or an aspect of wide controversy.

9. There have been many cases throughout history which have made use of bite marks as evidence. Bite marks are usually seen in cases involving sexual assault, murder, and child abuse and can be a major factor in leading to a conviction.

10. Biting is often a sign of the perpetrator seeking to degrade the victim while also achieving complete domination. Bite marks can be found anywhere on a body, particularly on soft, fleshy tissue such as the stomach or buttocks.

11. In addition, bite marks can be found on objects present at the scene of a crime. Bite marks are commonly found on a suspect when a victim attempts to defend him/herself.

12. Even though using bite mark evidence began around 1870, the first published account involving a conviction based on bite marks as evidence was in the case of Doyle v. State, which occurred in Texas in 1954. The bite mark in this case was on a piece of cheese found at the crime scene of a burglary.

13. The defendant was later asked to bite another piece of cheese for comparison. A firearms examiner and a dentist evaluated the bite marks independently and both concluded that the marks were made by the same set of teeth.The conviction in this case set the stage for bite marks found on objects and skin to be used as evidence in future cases.

14. Another landmark case was People v. Marx, which occurred in California in 1975. A woman was murdered by strangulation after being sexually assaulted. She was bitten several times on her nose. Walter Marx was identified as a suspect and dental impressions were made of his teeth. Impressions and photographs were also taken of the woman's injured nose. These samples along with other models and casts were evaluated using a variety of techniques, including two-dimensional and three-dimensional comparisons, and acetate overlays. Three experts testified that the bite marks on the woman's nose were indeed made by Marx and he was convicted of voluntary manslaughter.

Applications of Forensic Odontology

Bite Mark Analysis:

1. Upon collection of dental evidence, the forensic odontologist analyzes and compares the bite marks. Studies have been performed in an attempt to find the simplest, most efficient, and most reliable way of analyzing bite marks.

2. Factors that may affect the accuracy of bite mark identification include time-dependent changes of the bite mark on living bodies, effects of where the bite mark was found, damage on soft tissue, and similarities in dentition among individuals.

3. Other factors include poor photography, impressions, or measurement of dentition characteristics. On a crime scene the deontologists collects the evidences of bite mark if there any found on the assaulted body. The sample of bite mark is mostly found in cases of sexual assaults. Sometimes tooth sample is confused with any tooth sample of animals.

Estimation of age and sex:

1. Forensic odontology involves dentist's participation in assisting legal and criminal issues. It refers to the proper handling, examination and evaluation of dental evidence which will be then presented in furtherance of justice.

2. The evidence that may be derived from the teeth is the age and the identification of the person to whom the teeth belongs. This is done by using dental records or ante mortem photographs.

3. Besides, a forensic odontology report sets out the findings of a comparison between antemortem and postmortem evidence that indicates the odontologist's opinion on the identification. The opinion needs to be defendable in a court of law.

4. In forensics odontology different methods and techniques are used to determine age, sex identification of the victims or assailants.

5. Sex determination can be done by using a major protein which has been found in human enamel called AMEL. Slight different in size and pattern of the nucleotide sequence in AMEL has been seen in male and female.

6. A comprehensive dental record with number, position, morphology of teeth, a record of treatments which has been done on each tooth, all together have golden value in legal problems.

7. Teeth are highly resistant to destruction and decomposition, so dental identification can be made under extreme circumstances.

8. Morphology of a buried tooth remains the same even after months, but amalgam fillings become soft and liquid. A burnt tooth shrinks and its root curves. Severe burn makes crown to get powder. Different degree of temperature produces different changes to the tooth. At 150 degree centigrade it starts cracking and at 800 degree dentin is carbonized and becomes blue in color. If a burnt tooth is not recognizable by appearance, microscopic examination needs to be done.

9. In age determination since the human body has different number of teeth in different period of life, therefore it helps to determine the age almost easily. If a single tooth is available (without body), Gustafson's method is used to determine age.

10. New techniques of body identification are based on DNA analysis. Polymerase chain reaction (PCR) which enable amplification of very tiny amount of DNA to concentration suitable for diagnostic analysis.

11. Another method for identification purpose used is mt.DNA. The victim's identification involves a comparison between DNA obtained from tooth fragment of victim and blood sample of biological relative's.

12. Bite marks also can be used in crime identification. For this purpose the bite marks is fixed in 10% formalin then saliva swab, photography and impression of the bite mark have been obtained.

13. Acetate tracing from models of suspect is generated and comparisons between these two models have been done by considering the anatomic location, type of injury and shape of the bite marks. The analysis of the information will prove links to the suspect.

There are several legal cases solved by forensic odontology.

One of the most famous cases is the determination of the decomposed body of minister of petroleum in Iran-Iraq war in the year 1980. In this case the body of the minister was found at decomposed stage after the war between the said two countries and by application of forensic odontology technique the body was identified after matching it with the antemortem evidences, the evidences included the photographs of the minister by which the sample of the jaw from the photograph and the jaw of the decomposed body was matched and the dead body was identified. In this case teeth were matched and then identified.

Florida v. Theodore Robert Bundy (June 25, 1979):

In this case Bundy was charged of murder after rape. While raping Bundy left bite marks on the body of the women. The teeth evidences from the body of the women were found and were compared to the teeth sample of Bundy.

The odontologist Dr. Souviron described the bite mark injuries found on Lisa Levy's body. As he spoke, the jury was shown full-scale photographs of the bite marks that had been taken the night of the murder.

The doctor pointed out the uniqueness of the indentations left behind on the victim and compared them with full-scale pictures of Ted's teeth. There was no question that Ted had made the bite marks on Lisa Levy's body.

Forensic Pathology

1. Forensic pathology is a branch of pathology concerned with determining the cause of death by examination of a cadaver. Forensic pathology was first recognized in the USA by the American Board of Pathology in 1959.

2. The autopsy is performed by the pathologist at the request of a coroner or medical examiner usually during the investigation of criminal law cases and civil law cases in some jurisdictions.

3. Forensic pathologists are also frequently asked to confirm the identity of a cadaver. Forensic pathology is that branch of medicine which deals with the study of cause of death by examination of a dead body at the request of a coroner during legal cases.

4. In forensic pathology the pathologist assists the criminal case by collecting and examining tissues specimens under the microscope in order to identify the presence or absence of natural disease and other microscopic findings such as asbestos bodies in the lungs or gunpowder particles around a gunshot wound.

5. The pathologist also Collects and interprets toxicological analyses on bodily tissues and fluids to determine the chemical cause of accidental overdoses or deliberate poisonings. Forensic pathologists also work closely with the medico-legal authority for the area concerned with the investigation of sudden and unexpected deaths.

6. In the practice of forensic pathology, all of the disciplines of anatomic and clinical pathology, as well as other forensic sciences, are employed for the solution of medico-legal questions and cases.

7. Cytological studies employing established methods of specimen collection and preparation are used for the determination of sex in both living and dead persons, for the determination of sex and for tissue identification in trace evidence and in the documentation of some disease processes occurring in the forensic setting.

8. Application of forensic pathology is involved in every forensic technique, since pathology is a step from where every evidence collection has to pass.

Forensic Toxicology

1. Forensic toxicology is the use of toxicology and other disciplines such as analytical chemistry, pharmacology and clinical chemistry to aid medical or legal investigation of death, poisoning, and drug use.

2. The primary concern for forensic toxicology is not the legal outcome of the toxicological investigation, but rather the technology and techniques for obtaining and interpreting the results.

3. A toxicological analysis can be done to various kinds of samples. The first comprehensive work on forensic toxicology was published in 1813 by Mathieu Orifila. He was a respected Spanish chemist and the physician who is often given the distinction of "father of toxicology." His work emphasized the need for adequate proof of identification and the need for quality assurance. It also recognized the application of forensic toxicology in pharmaceutical, clinical, industrial and environmental fields.

4. A forensic toxicologist must consider the context of an investigation, in particular any physical symptoms recorded, and any evidence collected at a crime scene that may narrow the search, such as pill bottles, powders, trace residue, and any available chemicals.

5. Provided with this information and samples with which to work, the forensic toxicologist must determine which toxic substances are present, in what concentrations, and the probable effect of those chemicals on the person.

6. Determining the substance ingested is often complicated by the body's natural processes, as it is rare for a chemical to remain in its original form once in the body.

   For example: *heroin is almost immediately metabolized into another substance and further to morphine, making detailed investigation into factors such as injection marks and chemical purity necessary to confirm diagnosis. The substance may also have been diluted by its dispersal through the body; while a pill or other regulated dose of a drug may have grams or milligrams of the active constituent, an individual sample under investigation may only contain micrograms or nanograms.*

Some of the samples used in forensic toxicology are as below:

Urine:

a) A urine sample is quick and easy for a live subject, and is common among drug testing for employees and athletes. Urine samples do not necessarily reflect the toxic substance the subject was influenced by at the time of the sample collection.

b) An example of this is THC from cannabinoid (for example, marijuana) use, which in heavy users can be detected in urine for up to 14 days following use. Note also that it can take as long as 8 hours until a given substance can be detected.

c) Specific to workplace drug testing, urine collection must be directly observed due to the prevalence of substance abusers "beating the test" via sample substitution or adulteration.

Blood:

a) A blood sample of approximately 10 cm^3 is usually sufficient to screen and confirm most common toxic substances.

b) A blood sample provides the toxicologist with a profile of the substance that the subject was influenced by at the time of collection; for this reason, it is the sample of choice for measuring blood alcohol content in drunken driving cases.

Hair sample:

a) Hair is capable of recording medium to long-term or high dosage substance abuse. Chemicals in the bloodstream may be transferred to the growing hair and stored in the follicle, providing a rough timeline of drug intake events.

b) Head hair grows at rate of approximately 1 to 1.5 cm a month, and so cross sections from different sections of the follicle can give estimates as to when a substance was ingested.

c) Testing for drugs in hair is not standard throughout the population. The dark and coarser the hair is the more drugs that will be found in the hair.

d) If two people consumed the same amount of drugs, the person with the darker and coarser hair will have more drugs in their hair than the lighter haired person when tested. This raises issues of possible racial bias in substance tests with hair samples.

Oral fluid:

a) Oral fluid is the proper term, however saliva is used commonly. Saliva is a component of oral fluid. Oral fluid is composed of many things and concentrations of drugs typically parallel to those found in blood.

b) Sometimes referred to as ultra filtrate of blood, it is thought that drugs pass into oral fluid predominantly through a process known as passive diffusion.

c) Drugs and pharmaceuticals that are highly protein bound in blood will have a lower concentration in oral fluid.

d) The use of oral fluid is gaining importance in forensic toxicology for showing recent drug use, e.g. in clinical settings or investigation of driving under influence of substances.

Other bodily fluids and organs:

a) Other bodily fluids and organs may provide samples, particularly samples collected during an autopsy.

b) A common autopsy sample is the gastric contents of the deceased, which can be useful for detecting undigested pills or liquids that were ingested prior to death.

c) In highly decomposed bodies, traditional samples may no longer be available. The vitreous humour from the eye may be used, as the fibrous layer of the eyeball and the eye socket of the skull protects the sample from trauma and adulteration. Other common organs used for toxicology are the brain, liver, spleen and stomach contents.

d) The inspection of the contents of the stomach must be part of every postmortem examination if possible because it may provide qualitative information concerning the nature of the last meal and the presence of abnormal constituents.

e) Using it as a guide to the time of death, however, is theoretically unsound and presents many practical difficulties, although it may have limited applicability in some exceptional instances.

f) Generally, using stomach contents as a guide to time of death involves an unacceptable degree of imprecision and is thus liable to mislead the investigator and the court.

Applications of Forensic Toxicology

1. Currently, this area of forensics has evolved to mean the study of illegal drugs and legal ones, such as alcohol. Forensic toxicology can even identify poisons and hazardous chemicals.

2. The chemical makeup of each substance is studied and they are also identified from different sources such as urine or hair.

3. Forensic toxicology deals with the way that substances are absorbed, distributed or eliminated in the body the metabolism of substances. When learning about drugs and how they act in the body, forensic toxicology will study where the drug affects the body and how this occurs.

4. While there are many uses for forensic toxicology testing, the most familiar one to most people is likely to be drug and alcohol testing. This type of testing is commonly performed in the transportation industry and in workplaces.

5. Another use is for drug overdoses, whether these are intended or accidental. People who drive with a blood alcohol concentration over the accepted legal limit can also be assessed through toxicology testing.

6. Another application of forensic toxicology relates to sexual assault that involves the use of drugs. Various drugs are used today for the purposes of rendering the victim unable to fight the attacker, who then proceeds to sexually assault the victim. Through toxicology testing, a victim can find out what drug was given and can then be treated accordingly.

7. There are a lot of substances and poisons in our world many of which impact how we function in work and society. For some people, these substances can influence their death. Fortunately, forensic toxicology testing allows forensic scientists to identify substances and determine a pattern of use. In this way, a forensic toxicologist can provide closure on the 'what if' of a person's drug habits or perhaps some mystery surrounding their death.

LAW GOVERNING FORENSICS IN INDIA

Law governing expert evidence consists of:

(1) Enacted laws.
(2) Case laws.
(3) Court conventions.

Enacted laws

1. The main legal provisions, which govern the expert evidences, are in:

   (1) Indian Constitution. (Article 20 (3)

   (2) Indian Evidence Act, 1872. (Sections 45 & 112)

   (3) Code of Criminal Procedure, 1972 (Sections 53, 194 & 293)

   (4) Identification of Prisoners Act.

2. In so far as the Indian legal system and its position is concerned, when Indian Evidence Act 1872 or the Code of Criminal Procedure, 1973 were enacted, legislature could not anticipate the tremendous development of modern science and technology and its deep impact on the forensic science as well as well as administration of justice.

3. Neither the Indian Evidence Act nor the Code of Criminal Procedure has provisions to manage science and technology issues effectively since the rules of our judicial system lies on the bedrock of traditional law. There is no specific or special DNA legislation in India.

4. For collection of blood samples S. 53 of the CrPC is required which goes with the marginal heading 'Examination of the accused by Medical Practitioner at the request of the Police'. This section deals with examination of the accused by a medical practitioner at the request of the police officer, if there are reasonable grounds for believing that an examination of a person will afford evidence as to the commission of offence.

5. So it shall be lawful for a registered medical practitioner at the request of the police officer not below the rank of sub-inspector and for any person acting in good faith in his aid and under his direction, to make such an examination of the person arrested as is reasonably necessary in order to ascertain the facts which may afford such evidence and to use such force as is reasonably necessary.

6. This section does not specifically say whether it would be applicable for DNA tests also. This section does not state that the police officer shall be entitled to personally collect semen, blood, hair root, urine, vaginal swab, etc for the purpose of investigation himself.

7. By the amendment Act of 2005 the CrPC has been amended and added S. 53A which states that examination of a person accused of rape by medical practitioner. By the amendment act of 2005 the new Explanation now stands which include within its ambit examination of blood, blood stains, semen, sputum, swabs, sweat, hair samples and finger nails by the use of modern techniques in the case of sexual offences including DNA profiling and such other tests which is necessary in a particular case.

8. Though, S. 53 of CrPC refers only to examination of the accused by medical practitioner at the request of the public officer but the Court has wider power for the purpose of doing justice in criminal cases.

9. By issuing direction to the police officer to collect blood samples from the accused and conduct DNA test for the purpose of further investigation under S. 173(8) of CrPC. S. 293 (4) (e) of the CrPC provides for report of certain Government scientific experts. This section is only an ancillary provision which provides for giving of report by scientific experts.

10. Neither S. 53A, the amended S. 53A nor S. 164A of the CrPC are adequate to protect the interest of the suspects as well as the accused. Moreover the application of S. 53A and 164A is restricted to rape cases.

11. Section 112 of the Evidence Act raises a conclusive presumption about the paternity of a child born during the subsistence of a valid marriage. The said conclusiveness can be rebutted and it can be shown that the parties had no access to each other at the time when the child could have been begotten.

12. The result of genuine DNA test is said to be scientifically accurate. If a husband and wife were living together during the time of conception, and the DNA test revealed that the child was not born to the husband, the conclusiveness in law would remain unrebuttable. There was an admitted access between husband and wife during which she could have conceived and delivered normal child. The presumption under s. 112 was not rebutted. No adverse inference can be drawn against refusing to submit himself to blood test.

13. Section 112 requires the party disputing the paternity to prove non-access in order to dispel the presumption. “Access” and “non-access” mean the existence or non-existence of opportunities for the sexual intercourse. It does not mean actual co-habitation.

14. It is a rebuttable presumption of law under s. 112 that a child born during the lawful wedlock is legitimate, and that access occurred between the parents. This presumption can only be displaced by a strong preponderance of evidence and not by a mere balance of probabilities.

EXPERT WITNESS

1. An expert witness or professional witness is an expert, who by virtue of education, training, skill, or experience, is believed to have expertise and specialized knowledge in a particular subject beyond that of the average person, sufficient that others may officially and legally rely upon the witness's specialized (scientific, technical or other) opinion about an evidence or fact issue within the scope of his expertise, referred to as the expert opinion, as an assistance to the fact-finder.

2. Expert witnesses may also deliver expert evidence about facts from the domain of their expertise. Expert witnesses are usually instructed to produce a joint statement detailing points of agreement and disagreement to assist the court or tribunal. The meeting is held quite independently of instructing lawyers, and often assists in resolution of a case, especially if the experts review and modify their opinions. When this happens, substantial trial costs can be saved when the parties to a dispute agree to a settlement.

3. In most systems, the trial (or the procedure) can be suspended in order to allow the experts to study the case and produce their results. More frequently, meetings of experts occur before trial. In forensic science there are forensic expert, who have skilled knowledge to analyze the evidences and give exact reasoning.

4. Science by definition is exact, uniform and variable, and scientific inferences are logically unimpeachable. Therefore scientific evidences can not be brushed aside.

5. The only way available to disregard a scientific finding or the testimony of an expert witness is to show by cogent reason that either the scientific finding in question has no relevance with respect to the issue in question or the conclusions arrived at by the expert witness are not based on scientific reasoning but on speculations, or that the scientific process is not reliable for want of consistency.

SOME CRIMINAL CASES SOLVED BY FORENSICS (INDIA)

Tandoor Murder Case (1995) Delhi

1. This was the first criminal case in India solved by the help of forensics. In this case Shusil Sharma murdered his wife at home by firing three bullets in to his wife Naina Sahni's body. He killed his wife believing that she had her love affair with her classmate and fellow congress worker Matloob Karim.

2. After murdering his wife Sharma took her body in his car to the Bagiya restaurant, where he and restaurant manager Keshav Kumar attempted to burn her in a *tandoor* there.

3. Police recovered Sharma's revolver and blood-stained clothes and sent them to Lodhi Road forensic laboratory. They also took blood sample of Sahni's parents, Harbhajan Singh and Jaswant Kaur and sent them to Hyderabad for a DNA test.

4. According to the lab report, "Blood sample preserved by the doctor while conducting the post mortem and the blood stains on two leads recovered from the skull and the neck of the body of deceased Naina are of 'B' blood group."

5. Confirming that the body was that of Sahni, the DNA report said, "The tests prove beyond any reasonable doubt that the charred body is that of Naina Sahni who is the biological offspring of Mr. Harbhajan Singh and Jaswant Kaur."

6. And finally Mr. Shusil Sharma was found guilty with the help of forensic evidences.

Sister Abhaya murder case (1995) Kerala

1. The Sister Abhaya Case is a case regarding the death of a Knanaya Roman Catholic nun, who was found dead in a water well in St Pius X convent in Kottayam, India, on 27 March 1992. She was 19 years old at the time of her death and was a member of St. Joseph's Congregation for women under the Knanaya Catholic diocese of Kottayam, Kerala in India. She was a pre-degree student of BCM College, Kottayam and was staying in St Pius X Convent/Hostel at the time of her death.

2. On the day of her death she got up from sleep early at around 4 am to study for her exam, had gone down to the kitchen of the hostel to get water from the refrigerator. Later her body was found in the well outside the kitchen in the convent/hostel compound.

3. Scientific investigation methods such as polygraph tests, brain mapping/brain fingerprinting and narco analysis were used to solve the case. Subsequently two fathers of the church were arrested.

Aarushi Talwar murder case (2007) Noida

1. On the morning of May 16, 2008, Aarushi Talwar (May 24, 1993 - May 15, 2008), the 14-year-old daughter of a successful dentist couple, was found dead with her throat slit in her parents' home at Jalvayu Vihar in Noida, a posh suburb of Delhi. Suspicion immediately fell on the family's live-in man-servant, Yam Prasad Banjade alias Hemraj, a 45 year old Nepalese national, who was found missing from the home.

2. Immediately declaring Hemraj as the prime suspect, the Noida police announced a reward for information leading to Hemraj's apprehension and arrest. In addition, a police party was dispatched to his hometown in Nepal, in hopes of apprehending him there.

3. In this case fingerprinting was applied and DNA was extracted from the clothes containing blood stains.

4. Also several fingerprints were found on the glasses of the house at the time of murder. Several narco analysis tests were applies on Aarushi's father on CBI's suspicion, but after no evidence Aarushi's father was acquitted.

5. The final verdict of the Court on this case is still pending.

Dinesh Dalmia v. C.B.I (2007)

1. The Central Bureau of Investigation (CBI) lodged a first information report against the appellant and three companies registered and incorporated under the Companies Act, 1956 on a complaint made by the Securities and Exchange Board of India. Indisputably, Appellant was named therein.

2. He was, however, evading arrest. He had gone to the United States. The learned Magistrate by an order dated 14.02.2005, on a prayer made in that behalf by the CBI, issued a non-bailable warrant of arrest against him. Upon completion of investigation, a charge sheet was submitted before the Magistrate in terms of Sub-section (2) of Section 173 of the Code.

3. Investigation has revealed that Sh. Dinesh Dalmia, the then Managing Director & Custodian of properties, including shares, of M/s. DSQ Software Ltd., fraudulently got dematerialized un- allotted and unlisted share of DSQ Software Ltd. In the name of three entities namely New Vision Investment Ltd., UK; Dinesh Dalmia Technology Trust and Dr. Suryanil Ghosh, Trustee - Softechh Corporation and thereafter these shares were sold in the market and the proceeds of sale of said shares were credited in the accounts of M/s. DSQ Holdings Ltd., M/s. Hulda Properties and Trade Ltd. and M/s. Power flow Holding and Trading Pvt. Ltd. and thereby dishonestly misappropriated and cheated investors including existing share holders and obtained undue gain to the tune of Rs. 5,94,88,37,999/-. Thus, Sh. Dinesh Dalmia has committed fraudulent acts prima facie disclosing commission of offences of cheating, breach of trust, forgery and using forged documents as genuine by getting wrongful gain in the matter of partly paid shares.

4. This case is of our concern because, in this case when Dalmia was arrested, and police requested the court for detention of Dalmia for more days until enough evidences had been collected in order to prove the charge. The court granted the detention and extended the days for collecting the evidences.

5. Meanwhile the CBI introduced Dalmia to narco analysis test, in order to gain the truth behind the motive of crime, and at last they got some evidences in oral from Dalmia.

6. But after the narco analysis test was introduced, several other issues regarding Fundamental Rights were raised by Dalmia; the first amongst them was, right to self incrimination, which is the major critique of these forensic tests.

7. This case is not decided yet. This is a major critique of forensic science that, some times it does not stand true on testing.

FORENSIC SCIENCE LABORATORY, MOHALI

INTRODUCTORY

The Forensic Science Laboratory, Punjab (FSL) was established in the year 1976. The Laboratory started its functions in 1981.Its main role is of examining the clue material received from innumerable crime scenes and further to link the suspect with the crime. The material is received from all over the State of Punjab. The laboratory with its efficient scientific staff has been able to meet the responsibilities assigned to it despite the severe constraints.

This has been possible only with the benign co-operation of the scientific institutes like instrumentation section of Punjab University, Punjab Engineering College, Post Graduate Institute of Medical Education & Research, Institute of Microbial Technology, Central Scientific Instruments Organization, Terminal Ballistics Research Laboratory and Central Forensic Science Laboratory all situated at Chandigarh. The Laboratory needs regular up gradation to keep abreast with the latest technological advancements to counter the modern technology being used by anti-social and unscrupulous elements.

LOCATION

At Present, Forensic Science Laboratory, Punjab, was functioning from 'A' block of Mini Secretariat, Sec.-9-A, Punjab, Chandigarh as a stop gap arrangement. A separate building for Forensic Science Laboratory has been constructed at Phase IV, Mohali.

ORGANIZATIONAL SET UP

Forensic Science Laboratory, Punjab, functions under the control of ADGP/Crime, Punjab. It has 48 sanctioned technical posts and 28 posts of ministerial staff as under:

TECHNICAL STAFF

	Designation	**No. of Posts**
1.	Director	1
2.	Assistant Director	7
3.	Scientific Director	9
4.	Scientific Assistant	11
5.	Laboratory Assistants	11
6.	Laboratory Attendants	9

MINISTERIAL STAFF

1.	Assistant In-charge	1
2.	Senior Assistant	2
3.	Junior Scale Stenographer	5
4.	Steno-typists	3
5.	Clerks	4
6.	Peon	6
7.	Constable driver	5
8.	Sweeper	1
9.	Sweeper (part-time)	1

FUNCTIONS

Forensic Science Laboratory aims at:

1. Analysis of the crime exhibits and reporting there upon.
2. Expert evidence in courts.
3. Evaluation of scene of crime.
4. Research and development in the field.
5. Imparting expert lectures/training.

DIVISIONS

Forensic Science Laboratory, Punjab, Chandigarh is headed by a Director, assisted by 7 Assistant Directors and comprises following divisions:-

1. Ballistics
2. Physics
3. Documents
4. Toxicology
5. Serology
6. Chemistry
7. Biology
8. Photography

INTERNAL ADMINISTRATION OF DIVISIONS

Each division is headed by one Assistant Director *(except Photography division where scientific officer heads the division)* assisted by one Scientific Officer, one Scientific Assistant, one Lab Assistant and one Laboratory Attendant.

TYPES OF EXAMINATIONS CONDUCTED

BALLASTIC DIVISION

The cases registered under the Arms Act. 1959, in which firearms and ammunitions are recovered/confiscated are examined in this division. In such references, opinion regarding working condition of firearms, their types and type of ammunition is provided. The fired cartridges/bullets are linked to the weapons.

Scientific Equipments used for the Examination

1. Stereo Microscope
2. Leitzlarge Forensic Comparison Microscope
3. Bullet Recovery box.
4. Bullet speed meter.
5. Comparison Microscope.

PHYSICS DIVISION

Physics division undertakes the examination of criminal cases related to paints, glass, soil/dust, telegraphic wires, lottery tickets, restoration of original number, tool marks, track marks (footwear prints) etc.

Scientific Equipments used for the Examination

1. Ultra-Violet Spectrograph
2. Zoom Stereo Microscope
3. Ultra-Violet Lamp
4. Density Gradient
5. Senior Kelvin Bridge
6. Mettler Balance
7. Sieve shaker
8. Digital Refractrometer
9. Hot Air Oven
10. Micro Meter Vernier Calliper
11. Over Head Projector
12. Metallurgical Microscope
13. Slide Projector
14. Fourier Transform Infra Red Spectrometer (FTIR)
15. Fume hood
16. Building material testing equipment
17. Polishing Machine
18. Silver projection screen
19. Soil and water analysis kit
20. X-Ray Analyzer (EDXRF Spectrometer)
21. GRIM (Glass Refractive Index Measurement)

DOCUMENT DIVISION

In the documents division, cases of handwriting, typewriting paper, pen/pencil, inks, charred documents, alteration, addition, obliteration and deciphermet of invisible writing etc. are examined

Scientific Equipments for the Examination

1. Ultra-Violet Lamp
2. Stereo Microscope
3. Video Spectral Comparator-1 with Digital image processing system
4. Magnifying lenses
5. Electro-Static Detection Apparatus
6. Portable Ultra-Violet Equipment
7. Video Spectral Comparator-2000/HR

TOXICOLOGY DIVISION

The cases related to charas, Ganja, Bhang, Opium and its derivatives, other narcotics drugs and poisons etc. are examined in the division.

Scientific Equipments for the Examination

1. Gas Liquid Chromatograph Perkin Elmer F-II
2. Ultra-Violet Spectrophotometer, Sp 8000-Pye, Unicam

3. Electric Agate Pestle Mortar

4. Muffle Furnace

5. Mixer cum Grinder

6. Centrifuge

7. Deep Freezer

8. Fume hood

9. High Performance Liquid Chromatograph

10. Magnetic stirrers

11. Thin Layer Chromatography Apparatus

12. Infra-red Spectrophotometer

13. Melting Point Apparatus

14. Ultra Violet Cabinet

15. Hot Air Oven

16. Electronic Balance

17. Gas Chromatograph-Mass Spectrophotometer

SEROLOGY DIVISION

The cases pertaining to the examination of body fluids for their origin and grouping are examined in Serology division.

Scientific Equipments used for the Examination

1. Electrophoresis Equipment
2. Stereo Microscope
3. Cold Centrifuge
4. Ultra centrifuge
5. Ordinary Centrifuge
6. Water Distillation Plant
7. Balance
8. Oven
9. Refrigerator
10. Stirrers
11. Microwave oven
12. Vortex/shaker
13. Micro centrifuge
14. Electronic. Balance

CHEMISTRY DIVISION

The cases related to Trap, Liquor, Acid throwing, Dowry deaths and arson etc. are being examined in Chemistry division.

Scientific Equipments for the Examination

1. Spectronic-70 (Bausch & lamb)
2. Flash Point Apparatus.
3. Ph meter
4. Double distillation water distillation plant
5. Mettler H 80 Electronic Analytical Balance
6. Tullu Pump
7. Melting Point Apparatus
8. Electronic Balance.

BIOLOGY DIVISION

The cases pertaining to the examination of hair, cloth, teeth, bones, blood and other body fluids and plants are examined in the Biology division.

Scientific Equipments used for the Examination

1. Compound Microscope
2. Stereo Microscope
3. Ultra-Violet Lamp Cabinet
4. Centrifuge Machine
5. Microtome

6. Electronic Balances-2

7. Human skeletions-2

8. Oven

9. Incubator

10. Stirrer

11. Auto-Clave machine

12. Deep freezer

13. Portable Ultra-Violet Equipment

14. Refrigerator

15. Erma scope Projection Microscope

PHOTOGRAPHY DIVISION

Scientific Photography of the crime exhibits from all the Divisions of Forensic Science Laboratory is carried out and positives prints are prepared for evidentiary purposes, in this division along with photography coverage of crime scene.

Scientific Equipments used for the Examination

1. Camera

2. Enlarger

3. Printer

4. Allied Accessories

MODE OF RECEIPT OF EXHIBITS AND DESPATCH OF REPORTS

The exhibits for examination are received in the laboratory from district SSsP in sealed cover along-with necessary documents through special messengers. In rare document cases, the sealed exhibits are also received through registered post.

After examination, information for collection of report is sent to the concerned SSP, who deputes special messengers for the purpose under proper authority letter.

TEACHING OF SCIENTIFIC AIDS

A Scientific Officer, a Scientific Assistant and two Laboratory Assistants have been deputed for teaching the police personnel on the subject of scientific aids in the Criminal Investigation at Punjab Police Academy, Phillaur.

Senior Scientists of main Forensic Science Laboratory, Punjab also deliver special lectures at CID Training School, Punjab Police Chandigarh. Special lectures for senior classes are also being delivered by the senior scientists to the trainees at Punjab Police, Academy, Phillaur, M.Sc. students of Punjabi University, Patiala and trainees of National Institute of Criminology and Forensic Science, Delhi. Senior Scientists of Forensic Science Laboratory, Punjab are also involved in setting of question papers, evaluating the answer sheets and conducting practical examination on the subject in respect of Post Graduate courses in Forensic Science, run by various Universities.

FUNCTIONS OF OFFICERS AND SUPPORTING STAFF

Following are the functions of the officers/officials of the scientific staff of the Laboratory.

DIRECTOR

1. Examination, evaluation, comparison of clue materials and to submit scientific reports.
2. To testify or give evidence before judicial/semi-judicial inquiry authority as and when required.
3. Examination of scene of crime and submission of reports.
4. Research in Forensic Science and related fields.
5. Teaching and training of IOs/NGOs of Police Prosecution and Judiciary in Forensic Science.
6. Any other scientific and administrative work assigned by the ADGP/Crime, Director General of Police, Punjab.

Besides the above functions, he is the head of the organization as well as controlling officer and has to perform duties related to it. He has to manage all the scientific matters for over all systematic development of the organization and ensure adoption of latest technology.

ASSISTANT DIRECTOR

1. Examination, evaluation, comparison of clue materials and to submit scientific reports.

2. To testify or give evidence before judicial/Semi-judicial/Inquiry authority as and when required.

3. Examination of scene of crime and submission of reports.

4. Research in Forensic Science and related fields.

5. Teaching and training of personnel in Forensic Science and related Fields.

6. He/she will be responsible for efficient working of the divisions and expeditious disposal of work/cases pertaining to the divisions by giving quality reports.

7. He/she will render all assistance to the Director in updating and introducing new technologies in the division.

8. Any other work assigned by superior authorities. He/she is Divisional In-charge of his/her division. He also supervises and guide the scientific and technical staff of his division concerned in administrative and technical matters.

SCIENTIFIC OFFICER

1. Examination, evaluation, comparison of clue materials and to submit scientific reports.

2. To testify or give evidence before judicial/semi-judicial/Inquiry authority as and when required.

3. Examination of scene of crime and submission of reports.

4. Research in Forensic Science and related fields.

5. Teaching and training of personnel in Forensic Science and related fields.

6. He/she will be responsible for efficient working of the divisions and expeditious disposal of work/cases pertaining to the divisions by giving quality reports.

7. He/she will render all assistance to the Director in updating and introducing new technologies in the divisions.

8. Any other work assigned by superior authorities. He/she is also In-charge of scientific unit of staff working under him/her and also has to guide and supervise the unit.

SCIENTIFIC ASSISTANT

1. Examination, evaluation, comparison of clue materials and to submit scientific reports, if covered under Section 45 of Evidence Act.

2. To assist the officers/experts in examination of scene of crime and exhibits in the laboratory.

3. Assistance in research in Forensic Science and related fields under the supervision of experts.

4. Assistance in practical demonstration during teaching and training.

5. Any other work assigned by the senior officers.

6. He/she will also assist in keeping the laboratory and equipments in order for scientific examination and shall help in expeditious disposal of work/cases pertaining to the division and also to help in the preparation of quality reports.

7. He/she will also render all assistance to the senior officers in the division in updating and introducing new technology in the division.

LABORATORY ASSISTANT

1. He/she is required to assist Scientific Assistant/Scientific Officer/Assistant Director and Director in Examination, evaluation and comparison of clue material particularly sequencing the exhibits and reagents.

2. To maintain register of the division concerned for making entries of

   the exhibits/cases received in the division. He/she also has to maintain all the records of chemical/glassware and equipments and to update the same as and when required.

3. To perform other duties assigned by senior officers.

LABORATORY ATTENDANT

1. To clean the laboratory tables/apparatus, sinks, shelves, furniture

   and other items in the division.

2. To hold and carry exhibits, glass apparatus, reagents wherever required. To cut, open/seal the exhibits of the division in the presence of experts and to carry them from one Division to another or to Crime Branch.

3. To perform any other duties assigned by senior officers for the cleanliness of the laboratory as a whole and for carrying materials and other items for its functioning.

Punjab Police

Forensic Science

(Group 'A')

Service

Rules, 2010

PUNJAB GOVT. GAZ. (EXTRA.), DEC. 21, 2010 (AGHN 30, 1932 SAKA)

GOVERNMENT OF PUNJAB
DEPARTMENT OF, HOME AFFAIRS AND JUSTICE
(HOME-2 BRANCH)

Notification

The 20th December, 2010

No. GS.R.42/Const./Art. 309/2010.-1n exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, and all other powers enabling him in this behalf, the Governor of Punjab is pleased to make the following rules regulating the recruitment and the conditions of Service of the persons, appointed to the Punjab Police Forensic Science (Group' A') Service, namely:-

RULES

1. Short title, commencement and application.-(l) These rules may be called the Punjab Police Forensic Science (Group 'A') Service Rules, 2010.

(2) They shall come into force on and with effect from the date of their publication in the Official Gazette.

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

2. Definitions.-In these rules, unless the context otherwise requires,-

(a) 'Appendix' means an Appendix, appended to these rules;

(b) 'Government' means the Government of the State of Punjab in the Department of Home Affairs and Justice; and

(c) 'Service' means the Punjab Police Forensic Science (Group 'A') Service.

3. Number and character of posts.-The Service shall comprise the posts specified in Appendix 'A':

Provided that nothing in these rules shall affect the inherent right of the Government to add to or reduce the number of such posts or to create new posts with different designations and scales of pay whether permanently or temporarily.

4. Appointing authority.-Appointment to the Service shall be made by the Government.

5. Method of appointment, qualifications and experience.-(1) Appointment to the Service shall be made in the manner as specified in Appendix 'B':

Provided that if, no suitable candidate is available for appointment by promotion and by direct appointment, then appointment to the Service shall be made by transfer of a person holding a similar or an identical post under a State Government or Government of India.

(2) No person shall be appointed to the Service, unless he possesses the qualifications and experience, as specified in Appendix 'B'.

(3) Appointment to the Service by promotion shall be made on seniority-cum-merit basis, but no person shall have any right to claim promotion on the basis of seniority alone.

6. Pay of members of the service.-The members of the Service shall be entitled to such scales of pay, as may be authorized by the Punjab Government from time to time. The scales of pay, at present in force, in respect of the members of the Service, are given in Appendix 'A'.

7. Discipline, Punishment and Appeal.-(1) In the matters of discipline, punishment and appeal, the members of the Service shall be governed by the Punjab Civil Services (Punishment and Appeal) Rules, 1970, as amended from time to time.

(2) The authority empowered to impose penalties, as specified in Rule 5 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970, in respect of the members of the Service, shall be the Government.

8. Application of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994.- (1) In respect of the matters, which are not specifically provided in these rules, the members of the Service shall be governed by the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994, as amended from time to time.

(2) The Punjab Civil Services (General and Common Conditions of Service) Rules, 1994, at present in force, are contained in Appendix 'C'.

9. Interpretation.-If any question arises as to the interpretation of these rules, the Government shall decide the same.

APPENDIX 'A'

(See rules 1(3), 3 and 6)

Sr. No.	Designation of Post	Number of Posts	Scale of Pay (in rupees)
1.	Director, Forensic Science Laboratory, Punjab	1	37400-67000 + Grade Pay of Rs. 8700
2.	Assistant Director (Ballistics /Biology/Chemistry/Documents /Physics/Serology/Toxicology	7	15600-39100 + Grade Pay of Rs. 6600

APPENDIX 'B'

(See rule 5)

Sr. No.	Designation of Post	Percentage for appointment by		Method of appointment, qualifications and experience for appointment by-	
		Direct appt.	**Promotion**	**Direct appointment**	**Promotion**
1.	Director, F.S. Laboratory	-	Hundred percent	Should posses,- a) M.Sc. degree in Chemistry or Zoology or Botany or Biochemistry or Physics or Mathematics or Microbiology or Forensic Science or its equivalent from a recognized university or institution, and b) an experience of research and analysis for minimum period of ten years in any of the subjects mentioned in clause (a) in a government department/public sector undertaking or any other organization. Notes:-(1) The period spent in doing Ph.D degree in any of the aforesaid subjects, shall be counted towards the experience: Provided that such period shall not exceed three years. (2) Preference will be given to those candidates who have an experience of working in a Forensic Science Laboratory.	From amongst the Assistant Directors who have an experience of working as such for a minimum period of ten years.
2.	Assistant Director (Ballistic)	-	Hundred percent	Should posses,- a) M.Sc. degree in Physics or Mathematics or Forensic Science or its equivalent from a recognized university or institution, and b) an experience of research and analysis for minimum period of seven years in any of the subjects mentioned in clause (a) in a government department /public sector undertaking or any other organization.	From the Scientific Officer (Ballistic), who has an experience of working as such for a minimum period of five years

				Note:- The period spent in doing Ph.D degree in any of the aforesaid subjects, shall be counted towards the experience: Provided that such period shall not exceed three years.	
3.	Assistant Director (Biology)	-	Hundred percent	Should posses,- a) M.Sc. degree in Botany or Zoology or Microbiology or Bio-Chemistry or Forensic Science or its equivalent from a recognized university or institution; and b) an experience of research and analysis for minimum period of seven years in any of the subjects mentioned in clause (a) in a government department, public sector undertaking or any other organization. Note:- The period spent in doing Ph.D degree in any of the aforesaid subjects, shall be counted towards the experience: Provided that such period shall not exceed three years.	From the scientific Officer (Biology), who has an experience of working as such for a minimum period of five years
4.	Assistant Director (Chemistry)	-	Hundred percent	Should posses,- a) M.Sc. degree in Chemistry or Biochemistry or Forensic Science or its equivalent from a recognized university or institution, and b) an experience of research and analysis for minimum period of seven years in any of the subjects mentioned in clause (a) in a government department, public sector undertaking or any other organization. Note:- The period spent in doing Ph.D degree in any of the aforesaid subjects, shall be counted towards the experience: Provided that such period shall not exceed three years.	From the Scientific Officer (Chemistry), who has an experience of working as such for a minimum period of five years

5.	Assistant Director (Documents)	-	Hundred percent	Should posses,- a) M.Sc. degree in Physics or Chemistry or Forensic Science or its equivalent from a recognized university or institution, and b) an experience of research and analysis for minimum period of seven years in any of the subjects mentioned in clause (a) in a government department, public sector undertaking or any other organization. Note:- The period spent in doing Ph.D degree in any of the aforesaid subjects, shall be counted towards the experience: Provided that such period shall not exceed three years.	From the Scientific Officer (Documents) who has an experience of working as such for a minimum period of five years.
6.	Assistant Director (Physics)	-	Hundred percent	Should posses,- a) M.Sc. degree in Physics or Forensic Science or its equivalent from a recognized university or institution, and b) an experience of research and analysis for minimum period of seven years in any of the subjects mentioned in clause (a) in a government department, public sector undertaking or any other organization. Note:- The period spent in doing Ph.D degree in any of the aforesaid subjects, shall be counted towards the experience: Provided that such period shall not exceed three years.	From the Scientific Officer (Physics) who has an experience of working as such for a minimum period of five years.
7.	Assistant Director (Serology)	-	Hundred percent	Should posses,- a) M.Sc. degree in Botany or Zoology or Bio-Chemistry or Microbiology or Forensic Science or its equivalent from a recognized university or institution, and	From the Scientific Officer (Serology) who has an experience of working as such for a minimum period of five years.

				b) an experience of research and analysis for minimum period of seven years in any of the subjects mentioned in clause (a) in a government department, public sector undertaking or any other organization. Note:- The period spent in doing Ph.D degree in any of the aforesaid subjects, shall be counted towards the experience: Provided that such period shall not exceed three years.	
8.	Assistant Director (Toxicology)	-	Hundred percent	Should posses,- a) M.Sc. degree in Chemistry or Bio-Chemistry or Forensic Science or its equivalent from a recognized university or institution, and b) an experience of research and analysis for minimum period of seven years in any of the subjects mentioned in clause (a) in a government department, public sector undertaking or any other organization. Note:- The period spent in doing Ph.D degree in any of the aforesaid subjects, shall be counted towards the experience: Provided that such period shall not exceed three years.	From the Scientific Officer (Toxicology) who has an experience of working as such for a minimum period of five years.

APPENDIX-'C'
(See rule 8)

GOVERNMENT OF PUNJAB
DEPARTMENT OF PERSONNEL AND ADMINISTRATION REFORMS
(PERSONNEL POLICIES BRANCH)

Notification
The 4th May, 1994

No. G.S.R. 33/Const./Art.309/94.– In exercise of the powers conferred by the proviso to article 309 of the Constitution of India, and all other powers enabling in this behalf, the Governor of Punjab is pleased to make the following rules regulating the recruitment and general and common conditions of service of persons appointed to @@ [Group 'A', Group 'B' and Group 'C'] services in connection with the affairs of the State of Punjab, namely:-

1. Short title, commencement and application.-(1) These rules may be called Punjab Civil Services (General and Common Conditions of Service) Rules, 1994.

(2) They shall come into force at once.

(3) They shall apply to all the posts in @@ [Group 'A', Group 'B' and Group 'C'] services in connection with the affair of the State of Punjab.

2. Definitions.-In in these rules, unless context otherwise requires–

(a) "Appointment Authority" means an appointing authority specified as such in the Service Rules made under article 309 of the Constitution of India in respect of any service or post in connection with the affairs of the State of Punjab;

(b) "Board" means the Subordinate Services Selection Board, Punjab or any other authority constituted to perform its functions;

(c) "Commission" means the Punjab Police Service Commission;

(d) "Direct appointment" means an appointment made otherwise than by promotion or by transfer of person already in the service of Government of India or of a State Government.

(e) "Government" means the Government of the State of Punjab in the Department of Personnel and Administrative Reforms;

(f) "Recognized university or institution" means –

(i) Any University or Institution incorporated by law in any of the State of India, or

(ii) Any other University or Institution which is declared by the Government to be a recognized University or Institution for the purpose of these rules;

(g) @@ ["Service" means any Group 'A' service, Group 'B' service and Group 'C' service constituted in connection with the affairs of the State of Punjab;]

(h) "Service Rules" means the service rules under Article 309 of the constitution of India regulating the recruitment and conditions of service other than the general and common conditions of service of persons appointed to any service or post in connection with the affairs of the State of Punjab; and

*(i) "War Hero" means a defence service personnel, or a para-military forces personnel, who is a bona fide resident of Punjab State and is killed or discharged from the above service on account of disability suffered by him while fighting for defending the border of the country in Kargil sector of the State of Jammu and Kashmir or fighting for the country in any other sector or similar operation on or after the first day of January, 1999 which may be notified by the State Government as undertaken for preserving the unity and integrity of the motherland. However, in exceptional cases, the cases of those war heroes can also be covered under this definition who, though, not bona fide residents of Punjab State, but are yet closely connected to the State of Punjab. In such exceptional cases, the express approval of the Department of Personnel will be mandatory.

3. Nationality, domicile and character of persons appointed to the service –

(1) No person shall be appointed to the service unless he is –

(a) a citizen of India ; or

(b) a citizen of Nepal ; or

(c) a subject of Bhutan ; or

(d) a Tibetan refugee who came over to India before the first day of Jan., 1962 with the intention of permanently settling in India; or

(e) person of Indian origin who has migrated from Pakistan, Burma, Sri Lanka and East African Countries of Kenya, Uganda and United Republic of Tanzania (formerly Tanganyika and Zanzibar), Zambia, Malawi, Zaire, Ethiopia and Vietnam with the intention of permanently settling in India :

Provided that a person belonging to any of the categories (b), (c), d) and (e) shall be person in whose favour a certificate of eligibility has been given by the Government of Punjab in the Department of Home Affairs and Justice.

(2) A person in whose case a certificate of eligibility is necessary may be admitted to an examination or interview conducted by the Commission or the Board, as the case may be, on his furnishing proof that he has applied for the certificate but he shall not be appointed to the service unless the necessary certificate is given to him by the Government of Punjab in the Department of Home Affairs and Justice.

(3) No person shall be recruited to the service by direct appointment, unless he produces, -

(a) a certificate of character from the Principal, Academic Officer of the University College, School or Institution last attended, if any, and similar certificates from two responsible persons not being the relatives who are locally acquainted with him in his private life and are unconnected with the University, College or Institution; and

(b) An affidavit to the effect that he was never convicted for any criminal offence involving moral turpitude and that he was never dismissed or removed from service of any State Government of India, or of any Public Sector Undertaking.

4. Disqualifications– No person-

(a) who has entered into or contracted marriage with a person having a spouse living; or

(b) who, having a spouse living, has entered into or contracted a marriage with any person, shall be eligible for appointment to the service :

Provided that the Government, if satisfied that such marriage is permissible under the personal law applicable to such person and the other party to the marriage and that there are grounds for so doing, exempt any person from the operation of this rule.

5. Age.-(1) No person shall be recruited to the service by direct appointment, if, he is less than eighteen years or is more than thirty three years of age, in the case of non-technical posts and technical posts on the 1st day of January of the year immediately preceding the last date fixed for submission of application by the Commission or the Board, as the case may be, or unless he is within such range of minimum and maximum age limits as may be specifically fixed by the Government from time to time ;

Provided that where different lower and upper age limits have been specifically prescribed for posts in the Service Rules, these limits shall be made applicable for appointment in such posts:

Provided further that the upper age limit may be relaxed up to 45 years in the case of person already in the employment of the Punjab Government, other State Governments, or the Government of India:

Provided further that in the case of candidates belonging to Scheduled Caste and other Backward Classes, the upper age limit shall be such as may be fixed by the Government from time to time.

(2) In the case of ex-servicemen the upper age limit shall be such as has been prescribed in the Punjab Recruitment of Ex-servicemen Rules, 1982 as amended from time to time.

(3) In the case of appointment on compassionate grounds on priority basis the upper age limit shall be such as may be specifically fixed by the Government from time to time.

*(4) In the case of appointment of a War-hero who has been discharged from defence services or paramilitary forces on account of disability suffered by him or his widow or dependent member of his family, the upper age limit shall be such as may be specifically fixed by the Government from time to time.

6. **Qualification etc.–**Subject to the provision of these rules, the number and character of posts, method of recruitment and educational qualification and experience for appointment to a post or posts in a service and the departmental examination, if any, shall be such as may be specified in the Service Rules made for that Service :

*Provided that where appointment of @@ (Group 'A' or Group 'B') non-technical post is offered to a war-hero, who has been discharged from defence services or paramilitary forces on account of disability suffered by him or his widow or dependent member of his family, under the instructions issued in this behalf by the Government, the educational qualification to be possessed such by person shall be graduation from a recognized university. Such person who is offered @@ (Group 'A' or Group 'B' or Group 'C') non technical post shall not however be required to possess experience of a technical or a non technical post at the time of his initial appointment.

7. Probation.-A person appointed to any post in the service shall remain on probation for period of two years, if recruited by direct appointment and one year if appointed otherwise:

Provided that –

(a) Any period, after such appointment spent on deputation on a corresponding or a higher post shall count towards the period of probation;

(b) In case of an appointment by transfer, any period of work on an equivalent or higher rank, prior to appointment to the Service, may in the discretion of the appointing authority, be allowed to count towards the period of probation ;

(c) Any period of officiating appointment to the service reckoned as period spent on probation; and

(d) Any kind of leave not exceeding six months during or at the end of period of probation shall be counted towards the period of probation.

(2) If, in the opinion of the appointing authority, the work or conduct of a person during period of probation is not satisfactory or if he has failed to pass departmental examination, if any, prescribed in the Service Rules within a period not exceeding two and half years from the date of appointment, it may -

(a) If such a person recruited by direct appointment, dispense with his service or revert him to a post on which he held lien prior to his appointment to the service by direct appointment ; and

(b) If such person is appointed otherwise –

(i) revert him to his former post ; or

(ii) deal with him in such other manner as the terms and conditions of the previous appointment permit.

(3) On the completion of period of probation of a person, the appointing authority may -

(a)If his work and conduct has in its opinion been satisfactory -

(i) confirm such person, from the date of his appointment or from the date he completes, his period of probation satisfactorily, if he is not already confirmed ; or

(ii) declare that he has completed his probation satisfactorily, if he is already confirmed; or

(b) If his work or conduct has not been in its opinion, satisfactory or if he has failed to pass the Departmental examination, if any, specified in the Service Rules -

(i) dispense with his services, if appointed by direct appointment or appointed otherwise revert him to his former post, or deal with him in such other manner as the terms and conditions of his previous appointment may permit ;

(ii) extend his period of probation and thereafter pass such order as it could have passed on the expiry of the period of probation as specified in sub-rule (1) :

Provided that the total period of probation including extension, if any, shall not exceed three years.

8. Seniority- The seniority *inter se* of persons appointed to posts in each cadre of a service shall be determined by the length of continuous service on such post in that cadre of service:

Provided that in the case of person recruited by direct appointment who joins within the period specified in the order of appointment or within such period as may be extended from time to time by the appointing authority subject to a maximum of four months from the date of order of appointment, the order of merit by the Commission or the Board, as the case may be shall not be disturbed:

Provided further that in case any person of the next selection has joined a post in the cadre of the concerned Service before the person referred to in the preceding proviso joins, the person so referred shall be placed below all the persons of the next selections, who join within the time specified in the first proviso:

Provided further that in the case of two or more persons appointed on the same date, their seniority shall be determined as follows:-

(a) a person appointed by direct appointment shall be senior to a person appointed otherwise ;

(b) a person appointed by promotion shall be senior to a person appointed by transfer ;

(c) in the case of persons appointed by promotion or transfer, the seniority shall be determined according to the seniority of such persons in the appointment from which they were promoted or transferred ; and

(d) in the case of persons appointed by transfer from different cadres, their seniority shall be determined according to pay, preference being given to a person who was drawing a higher rate of pay in his previous appointment and if the rates of pay drawn are also same,

then by their length of service in these appointments and if the rates of pay drawn are also same, then by their length of service in these appointments and if the length of service is also the same, an older person shall be senior to a younger person.

Note:- Seniority of person appointed on purely provisional basis or on ad hoc basis shall be determined as when they are regularly appointed keeping in view the dates of such regular appointment.

9. Liability of members of service to transfer-A member of Service may be transferred to any post whether included in any other service or not, on the same terms and conditions as are specified in rule 3.17 of Punjab Civil Service Rules, Vol. I, Part-I.

10. Liability to serve.-A member of service shall be liable to serve at any place, whether within or out of the State of Punjab on being ordered so to do by the appointing authority.

11. Leave, Pension and other matters – In respect of pay, leave, pension and all other matters not expressly provided for in these rules, a member of a Service shall be governed by such rules and regulations as may have been or may hereafter be adopted or made by the competent authority.

12. Discipline, Penalties and Appeals – (1) In the matter of discipline, punishment and appeals a member of a Service shall be governed by the Punjab Civil Service (Punishment and Appeal) Rules, 1970 as amended from time to time by special or general order.

(2) The authority empowered to impose penalties specified in rule 5 of the Punjab Civil Service (Punishment and Appeal) Rules, 1970 and the appellate authority hereunder in respect of the Government employee shall be such as may be specified in the Service Rules.

13. Liability for vaccination and re-vaccination.-Every member of a service shall get himself vaccinated or re-vaccinated when, Punjab Government so directs by a special or general order.

14. Oath of allegiance.-Every member of a Service unless he has already done so, shall be required to take oath of allegiance to India and to the Constitution of India as established by law.

****15. Minimum educational and other qualifications.-**(1) No person shall be appointed by direct appointment to the post of Clerk under the Punjab Government unless he is Matriculate in Second Division or has passed Senior Secondary Part II examination from a recognized university of institution.

(2) The person so appointed as clerk in terms of sub-rule (1), shall have to qualify a test in Punjabi typewriting to be conducted by the Board or by the appointing authority at the speed of thirty words per minute within a period of one year from the date of his appointment.

(3) In case, the person fails to qualify the said test within the period specified in sub-rule (2) he shall be allowed annual increment only with effect from the date he qualifies such test, but he shall not be paid any arrear for the period, for which he could not qualify the said test:

Provided that where appointment of @@ (Group 'C') non technical post is offered to a War Hero who has been discharged from defense services or paramilitary forces on account of disability suffered by him or his widow or dependent member of his family, under instructions issued in his behalf by the Government, the educational qualifications to be possessed by such person shall be Matriculate from a recognized university or institution. Such person will however be not required to qualify the test in Punjabi typewriting as specified in sub-rule (2).

16. Minimum educational and other qualification for appointment to the Steno-typist Grade-II or Junior Scale Stenographer Grade II.-No person shall be appointed by direct appointment to a post of Steno-typist Grade-II or a Junior Scale Stenographer Grade-II under the Punjab Government unless he,-

(a) is Matriculate in Second Division or has passed Senior Secondary Part-II examination from a recognized university or institution ; and

(b) qualifies a test in Punjabi Stenography to be held by the Board or by the appointing authority at a speed to be specified by the Government from time to time.

##17. Knowledge of Punjabi Language:-No person shall be appointed to any post in any Service by direct appointment unless he has passed matriculation examination with Punjabi as one of the compulsory or elective subjects or any other equivalent examination in Punjabi language, which may be specified by the Government from time to time.

Provided that where a person is appointed on compassionate grounds on priority basis under the instructions issued in this behalf by the Government from time to time, the person so appointed shall have to pass an examination of Punjabi Language equivalent to Matriculation standard or he shall have to qualify a test conducted by the Language Wing of Department of Education of Punjab Government within a period of six months from the date of his/her appointment:

Provided further that where educational qualifications for a post in any service are lower than the Matriculation standard, then the person so appointed shall have to pass an examination of Punjabi Language equivalent to Middle standard:

Provided further that where a War Hero, who has been discharged from defense services or paramilitaries forces on account of disability suffered by him or his widow or dependent member of his family, is appointed under the instructions issued in this behalf by the Government, the person so appointed will not be required to possess aforesaid knowledge of Punjabi Language:

Provided further that where a ward of Defense Service Personnel, who is a bona fide resident of Punjab State, is appointed by direct appointment, he shall have to pass an examination of Punjabi Language equivalent to Matriculation Standard or he shall have to qualify a test conducted by the Language Wing of the Department of Education of Punjab Government within a period of two years from the date of his appointment.

18. ***Promotion to Group 'A' and Group 'B' Services.–(1) (a) For promotion to the post as Head of the Department would be decided strictly on the basis of merit-cum-seniority as per the instructions issued by the Government from time to time. The minimum bench mark for promotion for such post would be 'Very Good'. The officer who is graded as 'Outstanding' would supersede the officer graded as 'Very Good'

(b) For promotion to post falling in Group 'A' other than Head of Department, the minimum bench mark will be 'Very Good' as per instructions issued by the Government from time to time. There shall be no supersession on the basis of merit.

(c) For promotion to post falling in Group 'B', the minimum bench mark will be 'Good' and there shall be no super-session on the basis of merit.

(2) Debarring for considering for promotion of a Government employee who refuses to accept promotion.-In the event of refusal to accept promotion by a member of a Service, he shall be debarred by the appointing authority from consideration for promotion for all the consecutive chances which may occur in future within a period of two years from the date of such refusal to accept promotion:

Provided that in a case where the appointing authority is satisfied that a member of a service has refused to accept promotion under the circumstances beyond his control, it may exempt such a member for reason to be recorded, therefore, in writing from the operation of this rules.

19. Power to relax.-Where the government is of the opinion that it is necessary or expedient to do so, it may by order, for reasons to be recorded in writing, relax any of the provision of these rules with respect to any class or category of person:

Provided that, the provision relating to educational qualification and experience, if any, shall not be relaxed.

20. Overriding effect.-The provisions of these rules shall have effect not withstanding anything contrary contained in any rules for the time being in force for regulating the recruitment and condition of service for appointment to public service and posts in connection with the affairs of the State.

21. Interpretation.-If any question arises as to the interpretation of these rules, the Government shall decide the same.

@@ "**APPENDIX**"

(See rule 2)

Group 'A' Posts in initial entry revised scales or pay having a maximum of Rs. 11,660 or more:

Provided that all existing Class I posts irrespective of the monetary limits of the pay scales shall be placed in Group 'A'.

Group 'B' Posts in initial entry revised scales of pay with maximum ranging between Rs. 10,640 to Rs. 11,659;

Group 'C' Posts in initial entry revised scales of pay with maximum ranging between Rs. 5,160 to Rs. 10,639

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*Amended,-*vide* Punjab Government Notification No. G.S.R. 81/ Canst/Art. 309/Amd. (II)/99, dated 15th November, 1999 published in Punjab Government Gazette Extra November, 16, 1999. The amendment comes into force from the 1st Day of January, 1999.

**Amended,-vide Punjab Government Notification No. G.S.R. 98/ Canst/Art. 309/Amd. (4)/2000, dated 22nd November, 2000 published in Punjab Government Gazette December, 01, 2000. The amendment except the proviso shall be deemed to have been substituted on and with effect from 2nd July, 1999 and the proviso shall be deemed to have been substituted on and with effect from the 1st Day of January, 1999.

Amended,-*vide* Punjab Government Notification No. G.S.R. 97/ Const/Art. 309/Amd. (5)/2001, dated 4th September, 2001 published in Punjab Government Gazette September, 14, 2001. The amendment comes into force from the date of its publication in the Official Gazette.

@@ Amended,-- *vide* Punjab Government Notification No. G.S.R. 115/Canst/Art. 309/Amd. (6)/2001, dated 18th December, 2001 and published in Punjab Government Gazette 18th December, 2001. The amendment comes into force with effect from the 8th day of September, 2000.

***Amended.-*vide* Punjab Government Notification No. G.S.R. 117/ Canst/Art. 309/Amd. (7)/2001, dated 18th December, 2001 published in Punjab Government Gazette dated December 18, 2001. The amendment comes into force with effect from the 6th day of September, 2001.

A. R. TALWAR
Principal Secretary, Government of Punjab,
Department of Home Affairs and Justice

CHAPTER 14

NATIONAL CRIME RECORD BUREAU

BACKGROUND

The growth and spurt in the Organized Crime, especially Mafia activities and activities by the Terrorists and Insurgents outfits, in the recent times have attained considerable magnitude. Such violent and criminal activities have to be tackled with greater professional expertise and effectiveness. The issues related to Organized Crime including terrorist and militants activities require inter-agency co-ordination particularly in sharing the criminal intelligence. For this purpose, a central agency which will be a store-house of information/intelligence on organized crime and criminals and which can co-ordinate amongst different police forces both at State and Central level is of paramount importance to fight such organized criminal activities.

The Group of Ministers (GOM) constituted to look into "Reforming of National Security System" in para 4.55 of its recommendations have observed "MHA and all States should maintain an updated data/information base with regard to the activities of the organized crime/mafia networks, smugglers and racketeers. Modalities are already being worked out in the MHA for creation of such a database, which may be located in the National Crime Records Bureau (NCRB). Further they wanted that Organized Crime units should be located in all states (Para 4.91) and recommended that every state should also have a dedicated band of intrepid investigators, prosecutors and special courts to deal with the challenges of organized and terrorist crimes. The MHA may request State Government to do the needful.

A Policy Planning Group-XX (PPG-XX) formed by the MHA in August 1999 deliberated in twenty sittings on the issue of challenges of organized and terrorist crimes and short-listed 28 activities to be covered under organized crimes. **The PPG-XX also recommended creation of centralized database wherein information could be collected /collated on all aspects of organized crimes and this responsibility was entrusted to NCRB.** In pursuance of MHA's instructions, an Organized Crime Cell was started in NCRB in August 1999.

MHA vide their letter No. 24013/422001-GPA.VI dated 28 August 2001 had advised the states to set up special units for monitoring; investigating and pursuing organized criminal gangs. These units would be required to coordinate with other counterparts in the neighbouring States as well as with the organized crime units at the Central level. Further MHA has advised vide order no 24013/36/2001-GPA.VI dated 23.10.2001 to have a central database wherein all information about specific organized syndicates is pooled together. The National Crime Records Bureau (NCRB) has been identified as the nodal agency in the Central Government to create/maintain a database on the activities of organized crime syndicates.

A meeting was convened by MHA and chaired by the Special Secretary (NE) on 13.6.2002 on this subject, wherein representatives from some of the States and CPOs, including IB, were invited. It was decided to formally move the Ministry of Home Affairs for taking up OCIS as a National Project with the following objectives:

a) Creation of comprehensive database in respect of militant/ terrorists and underworld elements.

b) Effective coordination and sharing of data and information by various law enforcement agencies.

c) Assistance to the field level investigators to quicken the investigation process relating to complaints on organized crimes/terrorists outfits through computerized crime records availability.

d) Preparation of complete background files on gangsters and gangs to be used at various stages in investigation and prosecution process.

A protocol for maintaining database under OCIS was prepared keeping in view the recommendations of GOM and PPG-XX. The MHA, after due examination, has approved the draft protocol vide their U.O. No. 24013/16/2002-GPA-VI dated 12.6.2002.

For effective exchange of information and intelligence between various Law Enforcement Agencies, software to capture relevant information in standard formats has been developed by NCRB. Beta Version of application software was sent to many States/CPOs for testing. The application takes into accounts the original source of information that is acquired during investigation and interrogation of crime gang members. Information about the Criminal Activities of Gangs/Members already captured in CIPA/ICCIS will be imported into OCIS. Bridge software for vis a vis CCIS has been prepared.

NCRB has proposed the national project for computerization of Organized Crime Intelligence at States and National level.

Organized Crime Intelligence System (OCIS)

The objective of Organized Crime Intelligence System (OCIS) is to improve sharing of information/intelligence and cooperation among various law enforcement agencies in preventing and combating terrorism and other serious forms of Organized and International Crimes. OCIS will collect the information on various Organized Gangs, Terrorist and Militant Organizations, their members and activities.

The information collected from different sources will be collated and analyzed to develop criminal intelligence about the various organizations and their members and to assist the collaborating agencies in their operations.

The software has been developed with a view to provide all possible help to the user to enter and query data quickly. The OCIS software seeks to standardize collection of information and taking into account the needs of the consumer, a large number of parameters have been included. OCIS is not meant to provide operational support or for performing day to day intelligence activities.

The software not only allows the user to enter data in numerical or text form, as is normally done, pictorial/graphic details' like photographs, handwriting/signature and finger prints would also be stored along with other data. Provisions for creating, storing and retrieving organizational chart have also been made. Objects like video and audio clips can also be stored.

While accepting details of various gangs, the software provides various sub-screens to enter details regarding various types of vehicles, fire arms, explosives. The software also maintains data on expertise of gang members in using various types of fire arms and explosives. An effort has been made to get all possible information in one place for easy and quick retrieval.

Beta version of the software does not include any analytical tool like GIS based search. This version of the software has been released to test the data entry/input modules of the software as well as the reports.

The software endeavors to provide right information at right time with least effort.

FEATURES OF OCIS

1. Common Standard format for collection of crime information/criminal intelligence.

2. Capability to search and analyze both structured and unstructured data and produce flexible outputs; Creating linkages between persons, object, events and activities for analysis.

3. OCIS to have three principle components

   a) Information system on group/gang profile; member profile; criminal activities group/ members.

   b) Analysis system - Statistical/ Pattern/ Network Analysis etc.

   c) Index System

4. Information and intelligence will be developed and maintained by the State/Central Agencies in their server and mirrored in NCRB Server.

The GOI, MHA has decided to run this project on pilot basis in the states of Haryana, J&K, Punjab, Uttar Pradesh, West Bengal and Delhi UT for "Theft of automobiles" and Andhra Pradesh & Maharashtra for "Sale and Purchase of Women and Children for Prostitution and maid services". A sum of Rs. 2.25 Crore has been sanctioned by the GOI for implementation of OCIS pilot projects during the year 2004-05 and 2005-06. Under this pilot project it is proposed to provide hardware, systems software and funds for infrastructure developments to the piloting states.

OCIS project once implemented in all the states and Central Law Enforcement Agencies will enable sharing of Criminal Intelligence and coordination of the efforts of various agencies working to control activities of Organized Crime syndicates in the Country.

RECOMMENDED HARDWARE REQUIREMENTS

Server

- Pentium IV
- 256 MB RAM
- 80 GB HDD
- DAT Drive/CD Writer

Printer (Network)

- Laser

Client

- Pentium IV
- 256 MB RAM
- 40 GB HDD
- CD Rom Drive

Network Devices

- Switch/Hub
- UTP Cat V enhancer
- IO Outlets

Software Requirements

- Windows Server 2000/2003 for Server Machine
- Windows XP for Client Machine
- Microsoft SQL server 2000
- MS Office tool (Organization Chart)

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PROCEDURE FOR INSTALLING "WINDOWS SERVER 2003 STANDARD EDITION"

1. Put the Windows Server 2003 Standard Edition O.S. CD in the CD-ROM Drive.

2. When the Message "Press any key to boot from CD", Press any key.

3. Press Enter to move from the "Welcome to Setup" Message Screen.

4. When "License Agreement" screen appears, Press F8.

5. Create a partition of 2048 MB and leave the remaining space as un-partitioned space.

6. Format the created Partition C using NTFS file system."

7. After all the file copying is over the *M/C* will reboot automatically. Don't press any key to reboot from the CD.

8. Win 2003 Server Setup Process.

9. In "Regional and Language Option Settings" screen, click Customize (to change system or user local settings)

10. In "Regional Option", select "English (United Kingdom)" instead of the default setting.

11. Click on Apply button. Click OK. Click Next to go to next screen.

12. In "Personalize Your Software" screen give the *M/C* owner Name: OCU.

13. Give the Organization: National Crime Records Bureau. Click Next.

14. When the screen "Your Product Key" appears type the following.

    VJBKH-X4JX9-DBV2K-CBDM9-RR47M

15. Choose Per server Mode for licensing and give the no. of client: 10. Click Next.

16. In "Computer and Administrator" screen, give computer name: DIST_QCU.

17. Leave blanks in Administrator Password and confirm Password, Click Yes.

18. In "Date and Time Settings" screen choose the Time Zone as GMT-Calcutta, Chennai, Mumbai, Chennai. Leave all other columns in-touched. Click Next.

19. After successful installation, system will reboot and shows message for configuring server. Click on 'don't display this message again' and close the windows.

PROCEDURE FOR INSTALLATION OF "MS-SQL SERVER 2000"

1. Logon to Windows Server 2003.
2. Insert CD of MS-SQL Server 2000 into CD Drive.
3. Click on Install SQL Server 2000 component option.
4. Click on Database server-Standard Edition option.
5. A screen appears showing message "SQL server 2000 SP2 & below is not supported by this version of Window". Click on Continue.
6. A Welcome window appears, click on Next button.
7. Select "Local Computer" and click on Next button.
8. Select "Create a new instance of SQL Server or install click tools". Click on Next.
9. User Information window appears, click on Next button.
10. "Software License Agreement" window appears, clicks on Yes button.
11. Enter the CD key provided by the supplier & click on OK button.
12. Select "Server & Client tool" and click on Next button.
13. Select "default" and click on Next button.
14. "Setup Type" window appears, selects Custom option.
15. Click on Browse button of Program files, "Choose Folder" window appears. Change the path to D:\SQL2000.
16. Click on Browse button of data files, "Choose Folder window appears. Change the path to D:\SQL2000.
17. Click on Next button.
18. "Select Component" window appears, click on Next button.
19. "Services Account" window appears, here select "Use the local system account" & click on Next button.
20. "Authentication Mode" screen appears, selects "Mixed mode" and checks on "Blank password" option, click Next.
21. Character set/sort order/Window collation window appears, click on Next button.
22. Network libraries window appear, click on Next Button.
23. Click on Next button to copy files.
24. Choose licensing mode, enter 10 for devices for 'Per seat' and press Continue.
25. lt starts the installation.
26. Setup completing window appear, click on Finish button.
27. To verify the proper installation of MS-SQL Server 2000 shutdown and restart the system. Logon to Window 2003 Server, and see the status line on the screen. If a green signal is glowing, this implies that MS-SQL database services are running.

PROCEDURE FOR INSTALLATION OF "WINDOWS XP" ON CLIENT

1. Switch on the machine and immediately put Windows XP 0.5. CD in the CD ROM Drive.

2. When the message "Press any key to boot from CD..." appears Press Any Key.

3. Wait till "Setup Notification" screen appears.

4. Press Enter key to continue.

5. "Welcome to Setup" screen appears Press Enter key to continue.

6. When "License agreement screen" appears, Press F8 key

7. "Disk Partition Screen" appears, Existing disk partitions will be displayed, Select "C" partition ....." and Press Enter key.

8. To continue setup, Press C.

9. Select "Format partition using the FAT file system" option using Up & Down Arrow keys and Press Enter key to continue.

10. A Caution message screen appears for confirmation, to format the drive, Press F.

11. A message screen appears regarding FAT 32 file system Press Enter key to continue and format the partition.

12. Please wait till formatting is over.

13. Please wait till setup starts copying files.

14. After file copying is over, the machine will reboot automatically. Don't Press any to boot from CD, setup will continue automatically,

15. "Regional and Language option" window appears, click on Customize Button.

16. In "Regional Option", select "English (United Kingdom)" instead of the default setting.

17. Click on Apply button. Click OK. Click Next to go to next screen.

18. In "Personalize your software" window give the Name of owner and Organization, Click on Next Button.

19. "Your Product Key" window appears, provide the Product Key provided with Windows XP CD click on Next button.

20. "Computer Name and Administrator Password" windows appear, Give Computer Name and Administrator Password, Click on Next Button.

21. "Date and Time Setting" window appears, select "Time Zone" as (GMT 05:30) Chennai Kolkata, Mumbai, New Delhi, and Click on Next button, Setup will continue automatically.

22. "Network Setting" window appears, Select "Custom Setting" option & click Next button

23. "Networking Components" window appears, Select "Internet Protocol (TCP/IP)" option and click on Properties button.

24. "TCP/IP Properties" window appears, select "Use the following IP address" option, Provider the relevant IP address and Subnet Mask click on OK button.

25. Control will return to "Networking Component" window click on Next button.

26. "Work group or Computer Domain" window appear accept the default workgroup name WORKGROUP and click on Next button.

27. Setup will continue automatically_____ wait. After successful installation, system will reboot, Remove XP CD from CD Drive with this installation is completed.

28. When system reboots, "Welcome to Microsoft windows" screen appears, To continue, Click Next button.

29. "Connect to the Internet" will appears click on "Skip" button.

30. "Ready to Activate Windows" appears, Select "No, remind me every few days" option and click Next button.

31. "Who will use this computer?" appears, Enter any name and click Next button.

32. "Thank You" screen appears, clicks on Finish button, now windows XP desktop will appear. System is ready with Windows XP.

PROCEDURE FOR INSTALLATION OF "WINDOWS XP SERVICE PACK 2" ON CLIENT

1. Insert OCIS Application Software CD into CD Drive.

2. Run the XPSP2.exe from the Package\WinXP Service Pack 2 folder of CD, by double clicking it.

3. "Extracting Files" screen appears, please wait till process completed.

4. "Welcome" screen appears, click on Next button.

5. "License Agreement" screen appears, selects I Agree option and then click on Next button.

6. "Select option" screen appears, click on Next button.

7. "Updating Your System" screen appears, please will till process completed. It will take several minutes to complete the process.

8. "Completed the Win XP Service Pack 2" screen appears, click on Finish.

9. System will automatically restart.

PROCEDURE FOR INSTALLATION OF "MS OFFICE 2000 TOOL (ORGANIZATION CHART)"

1. Insert MS-Office 2000 CD into CD Drive.

2. "Welcome" screen appears, enter CD key add click Next button.

3. Select CD drive and press OK.

4. Select "I accept the terms in license agreement" and press Next.

5. Click on Customize and then click on Next.

6. Click on "Microsoft Word for Windows" and select "X Not Available". Repeat this step for all other options.

7. Open the "Office tools" options by clicking + sign against "Office tools".

8. Click on "Organization Chart" button, select 'Run from My computer' and then click on Install Now button.

9. Setup completing window appear, click on OK button.

PROCEDURE FOR INSTALLATION OF "MS OFFICE 2000 TOOL (ORGANIZATION CHART)"

1. Insert OCIS Application Software CD into CD Drive.

2. Run the Setup.exe from the Package folder of CD, by double clicking it.

3. Dialogue Box will appear, click OK button to continue.

4. Click on "Change directory' and mention path as 'C/: OCIS'.

5. Click on Begin setup Icon.

6. Click on Continue button.

7. If it asks to replace a file, which is not newer than existing file, then choose No to all.

8. After successful installation, Click on OK button.

9. Close all open windows and restart the system.

PROCEDURE TO RESTORE "OCIS DATABASE" ON SERVER

Step-1

Follow the following procedures to copy backup database file "OCIS Backup" from CD-ROM to Hard Disk:

- Insert **OCIS Application Software** CD into CD Drive.
- Double click on **My Computer** icon.
- Double click on **CD-Drive** icon.
- Double click on **Package** folder.
- Double click on **Database** folder.
- Right click on **OCIS Back Up** file and click on Copy option.
- Double click on **My Computer** icon.
- Double click on **Hard Disk** C: icon.
- Click on **Edit** menu and select Paste.

Step-2

Procedure to restore the OCIS Database

- Click on **Start-Program-Microsoft SQL Server-Enterprise Manager**
- Double click on **SQL Server Group**
- Double click on **Server Name**
- Click on **Databases**
- If **OCIS** database is present then right click on OCIS and select Delete to delete database.
- Right click on **Databases-All tasks-Restore Database**
- Give **OCIS** in the field of ***restore as database.***
- Click on **from device checkbox**.
- Click on **database complete** checkbox.
- Click on **select device button.**
- Click on disk **checkbox.** Since ***disk checkbox*** is selected, so click on **add button** and in ***file name*** and field give the path as **C:/OCIS Back Up** and click on **OK,** again click on **OK** to continue.
- Go to **Options tab.**
- Click on **Force restore over existing Database.**
- Click on **OK.**

It will show that "**Restore of Database OCIS** completed successfully"

FORM-1

GANG PROFILE FORM

1. *State/Agency ……

2. *Organization Type: (Insurgent Org, Militant Org, Organized Crime Gang, Terrorist Org)

3. *Gang/Organization name ……

4. *Gang/Organization leader Name……

5. *Status as on (Date) ……

6. Leader's Designation……

7. State Gang Code ……

8. Type of activity……

9. Area of operation

S.No.	Country	State	District(s)

10. Primary Goals/Aims……

11. Target(s)……

12. Membership details (No. of Members)

(i) Total (No.)……

(ii) Underground Activists (No.)……

13. Gang/Organization Chart-An organization chart showing various wings & hierarchy to be enclosed

14. Source(s) of finance ……

15. Sources of Recruitment……

16. Linkage with Local Groups etc (Communal Group/Ethnic Group/Caste Group / Advocate/Smuggler) Type

S.No.	Type	Name	Details

17. External Support

S.No.	Country	Organization	Nature of Support

18. Tactics .....

19. Strategy .....

20. Documents (Audio/Video chips photographs as attachments documents) enclosed or not (Yes/No).....

21. Logistics

i) Transport Holding (LMV/HMV/Two-Wheelers/Air Craft/Power Boats/Trawlers etc

S.No.	Vehicle Type	Quantity

ii) Transport details

S.No.	Auto type	Make	Registration No.	Chasis No.	Engine No.	Owner's Name & Address

iii) Weapons holding

S.No.	Type	Source	Quantity

iv) Explosives holding

S.No.	Type	Source	Quantity

v) Communication Details (Cellular Phone, Telephone, Wireless, E-mail, Fax etc.)

S.No.	Type	Details

(vi) Training Facilities (Within/Outside India)

S.No.	Country	State	District	Place	Training Details

(vii) Gang/Organization hideouts

S.No.	Country	State	District	Place	City	H.No., Street, Locality

Owner's name	Details of occupants

22. Frontal Organization (Students, Farmers, Labour, Political, Human Rights etc.) attach separate sheets for different organizations)

Type……

i) Name of the Organization ……

ii) Leader Name & Designation ……

ii) Approximate Strength……

iv) Address ……

v) Charter of the Organization ……

vi) Activities……

vii) Details of linkages……

23. General remarks with grading……

……

……

24. U.O. Notes

S. No.	Reference No.	Date	Circulation

FORM-2

GANG/ORGANIZATION CRIMINAL ACTIVITY DETAILS

(Fill separate sheet for each FIR)

1. State/Agency.....

2. Organization Type: (Insurgent Org, Militant Org., Organized Crime Gang, Terrorist Org.,)

3. Gang/Organization name .....

4. Gang/Organization leader name .....

5. FIR Details

   i) FIR No. ..... ii) Date of FIR .....

   iii) State ..... iv) District ..... v) PS .....

   vi) Act ..... Section .....

6. Case Status.....

7. Investigation Officer's Details:

S.No.	Name	Rank	Agency	Phone No.

8. Victim details:

S. No.	Name	Year of Birth	Sex	Victim type (killed/injured /Abducted /Extorted)	Occupation	Address	Compensation paid (Rupees)

9. Property Details

1. Nature of property attacked .....

1.1 Details of property .....

1.2 Value of property .....

1.3 Location .....

10. Weapons details (only if weapons are looted/recovered in the case)

S.No.	Type	Number	Bore	License No.	Recovered/Looted /N.A. (R/L)

11. Explosive details (only if explosives are looted/recovered/used in the case)

S. No	Type	Weight in Kgs.	Detonation device (Electric Fuse/Chemical Fuse/Electronic /Remote Control)	Type of casing Crude/Steel /Serrated/etc.	Recovered/Looted /N.A. (R/L)

12. Gang Members: (Suspected, Injured, Killed, Arrested)

S.No.	Gang Member Status	Name	Father's Name	Address

13. Brief facts of the case……

……

FORM-3

MEMBER DETAILS

(Fill separate form for each Full Time Member only)

(Affix photograph)

1. State/Agency……

2. Organization Type: (Insurgent Org, Militant Org., Organized Crime Gang, Terrorist Org.,)

3. Gang/Organization name ……

4. Gang/Organization leader name …….

5. Member ID (A1-Z9) ……

6. Member Name……

7. Alias (es)……

8. Father's/Husband's Name ……

9. Address & Contact Details.

S.No.	Permanent Address	Present Address	Phone No.

10. Personal Details.

(i) Sex…… (ii) Age …… (iii) Year of Birth…… (iv) Place of Birth …

(v) Nationality……(vi) Religion……. (vii) Caste/Category……

(viii) Blood group……. (ix) Edn. qualification……

(x) Occupation…… (xi) Sources of Income……

(xii) Mother tongue…… (xiii) Languages known……

(xiv) Identification Marks……

(xv) Dress habits ……

(xvi) Food preferences ……

(xvii) Diseases ……

(xviii) Weaknesses ……

11. Physical features:-

(i) Eyes……. (ii) Nose……

(iii) Lips…… (iv) Teeth……

(v) Forehead…… (vi) Face……

(vii) Complexion…… (viii) Eye-Sight ……

(ix) Build…… (x) Height (cms)……

(xi) Beard ..... (xii) Chin.....

(xiii) Speech..... (xiv) Moustache.....

(xv) Dress..... (xvi) Walking Style.....

(xvii) Hair..... (xviii) Deformity.....

(xix) Spl. Feature ..... (xx) Disability .....

12. Photograph enclosed (Yes/No) .....

13. Handwriting sample/Specimen Signature (Yes/No) .....

14. Finger Prints enclosed (Yes/No) .....

15. Date of joining the Gang/Organization .....(DD/MM/YY)

16. Recruited By..... Alias(es).....

17. Special Details:-

(i) Belonging To (Armed Wing, Frontal Organization, Underground etc.)...

ii) Status in Gang/Organization (Leader/Member etc.) .....

iii) Countries where trained.....

iv) Area of Operation .....

S.No.	Country	State	District (s)

(v) Expertise in use of

Weapons ……

Explosives ……

(vi) Targets ……

(vii) Motivation factor ……

(viii) Modus-Operandi & other information……

18. Linkage with other Gangs/Organization……

19. Details of Linkages ……

20. Employment details

S. No.	Designation	Occupation	From	To	Employer details	Place of work

21. Political post details

S. No.	Party Name	From	To	Type of membership/Position held	Area

22. Property held

S. No.	Property Type	Property Details

23. Bank details:-

S. No.	Bank Name	Branch	Country	State	City	Type of Account	Account number	Locker number

24. Dead/killed (to be filled up on confirmation of casualty):-

Dead /Killed	Cause of Death	FIR No./UD No.	Date	Country	State	District	Police Station	Date of Death	Place of Death

25. Present whereabouts

(i) Inside the jail (Yes/No) If Yes, place of arrest

(If Yes) Anticipated date of release……..(If No) Date of last release (if any)……..

(ii) Out of sight (Yes/No)

(If Yes) Date of jumping the bail.....(If No) Date of last bail (if any).....

26. Family particulars (Father's Side, Mother's Side, Wife's Side)

S. No.	Relation	Relative's Name	Sex	Year of Birth	Occupation	Address

27. Associate details

S. No.	Name & Aliases	Address					Type of Associate	Nature of Associate
		H. No., Street & Locality	Country	State	Distt	Police Station		

28. Harbourer details

S. No.	Name & Aliases	Country	State	District	Police Station	Address H.No., Street & Locality	Telephone Number

29. Criminal history

S. No.	FIR No.	Date of FIR	State	Distt.	PS	Acts/ Sections	No. of killed	Detained		Arrest		Accused /Suspect
								from	to	from	to	

30. Passport details

S. No.	Category	Name as in Passport			Passport number	Date of issue
		First	Middle	Last		

Valid up to	Place & Country of Issue	Countries visited so far		
		Country	From	To

31. (i) State Dossier No. ..... (ii) CBI Dossier No. .....

(ii) NCRB Dossier No. .....

32. Whether Interpol Notice issued Yes/No If, Yes

S. No.	Interpol Notice No.	Date	File No.	Issuing Authority	If extradition required

33. Look out Notice

L.O No.	L.O. Date	FIR No.	FIR Date	State	District	Police Station

34. Whether NBWs Pending (Yes/No)

		FIR Date	State	District	Police Station	NBW No.	NBW Date	Magistrate Court

35. Reward details

S.No.	Reward Amount	Organization	Reference No.

36. Spotter

S. No.	Name	Father's Name	Sex	Year of Birth	Address

37. Any other detail with grading .....Grading.....

38. U.O. Notes

U.O. Reference No.	Date	Circulation

GANG PROFILE FORM

(The first five items are mandatory)

Item-1: Fill the State Column like DELHI/HARYANA etc. or Agency like I.B./N.C.B./C.B.I./R.A.W. by whom the data is maintained.

Item-2: Fill the Organization type as TERRORIST ORGANIZATION/INSURGENT ORGANIZATION/ORGANIZED CRIMINAL GANG/MILITANT ORGANIZATION.

Item-3: Fill the Gang/Organization name like LTIE, DAWOOD GANG, BABBAR KHALSA etc.

Item-4: Fill the Gang/Organization leader name like DAWOOD EBRAHIM, PRABHAKARAN, etc.

Item-5: Fill the Status as on column as the date on which data is filled.

Item-6: Fill the Designation like COMMANDANT/21C/CAPTAIN/ SUPREMO etc. of the Gang leader.

Item-7: Fill the State gang code like *DL/ORG/OO1/03* as per the choice or as in the prevailing practice.

Item-8: Type of Activity to be filled as per Appendix 'A'-under heading 'Type of Activity'.

Item-9: Area of Operation-Fill in locations viz. country, state, district in which they operate.

Item-10: Primary Goals/Aims-Fill the description about the aim/ mission of the gang/organization.

Item-11: Target(s) which is gang/organization's target/attack

Item-12: Fill the **Membership details** as numeric value.

Item-13: Gang/Organization Chart, enclose the hierarchy chart of the gang/organization.

Item-14: Source(s) of Finance-Fill the information such as HAWALA TRANSACTION; EXTORTION; etc.

Item-15: Sources of recruitment-Fill the column as UN-EMPLOYED YOUTH; STUDENT; RELIGIOUS INSTITUTIONS;

Item-16: Linkage with local groups-Fill up, as the case may be.

Item-17: External support-Fill the column on details as Financial/ Training/Hideout/Weapons/Cadre/Political institution.

Item-18: Fill the Tactics the organization/gangs adopt.

Item-19: Fill the ***Strategy*** *the* organization/gangs adopt.

Item-20: Documents mention the attachment like AUDIO VIDEO CLIPS/PHOTOGRAPHS/DOCUMENTS

Item-21: **Logistics** where the details of Transport Holding, Transport Details, Weapons Holding, Explosives Holding, Communication Details, Training Facilities and Gang/Organization Hideouts are to be filled.

Item-22: Frontal Organizations-Fill the details on the known primary organizations .

Item-23: General remarks - Fill the remarks.

Item-24: U.O. Notes (Un Official Notes) - Fill in the details.

CRIMINAL ACTIVITY DETAILS FORM

Important: **1. A separate form should be filled up for each registered case.**

2. The first five items are mandatory.

Item-1: Fill the State Column like DELHI/ HARYANA etc. or **Agency** like I.B./N.C.B./C.B.I./R.A.W. by whom the data is maintained.

Item-2: Fill the **Organization type** as TERRORIST ORGANIZATION / INSURGENT ORGANIZATION / ORGANIZED CRIMINAL GANG / MILITANT ORGANIZATION.

Item-3: Fill the **Gang/Organization name** like LTIE, DAWOOD GANG, BABBAR KHALSA etc.

Item-4: Fill the **Gang/Organization leader name** like DAWOOD EBRAHIM, PRABHAKARAN, etc.

Item-5: Fill the **FIR Details** such as FIR No., Date of FIR, State, District, PS, Acts & Sections.

Item-6: Fill the **Case Status** like CHARGE SHEET SUBMITTED/ CASE WITHDRAWN/FINAL REPORT TRUE SUBMITTED etc. (See Appendix 'A' under heading 'Case Status'.)

Item-7: **Investigating Officer's Details** - Fill the details such as Name, Rank, Agency & Phone No.

Item-8: **Victim Details**-Fill the details such as Name, Year of Birth, Sex, Victim Type (Killed/Injured/Abducted/Extorted), Occupation, Address & Compensation paid in rupees.

Item-9: **Property Details** - Fill in details such as Nature of property attacked (See Appendix 'A' under heading 'Property Details'), Details of property, Value of property in rupees & Location.

Item-10: **Weapon Details** the details to be filled only in the case of weapon looted/recovered, such as Type (See Appendix 'A' under heading 'Weapon Details'), Number, Bore, License No. & Recovered/Looted/Not Applicable.

Item-11: **Explosive Details** the details to be filled only in the case of explosive looted/recovered, such as Type, Weight in Kgs., Detonation device, Type of casing & Recovered/Looted/Used as per Appendix 'A' under heading 'Weapon Details'

Item-12: **Gang Members**-Fill the details on the gang members.

Item-13: **Brief facts of the case**-Fill in the details.

MEMBER DETAILS FORM

Important: 1. A separate form should be filled up for each gang member.
2. The first six items are mandatory.

Item-1: Fill the State Column like DELHI / HARYANA etc. or Agency like I.B./N.C.B./C.B.I./R.A.W. by whom the data is maintained.

Item-2: Fill the Organization type as TERRORIST ORGANIZATION/INSURGENT ORGANIZATION/ORGANIZED CRIMINAL GANG/MILITANT ORGANIZATION.

Item-3: Fill the Gang/Organization name like LTIE, DAWOOD GANG, BABBAR KHALSA etc.

Item-4: Fill the Gang/Organization leader name like DAWOOD EBRAHIM, PRABHAKARAN, etc.

Item-5: Member ID - Fill the column as A1 to A2 for first 9 gang members, B1 for the 10th gang members & so on.

Item-6: Fill the Member name as a text.

Item-7: Fill the Alias(es) as a text.

Item-8: Fill the Father's/Husband's name as a text.

Item-9: Address & contact details -Fill the details accordingly.

Item-10: Personal details fill the details of Sex, Year of Birth, Place of birth, Nationality, Religion, Caste/Category, Blood group, Ed. Qualification, Occupation, Sources of Income, Mother tongue, Languages known, Identification marks, Dress habits, Food preferences, Diseases & Weakness as per **Appendix 'A'** under heading 'Personal Details'.

Item-11: Physical features fill the details of Eyes, Nose, Lips, Teeth, Forehead, Face, Complexion, Eyesight, Build, Height (in cms.), Beard, Chin, Speech, Moustache, Dress, Walking style, Hair, Deformity, Special feature, Disability as per Appendix 'A' under heading 'Physical features'.

Item-12: Enclose Photographs if available.

Item-13: Enclose Hand written Samples/Specimen Signature if available.

Item-14: Enclose Finger Prints if available.

Item-15: Date of joining the Gang/Organization-Fill the column as date.

Item-16: Recruited by & Alias (es)-Fill as a text.

Item-17: Special details:-

(i) Belonging to-Fill the Organization such as Armed wing/Frontal Organization/ Underground etc.

(ii) Status in Gang/Organization-Fill as Leader/ Member etc.

(iii) Countries where trained -Fill the Country (ies) name.

(iv) Area of operation - Fills the details accordingly.

(v) Expertise in use of mentions the name of the weapons and explosives in which are having expertise.

(vi) Targets of terrorist - Fill as per Appendix 'A' under heading 'Targets of Terrorist'

(vii) Motive Factor-Fill as Mercenary/Religious/ Fanatic/ Revenge etc.

(viii) Modus operandi &other related information - Fill as a text.

Item-18: Linkage with other gang/organizations-Fill the details.

Item-19: Details of linkages -Fill as a text

Item-20: Employment details where the details of Designation, Occupation, Period of employment, Employer details & place of work are to be filled.

Item-21: Political post details where the details of Party name, Period, Type membership/position & the Area are to be filled.

Item-22: Property held -Fill the details of property type and property details.

Item-23: Bank details -Fill the details of Bank name, Branch, Country, State, City, Type of account, Account No. & locker No.

Item-24: Dead/Killed the details to be filled up on confirmation of casualty such as Dead/Killed (Natural death/Accidental/ Killed in encounter/ Killed by rival gang), Cause of death, FIR/UD No., Date of FIR/UD, Country, State, District, PS, Date of death & Place of death.

Item-25: Present whereabouts -Fill the details accordingly.

Item-26: Family particulars -Fill in detail.

Item-27: Associate details - Fill the details of Name & Aliases, Address, Type of Associate (Criminal/ Political/ Relative / Bureaucrat/ Financier & Nature of Association.

Item-28: Harbourer details -Fill the details accordingly.

Item-29: Criminal history - Fill the details of FIR No., Date of FIR, State, District, PS, Acts, Sections, No. of Killed, Detention Period, Arrest Period & Accused/Suspect.

Item-30: Passport details - Fill in details of Category, Name as in passport, Passport No., Date of issue, Valid up to, Place of issue, Country (ies) visited so far, Period.

Item-31: Fill the State dossier No., CBI dossier No., NCRB dossier No.

Item-32: Interpol notice issued details - Fill in details such as Interpol notice No., Date, File No., Issuing authority & extradition.

Item-33: Lookout notice - Fill the details of Lookout No., Date, FIR No., FIR Date, State, District &PS.

Item-34: Whether NBWs/Pending - Fill in details such as FIR No., FIR Date, State, District, PS, NBW No., NBW Date, Magistrate/Court.

Item-35: Reward details - Fill the details such as Reward Amt., Organization, Reference No.

Item-36: Spotter - Fill in details such as Name, Father's Name, Sex, Year of Birth & Address.

Item-37: Any other details with grading - Fill the details accordingly.

Item-38: U.O. Notes (Un Official Notes) - Fill in detail.

List of Activities under OCIS

1. Protection Rackets
2. Prostitution Rackets
3. Sale and purchase of women for
   (i) Prostitution
   (ii) Maid services/Slavery
4. Sale and purchase of children for
   (i) Prostitution
   (ii) Begging
   (iii) Camel Racing
5. Sale and purchase of infants and adults
6. Contract killings (Supari killings)
7. Contract evictions, forcible occupations
8. Smuggling of Narcotic, drugs, contraband items
9. Illicit Arms manufacture/Gun running/Explosives
10. Counterfeit Currency
11. Illicit Liquor
12. Forged stamp papers
13. Dealing in Human Organs
14. Theft of Automobiles
15. Extortion
16. Cultural/Wildlife products
17. Dealing with women & children kidnapping

18. Gangs operating in running trains

19. Terrorists/Militant/Insurgent activities

20. Kidnapping for ransom

21. Smuggling of fire arms and sensitive material like uranium

22. Matka gambling/Satta

23. Fake passport/visa racket

24. Money laundering (including Hawala)

25. Illegal Immigration/emigration

26. Loan sharking/Shylocking

27. Cricket betting racket

28. Organized exhibition/publication of obscene literature/video components.

29. Fake credit cards racket

30. Video piracy.

31. Cyber crime

No.24013/36/2001-GPA,VI

GOVERNMENT OF INDIA

MINISTRY OF HOME AFFAIRS

New Delhi, 23-10-2001

To

The Home Secretaries

To all States/UT admns.

Sub: Recommendations of a Group of Ministers on reforming the National Security System-Database on organized crime.

Sir,

The Government of India had constituted a Group of Ministers to go into the entire gamut of issue pertaining to the National Security System. In para 4.55 of their recommendations, the Group of Ministers have observed as follows:-

4.55 "The Ministry of Home Affairs and all States should maintain an updated data/information base with regard to the activities of the organized crime/mafia networks, smugglers and racketeers. Modalities are already being worked out in MHA for creation of such a database, which may be located in the National Crime Records Bureau (NCRB). The Central Bureau of Investigation is also taking action in this regard. State Governments may be asked to create their respective databases, with arrangements for regular updating. Arrangements should also be made for sharing and exchange of information between the Centre and the States."

2. Instances of some organized crime syndicates having links with inimical foreign agencies have come to light in the recent past. These syndicates, therefore, pose a threat to national security and need to be curbed with a heavy hand. The activities of many organized crime syndicates cut across the State Boundaries. It is necessary therefore to have a Central data base wherein all information about specific organized syndicates is pooled together. The National Crime Records Bureau (NCRB) has been identified as the nodal agency in the Central Government to create/maintain a database on the activities of organized crime syndicates. A software is being developed by NCRB, which will be separately shared with the States. Information received from a variety of sources will be logged on to that database.

3. The State Governments are advised to crate/maintain a similar database will regard to the activities of organized crime syndicates in their State. This may be updated on a regular basis. As indicated above the formats developed by NCRB will be shared separately with the States. The States will need to use the same format to enable sharing of information amongst State and Centre using the common software. Any improvements/suggestions regarding the formats would be useful. The NCRB data base will be available online. The State and the CBI will be expected to update the NCRB database whenever any additional information is available. The protocol for this will be communicated separately by the NCRB.

4. It is requested that the State take action accordingly.

Yours faithfully,

(RITA ACHARYA)

DEPUTY SECRETARY TO THE GOVERNMENT OF INDIA

No.24013/42/2001-GPA,VI

GOVERNMENT OF INDIA

MINISTRY OF HOME AFFAIRS

C.S. Division

New Delhi, Dated the 28th August, 2001.

To

The Home Secretaries
To all States/UT admns.

Sub: Recommendations of a Group of Ministers on reforming the National Security System - Setting up of organized crime units.

Sir,

One of the recommendations of the Group of Ministers on reforming the National Security System is reproduced below:

4.9"Organized Crime Units should be set up in all States. Every State should have a dedicated band of intrepid investigators, prosecutors and special courts, to deal with the challenges of organized and terrorist crimes. The MHA may request State Government to do the needful."

2. Organized crime is emerging as a major challenge to internal security. Criminal gangs involved in organized crime in different States are being used by the Pak ISI to remit fake currency and weapons. These criminals are also involved in kidnapping/extortion, prostitution, trafficking in drugs, hawala and various other criminal activities. It has therefore, become necessary to launch a concerted drive against organized crime. State Governments are advised to set up special units for monitoring; investigating and pursuing organized criminal gangs. These units would be required to co-ordinate with other counterparts in the neighbouring States as well as with the organized crime units at the Central level.

3. A structure of the proposed unit is enclosed. It is suggested that this unit should be a part of the Crime Branch/CID set up in the State. It should also have its presence in the districts by posting at least one officer of the rank of Dy. S.P. in the District Crime Investigation Records/Bureau whose main duty shall be to collect intelligence and to take up verification when entrusted by the Head Office.

4. The proposed unit will be required to perform the following duties:-

a) Maintain a databank on organized criminal gangs/syndicates operating in the State-their affiliations/members.

b) Investigate cases pertaining to organized crime.

c) Pursue the cases up to trial and conviction.

5. The State Governments are requested to inform the Central Government about the action taken in the matter.

Yours faithfully,

(RITA ACHARYA)

DEPUTY SECRETARY TO THE GOVERNMENT OF INDIA

No.24013/42/2001-GPA. VI

GOVERNMENT OF INDIA

MINISTRY OF HOME AFFAIRS

(CS Division)

New Delhi, September 8, 2001

To

The Home Secretaries to all
States/UT Admns.

Sub: Recommendations of Group of Minister of reforming National Security System-Setting up of Organized Crime Units.

Sir,

Reference is invited to this Ministry's letter of even number dated 28th August 2001, on the above mentioned subject in which the State Governments and Union Territory Administrations were advised to set up organized crime units. A structure of the proposed unit was also enclosed.

2. The proposed structure has been scrutinized again with a view to further prune the unit and make it more effective. It is clarified that the Organized Crime Unit will function under the ADG, CID/ADG, Crime. The Organized Crime Unit will, therefore, be headed by a officer of the rank of IGP. It has also been decided that one Research Data Base Unit can serve both the Organized Crime and the Economic Offences Wing. A revised structure with the above amendments is enclosed for adoption.

3. The State Governments are requested to inform the Central Government about the action taken in the matter.

Yours faithfully,

(R.K. Singh)

Joint Secretary to the Government of India

CREATION OF STATE CRIME RECORD BUREAU

The National Police Commission in 1979 recommended creation of a Nodal Agency, which would suggest a common format, for maintenance of Crime-Criminal records at all the Police Stations in the country. The same common format should also be utilized to create shareable databases at Police Stations, districts, States and National level. On this recommendation SCRB was created in 1990. Data section of coordination division of district Police was established.

The following operational software systems were provided by the Director General, Gal, MHA, NCRB, R.K. Puram, South Block -7th. New Delhi to the SCRB, Punjab, Chandigarh to maintained the proper record of crime.

1] CCIS [Crime Criminal Information System].

2] DCR [Daily Crime Report Operational System] [serious Crime].

3] MVCS [Motor Vehicle coordination System [Stolen/Recovered].

4] Fire-Arms [Stolen/Recovered].

5] Talash[Missing/Traced-persons/Wanted/Arrested/Kidnapped/ Deserter/Escapee/Un-identified-person/Un-identified-Dead Body].

6] Fake Counterfeit Currency System.

7] Portrait Building [Sketch].

1. CCIS [CRIME CRIMINAL INFORMATION SYSTEM]

The crime records containing information on Crime, Criminal and Properties are maintained by the police at district, state and national level at District Crime Records Bureau (DCRB), State Crime Records Bureau (SCRB) and the National Crime Records Bureau (NCRB). Crime Criminal Information System (CCIS) provides computerized information storage and retrieval of crime data maintained at district, state and national levels of all crimes. It provides country-wide on-line access to Crime and Criminal Information. CCIS assists the investigation process by providing timely information to investigating officers and Supervisory officers. It also assists the police in linking the past crimes of a criminal to a crime committed by him recently, thereby strengthening their court cases. Besides, it provides greater access to information related to convicts and arrested persons. It enables to link the recovered properties to the cases in which they are stolen, instantly. CCIS helps to maintain data about crime, criminals, properties and results of Investigation, Court Disposal and Appeal.

Data is captured on Integrated Investigation Forms (IIF.s) at Police Station level at different stages of crime cycle. Input forms comprise the revised Integrated Investigation, Court Disposal and Appeal. Forms and certain new forms for recording supplementary information about terrorists, fingerprint data, associates, kidnapped and wanted persons etc.

2. Motor Vehicle Coordination System:[MVCS] [Stolen/Recovered]

All the data of vehicles [Stolen/Recovered]under Section 379 & 411 IPC, entered in this system and very useful to trace out after matching the vehicle data on the National level.

3. Fire- Arms [Stolen /Recovered]

All the data of vehicles [Stolen/Recovered]under Section 379 & 411 IPC, entered in this system and very useful to trace out after matching the Fire-Arms on the National level.

4] Talash[Missing/Traced-persons/Wanted/Arrested/Kidnapped/ Deserter/Escaped/Un-identified-person/Un-identified-Dead Body

All the data of missing persons in all the categories is entered in this system and it is very useful to trace out after matching the missing persons on the National level.

5] Fake Counterfeit Currency System.

All the data of Fake Counterfeit Currency entered in this system.

6] Portrait Building [Sketch]

Portrait Building [Sketch] prepared on the requirement of Investigation Officer of the case in the presence and as suggest by the eye witness. This system is very useful to trace out the accused.

ORGANIZED CRIME HEADS

(To be covered in the Software)

S. NO.	MAJOR HEAD	ACTS	SECTIONS
1.	Theft (Minimum amount 25000/-)	IPC	379, 380, 381, 382
2.	Snatching	IPC	356, 382
3.	Extortion	IPC	384, 385, 386, 387, 388, 389
4.	Robbery/Dacoity by Criminal Tribes	IPC	382, 392, 402
5.	Highway Robbery/Dacoity	IPC	382, 392, 402
6.	Robbery/Dacoity in Bank/ Post office/Insurance Companies/Petrol Pump/ Wine Shop	IPC	382, 392, 402
7.	Other Robbery/Dacoity	IPC	392 to 402
8.	Vehicle Theft/Dacoity	IPC	379, 380, 382
9.	Contract killing	IPC	302
10.	Kidnapping for Ransom	IPC	364, 364-A, 368
11.	Kidnapping for Prosecution	IPC	366, 366-A, 366-B, 372, 373
12.	Kidnapping for begging	IPC	363-A
13.	Prosecution	The Immoral Traffic (Prevention) Act, 1956	All sections (3 to 9)
14.	Contract Eviction/forcible occupation by hired group or professionals.	IPC	447, 448, 452
15.	Terrorist/Militant/Insurgent Activities	IPC	121 to 130
		National Security Act, 1980	All sections
		Unlawful Activities (Prevention) Act (UAPA) 1967	All sections
16.	Illegal Arms Manufacturing selling, smuggling/Explosive related crime	Arms Act, 1959	All sections (25 to 33)
		The Explosive Act, 1884	All sections
		The Explosive Substance Act, 1908	All sections

17.	Illegal immigration/ emigration/Fake Passport/ Visa Racket	IPC	402, 420
		Passport Act, 1967	12
		Emigration Act, 1983	All sections (24)
		Immigration Act	All sections
18.	Fake Credit Card	IPC	463 to 477
19.	Counterfeit Currency/Stamp Papers (Minimum amount 5000/-)	IPC	230 to 263, 489-A to 489-E
20.	Cricket betting	IPC	420
		The Public Gambling Act, 1867	13
21.	Drugs smuggling	NDPS Act, 1985	All sections
	Minimum Quality :- Poppy Husk - 20 kg. Opium - 1/2 kg. Brown Sugar - 5gm. Heroin - 5gm. Ganza - 1/2 kg. Charas - 100gm Hashish - 100gm Psychotropic substance - 1000/-	Prevention of illicit traffic in NDPS Act, 1988	All sections
22.	Dealing in human organs	The transplantation of Human Organs Act, 1994	All sections (18-22)
23.	Crime related to Wild Life Product	Wild Life Protection Act, 1972	All sections
24.	Crime related to Antiquities/ Cultural product	IPC	295
		The Antiquities & Ant Treasures Act, 1972	All sections
25.	Gangs Operating in trains against public	All acts	All sections
26.	Cyber Crime	IT Act	All sections

About Software

Punjab Police Criminal Information System

PPCIS
(for Organized Crime)
Web Site-http/www.ocu.in/

User name & Pass word is supplied to all the units.

Data Collection & feeding:-

i) Data of all persons arrested/declared P.O. under Organized crime head is collected from all units in prescribed data form and centrally fed into this software.

Queries:

Following queries can be done on the Internet related to Organized crime.

i) a) The personal file of criminal can be searched through his name, nickname, father name, address and permanent criminal number (PCN). This is a phonetic search.

b) The personal file gives personal detail (including photographs), crime detail of all cases and associate detail of criminal.

ii) This software can find out all criminal under some specific head and of specific area.

iii) a) This software can find out all criminals under some specific head and of specific area.

b) This software can also from all gangs of particular crime in specific area.

iv) This software search criminals by

a) Modus Operandi
b) Recovery/equipment or arms used
c) Physical particulars

Brief note on Punjab Police Criminal Information System (PPCIS)

Punjab Police Crime Information System (PPCIS), is the software developed by Crime Wing with the technical assistance of IDS InfoTech Limited, a software development company based in Chandigarh.

This software is developed with the objective

(i) For keeping computerized database of all criminals of Organized Crime who have either committed the crime in Punjab or resident of Punjab.

(ii) To maintain electronic history-sheet of such criminals on web so that it is easily available to the authorized users in any corner of world at the click of mouse.

(iii) To recover the criminal information on various search parameters and to generate such reports which may be helpful in detection & prevention of crime.

The salient features of this software are:

(i) It is a web-enabled software.

(ii) It has potential to store and process the criminal information for many years to come.

(iii) It can virtually replace all DCRB & SCRB (District & State Crime Record Bureau) in a much more efficient and effective manner. This will not only result into effective output but lot of manpower saving also.

(iv) This software, if implemented effectively, will revolutionaries the data & research wing of crime detection & prevention.

(v) It has got optimum security features.

The current status of this software is as under: -

(i) It is already developed by IDS Infotech Limited for the Crime Wing and is installed in Crime Wing of PHQ.

(ii) A well-furnished & equipped room is designed and developed by Crime Wing for this purpose.

(iii) The software is already operational in Crime Wing.

(iv) Data of all criminals related with organized crime who are arrested/declared P.O. between January 2004 to till date is uploaded. In this time 6000 criminals are stored in this software.

(v) Two training sessions for Dy. S.P. (D), I/O CIA, CRO & computers operators of all districts of Punjab are held at PHQ. Around 200 persons are trained on various aspects of collection of data and use of software.

(vi) Many senior Supdt. of Police & other senior police officers have seen the functioning of this software and have appreciated it for being useful for crime detection.

Punjab Police Crime Information System (PPCIS) is the software developed by Crime Wing.

This software is developed with the objective

(i) For keeping computerized database of all criminals of Organized Crime who have either committed the crime in Punjab or resident of Punjab.

(ii) To maintain electronic history-sheet of such criminals on web so that it is easily available to the authorized users in any corner of world at the click of mouse.

(iii) To recover the criminal information on various search parameters and to generate such reports which may be helpful in detection & prevention of crime.

Easy and round the clock accessibility to the data base by field officers is key to the success of this data base. The potential of this software (PPCIS) can be realized only if the database is hosted on the web site. This will enable field officers to access the data of criminals from anywhere, wherever the Internet is available. This will increase the utility of this software manifold. This will cut down on the cost of maintenance of the replica of this software and database in each district separately in terms of man power, Computer and other Hardware.

The safety of the database will be ensured by providing separate user name and passwords to each specific group of users. This will check the unauthorized access to the database. This user name and password will be change periodically to check misuse of it.

The estimated cost of hosting the database on the web will be nearly Rs.16,500/- for the 1st year, which includes (Web Space, Uploading services and Domain Name registration). Some Senior Suprientendents of Police have agreed to sponsor this cost for the first year.

Financial Requirements: -

(i) This software is developed by IDS Infotech Limited, a software firm based in Chandigarh.

This software development work is done by this company through its four (4) software/network professionals working for nearly two and half months (2-1/2 months) continuously.

Since this development work is done as goodwill gesture by the company due to personal rapport with Senior Police Officer they have only projected the administrative charges (including pay of professionals) as cost of software. On further request they have charged only Rs. 1,50,000/- as the cost of software development.

Looking into the type of software, its scope, its technology (development language) and resources used for development of his software, the amount projected is a nominal amount.

Worthy DGP has initially sanctioned Rs. 60,000/- for PPCIS development Rs.2, 000/- is already used for training purpose.

It is therefore requested that Rs. 92000/- may be further sanctioned from some fund to meet the cost of software development.

(iii) For optimum utilization of this software, it is required to be hosted on web. For this purpose web site (dynamic) hosting services are required to be obtained from market.

As per our assessment for initial few years (5 years) a web space of 1000 MB, Bandwidth of 10GB, 24 Hrs. FTP access, ASP.NET Service, MS SQL & 100% uptime for Windows Web Hosting.

As per market survey, this facility will cost nearly Rs. 2500/- per month for hiring.

Therefore it is also requested that a regular sum of Rs. 2500/- per month (Rs. 30,000/- per year) may be sanctioned for making this software web-enabled.

PUNJAB POLICE CRIMINAL INFORMATION SYSTEM

PPCIS

(FOR ORGANIZED CRIME)

Punjab Police Crime Information System (PPCIS) is the software developed by Crime Wing.

This software is developed with the objective

(i) For keeping computerized database of all criminals of Organized Crime who have either committed the crime in Punjab or resident of Punjab.

(ii) To maintain electronic history-sheet of such criminals on web so that it is easily available to the authorised users in any corner of world at the click of mouse.

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The safety of the database will be ensured by providing separate user name and passwords to each specific group of users. This will check the unauthorized access to the database. This user name and password will be change periodically to check misuse of it.

The estimated cost of hosting the database on the web will be nearly Rs.l6,500/- for the 1st year, which includes (Web Space, Uploading services and Domain Name registration). Some Senior Supdts. of Police have agreed to sponsor this cost for the first year.

Problem Faced By PPCIS

1. Data are not sent by districts regularly and in time.

   (Note:-Data are required to be sent in prescribed data forms by 10th of next month on monthly basis)

2. Data of many arrested persons/P.O. of Organized crime are not sent by district.

3. Data forms are not filled properly specially:

   - Modus Operandi
   - Identity Mark
   - Recovery Details
   - Associate Details

4. Photographs of arrested persons are missing.

5. We do not have suf1icient computer operator for feeding data.

Index No. ☐

DATA FORM

(To be filled by field unit in Punjab)

(for persons arrested or declared P.O.)

(A) Case Detail

1. Major Head under which accused is arrested/declared P.O. _____

2. a) FIR No. _____

b) Dated _____

c) Police Station _____

d) District _____

e) State _____

2. U/S

Section	Act

Index No. ☐

(B) Arrested Person/P.O. Detail

Photo

Status

☐ Arrested

☐ P.O.

1. Name _____

2. Alias _____

_____

3. Father/Husband Name _____

_____

4. Present Address _____

_____

PS_____ Distt._____

State_____

5. Permanent Address _____

PS_____ Distt._____

State_____

6. Age_____ Date of Arrest/declaring P.O. _____

7. Sex _____ (M / F)

8. Height (in ft. & inch.) _____

9. Complexion _____

(very fair, fair, wheatish, dark)

10. Built _____

(fat, average, thin)

11. Facial appearance _____

(clean shave, mullah fashion, sikh)

12. Any Identity Mark _____

13. Role played in organized _____

Crime Gang

Index No. ☐

(C) CRIME DETAIL

1. Place of occurrence of Crime

i) _____

_____

PS_____ Distt._____

State_____

ii) _____

_____

PS_____ Distt._____

State_____

2. Modus Operandi

_____

_____

_____

_____

_____

3. Recovery Detail

Article	Quantity	Number/Identification detail

4. Arms/Vehicle/Other equipment used for committing Crime

Arms/Vehicle/Equipment	Detail

Index No. ☐

(D) SUSPECTS/GANG MEMBERS IN

INTERROGATION REPORT

☐

Status

☐ Suspect in Interrogation Report

1. Name _____

2. Alias _____

3. Father/Husband Name _____

4. Present Address _____

_____

PS_____ Distt._____

State_____

5. Permanent Address _____

_____

PS_____ Distt._____

State_____

6. Age _____

(as on date of arrest of main accused)

7. Sex _____(M/F)

8. Height

(in ft. & inch) _____

9. Complexion _____

(very fair, fair, wheatish, dark)

10. Built _____

(fat, average, thin)

11. Facial appearance _____

(clean shave, mullah fashion, sikh)

12. Any Identity Mark _____

13. Role played in organized Crime Gang _____

CHAPTER NO. 15

MISCELLANEOUS

TOPICS

CRUELTY

AGAINST

ANIMALS

From

The Addl. Director General of Police,
Crime, Punjab, Chandigarh

To

All Distt. Sr. Supdt. of Police,
Punjab & AIG/GRP/Punjab, Patiala

No. 5391-615/CR-2 Dated, Chg. the: 25-02-08

Memo:-

In continuation to this office circular order No. 7 dated 10-06-02, memo. No. 19203-26/CR-2 dated 21-10-05 and No. 28244-68/CR-2 dated 28-11-07 on the subject noted above.

2. The Animal Welfare Board of India has issued guidelines/instructions vide its memo. No. 32/3/08-A47/470 dated 22-01-08 to all Dy. Directors (Animal Husbandry), in the State of Punjab for its implementation of various Animal Welfare Acts. Apart from the instructions issued by Department of Animal Husbandry, Fisheries & Dairy Development, Punjab the following guidelines/instructions are required to be implemented by the Police Deptt.

You are therefore, directed that the following guidelines /instructions be complied with:

1. Implementation of various clauses of the Acts Viz., The Punjab Prohibition of Cow Slaughter Act, 1956 and The Prevention of Cruelty to Animal Act, 1960.

2. The Police in the districts shall conduct surprise raids on the suspected places from where illegal transportation of Animals takes place.

3. The sales tax and excise check posts/barriers on the interstate borders must keep proper record of the Health/Export Certificates and get it verified from the concerned Deputy Director, Animal Husbandry for checking the genuineness of these certificates.

4. The SSsP should give certificates to the police personnel taking special interest in curbing the menace of cruelty to animals inflicted by the traders during transportation. Exemplary work done by any police official in this regard should be recorded in the annual confidential report (s), so as to give a boost to the police force and reward to the dedicated officials.

5. The police should conduct surprise raids at the slaughter houses in your districts to check illegal slaughter of Cow, OX or its progeny as provided under the Cow Slaughter Act.

6. The police should follow cases of violation of cow slaughter act, wholeheartedly so as to ensure exemplary punishments for the violators in the courts.

7. The Dy. Commissioners should hold monthly meetings of civil and police officers under their control to review the implementation of these Acts.

for Addl. Director General of Police,
Crime, Punjab, Chandigarh.

No. 5795/CR-2 Dated, Chg. the : 26-02-08

A copy of the above is forwarded to the Principal Secy. to Govt. of Punjab, Deptt. of Home Affairs & Justice (Home-VI Branch), Chandigarh w.r.t. his memo. No. 12/12/20-4H(6)/95 dated 28-01-2008 for information please.

for Addl. Director General of Police,
Crime, Punjab, Chandigarh.

From

The Addl. Director General of Police,
Crime, Punjab, Chandigarh.

To

All Districts SSsP in Punjab

No. 3344-67/CR-2 Dated CHG 4-2-09

Subject **Stopping of inhumane and illegal killing / sacrifices of Cows/Calves. Camels and other animals on the occasion of Bakri-id.**

Memo.

Enclosed herewith please find a copy of D.O. letter No. 79/2008- PCA dated 5-12-08 received from D. Rajasekar , IFS, Secretary, Animal Welfare Board of India, Ministry of Environment and Forests Govt. of India, Chennai regarding stopping of inhuman and illegal killing/sacrifices of Cows/Calves, Camels and other animals on the occasion of Bakri-id for necessary action in future on similar occasions.

for Addl. Director General of Police,
Crime, Punjab, Chandigarh.

D.O letter No. 79/2008-PCA dated 5th December, 2008

D. RAJASHEKAR, IFS
Secretary

Sir, Madam,

Subject:- Stopping of inhumane and illegal Killing/sacrifices of Cows/calves, Camels and other animals on the occasion of Bakri-id-Reg.

It is brought to the notice that the Bakrid festival is going to be celebrated on 9th December, 2008 all over the country. It is a fact that large number of animals are being slaughtered on the eve of Bakrid festival.

As you may be kindly aware that cruelty to any animal is a punishable offence under the Prevention of Cruelty to Animals Act, 1960 and amended in 1982 and violation of Articles 48, 48(a) and 51 A(g) of the Constitution of India.

As far as slaughter of camels are concerned, Camel is a desert living animal, native and accustomed to live in Rajasthan and other semi-arid regions and not a native of the Peninsular States. They are brought here with lot of physiological stress on foot and made to travel near about 2000 Kms by foot on hard surface only for the purpose of slaughter. Mostly camels are starved and not given water, food and medicine care etc as required in Animals Transportation Rules, 2001 and are subjected to cruelty as defined in the Prevention of Cruelty of Animals, 1960 and as amended in 1982, as they are ultimate brought with sole object of slaughter alone.

All the camels brought here are without a valid transportation permit and necessary health certificate as required by the law of Transportation of Animals. A direction be given to authorities concerned to seize all the illicitly transportation camels without valid transport permit and requisite health certificate for transport by foot immediately and hand over the same to Society for Prevention of Cruelty to Animals, Blue Cross, People for Animals and other places as per Transportation Rules.

There are no trained butchers available for slaughter of camel and no pre-designed slaughter house facilities in any of the States, as required under Slaughter House Rules. Tremendous cruelty is to be done at the time of open road slaughter and animals is bled in road and open places for slaughter that mentally affects the people in the area and the animals is not

given its due dignity even at the time of its affects the people in the area and the animal is not given due dignity even at the time of its last moments. Hence, the directions be given to the Commissioners Municipal Corporations, Collectors, Director General of Police, Superintendent of all the States to follow the Rules prescribed in accordance with the slaughter House Rules.

In slaughter, a Veterinary Doctor is to certify the post and ante mortem of an animal and also certify to pass it fit for human consumption. A direction be given to Secretary, Animal Husbandry and Director, Animal Husbandry Department to testify certifying the camel fit for human consumption. There is no licensed trader who can sell camel meat. All the Commissioners Municipality be given a direction to submit the list of licensed shops who can sell CAMEL MEAT. It cannot be sold commercially in open places as per the Municipality Act itself. There are various cases pending for final disposal in various courts for violation of the above said rules.

May I therefore, request you to kindly take all precautionary measures to strictly implement the animal laws for stopping illegal killing of animals during Bakrid and direct all the authorities concerned to take stringent action against the offenders violating the animal laws.

Action taken in this regard may kindly be intimated to the Board.

Yours truly,

(D.Rajasekar)

To

The Chief Secretaries of all the States.
The Director Generals of Police of all the States.
The Directors, Animal Husbandry Department of all the States.
The Commissioner of Police, Chennai.

INSURANCE CLAIM MATTERS OF MOTOR VEHICLES

ਸਰਕੂਲਰ ਆਰਡਰ ਨੰਬਰ ਟ 62/2003

ਧਾਰਾ 158(6) ਮੋਟਰ-ਵਹੀਕਲ ਐਕਟ-1988 ਅਨੁਸਾਰ ਹਾਦਸਿਆਂ ਦੇ ਅਜਿਹੇ ਕੇਸਾਂ ਜਿੰਨਾ ਵਿੱਚ ਕਿਸੇ ਵਿਅਕਤੀ ਦੀ ਮੋਤ ਹੋ ਗਈ ਹੋਵੇ, ਜਾਂ ਉਸ ਨੂੰ ਸਰੀਰਕ ਸੱਟ ਵੱਜੀ ਹੋਵੇ ਦੀ ਇਤਲਾਹ ਪੁਲਿਸ ਅਫਸਰ ਵੱਲੋ ਦਰਜ ਕਰਨ ਉਪਰੰਤ ਜਾਂ ਇਸ ਸਬੰਧੀ ਕਾਰਵਾਈ ਮੁਕੰਮਲ ਹੋਣ ਉਪਰੰਤ, ਉਸ ਥਾਣੇ ਦਾ ਮੁੱਖ ਅਫਸਰ ਇਤਲਾਹ ਦਰਜ ਹੋਣ ਤੋ ਜਾਂ ਅਜਿਹੀ ਕਾਰਵਾਈ ਦੀ ਰਿਪੋਰਟ ਮੁਕੰਮਲ ਹੋਣ ਤੋ ਜਿਵੇ ਵੀ ਹੋਵੇ, 30 ਦਿਨਾਂ ਦੇ ਅੰਦਰ-ਅੰਦਰ ਉਸਦੀ ਇੱਕ ਕਾਪੀ ਇਲਾਕੇ ਦੇ ਕਲੇਮ ਟ੍ਰਿਬਿਊਨਲ ਅਤੇ ਇੱਕ ਕਾਪੀ ਸਬੰਧਤ ਇੰਨਸਿਊਰੈਸ (ਇੰਨਸਿਊਰੈਸ ਕੰਪਨੀ) ਨੂੰ ਭੇਜੇਗਾ, ਅਤੇ ਅਜਿਹੇ ਕੇਸਾਂ ਜਿੰਨਾ ਵਿੱਚ ਇੱਕ ਕਾਪੀ ਗੱਡੀ ਦੇ ਮਾਲਕ ਦਿੱਤੀ ਗਈ ਹੋਵੇ, ਉਹ ਵੀ ਅਜਿਹੀ ਰਿਪੋਰਟ ਪ੍ਰਾਪਤ ਹੋਣ ਤੇ 30 ਦਿਨਾਂ ਦੇ ਅੰਦਰ-ਅੰਦਰ ਉਸਦੀ ਇੰਤਲਾਹ ਅਜਿਹੇ ਕਲੇਮ ਟ੍ਰਿਬਿਊਨਲ ਜਾਂ ਇੰਨਸਿਊਰਰ ਨੂੰ ਦੇਵੇਗਾ।

ਇਸ ਦਫਤਰ ਦੇ ਧਿਆਨ ਵਿੱਚ ਆਇਆਂ ਹੈ, ਕਿ ਉਕੱਤ ਧਾਰਾ ਦੀ ਥਾਣੇ ਮੁੱਖ ਅਫਸਰਾਂ ਵੱਲੋ ਪਾਲਣਾ ਨਹੀ ਕੀਤੀ ਜਾਂ ਰਹੀ। ਜਿਸ ਕਾਰਨ ਇੰਨਸਿਊਰੈਸ ਕੰਪਨੀਆਂ ਨੂੰ ਕਰੋੜਾਂ ਦਾ ਹਰਜਾਨਾ ਝੱਲਣਾ ਪੈ ਰਿਹਾ ਹੈ। ਇਸ ਲਈ ਉਕੱਤ ਧਾਰਾ ਦੀ ਇੰਨ-ਬਿੰਨ ਪਾਲਣਾ ਕੀਤੀ ਜਾਵੇ।

ਵਾ:ਐਡੀਸਨਲ ਡਾਇਰੈਕਟਰ ਜਨਰਲ ਪੁਲਿਸ,
ਕਰਾਇਮ ਪੰਜਾਬ, ਚੰਡੀਗ੍ਹੜ।

ਨੰਬਰ 13450-78/ਸੀ.ਆਹ-2 ਮਿਤੀ 19-06-03

ਉਕੱਤ ਦਾ ਉਤਾਰਾ ਹੇਠ ਲਿਖਿਆਂ ਨੂੰ ਸੂਚਨਾ ਅਤੇ ਜਰੂਰੀ ਕਾਰਵਾਈ ਹਿੱਤ ਭੇਜਿਆਂ ਜਾਂਦਾ ਹੈ:-

1. ਸਮੂਹ ਰੇਂਜ ਡੀ.ਆਈ.ਜੀਸ, ਪੰਜਾਬ।
2. ਸਮੂਹ ਸੀਨੀਅਰ ਪੁਲਿਸ ਕਪਤਾਨ, ਪੰਜਾਬ।

ਵਾ:ਐਡੀਸਨਲ ਡਾਇਰੈਕਟਰ ਜਨਰਲ ਪੁਲਿਸ, ਕਰਾਇਮ ਪੰਜਾਬ। ਚੰਡੀਗ੍ਹੜ।

From

The Addl. Director General of Police,
Crime, Punjab, Chandigarh.

To

All Districts SSsP in Punjab and
AIG, GRP, Patiala

No. 17298-322/CR/LA-3 dated Chandigarh 3.7.08

Subject Writ petition (Civil) No. 14 of 2008 - General Insurance Council and others Vs State of Punjab and others.

Memo.

Please refer to the subject cited above.

2 General Insurance Council and others have filed above petition in the Hon'ble High Court, para 25(iv) of which read as follows :-

"It has been the common refrain of Insurance Companies that the police station fails to inform the Insurance Company about the recovery of the vehicle although it is clearly mandated in the statute as well as in Amba Lal Desai's Judgment wherein this Hon'ble Court has been pleased to observe that when an insured vehicle is recovered then the Insurance Company has to be informed accordingly. However, the same is not complied with and due to non information to the Insurance Company, the vehicle continues to languish in the police station for months together with the Insurance Company completely unaware of the same by which time it is already reduced to scrap".

In the above light, the petitioners have prayed for the issuance of the necessary writ, direction or order to ensure the implementation of the procedure laid down in Section 451 and 457 of the Cr.P.C. and also by the Hon'ble Supreme Court of India in the case of Sunderbhai Ambalal Desai Vs. State of Gujarat reported in 2002 (10) Supreme Court cases 283, relating to release of insured/recovered vehicles which had been stolen.

3. In view of the above, you are directed to ensure that the direction issued by the Hon'ble Supreme Court of India in the case of Sunderbhai Ambalal Desai Vs. State of Gujarat reported in 2002 (10) Supreme Court cases 283, relating to release of recovered/insured vehicles from police custody to the insurance Companies under the provision of Section 451/457 CrPC be complied with in letter and spirit.

for Addl. Director General of Police,
Crime, Punjab, Chandigarh.

UNDER TRIAL

PRISONERS

ਵੱਲੋ

ਐਡੀਸਨਲ ਡਾਇਰੈਕਟਰ ਜਨਰਲ ਪੁਲਿਸ,
ਕਰਾਇਮ ਪੰਜਾਬ, ਚੰਡੀਗੜ੍ਹ।

ਵੱਲ

ਸਮੂੰਹ ਕਮਿਸ਼ਨਰ ਪੁਲਿਸ, ਪੰਜਾਬ।
ਸਮੂੰਹ ਸੀਨੀਅਰ ਪੁਲਿਸ ਕਪਤਾਨ, ਪੰਜਾਬ।

ਨੰ: 13177-203/ਸੀ.ਆਰ-6 ਮਿਤੀ ਚੰਡੀਗੜ੍ਹ 7-7-10

ਵਿਸਾ: ਹਵਾਲਤੀਆਂ ਨੂੰ ਪੇਸੀਆਂ ਸਬੰਧੀ ਗਾਰਦ ਮੁਹਈਆਂ ਕਰਾਉਣ ਸਬੰਧੀ।

ਯਾਦ ਪੱਤਰ:

ਵਿਸਾ ਉਪਰੋਕਤ ਦੇ ਸਬੰਧ ਵਿੱਚ।

ਵਿਸ਼ਾ ਉਪਰੋਕਤ ਦੇ ਸਬੰਧੀ ਡੀ.ਜੀ.ਪੀ/ਜੇਲ੍ਹਾਂ ਨੇ ਧਿਆਨ ਵਿੱਚ ਲਿਆਂਦਾ ਹੈ ਕਿ ਪੰਜਾਬ ਜੇਲ ਬੰਦੀਆਂ ਦੇ ਮਾਨਯੋਗ ਅਦਾਲਤਾਂ ਵਿੱਚ ਸਮੇ ਬੱਧ ਤਰੀਖ ਪੇਸ਼ੀ ਤੇ ਹਾਜ਼ਰ ਨਾਂ ਹੋ ਸਕਣ ਦੀ ਸਮੱਸਿਆਂ ਦੇ ਵਿਸਥਾਰ ਸਬੰਧੀ ਨਿਰਣਾ ਲੈਣ ਲਈ ਪੰਜਾਬ ਦੀਆਂ ਮਹੱਤਵਪੂਰਨ ਜੇਲ੍ਹਾਂ ਦੇ ਸੁਪਰਡੰਟਾਂ ਨੂੰ ਪੁਲਿਸ ਗਾਰਦ ਨਾਂ ਮਿਲਣ ਕਾਰਨ ਬੰਦੀਆਂ ਦੀਆਂ ਮਿਸ ਹੋਈਆਂ ਪੇਸ਼ੀਆਂ ਦੇ ਵੇਰਵੇ ਦੱਸਣ ਲਈ ਕਿਹਾ ਗਿਆ ਸੀ । ਇਸ ਸਬੰਧੀ ਅੰਕੜਾ ਸਮੱਸਿਆ ਦੇ ਕਾਫੀ ਗੰਭੀਰ ਹੋਣ ਦਾ ਸੰਕੇਤ ਕਰਦਾ ਹੈ, ਕਿਉਕਿ 12 ਤੋ 65 ਹਵਾਲਾਤੀ ਮਿੱਥੀ ਤਾਰੀਖ ਨੂੰ ਅਦਾਲਤਾਂ ਵਿੱਚ ਪੇਸ਼ ਨਹੀ ਹੋ ਸਕੇ । ਹਵਾਲਾਤੀਆਂ ਦੀਆਂ ਸਮੱਸਿਆਂ ਦੇ ਨਾਲ-ਨਾਲ ਵਿਭਾਗ ਦੇ ਕ੍ਰਮਚਾਰੀਆਂ ਨੂੰ ਵੀ ਮਾਨਯੋਗ ਅਦਾਲਤ ਵੱਲੋ ਤਨਖਾਹ ਬੰਦ ਕਰਨ ਵਰਗੀਆਂ ਸਜਾਵਾਂ ਝੇਲਣੀਆਂ ਪੈਦੀਆਂ ਹਨ । ਜਿਆਦਾਤਰ ਸਮੇ ਡਾਕਟਰ ਦੀ ਸਲਾਹ ਤੇ ਬਿਮਾਰ ਬੰਦੀਆਂ ਨੂੰ ਜੇਲ ਦੇ ਕ੍ਰਮਚਾਰੀਆਂ ਨਾਲ ਹੀ ਹਸਪਤਾਲ ਭੇਜਣਾ ਪੈਦਾ ਹੈ । ਇਹ ਪ੍ਰਕਿਰਿਆਂ ਰੂਲਾਂ ਦੇ ਵਿਰੁੱਧ ਹੈ ਅਤੇ ਬੰਦੀਆਂ ਦੇ ਫਰਾਰ ਹੋਣ ਦੇ ਮਾਮਲਿਆਂ ਸਬੰਧੀ ਕ੍ਰਮਚਾਰੀ/ਅਧਿਕਾਰੀ ਕਿਸੇ ਡਿਊਟੀ ਵਿੱਚ ਘਾਟ ਕਾਰਣ ਵਿਭਾਗੀ ਕਾਰਵਾਈ ਹੋਣ ਦੇ ਭੈ ਵਿੱਚ ਰਹਿੰਦੇ ਹਨ, ਹਾਲਾਂ ਕਿ ਉਹਨਾਂ ਦੀ ਡਿਉਟੀ ਨਹੀ ਬਣਦੀ ।

ਇਸ ਲਈ ਉਪਰੋਕਤ ਸਮਸਿਆਂ ਨੂੰ ਮੱਦੇਨਜਰ ਰੱਖਦੇ ਹੋਏ, ਸਮੂੰਹ ਜਿਲ੍ਹਾਂ ਕਮਿਸ਼ਨਰ ਪੁਲਿਸ/ਐਸ.ਐਸ.ਪੀ ਪੰਜਾਬ ਨੂੰ ਹਦਾਇਤ ਕੀਤੀ ਜਾਦੀ ਹੈ, ਕਿ ਸੁਪਰਡੰਟ ਜੇਲ੍ਹਾਂ ਦੀ ਲੋੜ ਅਨੁਸਾਰ ਹਵਾਲਾਤੀਆਂ ਦੀਆਂ ਪੇਸ਼ੀਆਂ ਭੁਗਤਨ ਜਾਂ ਹਪਸਤਾਲ ਲਿਜਾਣ ਸਮੇ ਗਾਰਦ ਮੁਹੱਈਆ ਕਰਵਾਈ ਜਾਵੇ ।

ਵਾਸਤੇ ਐਡੀਸਨਲ ਡਾਇਰੈਕਟਰ ਜਨਰਲ ਪੁਲਿਸ,
ਕਰਾਇਮ ਪੰਜਾਬ।

ਨੰਬਰ: 13204-05/ਸੀ.ਆਰ-6 ਮਿਤੀ 7-7-10

ਉਪਰੋਕਤ ਦਾ ਉਤਾਰਾ ਹੇਠ ਲਿਖਿਆਂ ਨੂੰ ਸੂਚਨਾਂ ਹਿੱਤ ਜਾਂਦਾ ਹੈ:-

1. ਪ੍ਰਮੁੱਖ ਸਕੱਤਰ ਪੰਜਾਬ ਸਰਕਾਰ, ਗ੍ਰਹਿ ਮਾਮਲੇ ਤੇ ਨਿਆਂ ਵਿਭਾਗ(ਜੇਲ੍ਹਾਂ ਸਾਖਾ) ਨੂੰ ਉਹਨਾਂ ਦੇ ਦਫਤਰ ਦੇ ਯਾਦ ਪੱਤਰ ਨੰ:1/179/10-4ਜੇ/2896 ਮਿਤੀ 11-6-10 ਦੇ ਹਵਾਲੇ ਵਿੱਚ।

2. ਡਾਇਰੈਕਟਰ ਜਨਰਲ ਪੁਲਿਸ, ਜੇਲ੍ਹਾਂ ਪੰਜਾਬ, ਚੰਡੀਗੜ੍ਹ।

ਵਾਸਤੇ ਐਡੀਸਨਲ ਡਾਇਰੈਕਟਰ ਜਨਰਲ ਪੁਲਿਸ,
ਕਰਾਇਮ ਪੰਜਾਬ।

ਵੱਲੋਃ

ਐਡੀਸਨਲ ਡਾਇਰੈਕਟਰ ਜਨਰਲ ਪੁਲਿਸ,
ਕਰਾਇਮ ਪੰਜਾਬ, ਚੰਡੀਗ੍ਹੜ।

ਵੱਲਃ

ਸਮੂੰਹ ਕਮਿਸ਼ਨਰ ਪੁਲਿਸ, ਪੰਜਾਬ।
ਸਮੂੰਹ ਸੀਨੀਅਰ ਪੁਲਿਸ ਕਪਤਾਨ, ਪੰਜਾਬ।

ਨੰਬਰਃ 15286–311/ਸੀ.ਆਰ–6 ਮਿਤੀ ਚੰਡੀਗੜ੍ਹ 5–8–10

ਵਿਸਾਃ ਪੰਜਾਬ ਰਾਜ ਦੀਆਂ ਜੇਲਾਂ ਦੇ ਅੰਡਰ ਟਰਾਈਲਜ ਨੂੰ ਅਦਾਲਤਾਂ ਵਿੱਚ ਪੇਸ ਕਰਨ ਲਈ ਪੁਲਿਸ ਵਿਭਾਗ ਵੱਲੋ ਪ੍ਰਮਾਨੈਂਟ ਸਟਾਫ ਲਗਾਉਣ ਸਬੰਧੀ।

<u>ਯਾਦ ਪੱਤਰ</u>

ਵਿਸ਼ਾ ਉਪਰੋਕਤ ਦੇ ਸਬੰਧ ਵਿੱਚ।

ਵਿਸ਼ਾ ਉਪਰੋਕਤ ਦੇ ਸਬੰਧ ਪੰਜਾਬ ਸਰਕਾਰ, ਗ੍ਰਹਿ ਮਾਮਲੇ ਤੇ ਨਿਆਂ ਵਿਭਾਗ ਦੇ ਨੋਟਿਸ ਵਿੱਚ ਡੀ.ਜੀ.ਪੀ ਜੇਲਾਂ ਪੰਜਾਬ ਨੇ ਲਿਆਂਦਾ ਹੈ, ਕਿ ਮਾਨਯੋਗ ਅਦਾਲਤ ਵਿੱਚ ਸਮੇ–ਸਮੇ ਸਿਰ ਕੈਦੀਆਂ ਨੂੰ ਪੇਸ਼ ਨਾਂ ਕਰਨ ਕਾਰਨ ਸੁਪਰਡੰਟ ਜੇਲ ਦੀ ਸੇਲਰੀ ਮਾਨਯੋਗ ਅਦਾਲਤ ਵੱਲੋ ਅਟੈਚ ਕੀਤੀ ਜਾਂਦੀ ਹੈ । ਜੱਦ ਕਿ ਸੁਪਰਡੰਟ ਜੇਲਾਂ ਵੱਲੋ ਸਮੇ ਸਿਰ ਗਾਰਦ ਭੇਜਣ ਲਈ ਸਬੰਧਤ ਐਸ.ਐਸ.ਪੀ ਨੂੰ ਲਿਖਿਆਂ ਹੁੰਦਾ ਹੈ, ਅਤੇ ਕਿਸੇ ਮੁਸ਼ਕਿਲ ਕਰਕੇ ਉਨਾਂ ਵੱਲੋ ਪੇਸ਼ੀਆਂ ਭੁਗਤਾਉਣ ਲਈ ਗਾਰਦ ਨਹੀ ਭੇਜੀ ਜਾਂਦੀ । ਜਿਸ ਦੇ ਸਿੱਟੇ ਵਜੋ ਬੰਦੀ ਨੂੰ ਅਦਾਲਤ ਵਿੱਚ ਪੇਸ਼ ਨਹੀ ਕੀਤਾ ਜਾਂਦਾ ਤਾਂ ਸੁਪਰਡੰਟ ਜੇਲਾਂ ਦੀ ਕੋਈ ਜਿੰਮੇਵਾਰੀ ਨਹੀ ਹੁੰਦੀ । ਪਰ ਫਿਰ ਵੀ ਲੋਅਰ ਕੋਰਟ ਵੱਲੋ ਅਫਸਰ ਦੀ ਸੈਲਰੀ ਅਟੈਚ ਕਰ ਦਿੱਤੀ ਜਾਦੀ ਹੈ, ਜੋ ਕਿ ਨਿਆਂ ਸੰਗਤ ਨਹੀ ਹੈ । ਉਪਰੋਕਤ ਨੂੰ ਮੁੱਖ ਰੱਖਦੇ ਹੋਏ ਇਸ ਸਬੰਧੀ ਸਰਕਾਰ ਨੇ ਪੱਤਰ ਨੰਃ 1/86/04–2ਜੇ/1133 ਮਿਤੀ 5–5–05 ਰਾਹੀ ਪੇਸ਼ੀਆਂ ਭੁਗਤਾਉਣ ਲਈ ਜਿਲ੍ਹਾ ਪੁਲਿਸ ਵੱਲੋ ਹੀ ਸਮੇ–ਸਮੇ ਸਿਰ ਲੋੜੀਦੀ ਗਾਰਦ ਮੁਹੱਈਆ ਕਰਵਾਉਣ ਲਈ ਹੁਕਮ ਕੀਤੇ ਹਨ, ਅਤੇ ਇਹ ਵੀ ਹੁਕਮ ਕੀਤੇ ਹਨ, ਕਿ ਹਵਾਲਾਤੀਆਂ ਨੂੰ ਅਦਾਲਤਾਂ ਵਿੱਚ ਪੇਸ਼ ਕਰਨ ਲਈ ਸੁਪਰਡੰਟ ਜੇਲ੍ਹ ਵੱਲੋ ਇੱਕ ਦਿਨ ਪਹਿਲਾਂ ਦੱਸੇ ਅਨੁਸਾਰ ਸਟਾਫ/ਵਹੀਕਲ ਜੇਲ੍ਹਾਂ ਨੂੰ ਸਮੇ–ਸਮੇ ਮੁਹੱਈਆ ਕਰਵਾਉਣ ਦੀ ਜਿੰਮੇਵਾਰੀ ਸਬੰਧਤ ਜਿਲ੍ਹਾ ਪੁਲਿਸ ਦੀ ਹੋਵੇਗੀ, ਜੇਕਰ ਪੁਲਿਸ ਗਾਰਦ ਨਾ ਦਿੱਤੇ ਜਾਣ ਕਾਰਨ ਕੋਈ ਹਵਾਲਾਤੀ ਕਿਸੇ ਅਦਾਲਤ ਵਿੱਚ ਸਮੇ ਸਿਰ

ਨਾਂ ਪੇਸ਼ ਕੀਤਾ ਗਿਆ ਤਾਂ ਸਬੰਧਤ ਜਿਲ੍ਹਾ ਦਾ ਪੁਲਿਸ ਸੁਪਰਡੰਟ (ਹੈਡਕੁਆਟਰ) ਇਸ ਕੁਤਾਹੀ ਲਈ ਨਿੱਜੀ ਤੌਰ ਤੇ ਜਿੰਮੇਵਾਰ ਸਮਝਿਆ ਜਾਵੇਗਾ । ਜਿਸ ਨੂੰ ਆਪਣਾ ਸਪੱਸ਼ਟੀਕਰਨ ਸਬੰਧਤ ਅਦਾਲਤ ਵਿੱਚ ਪੇਸ਼ ਕਰਨਾ ਹੋਵੇਗਾ ।

ਇਸ ਲਈ ਉਪਰੋਕਤ ਨੂੰ ਮੱਦੇਨਜਰ ਰੱਖਦੇ ਹੋਏ, ਸਮੂੰਹ ਜਿਲ੍ਹਾ ਕਮਿਸ਼ਨਰ ਪੁਲਿਸ/ਐਸ.ਐਸ.ਪੀ ਪੰਜਾਬ ਨੂੰ ਹਦਾਇਤ ਜਾਂਦੀ ਹੈ ਕਿ ਪੰਜਾਬ ਸਰਕਾਰ ਦੀਆਂ ਹਦਾਇਤਾਂ ਜੋ ਪੱਤਰ ਨੰ: 1/86/04-2ਜੇ/1132-33 ਮਿਤੀ 5-5-2005 ਰਾਹੀ ਜਾਰੀ ਕੀਤੀਆਂ ਗਈਆਂ ਹਨ, ਦੇ ਅਨੁਸਾਰ ਸੁਪਰਡੰਟ ਜੇਲ੍ਹਾਂ ਦੀ ਮੰਗ ਅਤੇ ਲੋੜ ਅਨੁਸਾਰ ਹਵਾਲਾਤੀਆਂ ਦੀਆਂ ਅਦਾਲਤਾਂ ਵਿੱਚ ਪੇਸ਼ੀਆਂ ਲਈ ਸਮੇ-ਸਮੇ ਸਿਰ ਸਟਾਫ/ਵਹੀਕਲ ਮੁਹੱਈਆ ਕਰਵਾਏ ਜਾਣ । ਪੁਲਿਸ ਗਾਰਦ ਨਾਂ ਦਿੱਤੇ ਜਾਣ ਕਾਰਨ ਕੋਈ ਹਵਾਲਾਤੀ ਕਿਸੇ ਅਦਾਲਤ ਵਿੱਚ ਸਮੇ ਸਿਰ ਪੇਸ਼ ਨਾਂ ਕੀਤਾ ਗਿਆਂ ਤਾਂ ਸਬੰਧਤ ਜਿਲ੍ਹੇ ਦਾ ਪੁਲਿਸ ਸੁਪਰਡੰਟ ਹੈਡਕੁਆਟਰ ਇਸ ਕੁਤਾਹੀ ਲਈ ਜਿੰਮੇਵਾਰ ਹੋਵੇਗਾ । ਇਹਨਾਂ ਹਦਾਇਤਾਂ ਦੀ ਇੰਨ-ਬਿੰਨ ਪਾਲਣਾ ਕੀਤੀ ਜਾਵੇ ।

ਵਾਸਤੇ ਐਡੀਸਨਲ ਡਾਇਰੈਕਟਰ ਜਨਰਲ ਪੁਲਿਸ,
ਕਰਾਇਮ ਪੰਜਾਬ।

ਨੰਬਰ: 15312-13/ਸੀ.ਆਰ-6 ਮਿਤੀ 5-8-10

ਉਪਰੋਕਤ ਦਾ ਉਤਾਰਾ ਹੇਠ ਲਿਖਿਆਂ ਨੂੰ ਸੂਚਨਾਂ ਹਿੱਤ ਜਾਂਦਾ ਹੈ:-

1. ਪ੍ਰਮੁੱਖ ਸਕੱਤਰ ਪੰਜਾਬ ਸਰਕਾਰ, ਗ੍ਰਹਿ ਮਾਮਲੇ ਤੇ ਨਿਆਂ ਵਿਭਾਗ (ਜੇਲ੍ਹਾਂ ਸਾਖਾ) ਨੂੰ ਉਹਨਾਂ ਦੇ ਦਫਤਰ ਦੇ ਯਾਦ ਪੱਤਰ ਨੰ:1/86/04-2ਜੇ/3062 ਮਿਤੀ 25-6-10 ਦੇ ਹਵਾਲੇ ਵਿੱਚ।

2. ਡਾਇਰੈਕਟਰ ਜਨਰਲ ਪੁਲਿਸ, ਜੇਲ੍ਹਾਂ ਪੰਜਾਬ, ਚੰਡੀਗੜ੍ਹ।

ਵਾਸਤੇ ਐਡੀਸਨਲ ਡਾਇਰੈਕਟਰ ਜਨਰਲ ਪੁਲਿਸ,
ਕਰਾਇਮ ਪੰਜਾਬ।

AUDIO

VIDEO

PIRACY

AUDIO-VIDEO PIRACY CASES
&
COPYRIGHT ACT, 1957

Important Provisions

Section 63.Offence of infringement of copyright or other rights conferred by this Act –

Any person who knowingly infringes or abets the infringement of –

(a) the copyright in a work, or

(b) any other right conferred by this Act, except the right conferred by Section 53A

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees.

Provided that where the infringement has not been made for gain in the course of trade or business the court may, for adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

Explanation – Construction of a building or other structure which infringes or which, if completed would infringe the copyright in some other work shall not be an offence under this section.

Infringement of Copyright

Sec 51.When copyright infringed- Copyright in a work shall be deemed to be infringed-

(a) when any person, without a license granted by the owner of the copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a license so granted or of any condition imposed by a competent authority under this Act –

i. does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright, or

ii. permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright; or

(b) when any person –

i. makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or

ii. distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or

iii. by way of trade exhibits in public, or

iv. imports into India

any infringing copies of the work:

Provided that nothing in sub-clause (iv) shall apply to the import of one copy of any work, for the private and domestic use of the importer.

Explanation – For the purposes of this section, the reproduction of a literary, dramatic, musical or artistic work in the form of a cinematograph film shall be deemed to be an 'infringing copy'.

Section-68A. Any person who publishes a sound recording or a video film in contravention of the provisions of **Section 52A** shall be punishable with imprisonment which may extend to three years and shall also be liable to fine.

Section-52A. **Particulars to be included in sound recording and video films** – (1) No person shall publish a sound recording in respect of any work unless the following particulars are displayed on the sound recording and on any container thereof, namely:-

(a) the name and address of the person who has made the sound recording;

(b) the name and address of the owner of the copyright in such work; and

(c) the year of its first publication

(2) No person shall publish a video film in respect of any work unless the following particulars are displayed in the video film, when exhibited, and on the video cassette or other container thereof, namely:-

(a) if such work is cinematograph film required to be certified for exhibition under the provisions of the Cinematograph Act, 1952 (37 of 1952), a copy of the certificate granted by the Board of Film Certification under section 5A of that Act in respect of such work;

(b) the name and address of the person who has made the video film and a declaration by him that he obtained the necessary license or consent from the owner of the copyright in such work of making such video film; and

(c) the name and address of the owner for the copyright in such work.

63B. Knowing use of infringing copy of computer programme to be an offence –

Any person who knowingly makes use on a computer of an infringing copy of a computer programme shall be punishable with imprisonment for a term which shall not be less than seven days but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:

Provided that where the computer programme has not been used for gain or in the course of trade or business, the court may, for adequate and special reasons to be mentioned in the judgement, not impose any sentence of imprisonment and may impose a fine which may extend to fifty thousand rupees.

64. Power of Police to seize infringing copies – (1) Any police officer, not below the rank of a sub-inspector, may, if he is satisfied that an offence under section 63 in respect of the infringement of copyright in any work has been, is being, or is likely to be, committed, seize without warrant, all copies of the work, and all plates used for the purpose of making infringing copies of the work, wherever found, and all copies and plates so seized shall, as soon as practicable, be produced before a Magistrate.

(2) Any person having an interest in any copies of a work, or plates seized under sub– section (1) may, within fifteen days of such seizure, may can application to the magistrate for such copies or plates being restored to him and the Magistrate, after hearing the applicant and the complainant and making such further inquiry as may be necessary, shall make such order on the application as he may deem fit.

Important points during Investigation and preparation of Charge Sheet

Most of the crimes are committed under Section 63 of the Copyright Act. The following are the important points required to be kept in mind during investigation and preparation of charge sheet:

1 The Author of any literary work has the right to lodge complaint of any infringement under the Copy Right Act. It is the first requirement of the Law to record his statement. If for any reasons, the Author is not possible to reach, it is required to record the statements of the General/Special Power of Attorney Holders appointed by him to represent in the case and to bring it on record on the file.

2 It is mandatory to get such Power of Attorneys attested as per the provisions contained in the Indian Evidence Act. Statements of both the executants of the Power of Attorney and the Witnesses should be recorded under Section 161 Cr.P.C. to make them admissible as valid legal documents. Notary Public is not authorized to attest such documents.

3 In case of Registered Documents, the attested copies need to be obtained from the concerned office and should be attested by recording the statement of the concerned employee under Section 161 Cr.P.C. to make them admissible legal documents.

4 Similarly, in many cases, the literary work is got registered with the concerned authorities. In such eventualities Copy Right Certificate is issued by the authority. It is important to get such Copy Right Certificate attested from the said authority by recording the statement of the said employee who issues the certified copy under Section 161 Cr.P.C.

5 The acid test for conviction under the Copy Right Act is that the goods/articles impounded are fake copies of the original. In many instances, the Investigating Officer(s) obtain the Test Reports from the complainant itself, which are not admitted as judicial evidence in court of law for the prime reason of having being produced by the interested party. Therefore, it is advisable to obtain the Test Report(s) from the Government recognized Test Laboratories / Forensic Sciences Laboratory, which is an acceptable evidence in the Court under Section 293 Cr. P.C. and is presentable without calling for the personal presence of the Expert issuing such Test Report. On the contrary, if the report is arranged by the plantiff, it is required to be testified in the Court by the agency issuing the same. Many a times, the respondent party corroborates with the expert agency and desist them from giving personal testimony for evidence.

6 As per the provisions contained in Section 64(1) of the Copyright Act, it is required that the investigation of the case be conducted by an officer of the rank of Sub-Inspector only. It has been observed that initially the investigation is conducted by the Sub-Inspector and later on the police file is handed over to sub-ordinate officer, who is not competent to hold such investigation. This anomaly results in weakening of the prosecution case and the accused gets benefits in getting released.

7 It is desired to present the exhibits seized in the case before the court on priority. Any delay in the same benefits the accused persons.

8 The Seizure Memo is also found to be incomplete in many cases thereby benefiting the accused person.

9 Ownership/Tenancy/Occupation of the premises from where the seizure has been made, needs to be established and all the requisite evidence in this regard need to obtained and certified by the I.O.

10 It is required for establishing the charge under section 68A of the Copyright Act to mention in the Seizure Memo and Statements of the witnesses recorded under Section 161 Cr. P.C. that the seized CDs/Films etc. do not carry any information mandatorily required under Section 52A of the Copyright Act.

CERTAIN LEGAL ISSUES TO BE KEPT IN CONSIDERATION IN PIRACY CASES

1 In cases of Unauthorized public exhibition of films on Video Cassettes/ Public Video CDs/DVDs without obtaining any license or written permission from the owner of the copyright

Section 64 contemplates only seizure of copies which are infringing copies of the work and does not authorize to seize the Television Sets, Amplifiers, speakers, Video Cassette/Video/CD/DVD Players and other apparatus. Therefore if there is a contravention of provisions of Section 52A, then the action to the extent mentioned in Section 64 can be taken.

Cases referred to:

Surajmal Jain v. State of Orissa 1989 C.L.J.1960

Cinemaster (A Division of Asiavision Entertainment Pvt. Ltd.) v. State of Gujarat 2010 (4) R.C.R. (Criminal) 950 (Gujarat)

2 Powers of the Magistrate

The Magistrate even after taking cognizance cannot direct any Police Officer to effect Seizure. It is the domain of the Police Officer alone to effect seizure. If there is any anomaly, it is for the Legislature to mend it.

Cases referred to:

Sk.Zaharul Islam v. Umakanta Khadiratna, 1992 Criminal Law Journal, 1869

3 Payment for obtaining Police help

Assistance of Police for protection of private interest- If the petitioners want certain police assistance for protection and preservation of their private interest, they are bound to make such payment. When a complaint is lodged by an aggrieved party before the Police Authority and the Police Authority on its own takes action as per its convenience and availability of time and manpower, in that case, such Police Authority may not ask for any payment from the aggrieved party. However, when at the behest of such aggrieved party, immediate action is taken and that too instead of any public interest, the only object is to protect private interest, such party is bound to make the payment for taking such police assistance.

Cases referred to:
Cinemaster (A Division of Asiavision Entertainment Pvt. Ltd.) v. State of Gujarat 2010 (4) R.C.R. (Criminal) 950 (Gujarat)

REPORT OF

THE COMMITTEE

ON

PIRACY

Preface

The idea to set up a committee to suggest measures to combat various forms of piracy, namely, films, video, cable and music piracy emerged during the 27'" State Information Ministers' Conference held in New Delhi on 5th December, 2009 which was attended by, among others, Information Ministers of various State Governments as well as representatives of the film industry. The Honourable Minister of Information and Broadcasting, Smt. Ambika Soni, appreciating that piracy is one of the biggest challenges to the integrity of the film and broadcasting industry, immediately set up a broad based committee comprising representatives from film and broadcasting industry.

The Indian film industry is the largest in the world in terms of the number of films produced in various languages. It also contributes to the exchequer in the form of various Central and State taxes. As per a study, the economic impact of the Indian film industry is estimated at about rupees 7000 crore (about USD1.5 billion) which is about 0.13% of GDP (2008-09). Most importantly, it is a huge and the most preponderant source of entertainment to the Indian masses who consume it in various ways including in cinema theaters, through television, home video rentals and sell-throughs and now through the Internet as well. Indian cinema is being increasingly exported not only for consumption by the Diaspora but also mainstream audiences all over the world. There is no doubt that in the years to come, the reach of Indian cinema globally would increase manifold. Indian cinema is our 'soft power' and out best messenger to the world about our culture, tradition, civilization, our progress, our potential and our ambitions. Indian cinema showcases our rich and varied tradition and culture which has many more 'buyers' today than ever before. It is, therefore, imperative that the people who contribute towards its creation are rewarded and compensated adequately. It is from this point of view that piracy ought to be fought at all levels and by all means so as to ensure rewards not merely to the producers but to lyricists, music creators, composers, performers and everyone else associated with the creation of cinema.

That piracy in films has today assumed alarming proportions is not in doubt. Piracy is manifested when violation of the Copyright Act takes place, and while the Copyright Act is a Central legislation, its implementation is with the State Governments. Piracy, therefore, can be tackled only by adopting a multi-pronged and multi-layered approach which has been discussed at length in the Report.

I would like to thank all the members of the expert committee, all personalities of great eminence, who found time from their busy schedules to attend the meetings of the Committee and for having contributed so meaningfully and passionately.

On behalf of the members of the Committee, I have the pleasure in presenting the Committee's Report to the Honourable Minister of Information & Broadcasting, Smt. Ambika Soni.

Uday Kumar Varma
Chairperson
Committee on Piracy

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Chapter-1

Executive Summary

1.1 The Committee is of the view that the problem of piracy ought to be seen through the prism of demand and supply. A lasting solution to this malaise is rooted in reducing and possibly eliminating both the demand for pirated content and supply of the same. It is, fundamentally, an economic problem which has also degenerated into a social evil and needs such instruments of policy and practice, which makes piracy substantially risky and financially unattractive.

1.2 The Committee appreciates the present level of media campaign against piracy but recommends that a far more intensive, effective and all encompassing multi-media campaign involving all the stakeholders from film, broadcasters and music industry should be launched. Both Government and private sector should work in tandem to make the media campaign effective. Iconic personalities including from film and media should appear in advertisements asking people to refrain from buying pirated goods. These campaigns could be carried on Doordarshan/AIR and private TV channels and private FMs.

1.3 The level of sensitization of police, judicial and administrative officials about the Copyright Act needs to be substantially up-scaled and their training and capacity building in this regard needs to be further strengthened in order to curb its violations which result in piracy.

1.4 In order to manage the supply side, the Committee is of the firm belief that the problem of piracy can be effectively solved by correcting the gap in demand and supply which can be achieved by releasing films simultaneously or as near, simultaneously, across platforms, geographies and formats.

1.5 In the Committee's considered view, the content creators, rights holders, distributors, optical disc manufacturers and theatre/multiplex operators need to come together and come up with cost effective solutions, inter-alia, converting traditional theatres in smaller towns into digital theatres and releasing genuine DVDs etc. in bigger cities simultaneously with theatrical release in order to make piracy unviable.

1.6 The price of legitimate Optical Discs need to be brought down in order to make filmed entertainment accessible to the people at a price that they can afford. Further, measures need to be undertaken to ensure high fidelity in genuine DVDs so as to dissuade the public from buying pirated versions. Steps have to be taken by DVD manufacturers along with rights holders and content distributors to ensure that there is no compromise with the quality of genuine DVDs sold and that the viewer is not short-charged.

1.7 In order to buttress the supply side, traditional 35mm screens should be converted into digital ones so as to facilitate simultaneous release of films across the country as also reduce distribution costs. Digitalization of screens, which has already taken roots in the country with the setting up of almost 3000 such screens, needs to be given impetus.

1.8 The Committee has taken note of recent industry initiatives like setting up "Alliance Against Copyright Theft (AACT)", the Committee recommends that such initiatives, if multiplied and intensified, will supplement other efforts to curb piracy.

1.9 The Committee also recommends that State Governments may enact legislations so as to provide for preventive detention of video & audio pirates as had been done in some States like Tamil Nadu and Maharashtra. Video pirates may also be brought under the definition of the Goondas under Goonda Act.

1.10 In order to plug piracy from the cinema hall during screening of the film, the responsibility should be cast on the theatre/multiplex operators to ensure that viewers do not carry a cam cording device inside the theatre. This may be made a condition of license granted to theatres and multiplexes by the district authorities.

1.11 The Committee also recommends that Sections 63 & 63A of the Copyright Act may be amended so as to do away with the provision for a lesser sentence in situations where Copyright has not been infringed for "gain in the course of trade or business".

1.12 The Committee also recommends that the option of allowing copyright owners to register with the Copyright Office online should be explored. Alternatively, "censor" certificate granted by CBFC should be treated as evidence of copyright.

1.13 The Committee recommends amendments in the Cable Television Networks Act in order to replace the existing system of registration of cable operators with the licensing system.

1.14 The Committee recommends that the Internet Service Providers should be roped in to check Internet piracy by asking them to initiate action against errant subscribers. In this regard, the Committee recommends that the three stage strike model may be adopted.

1.15 The Committee is not in favour of Optical Disc legislation because its implementation will involve the same enforcement agencies who are already stretched while enforcing other extant laws on piracy. There is stronger merit in having one single comprehensive legislation to fight piracy rather than numerous legislations with weak enforcement.

Chapter 2

2.1. Piracy-An Introduction

2.1.1 Piracy refers to "the activity of manufacturing unauthorized copies of protected material and dealing with such copies by way of distribution and sale.

2.1.2 Wikipedia recognises "piracy" as copyright infringement and defines "copyright infringement (or copyright violation) as the unauthorized or prohibited use of works covered by copyright law, in a way that violates one of the copyright owner's exclusive rights, such as the right to reproduce or perform the copyrighted work or to make derivative works". Very simply, piracy can be defined as illegal sharing and consumption of content for which the consumer or the person who has shared such content has not paid anything, a part of which accrues to the copyright owner of the content. In other words, the remittance from such consumption has not been passed on to the copyright owner. In the context of Internet, piracy is a two-step process, namely, illegal "upload" of content on to an illegitimate platform (by the user originating online piracy) and “download” of this pirated content (by the end-user consuming this content) thus completing this piracy chain. Likewise, in the case of Video Compact Disc (VCD) & Digital Video Disc (DVD) piracy, the illegal replication and duplication of VCDs/DVDs as well as the activities of distribution, selling and consumption of such VCDs and DVDs amount to piracy. There could also be cable television piracy whereby the cable operator plays VCDs/DVDs illegally for viewing by his subscribers for which he has not bought copyright from the rights holder. It is necessary to define piracy comprehensively so as to establish the extremely wide nature of its tentacles. It is a very profitable business model which cuts into the revenues of the legal owners of content (film, music, etc) and Government (namely, Central Government, State Governments, local authorities) and limits consumption and viewer choice in terms of providing poor quality of audio and video content. The authors/owners of content also suffer economically because the buyers (of rights) factor in lower collections/realizations at the time of buying content/rights.

2.2 Piracy - International Dimension

2.2.1 One of the biggest problems of the entertainment industry that the world is grappling with is piracy. It is by far the biggest threat which brings losses to the entertainment industry. Piracy is a trans-national activity and not a localized phenomenon and today about 5% of the world trade depends on piracy and pirated products, according to some estimates. It is reported that the level of piracy in countries like China, Indonesia and Malaysia is over 50 per cent. In countries like Singapore, Hong Kong and South Korea it is 10 per cent to 15 per cent as per some reports. In India, Philippines & Thailand it is 25 per cent to 50 per cent.

2.3 Piracy in India

2.3.1 According to the International Federation of Phonograph Industry (IFPI), Indian entertainment industry is valued at USD 120 million. As per a study by a body, India accounts for about 4% of the total pirated sales in the world.

2.3.2 A study conducted by National Productivity Council, sponsored by M/o HRD, GOI, shows that piracy in India is worth USD 82 million, consisting of 23% of total sales of recorded copyright products, which is about 4% of world trade and these products include books, movies, sound track, computer programmes, Internet, cable, television and illegal copying (http://copyright.gov.in/)

2.3.3 As per a report by the US-India Business Council (USBC) and the US Chamber of Global Intellectual Property Centre, piracy and counterfeiting deprive the Indian entertainment sector of about Rs. 16,000 crore or almost 40% of potential annual revenues as well as around 820,000 jobs and losses to the industry from the trade in illegal CDs, DVDs, music downloads and cable television account for 38% of total potential sales. As per a report, about 50% of the music sold and 60% of the movies sold are pirated. Piracy, is thus an impediment to a faster growth of the film industry.

2.3.4 The FICCI-KPMG Report 2009 has estimated the loss at about Rs. 2000 crore annually due to piracy in the case of filmed entertainment.

2.3.5 It is quite clear from the above that there are wide variations in computation of piracy losses. The Indian entertainment industry predominantly consists of films and music, piracy of which are allegedly rampant. As stated earlier, piracy is an extremely profitable business model consisting of production, distribution and finally consumption of illegally replicated/duplicated/uploaded content without paying anything for the content. As it consists of a host of illegal economic activities, it is perhaps very difficult to quantify it. The various manifestations of piracy cannot be over-emphasized.

Chapter 3

3.1 Forms of Piracy

3.1.1 Piracy, as we have defined and understood in the earlier Chapter amounts to, in the Indian context, violation of Copyright Act, 1957. Copyright Act is one of the several Acts covering what are popularly called 'Intellectual Property Rights' (IPRs). The various Indian legislations covered under the genre of IPRs are the Indian Patent Act, 1970, Trade Marks Act of1999, Design Act of 1999, Semiconductor Integrated Circuits Layout Design Act of 2000, Protection of Plant Varieties Act 2001, and Bio Diversity Act of 2002. Thus, Copyright Act is one of the several Acts in the domain of IPRs, whose ultimate objective is to provide adequate remuneration to the owners and authors of intellectual property that define some facets of economic activity. The Copyright Act covers literary, dramatic and musical works along with cinematograph films, sound recordings and software. The mandate of this Committee is limited to recommending measures to combat video, cable and music piracy. Therefore, the discussions in the Report would revolve around different facets of illegal dissemination and consumption of filmed entertainment.

3.1.2 Piracy of filmed entertainment takes place in several forms. Some of the prominent ones are video, cable and Internet piracy. Video piracy includes DVD piracy.

3.2 Video Piracy

3.2.1 The advent of video technology in the early 1990s brought to India large scale replication of VCDs of films, which eventually spilled over to include the cable television network as well. With the proliferation of computers and DVD 'burners', which can easily be fitted into a computer, the replication/duplication/burning of DVDs has become very easy. If it is carried out on a larger scale using burning towers or large scale commercial grade replicators, it is possible to produce thousands of illegal DVDs at a little cost because no royalty is required to be paid for the film or music content stored in the DVD. Only the cost of DVD and the cost of a few replicators/burners are incurred. Later, these are sold to entertainment hungry masses at a very high premium which in fact is much lower than the cost of a legal DVD. The price differential can be as high as Rs. 25 to 40 per DVD. It is, therefore, a high rewards business. It entails very little risk because piracy is very low down in the list of various other illegal activities,

viz., bootlegging, gambling, prostitution and various other heinous criminal activities. It is, therefore, very low in terms of priority in the radar of law enforcement agencies. It is for this reason that piracy is referred to as low risk high reward venture. *As* per a study on Copyright piracy in India conducted by National Productivity Council (sponsored by Ministry of HRD), the size of video piracy in India was about Rs. 140 crore in 1999.

3.3 Cable Piracy

3.3.1 Cable TV piracy also entails screening of films by the local cable/channel operator who has not been authorized to telecast it and therefore does not incur any cost with respect to royalty payments. With the proliferation of illicit DVDs coupled with a huge demand for hit 'Bollywood' films as also films in regional languages, there is a huge incentive for the cable operator to earn huge profits by telecasting the DVDs thereby infringing both the Copyright Act and Cable Television Networks Regulation Act. Cable operators indulge in cable piracy by telecasting house viewing DVDs/VCDs, infringed (pirated copies) optical discs and cam cord recordings from theatres. This, according to some reports, is also popular among many hotels, particularly in smaller towns and satellite towns of metros. As per a study by National Productivity Council (sponsored by Ministry of HRD), the size of cable piracy was about Rs. 100 crore in 1999.

3.4 Piracy in Broadcasting Sector

3.4.1 In so far as piracy in the broadcast sector is concerned, under reporting alleged to be one of the most important factors contributing towards piracy, according to Study on the Socioeconomic Dimension of the Unauthorized Use of Signals - Part II: Unauthorized Access to Broadcast content-Cause and effects: A Global Overview by Screen Digest, London, on behalf of WIPO. This is on account of the analogue cable network where it is almost impossible to verify the actual number of subscribers except by physical checks and a subscriber base is arrived at by backward calculation on the basis of an agreed revenue return from an area. There could also be access of broadcast signals of pay channels of DTH operators either by carriage of signals by cable operators or otherwise. As per CASBAA estimates, the losses to the industry from under-declaration in India in 2008 was about 1.1 billion USD. Piracy in the broadcast sector in India is mostly unauthorized telecast of films and music as, discussed under Cable Piracy.

This as discussed in the ensuing report is on account of non-availability of entertainment to vast parts in the country at an affordable price or delayed availability.

3.5 Internet Piracy

3.5.1 Internet piracy has made it possible to access any audio and video content, which is available in digital format and can be accessed by any computer which is connected to Internet. Thus, it has made piracy 'invisible'. Internet piracy involves downloading the unauthorized material from websites as well as peer to peer (P2P) file sharing. These files can be compressed further and copied to a mobile phone from a computer or directly from the internet. As per one report, Bollywood hit film "Kameenay" is estimated to have been downloaded over 350,000 times on Bit Torrent, with around two thirds of these downloaders located in India. Music industry's greatest challenge apparently is Internet piracy. According to IFPI Digital Music Report 2009, globally about 95% of music tracks are downloaded without payment to the artists or music-company that produced them. As per the FICCI-KPMG Report 2010, music sold in physical formats such as audio cassettes and compact discs are facing volume de-growth. As per FICCI-KPMG Report on Media & Entertainment 2010, there are estimated to be 500 million mobile phones in India, of which about 45 per cent are capable of music transfers. With the imminent 3G roll out, we are at the cusp of an Internet revolution in the country. With increasing speeds of broadband available, it will be much easier to undertake all kinds of film piracy over the Internet.

3.6 Eco System of Piracy

3.6.1 In the foregoing sections, we have discussed how the films are reproduced viz. by burning/duplicating/replicating of DVDs and by uploading on the internet and also how piracy is consumed in the form of pirated DVDs and illegal downloading from websites or P2P file sharing over computer. The question does remain as to what is the source of the content which is duplicated or uploaded. There are various sources, some of which are discussed below. Traditional source has been to create one illegal copy from 35 mm celluloid print while in transit. The second source of making an illegal copy is a film processing laboratory. The third source is copying it illegally digitally from a digital print of the film while the film is in the hands of the distributor/exhibitor. The fourth source is illegally cam cording the

film while it is being screened in a cinema theatre which is said to be rampant in smaller towns and satellite towns of metros. Cam cording can also be done in hotels where the film is being screened or shown. Lastly, it is possible to "rip" a legitimate DVD of protective code by use of software. It is difficult to pin down as to which is the most important and the biggest source of pirated content in the Indian context. The various possible ways in which film piracy takes place is shown in Annex B.

3.6.2 The menace of piracy has increased manifold over the years and is set to explode on the face of the Internet revolution, which is no doubt about faster and easier dissemination and accessibility of all forms of content to the consuming masses. The bigger challenge is how to ensure an optimum remuneration for owners and authors of content while at the same time ensuring that the masses do not go content-hungry, which shall be discussed in the subsequent parts of the Report.

Chapter 4

Gist of Deliberations of the Committee

4.1 Piracy-its various dimensions

4.1.1 Members of the Committee were of the opinion that the problem of piracy emanates from the gap in demand and supply of filmed entertainment products and services which is met by pirated versions of CDs, DVDs and digitally through the medium of Internet. The mode of piracy has over the last thirty years evolved from CDs to DVDs and finally Internet piracy.

4.1.2 Pirates, taking advantage of disruptive innovations in technology have evolved a very sophisticated network to undertake piracy and are ahead of the law enforcement agencies in dissemination of pirated audio and video content. The members were of the view that piracy has become a 'low risk high reward' economic activity and thus the money generated through piracy is suspected to be used for funding terrorism and terrorist activities.

4.1.3 Members of the Committee were of the opinion that normally, in respect of an Indian film, most of the revenues accrue in the initial few weeks of its release. However, the biggest dent to their potential revenues is affected from pirated versions which are sold in physical format and even downloaded from various illegal websites during this period only. After the initial few weeks, any action that is taken against the pirates by the police is irrelevant and futile because by that time the damage has already been done. The problem is of enormous nature as one film or the other is released almost every Friday religiously.

4.1.4 Finally the members of the Committee were of a general opinion that the provisions of the law are adequate; however, these need to be enforced more effectively and in a more concerted fashion.

4.1.5 A representative from the Motion Picture Association (MPA), which is an association of Hollywood Studios was allowed to make a presentation before the Committee with respect to their studies and findings concerning piracy in India. According to them, the ultimate source of pirated DVDs/VCDs of films as well as all the films appearing on the Internet on various illegal websites is cam cording which essentially means recording a film illegally, in a cinema theatre while it is being run. This could be done either with the connivance of the theatre owners in smaller towns/sub-

urban towns or even sometimes without the knowledge of the theatre owners. As the cam cord captures the film digitally, it becomes the source of manufacturing counterfeit optical disc and also for being uploaded on the Internet. A study was commissioned by Motion Picture Dist. Association (India) Pvt. Ltd. from July to mid-September 2009 to examine the extent of cam cord piracy in India. The study monitored major Hindi theatrical films released during this period and as per the findings, 100% of surveyed Hindi films released were illegally camcorder and pirated copies made from camcorder recordings were available within an average of 2.15 days after first legitimate theatrical showing. The details of the study are at Annex C.

4.2 **Views & Recommendations of Industry Members**

4.2.1 The members were of the opinion that Government must take steps to combat piracy effectively by making policing very strict and by confiscating and destroying equipment used for producing pirated goods. The number of *suo-moto* raids by the police need to be increased.

4.2.2 One of the members was of the opinion that Government should consider imposing a nominal tax on blank CDs/DVDs with a view to trailing the blanks so as to check the flourishing gray market. An-other member was of the view that there should be an audit of blank DVDs/ CDs being manufactured by companies. The manufacturers of blank DVDs would be required to file a periodical return with the Government which would contain, interalia, information on the buyers of the blank DVDs. This would enable the Government to keep a track of small and petty" factories", who burn blank DVDs and record content thereon, which is not paid for. Manufacturers could be encouraged to use digital encryption or passwords so as to encrypt the content.

4.2.3 One of the members felt that all old films should be registered with the Copyright Office so as to clearly establish the ownership of rights in respect of a film. He was also of the opinion that the license of a cable operator should be made renewable and it should be renewed every year stipulating, inter alia, that the cable operator has not indulged in piracy in the previous year.

4.2.4 Establishment and shops licenses involved in the sale or renting of DVDs, should be renewed every year and in case of copyright violation the same should not be renewed. Shops and Establishment Act should provide

that every DVD parlour is required to maintain a register containing details of persons to whom they sell or rent out the DVDs/CDs, which are potential sources of piracy.

4.2.5 The role of film processing laboratories and cinema theatres being the fount of film piracy should be examined by the film industry.

4.2.6 Internet Service Providers (ISPs) should be made liable for downloading of pirated material by subscribers. Some members were of the view that websites hosting pirated content should be blocked. It is very important that the Internet Service Providers (ISPs) are also roped in to fight piracy. A list of ISPs, as provided by one of the members, is at Annex D. Top pirate destination websites, including, P2P sites and software are provided in Annex E.

4.2.7 Stringent punishment should be given to those found uploading (the originator of piracy) and downloading (the end consumer) film content through online illegitimate platforms.

4.2.8 The representatives of MPA submitted that three stage model for checking Internet piracy should be adapted, as in other countries. During the first stage, notice should be sent to whoever downloads pirated content. At the second stage, some more vigorous action should be taken; while at the third stage, the Internet connection of the subscriber should be disconnected for a few hours.

4.2.9 Copyright registrations should be, done when censorship certificate is issued by the regional Central Board of Film Certification offices. This is an imperative requirement as very few films have registered copyright owners with the Copyright Office which creates problem when the matter goes to courts and police, as these authorities ask for evidence of the Copyright ownership while registering the complaint, during proceedings and enquiry. Alternatively, registration of copyright could be made mandatory and online.

4.2.10 Some of the members were of the opinion that we should enact an anti cam cording legislation, which should preferably be a Central legislation. This should be drafted keeping in view similar legislations prevalent in other countries.

4.2.11 The Committee was of the unanimous opinion that public awareness, should be increased about piracy and therefore, media campaign needs to be launched so that people do not buy pirated goods. They felt that piracy should be a part of school curriculum. All members of the public, law enforcement agencies and the members of the judiciary should be educated about the ill-effects of piracy, which, interalia, robs the stake holders, Government and authors of content and right owners of legitimate revenue and provides unlimited resources to terrorists.

4.2.12 A Call Centre/Helpline should be set up which should be run by members of the industry and advertisements through multi-media should be given as below:-

DIAL----------FOR PROVIDING INFORMTION REGARDING PIRATED CDs/DVDs.

This message could be recorded in the nearest police stations for further action.

4.2.13 All the stake-holders-of the film industry, broadcasters, FM Radio Operators should come together and put up a united fight against piracy. Film piracy should not be seen merely as a problem of the film producer or content producer alone.

4.2.14, Piracy should be included as one of the offences in. the Goonda Act legislations enacted by the State Governments, as in the case of Tamil Nadu & Maharashtra.

4.2.15 According to some members, Optical Disc legislation should be put in place which would help in controlling production of DVDs containing pirated content

4.2.16 Intellectual Property (IP) Courts with special IP judges should be set up to expedite piracy related offences under the Copyright Act.

4.2.17 A corpus fund should be created for fighting piracy and industry should contribute towards it.

Chapter 5

Recommendations of the Committee

5.1 Multi-Media Campaign

5.1.1 The Committee is of the firm view that the only effective bulwark against piracy is to create public awareness in the long run because they are both the consumers as well as passive participants in the various processes relating to piracy. Only when people refrain from consuming pirated goods and services, would the demand for the same reduce. This, in turn, would come about as a result of making the people aware about the deleterious effects of piracy on the economy and their lives as well as on account of the fear that they cannot escape 'the clutches of piracy related laws. The Committee, therefore, recommends that an effective and all encompassing multi-media campaign should be carried out involving all the stakeholders from film and music industry. For the media campaign to be effective, both Government and private sector should work in tandem. Iconic film personalities may appear in advertisements asking people to refrain from buying pirated and counterfeit goods and services delineating its ill-effects. These campaigns could be carried on Doordarshan as well as private television channels. The Committee strongly feels that unless and until a concerted message, involving the entire value chain associated with bringing music and filmed entertainment to the doors of the consumer, is sent out to the public, this media campaign may not yield the desired results. The media campaign must be designed intelligently to harp on this issue.

5.1.2 Pamphlets and Comic books, highlighting harmful effects of piracy, may be published by film and music industry bodies in association with the Education Departments of various State Governments for free distribution in all schools, private or Government. This would provide the children with inputs regarding piracy, its various forms and its deleterious effects on economy and society.

5.2 Sensitizing Government Agencies

5.2.1 The Committee also feels that the Copyright Act and its violations which result in piracy, should be a part of curriculum of all officials of police and judiciary as well as administrative officers of the Central and State Governments. This could be done by designing suitable courses on the subject which could form part of the curriculum while the officers are getting

entry level training as well as during mid-career programmes. Suitable communication needs to be sent to all concerned in this regard.

5.3 Role of Industry

5.3.1 The Committee is of the firm belief that the problem of piracy can be solved ultimately only by correcting the imbalance in supply and demand in films and music. So long as there is a considerable gap in the timing of a film release in metro cities vis-a-vis smaller towns and on television through cable and satellites or Internet; the problem of piracy would be very difficult to tackle. Further, as long as there is a substantial price difference between the price at which the filmed entertainment is made available to the masses and the price at which the masses can afford to consume the same, the problem of piracy will continue to plague the society. It is, therefore, imperative that the film industry needs to look at the age-old practice of releasing films in smaller towns after a few weeks (generally ranging from 4-6 weeks) from its release in metros. The practice of sale of DVD/VCD and cable and satellite rights after a few weeks of its theatrical release too needs to be reviewed. The film producer, the distributor, the exhibitor, the broadcaster, the video parlour owner, the Internet Service Providers (ISP), all need to speak in a united voice and ensure that the releases are done simultaneously across platforms, geographies and formats so as to reach people in all comers of the country at the same time. The gains accruing on account of the "windowing strategy" adopted by rights owners, which entails release of DVDs etc. after 4-6 weeks of theatrical release is perhaps offset by the loss on account of piracy of optical discs. Though the timing of DVD release or release over C&S (cable and satellite) is purely a commercial decision, the Committee would like to request the members of the film industry value chain to consider simultaneous release because at least in the process, they would get additional revenues on account of genuine sales which in any case is presently not accruing to them due to sale of pirated DVDs and telecast of pirated DVDs over cable television. This would effectively help in combating the menace of piracy, as far as timing is concerned. An innovative business model needs to be worked out by the stakeholders in this respect which will ensure to them remunerative accruals also. The Committee was apprised of action taken by Korean and Hong Kong distributors whereby they have initiated the practice of releasing high quality DVDs even before its release in USA in respect of Hollywood films, at lower costs and with additional tracks/options. Clearly, providing value at the same cost would go a long way in keeping films buffs on the right side of law.

5.3.2 Also, the price of legitimate DVDs/VCDs should be brought down by the rights holders as well as the manufacturers of optical discs working together, like the case of a particular company which was brought to the notice of the Committee. This too needs an innovative business model so as to ensure optimum profitability for both the rights holders and the manufacturers of optical discs. The stakeholders could leverage the continuously evolving technologies and faster and more efficient dissemination of both audio and video content so as to bring down the unit price of "content".

5.3.3 Further, in this regard it was brought to the notice of the Committee that the quality of legal and genuine DVDs sold in India do not cater to the discerning fan and fail to provide high quality entertainment in terms of good picture quality and theatrical audio experience. The film director's vision, as seen in the theatres and which should be transferred to the DVD, is not passed on to this discerning fan. Repeat experiences of this kind, alienates the discerning fan and actually tempts him/her to buy pirated DVDs. The Committee is, therefore, of the opinion that strict measures need to be undertaken to ensure high-fidelity in DVD masters as well as DVD replication because getting the discerning fan on the right side of the law would go a long way in facilitating anti-piracy campaigns in the country. The Committee is of the view that this need not come at an exorbitant cost but requires only a will on the part of the 'factory inspectors' who should shut down noncompliant DVD replicating facilities. The rights holders should also inspect such facilities before sale of rights.

5.3.4 The Committee is well aware of the costs associated with releasing additional prints across the length and breadth of the country. Therefore, it feels that more and more traditional screens should be converted into digital ones, whereby a film can be released digitally across all such theatres in whichever part of the country they are located. The Committee is of the view that traditional theatres in smaller towns, remote and hilly regions with difficult terrains, should be converted into digital theatres at the earliest. This would enable simultaneous release of films in smaller towns and remote areas simultaneously with larger cities and metros with no additional cost. Only the fixed cost of converting traditional screens is required to be borne. The concerned State Governments could provide assistance towards this. In order to incentivize this, the Committee would make recommendations to the concerned Ministries/Departments. In fact, the Central Government has already extended the benefit of 'Project Imports' to the imports of digital cinema equipment, attracting concessional duty of 5 per cent. Also, service

tax has been exempted in respect of digital cinema operators and distributors in relation to delivery of content of cinematograph films in dial form to cinema theatres for exhibition.

5.3.5 The Committee is happy to note that some the stakeholders associated with the film industry have started an industry body called "Alliance Against Copyright Theft (AACT)". The Committee would like to advise the stakeholders associated with the production, distribution and exhibition of films, broadcasters, FM Radio operators, Music industry, etc. to become members of this alliance against copyright theft and take steps in a concerted fashion so as to fight piracy.

5.4 Legislative Measures

5.4.1 The Committee feels that a multi-pronged concerted action ought to be taken up by enforcement agencies to combat piracy. In view of this, it is absolutely essential that the State Governments should be required to enact legislations so as to provide for preventive detention of video and audio pirates. This has been done in Tamil Nadu by enactment of Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-offenders, Forest offenders, Goondas, Immoral Traffic Offenders and Slum-grabbers Act, 1982. This has also been done by Maharashtra Government and it was brought to the notice of Committee that Karnataka Government is also considering a similar legislation. If video pirates are covered under the definition of "goondas", then the, local police would be empowered to detain/ arrest habitual offenders when there is information that they are about to commit an act which would result in production of pirated optical discs.

5.4.2 The Committee got an opportunity to look at some of the anti-cam cording Statutes enacted by various countries as provided by the representative of Motion Picture Association (MPA), which is an alliance of major Hollywood production companies. Copies of anti-cam cording legislations enacted by various countries such as, USA, France, Spain, Hong Kong, Philippines, Japan and Canada have been provided. Some of these Statutes provide for imprisonment and fine if convicted for an offence of cam cording a film using an audio/video recording device, whose definition is very wide so as to include all possible recording devices. Further, mere possession by a person of an audio/video recording device in a cinema theatre is an evidence of a possible offender. The Committee feels that such a condition could be adapted / adopted as one of the licensing conditions of cinema theatres given by district authorities. This may be done by providing

an enabling provision in the Cinematograph Act, 1952. These licences are subject to renewal on a regular basis by the District Magistrate/ Collector. Enacting a statute in this matter may take some time; therefore, a more doable and most immediate way of fighting piracy would be to incorporate this condition in the licensing conditions for cinema theatres and multiplexes. The Committee would recommend a practical way of implementing this by casting the onus on the theatre owners of ensuring that viewers do not carry a cam cording device inside the theatre, which can be ensured while carrying out security check/frisking of the viewers, which is common today owing to heightened security concerns. This would not amount to placing any additional burden on the theatre owners.

5.5 Optical Disc Legislation

5.5.1 Though there has been some interest from some quarters of the industry, particularly MPA, for optical disc legislation in order to check piracy of optical discs (DVDs etc), the Committee is of the considered view that having the said legislation would not be the panacea for combating piracy, as is made out to be. There are provisions in the Copyright Act to check piracy of optical discs, for instance, there is a provision for arresting and imposing fine on a person if he has in his possession "plates" (which includes "duplicating equipment"), used for making "infringing copies" (in which copyright subsists). It is pertinent to point out here that both "plates" and "duplicating equipment" have been defined under the Copyright Act so as to include a host of equipment for making copies. The concerned Ministries/Departments of GOI are of the view that enactment of this legislation would lead to over-regulation of optical disc industry and re-introduction of license permit Raj, which has been jettisoned over the years. Moreover the problem of implementation of the legislation would not be solved because it would be administered by the same enforcement agencies. Additionally, this legislation does not at all address the issue of Internet piracy. It was, therefore, felt that any new legislation should be technology-neutral. The Committee, therefore, does not recommend enactment of optical disc legislation.

5.6 Amendments in Copyright Act

5.6.1 The Committee is aware that presently Parliament is debating comprehensive amendments to the Copyright Act. The Committee would, therefore, recommend that whatever lacunae that may exist in the implementation and enforcement of Copyright, Act could be corrected now.

The objective being to have one single comprehensive legislation, in order to fight piracy rather than have a plethora of legislations with weak enforcement.

5.6.2 A request was received from one of the State Governments to amend the provisos to Sections 63 and 63A which provide for a lesser sentence where infringement of copyright has not been made by a person for "gain in the course of trade or business". More often than not, according to the State Government, the proviso is being invoked and violation of copyright is carried out with impunity. One of the members of the Committee was of the view that a strict liability rule has to be established for copyright infringement in India which will prevent copyright infringers from avoiding culpability by concealing evidence of their knowledge. Further, a system of statutory damages in civil cases and compensation in criminal case may be adopted. The Committee recommends the above amendments to the Ministry of Human Resource Development.

5.6.3 The Committee further recommends that the option of allowing copyright owners to register with the concerned agency in the Copyright Office online should be explored. This would enable easy & convenient registration of copyright owners because one of the problems reportedly is that many of the copyright owners are not registered which leads to problems with the police and the courts, when a copyright complaint/ case is filed.

5.6.4 The Committee further recommends that the "censor" certificate granted by the regional offices of CBFC to applicant-producers should be deemed to be evidence of rights ownership, by amending the Copyright Act.

5.7 Amendments in Cable Television Networks (Regulation) Act

5.7.1 The Committee is of the considered opinion that the existing Cable TV Networks Act is inadequate in fighting the menace of piracy and a regulatory regime needs to be put in place with this object in mind. Presently, there is no system of suspension/revocation of a cable operator's registration. A system needs to be put in place whereby a cable operator's registration would be terminated if he/ she shows any film or plays an audio for which he/ she does not have the necessary copyright. This should be done by amending the above mentioned Act and migrating from the present system of registration to system of licensing with clear cut terms and conditions of license.

5.8 Administrative Measures

5.8.1 The Committee is of the opinion that the world of internet is practically devoid of any checks on piracy. With increasing speeds of broadband and wider broadband connectivity with 3G roll out across the country, if effective steps are not taken to check Internet piracy, both the film and music industry would suffer huge losses. As discussed in an earlier Chapter, the model adopted in some other countries whereby Internet Service Providers (ISPs) have been roped in by Government to check internet piracy, could perhaps be replicated here as well whereby action is taken against errant subscribers by the ISP concerned. A three stage strike model could be adopted for checking P2P piracy here as well. At the first stage, the errant subscriber could be let off with a warning appearing on his screen; at the second stage, a more severe punishment could be given while the third time, the subscriber's services could be disrupted for a few hours or so.

5.8.2 In this regard, Sec. 79 of the Information Technology Act, 2000 is helpful, particularly sub-sec S-79(3)(b). Under this sub-section, an ISP is liable if upon receiving actual knowledge or being notified by the Government that any information residing in or connected to a computer resource controlled by him is being used to commit unlawful act, and the ISP fails to remove or display access of that resource. As the ISP is aware of the actions of its various subscribers, it should be roped in to check unlawful and illegal activities of the subscribers.

5.8.3 One of the members provided a list of websites which host pirated content along with P2P sharing destinations. The Committee recommends that the Department of Information Technology should take necessary steps to block these websites to the extent possible. Moreover, a system needs to be put in place by Department of Information Technology whereby information provided by the film and music industry to the Government about rogue websites is verified by an appropriate agency of Department of Information Technology and subsequently blocked for public access. Further, a system of grading of ISPs should be evolved, which should be published, whereby ISPs which take effective steps to check piracy by their subscribers are rewarded by the Government and provided with incentives.

5.8.4 In order to check under-reporting of subscribers by cable operators and introduce addressability, it is imperative that their networks ought to be digitalized. The Committee, therefore, recommends that there should be an

analogue cable" switch-off date or sunset clause" by which the entire analogue network should be phased out. This phasing out could be staggered considering the fact that India is a vast country. Since digitalization of cable services is capital intensive, as it will require up-gradation of Head ends and networks, appropriate regulatory and tax incentives should be provided to attract investments into the sector. The increasing of FDI caps from 49% to 74%, for multi system operators who want to provide digital addressable services will also help the Industry garner adequate financial resources. Digitalization will bring in transparency of subscriber base which would go towards checking piracy in the broadcast sector considerably.

5.8.5 The Committee would like to take this opportunity to urge the Ministry of Human Resource Development to resolve the differences on royalty rates between FM radio operators and the copyright owners expeditiously so as to meet the multiple objectives of providing music to the music lover across platforms wherever he/she is, ensuring optimum remuneration to rights owners and also giving greater choice to the listeners.

5.9 Taxation Issue

5.9.1 A suggestion was mooted by one of the members of the Committee that a nominal tax be levied on blank CDs/DVDs with a view to trailing them so as to check the flourishing grey market. The Committee observes that this is really the mandate of the Ministry of Finance. It has, however, been brought to the notice of the Committee that tax is already levied on blank CDs/ DVDs in the form of Union Excise Duty. However, recorded DVDs etc. are exempt from the levy of excise. The Committee notes that levy of an additional tax either on DVDs or on raw materials used in their manufacture would further increase the demand-supply gap of 'film content' and may even increase the prices of DVDs which may abet piracy rather than contain it. A more practical way out could be to bring the plethora of various indirect taxes including entertainment tax under the umbrella of the proposed Goods and Service Tax (GST), which would mitigate the cascading effect of multiplicity of levies.

ANNEXURE A

No. 107/5/09-FI
Government of India
Ministry of Information & Broadcasting
A Wing Shastri Bhavan, New Delhi.

Dated: 18 December, 2009.

Sub: **Setting up of Committee on Film, Video, Cable and Music Piracy.**

In pursuance of the decision arrived at in the 27th State information Ministers Conference held in New Delhi on.5th December, 2009, the, following Committee is hereby constituted. The composition and terms of reference of the Committee are as follows:

Constitution of the Committee:

i)	Shri Uday Kumar Varma, Special Secretary, Ministry of Information & Broadcasting	:	Chairperson
ii)	Shri Yash Chopra, Eminent Film Producer	:	Member
(iii)	Shri Manmohan Shetty, President, Film & Television Producers' Guild of India	:	Member
(iv)	Shri G.Adisheshagiri Rao, Former President, FFI	:	Member
v)	Shri Jawahar Goel, President, Indian Broadcasting Federation	:	Member
vi)	Shri Prashant Pandey, Member, Association of Radio Operators of India	:	Member
vii)	Director (BC)		
viii)	Director (Films)	:	Member Secretary

2. The Committee shall recommend measures to combat film, video, cable and music piracy.

3. It shall hold consultations with State Governments as well as stakeholders before finalizing their recommendations.

4. The Committee would submit its report within a period of 6 months from the date of its constitution.

Sd/-
(Shri V.B. Pyarelal)
Joint Secretary to the Government of India
Tele: 2338 3857

To

All Members of the Committee

Copy to:

i) PS to HMIB
ii) PPS to Secretary I&B
iii) PPS to Special Secretary
iv) AS & FA/JS (B)/JS (F)/JS (P&A)
v) Director (FiIms-AK)/Director (Films-PK)/Director (BC)
vi) US (BC)/All Desk Officers in Film Wing

Sd/-
(V.B. Pyarelal)
Joint Secretary to the
Government of India

Stages and Forms of Film Piracy

How original film is stolen

i) Camcording from theatre
ii) Stealing film print
iii) Post production leak
iv) Hospitality window leak
v) Leaking from awards screener
vi) Falling through the analog hole
vii) Leaking of legitimate DVD before its release date
viii) Ripping code from original DVD

How film is reproduced

i) Burning (duplicating) or replicating DVDs
ii) Making available through the Internet

How copies are distributed

i) Purchasing or receiving a bootleg DVD.
ii) Copying or receiving a copy of a legitimate DVD
iii) Receiving electronically an illegal download

Annex C

Movie	Release date	1st street purchase	Type of copy	Quality	2nd street purchase	Quality	Type of copy	3rd street purchase	Type of copy	Quality
Kambakht Ishq	3-Jul-09	4-Jul-09	Cam corded	C	10-Jul-09	B	Cam corded	17-Jul-09	Cam corded	B
Short Cut	10-Jul-09	11-Jul-09	Cam corded	C	17-Jul-09	C	Cam corded	24-Jul-09	Cam corded	B
Jashan	17-Jul-09	20-Jul-09	Cam corded	B	24-Jul-09	A	Cam corded	31-Jul-09	Cam corded	A
Luck	24-Jul-09	25-Jul-09	Cam corded	C	31-Jul-09	C	Cam corded	7-Aug -09	Cam corded	C
Love Ajj Kal	31-Jul-09	1-Aug-09	Cam corded	C	7-Aug -09	C	Cam corded	14-Aug-09	Cam corded	C
Agyaatt	7-Aug -09	10-Aug-09	Cam corded	B	14-Aug-09	B	Cam corded	21-Aug-09	Cam corded	B
Kaminey	14-Aug-09	17-Aug-09	Cam corded	C	21-Aug-09	C	Cam corded	28-Aug-09	Cam corded	B
Life Partner	14-Aug-09	15-Aug-09	Cam corded	B	21-Aug-09	B	Cam corded	28-Aug-09	Cam corded	B
Sikander	21-Aug-09	26-Aug-09	Cam corded	B	28-Aug-09	B	Cam corded	4-Sep-09	Cam corded	B
Kishan	28-Aug-09	29-Aug-09	Cam corded	C	4-Sep-09	C	Cam corded	11-Sep-09	Cam corded	B
Quick Gun Murugun	28-Aug-09	2-Sep-09	Cam corded	D	4-Sep-09	C	Cam corded	11-Sep-09	Cam corded	C
Chintuji	4-Sep-09	5-Sep-09	Cam corded	B	11-Sep-09	B	Cam corded	Test purchase not conducted	Cam corded	N/A
Baabarr	11-Sep-09	13-Sep-09	Cam corded	C	Test purchase not conducted	N/A	Cam corded	Test purchase not conducted	Cam corded	N/A

Ten week Hindi Title Test Purchase Data

Key			
Quality	**Grade**	**Consumer Experience (Video)**	**Consumer Experience (Audio)**
Excellent	A	To the untrained eye, the illegal version cannot be differentiated from a legitimately obtained retail version	To the untrained ear, the sound track version cannot be differentiated from one found legitimately obtained retail version
Good	B	The picture contains artifacts that are minor and would not typically be obvious to the untrained eye. This version can be easily watched by all.	The soundtrack contains artifacts that are minor and would not typically be obvious to the untrained ear. The audio-recording can be easily listened to the untrained ear.
Fair	C	The picture contains artifacts that are obvious to the untrained by the viewer. The feature can be watched with some efforts.	The soundtrack contains artifacts that are obvious; however these artifacts can be overlooked by the listener. The recording to the untrained ear. The recording can be listened to with minimum efforts.
Poor	D	The picture contains artifacts that are obvious to an untrained eye and seriously impedes the viewer's ability to view the feature.	The soundtrack contains artifacts that are obvious to the untrained ear and seriously impedes the viewer's ability to listen to the feature.

Annex D

LIST OF INTERNET SERVICE PROVIDERS(ISPs)

ISP Names	Area of Operations
Airlink Broadband	Not Known
Asianet Satellite Commn.Ltd.	Thiruvananthapuram
AT & T Global Network Services	All India
Beam Cable System Pvt Ltd	Hyderabad
Bell Tele Service Pvt Ltd	Bangalore
Bharti Airtel Let	All India
Broadband Pacnet India Pvt Ltd	Mumbai
BT Global Comm.Ltd.	All India
CJ Online Pvt. Ltd	Ghaziabad
Cable & Wireless Network IPL	Not Known
Conjoinix Technologies Pvt.Ltd	Chandigarh
del DSL Internet Pvt. Ltd	Gurgaon
Dishnet Wireless ltd	All India
Eurus Network Services Pvt. Ltd	Delhi
Hathway Cable & DateCom Pvt. Ltd.	All India
HCL Infinet Ltd	All India
HCL Infinet Ltd	All India
HFCL Infotel Ltd.	Punjab Telecom Circle
In 2 Cable Com India Ltd.	All India
India Online Netcom	All India
Infotel Broadband Services Pvt. Ltd.	All India
Karuturi Telecom Pvt. Ltd.	All India
Net Magic Solutions Pvt. Ltd	All India
Net 4 India Pvt. Ltd.	All India
Novanet ltd.	Mumbai
Ortel Communication Ltd.	Orissa
Power Grid Corp. of India Ltd	All India
Rail Tel Corp. India Ltd.	All India
Reach NetWork India Pvt. Ltd.	All India
Reliance Communication	All India

S V Teletech Pvt. Ltd	All India
Sify Technologies Ltd.	All India
Soft ware Tech Parks of India	All India
Spectra Net	All India
Spice Innovative Technologies	All India
Tata Commn. Internet Services	All India
Tata Internet Service Ltd.	All India
TATA Tele Services Ltd	All India
Tikona Digitel Net works Pvt. Ltd.	All India
Tulip Telecom Ltd.	All India
Vasa Cable Pvt. Ltd.	All India
Wire and Wireless India Ltd.	All India
World Phone Internet Services	All India
YOU Telecom India Pvt. Ltd.	All India
Zylog Systems India Ltd.	All India

Annex E

Websites Showcasing Pirated Content	**P2P (peer-to-peer) Sharing Destinations**
123 nonstop.com	6arab
apniisp.com.	BearShare
bharatmovies.com	Bit Torrent
bollyextreme.com	Blubster
coolindianguy.com	Cdcovers
desimovielinks.com	Direct Connect
desirulez.net	eDonkey
esourceindia.com	eMule
eztakes.com	Gnutella
free-mp3-songs.mobilaze.com	Grokster
fulldhammal.com	IM
funtaoz.com	iMesh
funwadi.com	Limewire
guruji.com	Morpheus
hindilinks4u.net	MP2P
hindimoviesonline.tv	Music369
imovies4you.com	musiccity
isongz.com	Musiclines
mastimag.com	NeoNapster
moviesmobile.net	OpenNap
moviespack.com	Piolet
muskurahat.com	Qtrax
pendu-boys.com	Rocketnet
radioreloaded.com	Simplemp3s
songs.pk	WinMX
songsmastee.com	Xolox

ATTACHMENT OF PROPERTY

Property acquired by the accused person out of proceeds of crime can be attached under any of the following three laws:-

A. Code of Criminal Procedure, 1973
B. Criminal Law (Amendment) Ordinance 1944, or
C. Prevention of Money Laundering Act 2002.

A. Code of criminal Procedure, 1973

Section 105-C to 105-J of the Code of Criminal Procedure 1973 provide for attachment and/or forfeiture of property suspected to be acquired by a person, directly or indirectly, out of proceeds of crime. In case such property is located outside India, the Court may issue a letter of request to a Court or an authority in the concerned country for execution of such order, provided India has a treaty/reciprocal arrangement with the said country, known as the contracting state.

The procedure for such attachment/forfeiture is as under:

1. If the Court has reasonable grounds to believe that an accused has acquired property out of proceeds of crime, it shall direct a police officer not below the rank of sub inspector, to trace and identify such property or properties **(Section 105-D).**

2. The police officer so tasked can take all reasonable steps including an inquiry, investigation or survey in respect of any person, place, property, assets, documents or books of accounts, in order to collect details of the properties acquired by the accused from commission of the offence, as he deems fit.

3. If the police officer has reason to believe that the property in question is likely to be transferred/disposed of pending forfeiture, he may make an order seizing such property or where it is not practicable to seize such property, he may make an order of attachment directing that such property shall not be transferred except with the prior permission of the officer making such order **(Section 105-E).**

4. A copy of such order of attachment shall be served on the person concerned. This order needs to be confirmed by the Court within 30 days.

5. The Court may appoint the District Magistrate of the area, or any other officer nominated by the DM, to act as an Administrator of such property. The Administrator shall receive and manage the attached property in such manner and subject to such conditions as may be specified by the Central Government **(Section 105-F).**

6. If as a result of the inquiry, investigation or survey as mentioned at S.No.2 above, the Court has reason to believe that all or any of such properties are proceeds of crime, it may serve a show cause notice upon such person calling upon him to indicate the source of income, earnings or assets, out of which or by means of which he has acquired such property, the evidence on which he relies and other relevant information and particulars, and show cause why all or any of such properties should not be declared to be the proceeds of crime and forfeited to the Central Government **(Section 105-G).**

7. If any property is being held on behalf of such person by any other person, a copy of the notice shall also be served upon such other person.

8. The Court may, after considering the explanation to the show-cause notice issued under section 105G and the material available before it and after giving the person affected and such other person who holds any property on his behalf, a reasonable opportunity of being heard, record a finding whether all or any of the properties in question are proceeds of crime **(Section 105-H).**

9. Where the Court is satisfied that some of the properties referred to in the show-cause notice are proceeds of crime but it is not possible to identify specifically such properties, it shall be lawful for the Court to specify the properties which, to the best of its judgment, are proceeds of crime and record a finding accordingly.

10. Once the Court records a finding to the effect that any property is proceeds of crime, such property shall stand forfeited to the Central Government free from all encumbrances.

11. Where the Court makes a declaration that any property stands forfeited to the Central Government under section 105H but where the source of only a part of such property has not been proved to the satisfaction of the Court, it shall make an order giving an option to the person affected to pay, in lieu of forfeiture, a fine equal to the market value of such part **(Section 105-I).**

12. Where after the making of an order of attachment under section 105E or issue of a notice under section 105G, any property referred to in the said order or notice is transferred by any mode whatsoever, such transfer shall be ignored and if such property is subsequently forfeited to the Central Government under section 105H, the transfer of such property shall be deemed to be null and void **(Section 105-J).**

B. Criminal Law (Amendment) Ordinance 1944

Under the Criminal Law (Amendment) Ordinance 1944, property can be attached only in cases of *scheduled* offences, namely-

(i) Offence under Section 406 or 409 IPC, provided the property allegedly embezzled by the accused belongs to the Central Government or State Government or any department of such government or a local authority, Corporation or a Government Company established by either Government; or an authority or a body owned or controlled by such Corporation, Authority, Body or Government company; or a person acting on behalf of any such Government or department or authority.

(ii) Offence of Section 411 or 414 IPC where the stolen property is such as described under the preceding item.

(iii) An offence of Section 417 or 420 IPC, where the person deceived (victim) is the Central Government or State Government or any department of such government or a local authority, Corporation or a Government Company established by either Government; or an authority or a body owned or controlled by such Corporation, Authority, Body or Government company; or a person acting on behalf of any such Government or department or authority.

(iv) An offence punishable under the Prevention of Corruption Act.

The above set of offences is given in the Schedule to the Criminal Law (Amendment) Ordinance, 1944. Hence the name scheduled offences.

The procedure for attachment is contained in section 3 of the Criminal Law Amendment Ordinance 1944, which is reproduced below:

"3. Application for attachment of property:-

(1) *Where the State Government or as the case may be, the Central Government has reason to believe that any person has committed whether after the commencement of this Ordinance or not any scheduled offence, the State Government or as the case may be, the Central Government may, whether or not any Court has taken cognizance of the offence, authorize the making of an application to the District Judge within the local limits of whose jurisdiction the said person ordinarily resides or carries on business, for attachment under this Ordinance of the money or other property which the State Government or as the case may be, the Central Government believes the said person to have procured by means of the offence, or if such money or property cannot for any reason be attached of other property of the said person or value as nearly as may be equivalent to that of the aforesaid money or other property."*

Procedure of Attachment:

Step by step procedure for attachment of property under this law is as under-

1. First submit an application to the State or Central Government, as the case may be, for authorizing an officer to move to the competent court for the attachment of property. This application must contain the extent of property acquired through the commission of crime, the properties available vis-a-vis their value and owner(s).

2. The Government, after satisfying themselves, authorizes a specific officer to take steps for the attachment of the property by moving to the competent court within local limits of whose jurisdiction the said person ordinarily resides or carries on business.

3. Such an application to the court is to be accompanied by

   (a) affidavit (s), stating the grounds on which the belief that the said person has committed the scheduled offence is founded

   (b) details of the properties acquired by means of the scheduled offence, its owner, value of such properties, location and

(c) name and address of any other person who may claim interest or title in any of the properties. The application to be made to the court should also have authorization from the Government, as one of the Annexures

4. Upon receipt of the said application, if the District Judge (if it is pre-cognizance stage) or the Special Judge (if the offence is under the Prevention of Corruption Act and the case is at post-cognizance stage) finds prima facie grounds for the commission of the offence and consequent wrongful loss/wrongful gain, has to immediately pass an ad-interim order attaching the money or other property alleged to have been so procured.

5. If such money or property is not available for attachment, the court may pass order for attachment of such other property of the said person limited to the value of wrongful loss/gain.

6. Before passing such order, the court may examine the authorized person who has filed the affidavit accompanying the application but if court refuses to grant ad-interim attachment order, the court has to necessarily examine the person who has filed the affidavit along with the application.

7. Along-with the said order, the court has to issue notice to the concerned person(s) whose property is attached on ad-interim basis. This notice has to be accompanied by copies of (a) ad-interim attachment order, (b) application, (c) affidavit and (d) evidence, if any, recorded. The notice calls upon such person to show cause on a specified date (which is indicated in the notice) as to why the order of attachment should not be made absolute.

8. The accused or any other person in whose name the property which has been attached on ad-interim basis may on the fixed date make objection concerning attachment. Besides, any other person having interest or claim in the property, even if no notice has been issued, can also make objection on the specified date or at any time before an order for making an ad-interim order absolute is passed.

9. If the case is at pre cognizance stage, the order making ad-interim order absolute is valid for one year which can be extended from time to time. But if after the expiry of one year from the date of passing of order making the attachment absolute, no extension is granted by the court, the attachment of the property ceases immediately after expiry of one year.

10. Attachment of property done during the trial is valid till the termination of the proceeding. That is, if cognizance has been taken at the time of attachment or the court takes cognizance when the order of attachment is still valid, such order remains valid until the termination of the criminal proceedings.

11. It may also be noted that property of the mala-fide transferee can also be attached under this law. Further, it is open to the person(s) whose property has been attached or is about to be attached, apply to the court seeking permission to give security in lieu of such attachment and if the same is found satisfactory and sufficient, the attachment order may be withdrawn, if it has already been passed or the court may refrain from passing such order if the order, has not yet been passed.

12. In the attachment proceedings, provisions of Civil Procedure Code (CPC) are followed, that is why the District Judge for this purpose is not called District & Sessions Judge rather he is called only District Judge.

13. Anybody aggrieved from the order of the court concerning attachment may appeal to the High Court.

Important points to be kept in mind Attachment of Property cases

Proposal to be made to the State Government for attachment of property may be accompanied with the following documents:-

1. Brief facts of the case
2. Copy of the FIR
3. Draft Authorization along with an Annexure containing details of property to be attached.

Application to the Court will be accompanied with-

1. Affidavit of the authorized officer swearing that the contents of the application be read as part and parcel of the affidavit.

2. Charge sheet (if the same has been field).

C Under the Prevention of Money Laundering Act 2002

Schedule to the Prevention of Money Laundering Act 2002 contains the list of offences known as *scheduled offences*. Officers of the Enforcement Directorate of the rank of Deputy Director and above have been authorized vide Section 5 of the PMLA to provisionally attach property acquired out of the proceeds of crime in cases of *scheduled offences*. The procedure of such attachment will be as pre in the Second Schedule to the Income-tax Act 1961.

Scheduled offences

List of scheduled offences has been substantially enlarged after the recent amendment to the Provision of Money Laundering Act 2002. The following IPC offences now figure in Part II of the Schedule:-

120B, 255, 257, 258, 259, *260, 302, 304, 307, 308,* 327, 329, *364A,* 384 *to* 389,392 *to 402,411,* 412, 413, 414, 417, 418, 419, *420,* 421, 422, 423, 424, 467, 471, 472 *and* 473, 475 *and* 476,481,482, 483, 484, 485, 486, 487 *and* 488 I*PC.*

As offences like cheating and forgery which are invariably invoked in all economic crimes are now *scheduled offences* under this Act, it would now be possible to attach property acquired by the accused persons out of the proceeds of crime in almost all economic crimes. Good thing about PMLA is that its scope is much wider than the Criminal Law Amendment Ordinance 1944 and it does require authorization from the Government.

Procedure of attachment

Step by step procedure for attachment of property under the Prevention of Money Laundering Act 2002 is as under:-

1. Identify the properties, movable and immovable, acquired by the accused person out of the proceeds of crime. If the offence is specified in Part B of the Schedule, total value involved in the offences should be Rs. 30 lac or above for attachment under this Act. For offences under Part A of the Schedule, there is no monetary limit and tainted property can be attached in every case.

2. Issue notice under section 102 Cr. PC to the concerned authorities, namely, revenue authorities, bank managers etc to stop sale, transfer, lease etc of the tainted property until the competent authority passes order of attachment.

3. File charge sheet/challan in the case.

4. Contact the office of the Zonal Deputy Director, Enforcement Directorate who is competent to attach property under the PMLA with copy of the charge sheet and details of the tainted properties.

5. The competent authority passes provisional order of attachment, which is valid for 150 days.

6. Follow up with the competent authority so that the complaint under section 5(5) of PMLA is filed with the Adjudicating Authority within the stipulated period of 30 days for confirmation of the order.

7. The Adjudicating Authority after following the due process as laid down in section 8 of PMLA, shall either confirm the order of attachment or release the property.

CHAPTER NO. 16

SELECTED

STANDING

ORDERS

STANDING ORDER NO. 3 DATED 2001
ON SPECIALLY REPORTED CASES

At present different types of heinous crimes are monitored by the Crime Wing in accordance with the provision mentioned in P.P.R. 24.15 and instructions issued by the Head of the Department. All these cases are specially reported cases for which ISR's and CSR's are being received in the Crime Wing. Keeping the changing Crime scenario in view, the reports have been classified now in three categories.

(i) Those terminated at the level of DIG/Ranges.

(ii) Terminating at the level of IGP Zonals.

(iii) Terminating at the level of ADGP/Crime, DGP Punjab.

It has been decided to reschedule the supervision system and levels as below:

Sr. No.	**Offence**	**Sub Head**		**Officers to whom reports are to be made**
1.	u/s 302 IPC	i.	Accused are nominated	IGP/Zonal
		ii.	Blind cases	ADGP/Crime
		iii.	All cases of deaths in police & jail custody	ADGP/Crime
2.	u/s 304-B IPC		All cases	ADGP/Crime
3.	u/s 304, 307, 308 and 498-A		All cases	IGP/Zonal
4.	u/s 363, 366, 376, 377 IPC	i.	Accused are nominated	DIG/Range
		ii.	Blind cases	IGP/Zonal
		iii.	All cases where victim is a minor	ADGP/Crime
5.	Dacoity u/s 395, 396, 397 IPC	i.	Accused nominated	IGP/Zonal
		ii.	Blind cases	ADGP/Crime
6.	Robbery u/s 382, 392, 393, 394 IPC	i.	Accused nominated	IGP/Zonal
		ii.	Blind cases	ADGP/Crime

7.	Extortion cases		All cases	ADGP/Crime
8.	Violence..... burglaries u/s 379, 380, 457 IPC		All cases	ADGP/Crime
9.	Theft/other Burglaries u/s 379, 380, 457 IPC	i. ii. iii. iv.	Stolen property Rs. 50,000 to 2 lacs. Over Rs. 2 lacs. Two wheelers Four wheelers	IGP/Zonal ADGP/Crime IGP/Zonal ADGP/Crime
10.	Assault on Govt. servant u/s 353, 186, 132/133 IPC	i. ii.	Assault on G.O.'s & Police Officials All others	ADGP/Crime IGP/Zonal
11.	Fake currency counterfeiting coins u/s 498-A IPC	i.	All cases	ADGP/Crime
12.	Arms Act	i. ii. iii. iv.	Country made Regular weapons small firearms All automatic & semi auto weapons Recovery from weapon pedaling gangs or terrorist groups	DIG/Range IGP/Zonal ADGP/Crime ADGP/Crime
13.	Explosive Act	i. ii.	Recovery of fire cracker materials Ordnance explosive, initiators I.E.Ds & ordinance mines/ grenades etc.	DIG/Range ADGP/Crime
14.	NDPS Act	i. ii. iii. iv. v.	Recovery of Opium, Charas, Hashish upto 1kg and Poppy hush upto 200 Kgs. If recovery is more than mentioned in Sub head I. Recovery of heroin upto 100 gms Recovery of heroin upto 100 gms All other narcotic cases	IGP/Zonal ADGP/Crime IGP/Zonal ADGP/Crime ADGP/Crime
15.	Foreigners Act		All cases	ADGP/Crime

16.	Cheating/Criminal Breach of Trust & Embezzlement of Govt., Semi-Govt. & Govt. Corporate Bodies	i. ii.	Embezzled money is upto Rs. 5 Lacs. More than Rs. 5 lacs	IGP/Zonal IGP/Zonal ADGP/Crime
17.	Cyber Crime		All cases	ADGP/Crime
18.	Atrocities on SC's & ST's		All cases	ADGP/Crime
19.	Corruption cases		All cases	ADGP/Crime
20.	Essential Commodities Act		All cases	ADGP/Crime

Henceforth, special report cases monitoring be done as per above classification w.e.f. December 1st, 2001.

Director General of Police,

Punjab, Chandigarh.

CIRCULAR NO. 8

Monthly Report from Public Prosecutors of cases where police officials do not appear for evidence

Ram Parshad s/o Ram Swroop Jat r/o village Baans Akbarpur PS Narnaul, Distt. Hisar (Haryana) filled a Criminal Revision No. 35 of 2001 against the judgement dated 11-10-2000 of Additional Session Judge, Sonepat vide which his conviction awarded by the trial court was maintained. Revision Petition was accepted by the Hon'ble Punjab & Haryana High Court on 04-04-2001 on the ground that there was no admissible evidence against him connecting the petitioner with the incident.

The Hon'ble High Court observed as under:-

1. It would not be out of place to mention that either on account of paucity of time or complete lack of training some of the investigating officer overlook the need to collect material evidence for connecting any person alleged to be accused or an offence with the crime. They also do not make themselves available at the time when the evidence is being recorded to ensure that the fruits of their investigation are put forth before the court of law in a proper manner but on some occasions are not available for getting even their own statement recorded which at times prove fatal to the case of the prosecution. This being one such case, I feel that it would be appropriate that the malady which is eating into the entrails of the system of administration of justice is brought to the notice of the persons responsible for maintenance of law and order so that the tendency can be curbed and malady cured. For ensuring that defaults of this type do not re-occur, it may be desirable for the Director General's of Police of the State of Haryana and Punjab and Inspector General of Police U.T., Chandigarh to consider the advisability of directing the officers-incharge of the districts to secure monthly reports from all public prosecutors of cases where police officials do not appear to give evidence and the case of the prosecution is closed by order so that adequate measures can be taken against the erring officials.

2. In the light of this judgment, it has been decided to issue directions to all to all Sr. Superintendents of Police of the districts that monthly reports from all the Public Prosecutors should be obtained by the office of Senior Superintendents of Police of the district of cases where police officials do not appear for evidence in courts. This malady must be curbed with strict disciplinary action. Secondly, GOs of the district would be personally responsible to ensure that investigators bring solid evidence on record connecting accused with the crime.

Addl. Director General of Police,

Crime, Punjab, Chandigarh.

No. 12633-64/CR-I Dated, Chg. the: 11-06-2001

A copy is forwarded to the following for information and necessary action:

1. IGsP/Zonal.
2. Range DIsGs.
3. All SSsP in Punjab with a direction that monthly reports from the District Attorney of your district be collected and scrutiny be made and report in this regard be sent to this office within 15 days of the receipt of report from the District Attorney.

Addl. Director General of Police,

Crime, Punjab, Chandigarh.

OFFICE OF THE ADDL. DIRECTOR GENERAL OF POLICE, CRIME, PB.

Circular Order No. 15/2001

The Hon'ble Supreme Court of India in a case reported in 1994-CAR-29(SC)-Amarjit Singh Vs. State of Punjab and some other judicial pronouncements has observed that non-sealing of recovered weapons at the spot renders the recovery doubtful.

2. However, it has come to the notice of this office that sometimes illegal arms & ammunition recovered by the police is not sealed at the spot of recovery, so that the accused may not take benefit of this lapse.

Addl. Director General of Police,
Crime, Punjab.

No. 15531-54 /CR-3 Dated. Chg. the, 18-07-01

A copy of the above is forwarded to the following for information and necessary action:-

1. All District Senior Supdts. of Police in Punjab.
2. A.I.G./G.R.P./Punjab, Patiala.

ਦਫਤਰ :ਐਡੀਸ਼ਨਲ ਡਾਇਰੈਕਟਰ ਜਨਰਲ ਪੁਲਿਸ, ਕਰਾਈਮ, ਪੰਜਾਬ, ਚੰਡੀਗੜ੍ਹ

ਗਸ਼ਤੀ ਪੱਤਰ ਨੰ: 17/2001

ਆਮ ਦੇਖਣ ਵਿੱਚ ਆਇਆ ਹੈ ਕਿ ਕਿਸੇ ਵਿਅਕਤੀ ਦੀ ਗੈਰ-ਕੁਦਰਤੀ ਮੌਤ ਦੇ ਮਾਮਲੇ ਵਿੱਚ ਪੁਲਿਸ ਵੱਲੋ ਦਫਾ 174 ਜਾਬਤਾ ਫੌਜਦਾਰੀ ਦੀ ਕਾਰਵਾਈ ਵੇਲੇ ਕਈ ਵਾਰ ਮ੍ਰਿਤਕ ਦੇ ਵਾਰਸ਼ ਇਲਾਕਾ ਐਗਜੈਕਟਿਵ ਮੈਜਿਸਟ੍ਰੇਟ ਨੂੰ ਲਿੱਖ ਕੇ ਦਿੰਦੇ ਹਨ ਕਿ ਮੌਤ ਅਚਾਨਕ/ਕੁਦਰਤੀ ਹੈ, ਇਸ ਲਈ ਉਹ ਲਾਸ਼ ਦਾ ਪੋਸਟ-ਮਾਰਟਮ ਨਹੀ ਕਰਵਾਉਣਾ ਚਾਹੁੰਦੇ ਅਤੇ ਪੁਲਿਸ ਵੱਲੋ ਇਹ ਰਿਪੋਰਟ ਕਰ ਦਿੱਤੀ ਜਾਂਦੀ ਹੈ ਕਿ ਉਨਾਂ ਨੂੰ ਪੋਸਟ-ਮਾਰਟਮ ਨਾਂ ਕਰਾਉਣ ਵਿੱਚ ਕੋਈ ਇਤਰਾਜ਼ ਨਹੀ । ਪਰ ਬਾਅਦ ਵਿੱਚ ਓਹੀ ਵਾਰਸ ਜਾਂ ਕੋਈ ਹੋਰ ਇਹ ਸ਼ੱਕ ਕਰਦੇ ਹਨ ਕਿ ਇਹ ਮਾਮਲਾ ਕਤਲ ਦਾ ਸੀ ਅਤੇ ਪੁਲਿਸ ਨੇ ਸਹੀ ਢੰਗ ਨਾਲ ਕਾਰਵਾਈ ਨਹੀ ਕੀਤੀ । ਇਸ ਤਰ੍ਹਾਂ ਅਜਿਹੇ ਮਾਮਲੇ ਪੁਲਿਸ ਲਈ ਕਈ ਝੰਜਟ ਖੜੇ ਕਰਦੇ ਹਨ। ਪੋਸਟ ਮਾਰਟਮ ਕਰਾਉਣ ਸਬੰਧੀ ਕਾਨੂੰਨੀ ਪਹਿਲੂ ਜਾਬਤਾ ਫੌਜਦਾਰੀ ਦੇ ਸ਼ੈਕਸ਼ਨ 174(3) ਅਤੇ ਪੰਜਾਬ ਪੁਲਿਸ ਰੂਲਜ਼ 25।36 ਵਿੱਚ ਵਿਸਥਾਰਪੂਰਵਕ ਦਰਜ ਹਨ, ਜਿੰਨਾਂ ਨੂੰ ਧਿਆਨ ਵਿੱਚ ਰੱਖਿਆ ਜਾਵੇ । ਹਰੇਕ ਕੇਸ ਵਿੱਚ - - -

1. ਜਿੱਥੇ ਮੌਤ ਖੁਦਕਸ਼ੀ, ਹੱਤਿਆ, ਦੁਰਘਟਨਾ ਜਾਂ ਸ਼ੱਕੀ ਵਜ੍ਹਾ ਕਰਕੇ ਹੋਈ ਜਾਪਦੀ ਹੋਵੇ ਅਤੇ ਜਿੱਥੇ ਮੌਤ ਦੇ ਸਹੀ ਕਾਰਨਾ ਬਾਰੇ ਸ਼ੰਕਾ ਹੋਵੇ, ਜਾਂ

2. ਸ਼ੈਕਸ਼ਨ 157 ਜਾਂ ਸ਼ੈਕਸ਼ਨ 174 ਜਾਬਤਾ ਫੌਜਦਾਰੀ ਤਹਿਤ ਤਫਤੀਸ਼ ਕਰ ਰਹੇ ਅਫਸਰ ਨੂੰ ਜਰੂਰੀ ਜਾਵੇ, ਜਾਂ

3. ਮਾਮਲਾ ਔਰਤ ਦੁਆਰਾ ਵਿਆਹ ਦੇ ਸੱਤ ਸਾਲ ਦੌਰਾਨ ਆਤਮ ਹੱਤਿਆ ਕਰਨ ਦਾ ਹੋਵੇ, ਜਾਂ

4. ਮਾਮਲਾ ਵਿਆਹ ਦੇ ਸੱਤ ਸਾਲ ਦੌਰਾਨ ਔਰਤ ਦੀ ਮੌਤ ਦਾ ਹੋਵੇ ਅਤੇ ਅਜਿਹੇ ਹਾਲਾਤ ਵਿੱਚ ਜਾਇਜ਼ ਸ਼ੱਕ ਪੈਦਾ ਹੁੰਦਾ ਹੋਵੇ ਕਿ ਉਸ ਔਰਤ ਦੇ ਸਬੰਧ ਵਿੱਚ ਕਿਸੇ ਹੋਰ ਨੇ ਜੁਰਮ ਕੀਤਾ ਹੈ, ਜਾਂ

5. ਵਿਆਹ ਦੇ ਸੱਤ ਸਾਲ ਦੌਰਾਨ ਔਰਤ ਦਾ ਮੌਤ ਦਾ ਮਾਮਲਾ ਹੋਵੇ ਅਤੇ ਉਸਦੇ ਕਿਸੇ ਰਿਸ਼ਤੇਦਾਰ ਨੇ ਪੋਸਟਮਾਰਟਮ ਕਰਾਉਣ ਸਬੰਧੀ ਬੇਨਤੀ ਕੀਤੀ ਹੋਵੇ ਤਾਂ ਲਾਸ਼ ਨੂੰ ਪੋਸਟ ਮਾਰਟਮ ਲਈ ਭੇਜਿਆ ਜਾਣਾ ਜਰੂਰੀ ਹੈ ।

ਇਸ ਲਈ ਦਫਾ 174 ਦੀ ਕਾਰਵਾਈ ਕਰਨ ਵੇਲੇ ਜੇਕਰ ਮਾਮਲਾ ਉਪਰ ਦਰਜ ਕਿਸੇ ਵੀ ਪਹਿਲੂ ਵਿੱਚ ਆਉਦਾ ਹੈ ਤਾਂ ਤਫਤੀਸ਼ੀ ਅਫਸਰ ਨੂੰ ਪੋਸਟ ਮਾਰਟਮ ਜਰੂਰ ਕਰਵਾਉਣਾ ਚਾਹੀਦਾ ਹੈ ਭਾਵੇ ਮ੍ਰਿਤਕ ਦੇ ਰਿਸ਼ਤੇਦਾਰ ਲਿਖਕੇ ਵੀ ਦੇਣ ਕਿ ਪੋਸਟ ਮਾਰਟਮ ਨਾਂ ਕਰਵਾਇਆ ਜਾਵੇ ।

ਇਨਾਂ ਹਦਾਇਤਾਂ ਦੀ ਇੰਨ-ਬਿੰਨ ਪਾਲਣਾ ਕੀਤੀ ਜਾਵੇ ਤਾਂ ਜੋ ਇਸ ਸਬੰਧ ਵਿੱਚ ਆਉਣ ਵਾਲੀਆਂ ਮੁਸ਼ਕਲਾਂ ਤੋ ਬਚਿਆ ਜਾ ਸਕੇ ।

ਐਡੀਸ਼ਨਲ ਡਾਇਰੈਕਟਰ ਜਨਰਲ ਪੁਲਿਸ,
ਕਰਾਈਮ, ਪੰਜਾਬ, ਚੰਡੀਗੜ੍ਹ।

ਨੰਬਰ /ਸਸ-3 ਮਿਤੀ ਚੰਡੀਗੜ੍ਹ-

1. ਆਈ.ਜੀ.ਪੀ./ਜੋਨਲ/ਪਟਿਆਲਾ ਅਤੇ ਜਲੰਧਰ ਅਤੇ ਬਾਰਡਰ ਅੰਮ੍ਰਿਤਸਰ।
2. ਆਈ.ਜੀ.ਪੀ./ਜੀ.ਆਰ.ਪੀ./ਪੰਜਾਬ, ਪਟਿਆਲਾ।
3. ਸਮੂੰਹ ਰੇਜ਼ ਡੀ.ਆਈ.ਜੀਜ਼, ਪੰਜਾਬ।
4. ਸਮੂੰਹ ਜਿਲ੍ਹਾ ਸੀਨੀਅਰ ਕਪਤਾਨ ਪੁਲਿਸ, ਪੰਜਾਬ।
5. ਜੇ.ਡੀ.ਪੀ. ਐਡ ਕਰਾਈਮ ਵਿੰਗ, ਪੰਜਾਬ।
6. ਸੁਪਰਡੈਟ ਕਰਾਈਮ ਵਿੰਗ, ਪੰਜਾਬ, ਚੰਡੀਗੜ੍ਹ।

ਸਰਕੂਲਰ ਆਰਡਰ ਨੰਬਰ 1/2002

ਦਫਤਰ ਐਡੀਸ਼ਨਲ ਡਾਇਰੈਕਟਰ ਜਨਰਲ ਪੁਲਿਸ, ਕਰਾਈਮ, ਪੰਜਾਬ, ਚੰਡੀਗੜ੍ਹ ।

ਵਿਸ਼ਾ :- ਦਫਾ 174 ਜਾਬਤਾ ਫੌਜਦਾਰੀ ਦੀ ਕਾਰਵਾਈ ਕਾਇਦੇ ਕਾਨੂੰਨ ਅਨੁਸਾਰ ਕਰਨ ਸਬੰਧੀ।

ਵੇਖਣ ਵਿੱਚ ਆਇਆ ਹੈ ਕਿ ਇਨਸਾਨ ਦੀ ਗੈਰ-ਕੁਦਰਤੀ ਮੌਤ ਸਬੰਧੀ ਪੁਲਿਸ ਵੱਲੋ ਦਫਾ 174 ਦੀ ਕਾਰਵਾਈ ਕਰਨ ਵੇਲੇ ਇਸ ਸਬੰਧੀ ਜਰੂਰੀ ਪਹਿਲੂਆਂ ਨੂੰ ਨਜ਼ਰਅੰਦਾਜ਼ ਕਰ ਦਿੱਤਾ ਜਾਂਦਾ ਹੈ ਜੋ ਕਿ ਠੀਕ ਨਹੀ । ਦਫਾ 174 ਜਾਬਤਾ ਫੌਜਦਾਰੀ ਦੀ ਕਾਰਵਾਈ ਕਰਨ ਸਬੰਧੀ ਕਾਨੂੰਨੀ ਨੁਕਤੇ ਜਾਬਤਾ ਫੌਜਦਾਰੀ ਦੇ ਸ਼ੈਕਸ਼ਨ 174, 175 ਅਤੇ 176 ਅਤੇ ਪੰਜਾਬ ਪੁਲਿਸ ਰੂਲਜ਼ ਦੇ ਰੂਲ 25.31 ਤੋ 25.38 ਤੱਕ ਦਰਜ ਹਨ, ਜਿੰਨਾਂ ਨੂੰ ਧਿਆਨ ਵਿੱਚ ਰੱਖਿਆ ਜਾਣਾ ਚਾਹੀਦਾ ਹੈ । ਸੰਖੇਪ ਤੌਰ ਤੇ ਇਸ ਸਬੰਧ ਵਿੱਚ ਹੇਠ ਲਿਖੇ ਅਨੁਸਾਰ ਕਾਰਵਾਈ ਕੀਤੀ ਜਾਵੇ ।

1) ਜਦੋ ਵੀ ਕਿਸੇ ਗੈਰ ਕੁਦਰਤੀ ਮੌਤ ਸਬੰਧੀ ਥਾਣਾ ਮੁਖੀ ਨੂੰ ਸੂਚਨਾ ਮਿਲਦੀ ਹੈ, ਫੌਰੀ ਤੌਰ ਤੇ ਉਸ ਸਬੰਧੀ ਬਿਆਨ ਜਾਂ ਦਰਖਾਸਤ ਲੈ ਕੇ ਰੋਜਨਾਮਚੇ ਵਿੱਚ ਉਸ ਦਾ ਇੰਦਰਾਜ਼ ਕੀਤਾ ਜਾਵੇ । ਇਸ ਦੀ ਇੱਕ ਕਾਪੀ ਹਲਕਾ ਡੀ.ਐਸ.ਪੀ./ਐਗਜੈਕਟਿਵ ਮੈਜਿਸਟ੍ਰੇਟ ਨੂੰ ਭੇਜੀ ਜਾਵੇ ਅਤੇ ਉਸੇ ਸਮੇ ਰਜਿਸਟਰ ਨੰਬਰ 6 ਪਾਰਟ 4 ਵਿੱਚ ਇਸ ਮਰਗ ਦਾ ਇੰਦਰਾਜ਼ ਕੀਤਾ ਜਾਵੇ । ਇਸ ਸਬੰਧ ਵਿੱਚ ਤਫਤੀਸ਼ ਮੁੱਖ ਅਫਸਰ ਥਾਣਾ ਖੁਦ ਕਰੇਗਾ ਅਗਰ ਉਹ ਕਿਸੇ ਬਹੁਤ ਅਹਿਮ ਡਿਊਟੀ ਵਿੱਚ ਮਸਰੂਫ ਹੋਣ ਕਾਰਨ ਥਾਣੇ ਤੋ ਬਾਹਰ ਹੋਵੇ ਜਾਂ ਛੁੱਟੀ ਵਗੈਰਾ ਤੇ ਗਿਆ ਹੋਵੇ ਤਾਂ ਵਿਹਲਾ ਹੋਣ ਉਪਰੰਤ ਮੌਕਾ ਮੁਲਾਹਜ਼ਾ ਕਰੇ ਅਤੇ ਤਫਤੀਸ਼ ਤਸਦੀਕ ਕਰੇ ।

2) ਅਜਿਹੇ ਕੇਸਾਂ ਜਿੰਨਾਂ ਵਿੱਚ ਪੁਲਿਸ ਦਸਤਅੰਦਾਜ਼ੀ ਜੁਰਮ ਹੋਏ ਹੋਣ ਦਾ ਅੰਦੇਸ਼ਾ / ਸ਼ੱਕ ਹੋਵੇ ਉੱਥੇ ਕੇਸ ਰਜਿਸਟਰਡ ਕਰਕੇ ਤਫਤੀਸ਼ ਕੀਤੀ ਜਾਵੇ ।

3) ਮੌਕੇ ਤੇ ਜਾ ਕੇ ਜਿੱਥੇ ਲਾਸ਼ ਪਈ ਹੋਵੇ ਤਫਤੀਸ਼ੀ ਅਫਸਰ ਵਿਸਥਾਰਪੂਰਵਕ ਮੌਕਾ ਮੁਲਾਹਜ਼ਾ ਕਰੇ ਅਤੇ ਜਰੂਰਤ ਅਨੁਸਾਰ ਫਾਰਮ (25, 35ਓ, ਅ, ਏ) ਵਿੱਚ ਇਸ ਬਾਰੇ ਇੰਦਰਾਜ ਕਰੇ । ਆਸ-ਪਾਸ ਦੇ ਲੋਕਾਂ ਨੂੰ ਸ਼ਾਮਲ ਕਰਕੇ ਉਹਨਾਂ ਤੋ ਇਕੱਲੇ ਅਤੇ ਸਾਂਝੇ ਤੌਰ ਤੇ ਜਾਣਕਾਰੀ ਇਕੱਠੀ ਕਰੇ ਅਤੇ ਇਸ ਬਾਰੇ ਕਾਰਵਾਈ ਵਿੱਚ ਜ਼ਿਕਰ ਕਰੇ । ਲਾਸ਼ ਦੀ ਫੋਟੋ ਹਰ ਹਾਲਤ ਵਿੱਚ ਕਰਵਾਈ ਜਾਵੇ ਅਤੇ ਕੋਸ਼ਿਸ਼ ਕੀਤੀ ਜਾਵੇ ਕਿ ਅਜਿਹੀਆਂ ਫੋਟੋਆਂ ਪੁਲਿਸ ਕ੍ਰਮਚਾਰੀਆਂ ਵੱਲੋ ਹੀ ਲਈਆਂ ਜਾਣ ਕਿਓਕਿ ਪ੍ਰਾਈਵੇਟ ਫੋਟੋਗ੍ਰਾਫਰ ਕਈ ਵਾਰੀ ਅਦਾਲਤ ਵਿੱਚ ਗਵਾਹੀ ਦੇਣ ਸਮੇ ਕੁਝ ਤੱਥ ਛਿਪਾ ਜਾਂਦੇ ਹਨ ।

4) ਮੌਕਾ ਮੁਲਾਹਜ਼ਾ ਅਜਿਹੀਆਂ ਇੰਨਕੁਆਰੀਆਂ ਵਿੱਚ ਉਨਾਂ ਹੀ ਵਿਸਥਾਰਪੂਰਵਕ ਲਿਖਿਆ ਜਾਵੇ, ਜਿੰਨਾਂ ਕਤਲ ਦੇ ਮੁਕੱਦਮੇ ਵਿੱਚ ਲਿਖਿਆ ਜਾਂਦਾ ਹੈ । ਲਾਸ਼ ਦੇ ਉੱਪਰ ਜਾਂ ਆਸ-ਪਾਸ ਕੋਈ ਸੁਰਾਗ ਦੇਣ ਵਾਲੀ ਚੀਜ਼ ਪਈ ਹੋਵੇ ਤਾਂ ਉਸਦਾ ਜ਼ਿਕਰ ਕੀਤਾ ਜਾਵੇ ਅਤੇ ਉਸ ਨੂੰ ਕਬਜ਼ਾ ਪੁਲਿਸ ਵਿੱਚ ਲਿਆ ਜਾਵੇ ।

5) ਹਰੇਕ ਅਜਿਹੇ ਕੇਸ ਵਿੱਚ :-

i) ਜਿੱਥੇ ਮੌਤ, ਖੁਦਕਸ਼ੀ, ਹੱਤਿਆ, ਦੁਰਘਟਨਾ ਜਾਂ ਸ਼ੱਕੀ ਵਜ੍ਹਾ ਕਰਕੇ ਹੋਈ ਜਾਪਦੀ ਹੋਵੇ ਅਤੇ ਜਿੱਥੇ ਮੌਤ ਦੇ ਸਹੀ ਕਾਰਨਾਂ ਬਾਰੇ ਸ਼ੰਕਾਂ ਹੋਵੇ ਜਾਂ

ii) ਸ਼ੈਕਸ਼ਨ 157 ਜਾਂ ਸ਼ੈਕਸ਼ਨ 174 ਜਾਬਤਾ ਫੌਜਦਾਰੀ ਤਹਿਤ ਤਫਤੀਸ਼ ਕਰ ਰਹੇ ਅਫਸਰ ਨੂੰ ਜਰੂਰੀ ਜਾਪੇ ਜਾਂ

iii) ਮਾਮਲਾ ਔਰਤ ਦੁਆਰਾ ਵਿਆਹ ਦੇ ਸੱਤ ਸਾਲ ਦੌਰਾਨ ਆਤਮ-ਹੱਤਿਆ ਕਰਨ ਦਾ ਹੋਵੇ ਜਾਂ

iv) ਮਾਮਲਾ ਵਿਆਹ ਦੇ ਸੱਤ ਸਾਲ ਦੌਰਾਨ ਔਰਤ ਦੀ ਮੌਤ ਦਾ ਹੋਵੇ ਅਤੇ ਅਜਿਹੇ ਹਾਲਾਤ ਵਿੱਚ ਜਾਇਜ਼ ਸ਼ੰਕਾ ਪੈਦਾ ਹੁੰਦਾ ਹੋਵੇ ਕਿ ਉਸ ਔਰਤ ਦੇ ਸਬੰਧ ਵਿੱਚ ਕਿਸੇ ਹੋਰ ਨੇ ਜੁਰਮ ਕੀਤਾ ਹੈ, ਜਾਂ

v) ਵਿਆਹ ਦੇ ਸੱਤ ਸਾਲਾਂ ਦੌਰਾਨ ਔਰਤ ਦੀ ਮੌਤ ਦਾ ਮਾਮਲਾ ਹੋਵੇ ਅਤੇ ਉਸ ਦੀ ਕਿਸੇ ਰਿਸ਼ਤੇਦਾਰ ਨੇ ਪੋਸਟ ਮਾਰਟਮ ਕਰਾਉਣ ਸਬੰਧੀ ਬੇਨਤੀ ਕੀਤੀ ਹੋਵੇ ।

ਤਾਂ ਲਾਸ਼ ਨੂੰ ਪੋਸਟ ਮਾਰਟਮ ਲਈ ਭੇਜਿਆ ਜਾਣਾ ਜਰੂਰੀ ਹੈ ।

6) ਪੋਸਟ ਮਾਰਟਮ ਕਰਨ ਤੋ ਬਾਦ ਡਾਕਟਰ ਵਿਸਰਾ ਜਾਂ ਸਰੀਰ ਦਾ ਕੋਈ ਹਿੱਸਾ ਕੈਮੀਕਲ-ਐਗਜ਼ਾਮੀਨਰ ਜਾਂ ਹੋਰ ਮੈਡੀਕਲ ਮਾਹਿਰਾਂ ਨੂੰ ਭੇਜਦੇ ਹਨ ਅਤੇ ਨਾਲ ਹੀ ਪੋਸਟਮਾਰਟਮ ਰਿਪੋਰਟ ਦੀ ਕਾਪੀ ਜੋ ਪੁਲਿਸ ਨੂੰ ਦੇਣੀ ਚਾਹੀਦੀ ਹੈ, ਉਸ ਮਾਹਿਰ ਪਾਸ ਭੇਜ ਦਿੰਦੇ ਹਨ । ਡਾਕਟਰਾਂ ਨੂੰ ਕਿਹਾ ਜਾਵੇ ਕਿ ਹਰ ਹਾਲਤ ਵਿੱਚ ਪੋਸਟ ਮਾਰਟਮ ਰਿਪੋਰਟ ਦੀ ਇੱਕ ਕਾਪੀ ਥਾਣੇ ਫੌਰੀ ਤੌਰ ਤੇ ਭੇਜਿਆ ਕਰਨ ਤਾਂ ਕਿ ਪਤਾ ਲੱਗ ਸਕੇ ਕਿ ਇਸ ਪੋਸਟਮਾਰਟਮ ਰਿਪੋਰਟ ਜ਼ਾਹਿਰਾ ਤੌਰ ਤੇ ਮੌਤ ਸਬੰਧੀ ਕੋਈ ਜੁਰਮ ਹੋਣ ਦਾ ਸੰਕੇਤ ਦਿੰਦੀ ਹੈ ।

ਪਿਛਲੇ ਸਮਿਆਂ ਵਿੱਚ ਦਫਾ 174 ਜਾਬਤਾ ਫੌਜਦਾਰੀ ਦੀਆਂ ਤਫਤੀਸ਼ਾਂ ਵਿੱਚ ਜ਼ਿਮਨੀਆਂ ਲਿੱਖ ਕੇ ਤਫਤੀਸ਼ਾਂ ਮੁਕੰਮਲ ਕੀਤੀਆਂ ਜਾਂਦੀਆਂ ਸਨ ।

7) ਸੋ ਬੇਸ਼ੱਕ ਜਿਮਨੀਆਂ ਨਾਂ ਲਿਖੀਆਂ ਜਾਣ ਤਾਂ ਵੀ ਅਜਿਹੀਆਂ ਇੰਨਕੁਆਰੀਆਂ ਵਿੱਚ ਜੋ ਜੋ ਕਾਰਵਾਈ ਬਾਦ ਵਿੱਚ ਹਰ ਰੋਜ਼ ਕੀਤੀ ਜਾਂਦੀ ਹੈ, ਉਸ ਨੂੰ ਲਿੱਖ ਕੇ ਅਸਲ ਅਤੇ ਨਕਲ ਕਾਪੀਆਂ ਇੰਨਕੁਆਰੀਆਂ ਦੇ ਨਾਲ ਸ਼ਾਮਲ ਕਰਕੇ ਰੱਖਣੀਆਂ ਚਾਹੀਦੀਆਂ ਹਨ ਜਿਵੇ ਕਿ ਪੋਸਟ ਮਾਰਟਮ ਦੀ ਰਿਪੋਰਟ ਆਉਣ ਤੋ ਬਾਦ ਤਫਤੀਸ਼ੀ

ਅਫਸਰ ਲਿਖੇ ਕਿ ਪੋਸਟ ਮਾਰਟਮ ਰਿਪੋਰਟ ਤੋ ਮਰਨ ਵਾਲੇ ਦੇ ਜਿਸਮ ਤੇ ਕਿਸੇ ਕਿਸਮ ਦੀਆਂ ਸੱਟਾਂ ਪਾਈਆਂ ਗਈਆਂ ਜਾਂ ਨਹੀ । ਕੀ ਡਾਕਟਰ ਨੇ ਪੋਸਟਮਾਰਟਮ ਰਿਪੋਰਟ ਵਿੱਚ ਮੌਤ ਦਾ ਕਾਰਨ ਦਿੱਤਾ ਹੈ ਜਾਂ ਕਿਸੇ ਹੋਰ ਨਤੀਜੇ ਦੀ ਉਡੀਕ ਤੋ ਬਾਦ ਦੇਵੇਗਾ। ਜਦੋ ਵਿਸਰੇ ਜਾਂ ਸਰੀਰ ਤੋ ਕਿਸੇ ਹਿੱਸੇ ਨੂੰ ਡਾਕਟਰੀ ਮਾਹਿਰਾਂ ਪਾਸ ਸਿਪਾਹੀ ਦਾਖਲ ਕਰਵਾ ਕੇ ਆਉਦੇ ਹਨ, ਉਸ ਬਾਰੇ ਵੀ ਉਹਨਾਂ ਦਾ ਬਿਆਨ ਲਿਖਿਆ ਜਾਵੇ ਕਿ ਉਹ ਠੀਕ ਹਾਲਤ ਵਿੱਚ ਉਨਾਂ ਨੇ ਕਿਸ ਰੋਡ ਸਰਟੀਫਿਕੇਟ ਰਾਂਹੀ ਦਾਖਲ ਕਰਵਾਏ ਹਨ । ਇਸ ਸਬੰਧੀ ਮੁਕੰਮਲ ਪੜਤਾਲ ਕੀਤੀ ਜਾਵੇ ਕਿ ਇਹ ਮੌਤ ਕਿਸੇ ਕੁਦਰਤੀ ਕਾਰਨ ਕਰਕੇ ਹੋਈ ਹੈ ਜਾਂ ਮਰਨ ਵਾਲੇ ਦੀ ਲਾਪਰਵਾਹੀ ਕਰਕੇ ਹੋਈ ਹੈ ਜਾਂ ਆਤਮਹੱਤਿਆ ਦਾ ਮਾਮਲਾ ਹੈ ਜਾਂ ਕਿਸੇ ਵੱਲੋ ਇਹ ਮੌਤ ਜਾਣਬੁੱਝ ਕੇ ਕੀਤੀ ਗਈ ਹੈ। ਕੈਮੀਕਲ ਸਿੱਟੇ ਬਾਰੇ ਵੀ ਦਫਾ 174 ਦੀ ਕਾਰਵਾਈ ਵਿੱਚ ਲਿਖਤੀ ਇੰਦਰਾਜ ਕੀਤਾ ਜਾਵੇ ਕਿ ਕੀ ਨਤੀਜਾ ਆਇਆ ਹੈ ਅਤੇ ਉਸ ਬਾਰੇ ਡਾਕਟਰ ਨੇ ਮੌਤ ਦਾ ਕੀ ਕਾਰਨ ਦੱਸਿਆ ਹੈ । ਜਦੋ ਮਾਮੂਲੀ ਜਿਹੇ ਸਬੂਤ ਵੀ ਮਿਲਣ ਕਿ ਇਸ ਮੌਤ ਸਬੰਧੀ ਕਿਸੇ ਨੇ ਕੋਈ ਜੁਰਮ ਕੀਤਾ ਹੈ ਤਾਂ ਉਸੇ ਸਮੇ ਸਬੰਧਤ ਧਾਰਾ ਅਧੀਨ ਮੁਕੱਦਮਾ ਦਰਜ ਕੀਤਾ ਜਾਵੇ ।

8) ਗਜ਼ਟਿਡ ਅਫਸਰ ਮੌਕਾ ਤੇ ਜਾ ਕੇ ਅਜਿਹੀਆਂ ਗੈਰ-ਕੁਦਰਤੀ ਮੌਕਾ ਸਬੰਧੀ ਪੂਰੀ ਪੜਤਾਲ ਕਰਕੇ ਆਪਣੀ ਤਸਦੀਕ ਰਿਪੋਰਟ ਲਿਖਣਗੇ । ਥਾਣੇ ਦੀਆਂ ਨੂੰ ਖਾਸ ਤੌਰ ਤੇ ਵਿਚਾਰਨਗੇ ਅਤੇ ਉਨਾਂ ਵਿੱਚ ਲਿਖਤੀ ਤੌਰ ਤੇ ਯੋਗ ਹਦਾਇਤਾਂ ਵੀ ਦੇਣਗੇ ।

9) 174 ਦੀ ਕਾਰਵਾਈ ਵਿੱਚ ਵਰਤੇ ਗਏ ਫਾਰਮ ਅਤੇ ਹੋਰ ਸਫੈਦ ਕਾਗਜ਼ ਬਹੁਤ ਹੀ ਅੱਛੇ ਕਿਸੇ ਦੇ ਅਤੇ ਸਾਫ ਸੁਥਰੀ ਲਿਖਤ ਵਿੱਚ ਹੋਣ ਕਿਓਕਿ ਕਈ ਦਫਾ ਇਹ ਫੌਜਦਾਰੀ ਮੁਕੱਦਮੇ ਦੇ ਰੂਪ ਵਿੱਚ ਬਦਲ ਜਾਂਦੀਆਂ ਹਨ। ਇੰਨਾਂ ਇੰਨਕੁਆਰੀਆਂ ਦੇ ਹਰ ਪੇਜ਼ ਤੇ ਥਾਣੇ ਦੀ ਮੋਹਰ ਅਤੇ ਇੰਨਕੁਆਰੀ ਨੰਬਰ ਦਾ ਅਨੁਮਾਨ ਵੀ ਦਿੱਤਾ ਜਾਵੇ ।

ਇੰਨਾਂ ਹਦਾਇਤਾਂ ਦੀ ਇੰਨ-ਬਿੰਨ ਪਾਲਣਾ ਕੀਤੀ ਜਾਵੇ ।

ਐਡੀਸ਼ਨਲ ਡਾਇਰੈਕਟਰ ਜਨਰਲ ਪੁਲਿਸ,
ਕਰਾਈਮ, ਪੰਜਾਬ, ਚੰਡੀਗੜ੍ਹ ।

STANDING ORDER NO. 2 OF 2003

PURPOSE:-

The purpose of this order is to create a Detective and Investigation staff in the Police Station, Sub-Division and at the District Headquarters on functional and practical lines, with a view to improve our detective and investigational efficiency and ensure speedy as well as timely investigation.

MOTIVE:-

By this order, we intend:

(a) To improve upon the quality of Investigation of criminal cases.

(b) To ensure speedy and timely investigation of cases by reducing the causes for delay in investigation.

(c) To ensure application of scientific aids in crime investigation.

(d) To introduce expertise and specialization in our detection as well as investigation.

ORGANIZATION:-

(a) We already have the posts of SP/D and DSP/D in our Districts. These posts shall continue to be there while their role and responsibilities are defined in this order.

(b) In every Police Station, a detective and investigation staff may vary from 1 Sub-Inspector, 2 H.C.s and 3 Constables to 1 Inspector, 2 S.I.s, 2 A.S.Is, 5 H.Cs. and 10 Constables, keeping in view to the registration of crime and load of investigation in that police station, final decision will be with the SSP.

(c) This police station staff shall work under the full control of the SHO of the Police Station as well as under the full supervision of the DSP Sub-Division. However, the SSP will ensure that those, who are posted in this staff, are best available for the job of detection and investigation. The SSP will further ensure that once posted in this staff, one is not transferred at least before 2 years, except in cases of specific compliant of misconduct or inefficiency.

(d) The general police station staff shall continue investigating all the cases of local and special laws. In addition, they may continue with the registration and investigation of hurt cases and other minor or simple cases of IPC also. However, the following cases should be given by the SHO/DSP Sub Division to the Directive Staff of the police station.

CRIME AGAINST PERSON:

(a) Cases of 307 and above, if the accused are known or are likely to be identified immediately after.

(b) Cases of rape or abduction or kidnapping, if the accused are named or it is reasonably to identify them vary shortly.

CRIME AGAINST PROPERTY:

Theft, burglary, robbery cases where culprits are known or it can reasonably be expected that they can be identified immediately after.

NARCOTIC DRUGS:

Cases of drugs where the quantity is not commercial or where any big drug marketing is not suspected.

WHITE COLLAR CRIMES:

Economic offence cases of simple nature and easy investigation.

SUB-DIVISION & DISTRICT HEADQUARTERS SQUARD:-

At every District Headquarters, and if the SSP so finds, at one or more than one Sub-Divisional Level also, the following specialized squads shall be established:-

1. **Homicide squads:**

One or more than one squad, both at Sub-Divisional and the District Level or only at the District Level, according to the load of cases and investigation, should be established under the charge of a suitable Inspector, with adequate supporting staff of NGO, Head Constable and Constable to investigate blind murder cases or complicated and important homicide cases where specialized skill of investigation should be required.

2. **Kidnapping, Abduction and Rape cases squad:**

Kidnapping, abduction and rape cases are of serious gravity in any modern civilized society and are hereby declared cases in respect of which special reports are to be sent in terms of Police Rule 24.50. Such cases attract wide public attention and are reflections on law and order situation. Hence, one or more than one squads, under the charge of an Inspector be established to investigate such cases.

3. **White Collar Crimes and Economic Offence Squad:**

One or more than one such squads under the charge of an Inspector, be established to investigate the complicated and important cases of fraud, embezzlement, corruption, cheating, miss-appropriation and such other cases. Hawala and counterfeiting cases should also go to them.

4. Organized Gangs Crimes including Robbery, Dacoity and Burglary:

One or more than one squad should be created to investigate organized gangs crimes against property including car and scooter thefts by professional criminals. Cases of Drug trafficking also should be handed over to squad.

5. Interrogation Staff:-

The SSP should select some NGOs and others who should excel in technique of interrogation and questioning and should organize them in district headquarters or both at headquarters and Sub-Divisional Level to overtake all important interrogations on the direction of DSP/D or SP/D. The members of this staff should preferably be equipped with modern technique and questioning in interrogation.

6. Technically Expert Staff:-

Besides the above, an arrangement of Dog Squad, Finger Print Experts and Forensic Science Expert, be made under the charge of DCRB incharge, who should ensure that whenever there is a serious crime against the property or against the person, the experts so amalgamated, reach the spot to search for any scientific evidence and collect the same. This Scientific Aid team should consist of Officers, specially trained in examination of scene of crimes and lifting of finger prints, foot prints, blood samples etc. from the spot. The members of this team should carry their investigation and other equipments for measuring, labeling, packing, and lifting etc. The number of officers in this team should be adequate enough for the work load and frequency of such crimes. The team shall have its own transport.

7. Absconders and P.O. Staff:

Though the primary responsibility for the arrest of absconders and P.O.s will remain with the local station House officer, every district will organize a staff for the arrest of absconders and P.Os. as well who, if not apprehended promptly, will commit more crimes.

8. Scientific Experts from FSL Chandigarh:

Director/FSL shall make such experts from his Laboratory available, if such experts are required by any of the District S.P., to visit a crime scene, examine it and collect necessary materials for analysis and evidence.

9. Role of DSP/D and SP/D:

SP/D on behalf of the SSP and through his DSP/D:-

(i) Shall visit all the spots of heinous and sensational crimes and will supervise the investigation thereof.

(ii) He shall be personally responsible for the working and the performance of all the District Level as well as the Sub-Divisional Level Squads and Staff.

(iii) He, or his DSP/D, will transfers cases from the police station Detective Staff to the district level or Sub-Divisional Level Squads and Staff, in consultation with the DSP/Sub-Division/SHO Police Station.

(iv) Generally the investigation of those cases which are suspected to be gang crimes, crimes by organized professionals or which are sensational and important or which appear to be complicated, lengthy, blind or which require specialized skill, scientific or methodical investigation should be transferred to the specialized squads.

GENERAL INSTRUCTIONS:-

1. Men and Officers posted with the Detective and Investigation staff of police station, sub-divisional or the district headquarters shall normally not be deployed for any law & order and Bando-bast duty except in grave situations under the specific orders of the SSP.

2. All the men and officers posted in Detective staff will also be responsible for the collection and dissemination of information about the crimes and criminals.

3. In some cases, the law has specified a particular rank of police officer to register or to investigate those cases, the legal position in such cases is not to be disturbed by this Standing Order.

4. The DSP/D and SP/D shall inspect the work of the various squads and staff, of Sub-Division and District level, at least once a month each. They will further ensure close co-operation between the police station where the cases were registered and the squads by whom the investigation is being carried on. Likewise the DSP Sub Division will inspect the work of police station detective staff at least once a month and will ensure cooperation between the police station detective staff and the special squads, if necessary.

5. Special squads shall also be responsible, (a) for the pairvi of the cases investigated by them and (b) for preparing the necessary documents and making all the entries into the prescribed registers, as required by Law or by Punjab Police Rules.

6. It goes without saying that special squads shall develop their own sources of information. They should further conduct themselves in such a manner that they are able to secure effective people's cooperation.

7. The present CIA shall be merged with the District and Sub-Division Level specialized squads.

FINAL WORD:-

Thus the Standing Order No. 51 of 1977 establishing a Detective and Investigation Department in each district will be put under implementation with the modification and clarification as specified above. This order will supersede all other amendments and clarification issued on the subject earlier.

Director General of Police,
Punjab.

Circular Order No. 5/2003

Dated the Chandigarh :

Subject:- Inquiry/Investigation by Crime Wing.

The Crime of the Punjab Police undertakes the enquiries and investigations under the orders of the senior formations in the department and various other authorities prominently including the Supreme Court of India, New Delhi, the Punjab and Haryana High Court, Chandigarh, the Punjab State Human Rights Commission, Chandigarh, the National Human Rights Commission, New Delhi, the National Women's Commission, New Delhi, the Punjab Women's Commission, Chandigarh and the Punjab Chief Minister's Office.

The issue of the writing of the case diaries by crime wing had come up in the past few crime meetings and detailed discussions were held with various concerned quarters. The basic issue raised in such discussions was whether the case diaries are to be compulsorily written by the crime wing investigators when a case is taken up for enquiries into the complaints from petitioners on already registered cases in the districts.

The matter has been examined at length in this headquarter. It is clarified that in such cases where the crime wing undertakes an enquiry into a complaint in an already registered case, no case diaries are to be submitted. The enquiry report, by the crime wing, when submitted contains the written statements of the witnesses and these can be made basis for the case diaries by the District Investigating Officers when the reports are forwarded to them for the follow up action.

However, in cases, where the crime wing lakes up an investigation of a case under directions of competent authorities, the case diaries shall be invariably written by the investigating officers. The case files will be forwarded to the concerned district after the investigation is complete for taking further necessary action in such cases.

Enquiries/Investigations conducted by officers of the crime wing are improved by the ADGP/Crime or the DGP as the case may be. However, in case there is any difference of opinion, the matter shall be referred by the SSP to the DGP/Crime for review mentioning grounds for the same whose decision shall be final.

Director General of Police

Punjab.

OFFICE OF THE ADDL. DIRECTOR GENERAL OF POLICE, CRIME, PB.

No. 23735-68/CR-6dated, Chg. the:- 19-11-2003

A copy of the above is forwarded to the following for information and necessary action:-

1) ADGP/GRP, Punjab, Patiala.
2) IGP/Zonals, Patiala and Jalandhar.
3) IGP/Border, Amritsar.
4) All Range DIsG in Punjab.
5) All Distt. SSsP in Punjab and AIG/GRP/Pb. Patiala.

for Addl. Director General of Police,

Crime, Punjab.

OFFICE OF THE DIRECTOR GENERAL OF POLICE, CRIME, PUNJAB, CHANDIGARH

CIRCULAR ORDER NO. 5

Subject : Filling of final reports in the courts.

It has been seen that in a large number of criminal cases S.H.Os. file final reports of challan/untraced/cancellation in the courts on their own. It is likely that in some cases SHOs file not-so-bonafide final reports directly in the courts and halqua GOs choose to look the other way. Such a practice should be immediately stopped. In all specially reported cases, before final report is filled in the court S.S.P. or SP (D) should satisfy himself that all possible evidence has been collected and possible compliance of objections raised by prosecution agency have been made. Then only at the orders of S.S.P. or SP (D) final report should be presented in the court. In other cases halqua G.Os. should order filling of final reports after due examination. Wherever it is necessary, the S.S.P. should liaise with District Session Judge to ensure that the challans are accepted in the courts only through G.O.s/S.P (D)/S.S.P.

Addl. Director Genl. of Police,

Crime, Punjab.

No. 18450-85/CR-LA2 dated Chg. the 10-10-06

A copy of the above is forwarded to the following for information and necessary action please:-

1. All Zonal IsG in Punjab & IG/GRP PTL.
2. All Range DIsG in Punjab.
3. All Distt. SSsP in Punjab & AIG/GRP PTL.

OFFICE OF THE ADDL. DIRECTOR GENERAL OF POLICE, CRIME PUNJAB, CHG.

Circular Order No. 4/2002

Subject:- Guidelines regarding cancellation of cases u/s 498-A IPC.

It has come to notice that cancellation of cases u/s 498-A IPC is done without deeply probing the facts of the complaints lodged by the complainant and as such points which are raised by the complainant remain untouched or unprobed. In future, cancellation of cases u/s 498-A IPC be done only with the prior approval of the Zonal I.G.s. The Zonal I.G.s should see that all the points which are raised by the complainant are addressed to properly and adequately.

for Addl. Director General of Police,
Crime, Punjab, Chandigarh.

No. 2469-2500 Dated, Chandigarh : 17-05-02

1. All Zonal IGPs, Pb.
2. All Range DIGs.
3. All SSPs in Pb.
4. AIG/GRP/Pb.

OFFICE OF DIRECTOR GENERAL OF POLICE PUNJAB, CHANDIGARH

STANDING ORDER ON PROCEDURE FOR DEALING WITH MATRIMONIAL DISPUTES, PROPERTY DISPUTES AND MONETARY/ECONOMIC DISPUTES

(STANDING ORDER NO. 3 OF 2003)

Preface

It has been observed that a number of complaints are received daily by various functionaries of police, which are drafted in such a manner that on the face of them they disclose commission of a cognizable offence but the facts are generally contrary to the text. Instantaneous registration of FIR on such complaints causes lot of avoidable harassment to common citizens and wastes a lot of time of police, prosecution and judiciary. Needles to say, that this practice of rampant registration fuels corruption also. A common man suffers social stigma, loss of reputation and loss of money besides mental harassment once an FIR is registered, though may be cancelled later on after verification of facts. The moment an FIR is lodged, the damage is done thanks to our social values and fabric.

As a law enforcement agency, it is our prime responsibility to ensure that miscarriage of justice is not only checked but it appears to have been effectively checked. No innocent should suffer mental anxiety, loss of reputation and physical confinement. A study of Ludhiana district reveals that out of total 8019 cases registered in 2002-03, 2385 cases were sent as cancelled/untraced which is about 30% of total registration. Though we may feel satisfied that 30% of total persons booked have been given justice by recommending cancellation of the cases yet the million dollar unanswered question is whether we can restore the loss of dignity, the loss of money and the loss of mental and physical health suffered by an individual just because we went in for registration of a case without verifying the facts?

A battery of petition writers and legal experts is always on the job to design a complaint in such a manner that on face value it fulfills all conditions of a cognizable offence but ground reality is quite contrary. This practice is observed more often in respect of property disputes, monetary/economic disputes and matrimonial disputes. A sizeable chunk of complaints received in police stations pertain to such disputes. The police have to be careful and meticulous in respect of such cases to ensure that justice is not only done but it appears to have been done. No innocent should be unnecessarily harassed and no guilty should be spared, howsoever, influential he may be.

Legal Position

There are various provisions in Cr.P.C. and PPR which permit a police officer to refuse to investigate information, if he has reasonable doubts regarding commission of a cognizable offence. A reproduction of section 157 (1) (b) is relevant in this context:

"If it appears to the officer in-charge of police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case."

Section 157 (2) further mentions "in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Govt., the facts that he will not investigate the case or cause it to be investigated."

The relevant provisions of rule 24.4 of PPR are reproduced below:

"If the information or the intelligence relating to the alleged commission of a cognizable offence is such that an officer in charge of a police station has reason to suspect that the alleged offence has not been committed, he shall enter the substance of the information or intelligence in the station diary and shall record his reasons for suspecting that the alleged offence has not been committed and shall also notify to the informant, if any, the fact that he will not investigate the case or cause it to be investigated".

The Hon'ble Punjab and Haryana High Court while handing down a judgement in Mithiilesh Kumari versus State of Punjab in Criminal Misc. No. 34815-M of 2001 dated 02-09-2002 observed as follows :-

"A perusal of above case law shows that information received by an officer in charge of a police station relating to commission of a cognizable offence is required to be entered in a book kept at the police station in the form of FIR. ***At the same time, it cannot be ignored that a malicious or baseless information may do incalculable harm to the person against whom such information is furnished. If the information is uncertain, indistinct or patently absurd, the officer in charge of a police station is not debarred form a brief enquiry. Such a course is permissible under Rule 24.4 of the PPR which has been quoted in the earlier part of the judgement.*** Observations of the Apex Court in Bhagwant Kishore Joshi's case (supra) and P. Sirajuddin's case (supra) also expressly permit such a course to be adopted. Decisions of the Apex Court in Arun Kumar Aggarwal's case (supra), G.Sagar Suri's case (supra), Chandrapal Singh's

case (supra), Surendra Prashad Sinha's case (supra), and Madhavrao Jiwajirao Scindia's case (supra) also support such a course. View of the Division Bench of Delhi High Court in Sanjeev Kumar's case (supra) also recognizes this course to be adopted. While abuse of power by the police in adopting such a course cannot be ruled out, forcing the police to register FIR on any motivated, frivolous, absurd, vague malicious version will be equally un-desirable. There is no reason to presume that wholly false malicious or vague version will not be furnished by motivated informants to the police and if the police is to mechanically register FIR, it will put liberty of any innocent citizen into jeopardy. It is for this reason that FIR registered making out no case, if it is malafide or if it is abuse of the process of law, is liable to the quashed, What is liable to be quashed cannot be liable to be registered. No doubt, checks and balances are required in the matter of registering the FIR as well as in the matter of refusal to register required FIR, because abuse of power in registering as well as in refusing to register is required to be checked to advance the majesty of justice, which is the prime object of law".

Similarly the Hon'ble Supreme Court observed as follows while delivering judgement way back in 1991.

"Commencement of investigation by Police Officer is subject to two conditions first the Police Officer should have reason to suspect the commission of offence as required by Sections 157 (1) and secondly ***the Police Officer should subjectively satisfy himself as to whether there is sufficient ground for entering on an investigation even before he starts an investigation as contemplated under Section 157 (1) (b). State of Haryana Versus Ch. Bhajan Lal 1991(1) recent Cr. 383 (5C).***

PROCEDURAL MODALITIES

If a complaint is presented to a Station House Officer and if the Station House Officer is satisfied that the complaint submitted by a person in respect of above mentioned categories of case requires ascertainment of facts to assess the truth, he shall adopt the following course of action:

1. The text of complaint shall be entered in DDR keeping with the provisions of Punjab Police Rules 24.4. The reasons for making a DDR entry shall be reduced to writing in DDR at the end of text of the complaint.

2. A copy of DDR shall be forwarded to Halqa Magistrate and Halqa G.O. without delay.

3. Separate register shall be maintained in all police stations for recording the particulars of all such DDRs made under PPR 24.4.

4. After recording DDR, the Station House Officer himself or a subordinate officer to be deputed by him shall visit the spot, interview alleged witnesses and verify alleged evidence to ascertain the facts.

5. It shall be obligatory on the part of SHO to verify the complaint in a time bound manner preferably within a week and record the outcome of verification in DDR and a special register kept in the police station. The Halqa Magistrate and Halqa GO shall be informed about the outcome of verification of facts.

6. The complainant shall be informed about the outcome of the enquiry.

7. Meticulous investigation shall be carried out in respect of cases which have been registered after verification of facts and arrests be effected after bringing sufficient evidence on file.

8. The complaints received by or marked to women cell and anti-fraud staff shall also be disposed of in similar fashion.

COMPLAINTS BEFORE SENIOR OFFICERS

If the complaint is presented to any Senior Officer and he is satisfied that the complaint requires verification of facts to assess the truth, he shall himself verify the facts and assess the truth or get the needful done before ordering the concerned Police Station to register a criminal case on the complaint.

Sd/-

for Director General of Police, Punjab.

Date:

CIRCULAR NO. 2

It has been observed from critical assessment of monthly reports regarding seizure of narcotics received in this office that investigation work in the NDPS cases is not satisfactory as the local police is not taking keen interest for the follow up seizure of contrabands in the state. On 10-10-03, Moga police had seized 230 injections of Morphine and a big bottle containing diazepam from a person. Even on sizable recovery, as is apparent from the quantity, serious efforts are not being made to track down the sources, transportation routes and modus operandi, distribution net work of dealers and paddlers and targeted group of customers, like farm labour/students/employees etc. Further some, it is necessary to zero down all nodal points of sale for narcotics.

Hence, it directed that the SSsP/Range DIsG/IsG Zonal will closely monitor the progress of the investigation of the cases and ensure systematic and intensive efforts and follow up on these lines in all investigations of commercial quantity of recoveries.

Addl. Director Genl. of Police,

Crime, Punjab.

No. 3160-92/CR-2 dated, the 20-02-04

1. All Zonal IsG in Punjab.
2. All Range DIsG in Punjab.
3. All Distt. SSsP in Punjab.
4. AIG/GRP, Patiala.

CIRCULAR ORDER NO. 3

From

The Director General of Police,
Punjab, Chandigarh.

To

1) All Distt. Sr. Supdts. of Police in Punjab.
2) A.I.G./GRP, Punjab, Patiala.

No. 6798-821/CR-LA-2 Dated. Chandigarh the :- 04-05-04

Subject **: Registration & investigation of cases relating to manufactured drugs and preparations under section 21 of the NDPS Act.**

Memo:

Under section 21 of the NDPS Act, Police has the power to register FIR for further investigation in relation to manufactured drugs and preparations only in respect of those drugs which are covered under section 2(xi)(a) and under the notification issued under section 2(xi)(b). Power under this section cannot be exercised in respect of any other substance and preparation. However, there are some substances or preparation, which become manufactured drugs under section 2(xi)(b) only if these contain salts/concentrations beyond the limit prescribed therein. An offence under Section 21 is made out only if the quality of salt/concentrations is beyond the limit prescribed.

It has been seen that in such cases, after registration of FIR, the Police resorts to arrest and in the meantime sends a sample of the substances/preparations for chemical examination. Experience shows that in a number of cases, the salts/concentrations are found within the prescribed limits by the Chemical Examiner leading to no offence which amounts to harassment of the arrestee.

In view of above, it is directed that in case of those manufactured drugs where limits of some salts/concentrations have been prescribed, FIR on the basis of suspected offence may be registered. Arrests should be affected only if the person accused of committing offence refuses, on demand of Police Officer, to give his name or residence or gives a name or residence which such officer has reason to believe to be false on the report of the Chemical Examiner on scrutiny by the Prosecution Agency reveals that the salts/concentrations are beyond the prescribed limits. In case percentage of salts /concentrations are within the prescribed limit, cancellation report may be forwarded to the concerned Court otherwise the accused may be challaned.

for Director General of Police,
Punjab, Chandigarh.

No. 6822/CR- 2. Dated Chandigarh the :- 04-05-04

A copy of the above is forwarded to the Director Prosecution & Litigation, Punjab for information & necessary action.

for Director General of Police,
Punjab, Chandigarh.

OFFICE OF THE DIRECTOR GENERAL OF POLICE, PUNJAB CHANDIGARH.

STANDING ORDER ON PROCEDURE TO BE FOLLOWED IN DEALING WITH ECONOMIC OFFENCES

STANDING ORDER NO. 4 OF 2004

1. **AIMS AND OBJECTIVES:**

To streamline the procedure for dealing with economic offences in an effective manner and to ensure that (a) there is no police interference in disputes of civil nature and (b) economic offences which attract criminal provisions of law are investigated effectively.

2. **CLASSIFICATION OF ECONOMIC OFFENCES:**

Chapter XVII of the IPC lists out offences against property Offences covered from Sections 403 IPC to 409 IPC (misappropriation/criminal breach of trust), Sections 415 to 424 IPC (cheating/fraud) are broadly the offences pertaining to Economic Offences. Chapter XVIII relating to documents and property marks, from Section 463 to 489, also contains penal sections relating to Economic Offences. Economic Offences shall include cases like those concerning fake currency/stamps, Company and bank frauds, depositors being duped by Companies, frauds/land-grabs with Government/Government agencies, un-authorized colonies, money laundering, cyber crimes etc., in addition to offences under special laws like the Copyright Act etc.

3. The Economic Offences Wing set up at headquarters with the newly created posts of Inspector General of Police, Economic Offences Wing and Deputy Inspector General of Police, Economic Offences Wing will be supervised by the Addl. Director General of Police, Crime. For specialized investigation of economic offences of a serious nature, two investigation units shall be set up at the headquarters - Special Investigation Unit-I and Special Investigation Unit-II (SIU-I and SIU-II). Each unit will be headed by an investigating DSP/Inspector. Cases will be investigated in these two SIUs on the orders of D.G.P., ADGP/Crime, IGP/EOW and DIG/EOW. Distt. SSPs may send their recommendations for investigation of serious cases by the SIUs to the DIG/EOW through their Range DIGs AND IGs/Zone.

4. Anti Fraud Staff have been in existence in the districts earlier. Distt. SSPs shall create an Economic Offences Cell in each district under the charge of an Inspector. Wherever Anti Fraud Staffs are there, the same shall be converted into Economic Offences Cells. The Supervision of these Economic Offences Cell shall be given to the SP/Detective of the district. (wherever an SP/Detective is not posted the District SSP will earmark any other SP to be the supervisory SP of the Economic Offence Cell).

5. The Inspector In-charge of the Economic Offences Cell in the districts shall be posted by the Distt. SSP after the prior written approval of the DIG-EOW.

It will be ensured by the Economic Offences Wing that the staff posted in the district Economic Offences Cell is adequate and well educated to handle such cases and the logistics provided to these units are commensurate with the cases handled by the cells.

6. The supervisory SP of the Economic Offences Cell in each district shall undertake a review of all economic offences cases in the Police Stations of the district and classify them into the following categories:

(i) Cases of routine nature which will be investigated in the concerned Police Station itself. Every Police Station will maintain a register containing details of all such cases being investigated in the Police Station.

(ii) Cases which require specialized investigation will be transferred to the district Economic Offences Cells. Cases will be transferred from the Police Station to the Economic Offences Cells for investigation, under the orders the supervisory SP with the approval of the SSP, and the SPs/SSPs will monitor the investigation of such cases.

DIG/EOW will undertake a monthly review of the cases which are being investigated in the Economic Offences Cells.

(iii) Cases which require specialized investigation and are to be recommended for investigation by the SIUs at State headquarters.

(iv) Vide Standing Order No. 3 of 2003 it has already been ordered that separate registers will be maintained in all Police Stations for recording particulars of all DDRs made under PPR 24.4 with regard to offences pertaining to matrimonial disputes, property disputes and monetary/economic disputes. Supervisory SPs of the Economic Offence Cells shall take a weekly review of these registers in order to ensure that the provisions of Standing Order No. 3 of 2003 are being properly complied with.

7. Sanding Order No. 3 of 2003 has been issued on the procedures to be followed for dealing with matrimonial disputes, property disputes and monetary/economic disputes. The Economic Offences Wing at the headquarters will supervise the implementation of this Standing Order and ensure that it is followed by the field units in letter and spirit. Wherever necessary, the Economic Offences Wing will call for the relevant record and take final decisions on the filing of frivolous and non-cognizable complaints, registration of FIRs after enquiries, steps to be taken for proper investigation of such cases and challaning /cancellation of such cases, and convey appropriate orders to the Distts./ units concerned.

8. The Economic Offences Wing will, wherever required, attach manpower and logistics from the districts/other units, for dealing with complaints/cases at the headquarters.

Sd/-

for Director General of Police, Punjab.

SEPARATION OF INVESTIGATION AND LAW & ORDER FUNCTIONS IN THE POLICE STATIONS

It is often experienced that one of the primary reason for poor investigation and low conviction rates is the fact that the time and energy of the entire police station personnel is almost entirely consumed towards responding to public order, bandobast and VIP duties. There is an emergent need to allow a detachment of investigators in the police station to focus exclusively on investigation and prosecution of criminal cases and introducing thereby an element of functional specialization which will ultimately improve the quality of investigation.

This important police reform has been the constant theme of various police commissions viz. National Police Commission (1977-1981), Padmanabhiah Committee (2000), Group of Ministers on National Security (2000-2001), Malimath Committee on Criminal Justice System Reform (2001-2003).

The Punjab Police Act 2007 also mandates separation of investigation and Law and Order functions for greater professionalism in police functioning.

AIM: -

By this order, we intend:

(a) To improve upon the quality of investigation of criminal cases.

(b) To ensure speedy and timely investigation of cases by reducing the causes for delay in investigation.

(c) To ensure application of scientific aids in crime investigation.

(d) To introduce expertise and specialization in our detection as well as investigation.

ORGANISATION :

(a) In every Police Station, a separate Investigation and Law and Order staff shall be posted / earmarked by the SSP. The strength of this staff will be according to the norm outlined later in the order. However local variance can be there depending upon the registration of crime and load of investigation in that police station. Final decision will be with the SSP/ Commissioner of Police.

(b) This police station staff shall work under the full control of the SHO of the Police Station who shall normally be of Inspector rank. However, the SSP will ensure that those, who are posted, are best available for the job of detection and investigation.

(c) The work of both the Investigation and Law and Order units in the police station will be supervised by the SHO, DSP Subdivision and SP City concerned.

(d) The SSP will further ensure that once posted in either wing the personnel are not transferred before one year, except in cases of specific complaint of misconduct or inefficiency. Even in such exceptional cases transfer has to be with reasons to be recorded in writing and with the prior approval of the Range DIG (IGP Zonal in case of Commissionerates).

(e) Men and Officers posted with the Investigation staff of the police station shall normally not be deployed for any law & order and Bando-bast duty except in grave situations under the specific orders of the SSP.

(f) It should our endeavour to repose greater confidence in the abilities of our subordinate ranks and give them higher responsibilities which will serve to enhance their self esteem. Hence Head Constables, graduate Constables and other experienced Constables should be entrusted with minor investigations. This will boost their confidence as well as enable NGOs to focus on important cases of serious nature.

DUTIES OF THE INVESTIGATION STAFF: -

The Investigation staff shall be entrusted with investigation of important and serious IPC offences such as:

IPC Cases to be investigated by Investigation Staff of Police Station

1. Murder
2. Dacoity
3. Pre. Assembly for Dacoity
4. Burglary
5. Rioting
6. Culpable Homicide
7. Attempt to Murder
8. Poisoning
9. Kidnapping
10. Abduction
11. Rape
12. Theft
13. Robbery
14. Receiving of Stolen Property
15. NDPS Act case where the quantity is not commercial or where any big organised drug racket is not suspected
16. Cheating and criminal breach of Trust: - Investigation to be conducted by District Economic Offences Wing if the amount involved more than 20 lacs.
17. Hit and Run cases of u/s 304 A
18. 498A / 304 B IPC

(i) Each I.O. in the investigation unit shall investigate at least 25 cases in a year. The IOs shall be responsible for each case from its registration to conviction. They shall also be responsible for attending court work and other litigation that may arise in the cases under investigation.

(ii) This unit in pursuance of its duties shall be assisted/aided by CIA/special crime/investigation units at the district headquarters under the charge of SP

(Detective). For the purpose of arrest of accused persons and raids on suspected persons this unit shall be assisted by Law & Order police.

(iii) The staff of the Investigation unit shall be made to undergo an orientation at PPA Phillaur on scientific methods of investigation.

(iv) All the men and officers posted in Investigation staff will also be responsible for the collection and dissemination of information about crime and criminals.

(v) In some cases, the law has specified a particular rank of police officer to register or to investigate those cases, the legal position in such cases is not to be disturbed by this Standing Order.

(vi) The Investigation staff shall also be responsible, (a) for the pairvi of the cases investigated by them and (b) for preparing the necessary documents and making all the entries into the prescribed registers, as required by Law or by Punjab Police Rules.

(vii) The Investigation staff shall develop their own sources of information. They should further conduct themselves in such a manner that they are able to secure effective cooperation of the people.

DUTIES OF THE LAW AND ORDER STAFF: -

The responsibilities of Law & Order Staff of police station are to be as follows: -

i) Maintenance of Law & Order

ii) Prevention of Crime (Patrolling, Naka duties, preventive arrests)

iii) All VIP/Security/Bandobast duties.

iv) Community policing initiatives

v) Immediate response to all crime/emergencies.

vi) Investigation of cases other than those with Investigation Wing

vii) Traffic duties

viii) Conducting enquiries on public complaints regarding non-cognizable offences and domestic disputes between one individual or many individuals.

ix) The Law & Order staff in the police station shall continue investigating all the minor cases under local & special laws. In addition, they may continue with the registration and investigation of hurt cases and other minor or simple cases of IPC also.

The Law and Order Staff should be envisioned as the first unit of police/public interface. Accordingly the deployment of the force in terms of manpower, (their number and their age profile), the logistics and the charter of duties should be designed for fulfilling the aforementioned duties and for this reason the unit be kept agile and in constant touch with public without binding it down to long and tedious procedures of investigation.

This Law and Order Staff, shall, in pursuance of its duties, be assisted by the PCR and the traffic wing (a component of the security and traffic wing of the district police) as and when required.

NORMS FOR POSTING OF MANPOWER IN THE POLICE STATIONS: -

Category A Police Stations (Norm)

Name of the unit	SI	ASI	HC
Law and order	1	5	8
Investigation Wing	1	3	6
Total	**2**	**8**	**14**

Category B Police Stations (Norm)

Name of the unit	SI	ASI	HC
Law and order	1	2	6
Investigation Wing	1	1	5
Total	**2**	**3**	**11**

Category A Police Stations – (Commissionerate)

Name of the unit	SI	ASI	HC
Law and order	1	6	16
Investigation Wing	1	4	8
Total	**2**	**10**	**24**

Category B Police Stations – (Commissionerate)

Name of the unit	SI	ASI	HC
Law and order	1	3	10
Investigation Wing	1	3	4
Total	**2**	**6**	**14**

For Police Posts in the State: -

		Rank	Law & order	Investigation
i)	123 Police Posts in the State	ASI	0	123
		HC	492	0
		Total	**492**	**123**

All supervisory officers must put in their best endeavour to ensure effective and meaningful implementation of this important police reform measure.

Director General of Police,

Punjab.

OFFICE OF THE ADDL. DIRECTOR GENERAL OF POLICE, CRIME, PB.
Circular Order No. 11

Subject: Legal Aid Scheme (Sahayata)

Please refer to this office memo. No. 21002/35-CR dated 21.10.97 vide which the instructions given by the Hon'ble Supreme Court of India in Crl. W.P. No. 539/1986 with Crl.W.P. No. 592 of 1987-D.K. Basu Vs. State of West Bengal and others connection with/to deal the arrested persons in police station and to prevent custodial violence were issued.

2. The right of free legal aid characterizes the crime justice system of every free and democratic country in the world. The need to provide legal aid to the poor down trodden or though otherwise unable to realize their rights fully without legal counsel in the criminal and to some extent even in civil justice system is indeed the corner stone of a fair and justice procedure. The apex court has enshrined the principle of free legal aid in many decisions beginning with this in the "Hussaniara Khatoon" series of judgements.

3. The procedure for providing legal aid to the person arrested in Criminal cases and others who approach the police in civil or matrimonial cases may be streamlined in the following manner :-

a) When an accused is arrested he would be informed about his rights to legal and if he so deserves the legal counsel would be asked to visit him/her in police station. A meeting would be arranged in the waiting room of the police station.

b) The legal counsel would be from a panel of lawyers appointed by the District Legal Services Authority. He would be

contacted by the concerned investigating officer and he would then visit the accused in custody as described above.

c) The fact of informing the legal counsel would be recorded in the case diary and DDR. When the counsel visited the accused, he would sign in a register, specially maintained for the purpose which would mention the case, name of accused, name of I.O., counsel who attended and the time. This register should be called register No. 28 (as 27 registers are already in existence under the Punjab Police Rules and Standing Orders).

d) A legal aid form would then be filled up for the accused. The legal aid forms have already been provided by the District Legal Services Authority. The legal aid form would be filled for those who not provided, they were desirous of legal aid. The form should be presented to the concerned magistrate at the time of production of the accused.

e) Police Station Staff would also guide persons in the relevant categories regarding legal aid even in cases where they were not arrested or in cases of a civil and matrimonial nature.

4. Please ensure that these instructions are complied with meticulously and these instructions may be brought in the notice of every concerned officer.

Addl. Director General of Police,
Crime, Punjab.

No. 12682-714/CR-1/S Dated, Chg. the:- 11/06/2001

A copy of the above is forwarded to the following for necessary action please:-

1. Inspector General of Police, Border, Amritsar.
2. Inspector General of Police, Zonal, Jalandhar and Patiala.
3. Inspector General of Police, G.R.P. Punjab, Patiala.
4. All Range Dy. Inspectors General of Police in Punjab.
5. All District Sr. Superintendents of Police in Punjab.

Addl. Director General of Police,

Crime, Punjab.

ਸਰਕੂਲਰ ਆਰਡਰ ਨੰਬਰ 2/2003

ਧਾਰਾ 158(6) ਮੋਟਰਵਹੀਕਲਜ਼ ਐਕਟ-1988 ਅਨੁਸਾਰ ਹਾਦਸਿਆਂ ਦੇ ਅਜਿਹੇ ਕੇਸਾਂ ਜਿੰਨਾਂ ਵਿੱਚ ਕਿਸੇ ਵਿਅਕਤੀ ਦੀ ਮੌਤ ਹੋ ਗਈ ਹੋਵੇ ਜਾਂ ਉਸਨੂੰ ਸਰੀਰਕ ਸੱਟ ਵੱਜੀ ਹੋਵੇ, ਦੀ ਇਤਲਾਹ ਪੁਲਿਸ ਅਫਸਰ ਵੱਲੋ ਦਰਜ ਕਰਨ ਉਪਰੰਤ ਜਾਂ ਇਸ ਸਬੰਧੀ ਕਾਰਵਾਈ ਮੁਕੰਮਲ ਹੋਣ ਉਪਰੰਤ, ਉਸ ਥਾਣੇ ਦਾ ਮੁੱਖ ਅਫਸਰ ਇਤਲਾਹ ਦਰਜ ਹੋਣ ਤੋ ਜਾਂ ਅਜਿਹੀ ਕਾਰਵਾਈ ਦੀ ਰਿਪੋਰਟ ਮੁਕੰਮਲ ਹੋਣ ਤੇ ਜਿਵੇ ਵੀ ਹੋਵੇ, 30 ਦਿਨਾਂ ਦੇ ਅੰਦਰ ਅੰਦਰ ਉਸਦੀ ਇੱਕ ਕਾਪੀ ਇਲਾਕੇ ਦੇ ਕਲੇਮ ਟ੍ਰਿਬਿਊਨਲ ਅਤੇ ਇੱਕ ਕਾਪੀ ਸਬੰਧਤ ਇੰਨਸਿਓਰਰ (ਇੰਨਸਿਓਰੇਸ਼ ਕੰਪਨੀ) ਨੂੰ ਭੇਜੇਗਾ ਅਤੇ ਅਜਿਹੇ ਕੇਸਾਂ, ਜਿੰਨਾਂ ਵਿੱਚ ਇੱਕ ਕਾਪੀ ਗੱਡੀ ਦੇ ਮਾਲਕ ਨੂੰ ਦਿੱਤੀ ਗਈ ਹੋਵੇ, ਉਹ ਵੀ ਅਜਿਹੀ ਰਿਪੋਰਟ ਪ੍ਰਾਪਤ ਹੋਣ ਤੇ 30 ਦਿਨ ਦੇ ਅੰਦਰ ਅੰਦਰ ਉਸਦੀ ਇਤਲਾਹ ਅਜਿਹੇ ਕਲੇਮ ਟ੍ਰਿਬਿਊਨਲ ਜਾਂ ਇੰਨਸਿਓਰਰ ਨੂੰ ਦੇਵੇਗਾ ।

ਇਸ ਦਫਤਰ ਦੇ ਧਿਆਨ ਵਿੱਚ ਆਇਆ ਹੈ ਕਿ ਉਕਤ ਧਾਰਾ ਦੀ ਥਾਣੇ ਦੇ ਮੁੱਖ ਅਫਸਰਾਂ ਵੱਲੋ ਪਾਲਣਾ ਨਹੀ ਕੀਤੀ ਜਾ ਰਹੀ, ਜਿਸ ਕਾਰਨ ਇਨਸਿਓਰੈਸ਼ ਕੰਪਨੀਆਂ ਨੂੰ ਕਰੋੜਾਂ ਦਾ ਹਰਜਾਨਾ ਝੱਲਣਾ ਪੈ ਰਿਹਾ ਹੈ । ਇਸ ਲਈ ਉਕਤ ਧਾਰਾ ਦੀ ਇੰਨ-ਬਿੰਨ ਪਾਲਣਾ ਕੀਤੀ ਜਾਵੇ ।

ਵਾ: ਆਡੀਸ਼ਨਲ ਡਾਇਰੈਕਟਰ ਜਨਰਲ ਪੁਲਿਸ,
ਕਰਾਈਮ, ਪੰਜਾਬ।

ਨੰਬਰ 18450-78/ਸੀ.ਆਰ.-2 ਮਿਤੀ ਚੰਡੀਗੜ੍ਹ 19-06-2003

ਉਕਤ ਦਾ ਉਤਾਰਾ ਹੇਠ ਲਿਖਿਆਂ ਨੂੰ ਸੂਚਨਾ ਅਤੇ ਜਰੂਰੀ ਕਾਰਵਾਈ ਹਿੱਤ ਭੇਜਿਆ ਜਾਂਦਾ ਹੈ :-

1. ਸਮੂਹ ਰੇਜ਼ ਡੀ.ਆਈ.ਜੀਸ਼, ਪੰਜਾਬ ।
2. ਸਮੂਹ ਸੀਨੀਅਰ ਪੁਲਿਸ ਕਪਤਾਨ, ਪੰਜਾਬ ।

ਵਾ: ਆਡੀਸ਼ਨਲ ਡਾਇਰੈਕਟਰ ਜਨਰਲ ਪੁਲਿਸ,
ਕਰਾਈਮ, ਪੰਜਾਬ।

CIRCULAR ORDER NO. 1/04

It is been seen that incidents of forged sales and loss of Mobile Hand Sets are on the rise. Whenever any complaint is received by the officer incharge of Police Station, an FIR should be registered under relevant section of law and the case be referred to the Economic Offence Wing for investigation. In case of such information discloses admission of Non-Cognizable Offence, it should be entered in the daily diary register.

Inspector General of Police

Crime, Punjab, Chandigarh.

No. 1569-601 CR-6 Dated Chandigarh, the :- 27-01-04

A copy of the above is forwarded to the following for information & necessary action please:-

1. IGsP/Zonal Patiala, Jalandhar & Border Amritsar.
2. All Range DIsG in Punjab.
3. All SSsP in Punjab.
4. AIG/Railway, Patiala.

Inspector General of Police

Crime, Punjab, Chandigarh.

OFFICE OF THE DIRECTOR GENERAL OF POLICE, CRIME, PUNJAB, CHANDIGARH

CIRCULAR ORDER NO. 4/2006

Subject:- Right of Financiers to take back cars of loan defaulters.

Please refer to this office Circular Order No. 16/2001, on the subject noted above (copy enclosed)

The issue with regard to the Financiers right to take back vehicles of loan defaulters has been again considered by the Hon'ble Supreme Court in Managing Director. Orix Auto Finance (India) Ltd. versus Jagmander Singh 2006(2) RCR (Criminal) 386. It has been observed that if agreements permit the financier to take possession of the financed vehicles, there is no legal impediment on such possession being taken. Of course, the hirer can avail such statutory remedy as may be available. But mere fact that possession has been taken cannot be a ground to contend that the hirer is prejudiced.

In view of above, it is reiterated that in case bank/financial institution take possession of the vehicles in terms of agreement executed by the borrower/hirer, police should refrain from interfering unless any other cognizable offence is reported to have been committed.

for Addl. Director General of Police
Crime, Punjab.

1. All SSsP in the Punjab State.
2. All Range DIsG in the Punjab.
3. All IGsP/Zone in the Punjab including IGP/GRP, Patiala.

No. 16124-58/CR-6. Dated, Chg. the: 31-08-06