

CURRENT STATE OF LAW ON PROHIBITION, CONTROL AND REGULATION OF NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES: INDIA CHAPTER

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Abstract

Narcotic Drugs and Psychotropic Substances (NDPS) have several medical and scientific uses but, they can be and are also abused and trafficked. The basic legislative instrument of the Government of India on prohibition, control and regulation of NDPS is the Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act). This Act prohibits, except for medical or scientific purposes, the manufacture, production, trade, use, etc. of NDPS. The Act has been supplemented by the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988. The NDPS Act and allied legislations has created statutory authorities with specified mandated functions. The Act views drug offences very seriously and prescribes stiff penalties. The Act also provides for forfeiture of illegally acquired properties from the proceed of narcotic and psychotropic substances. The NDPS Act empowers the Central Government to permit and regulate cultivation of opium poppy and coca plants in India for medical and scientific purposes. The Government of India notifies (Opium Policies) the tracts where opium cultivation can be licensed as well as the General Conditions for issuance of license every year. The State Governments are empowered to licence cultivation of cannabis for medical and scientific purposes. Illegal cultivation of opium poppy and cannabis are offences under the Act. The overall responsibility of tackling the problem of illicit cultivation shall lie with the Central Government. The responsibility of collecting field intelligence and destroying illegal cultivation and arresting and prosecuting the offenders shall lie primarily with the State Governments. Manufacture of psychotropic substances listed in the Schedule to the Act is regulated. Synthetic and semi-synthetic drugs are illicitly manufactured in clandestine laboratories the world over and India is no exception. The manufacture, trade, transport, consumption and use of these substances are regulated in terms of a revised NDPS (Regulation of Controlled Substances) Order, 2013. Located between two of the world's largest illicit drug producing regions, India has been a transit country for long. Smuggling of drugs into and out of the country has been a very important problem of drug control in India and hence will be an area of focus.

Key words: Illicit cultivation, illicit trafficking, narcotic drugs, opium policies, psychotropic substances, statutory authorities.

Introduction

A drug is any biological substance, synthetic or non-synthetic, that is taken primarily for non-dietary needs. It is usually synthesized outside an organism, but introduced into an organism to produce its action. That is, when taken into the organism's body, it will produce some effects or alter some bodily functions such as relieving symptoms, curing disease or used as preventive medicine or any other purposes (Mehta, 2011).

Drug addiction is a growing problem in India. Defined as a disease in 1956 by the WHO and the American Psychiatric Association, drug abuse is the illicit consumption of any naturally occurring or pharmaceutical substance for the purpose of changing the way, in which a person feels, thinks or behaves, without understanding or taking into consideration the damaging physical and mental side-effects that are caused (Mehta, 2011).

Narcotic Drugs and Psychotropic Substances (NDPS) have several medical and scientific uses. However, they can be and are also abused and trafficked. India's approach towards NDPS is enshrined in Article 47 of the Constitution of India which mandates that the '*State shall endeavour to bring about prohibition of the consumption except for medical purposes of intoxicating drinks and of drugs which are injurious to health*'.

The system of control of and preventing the abuse of NDPS in India has been put in place considering the dual requirement of its medical and scientific uses and the country's international obligations towards drugs related matters. India has signed and ratified three international conventions on the matters, viz. the UN Single Convention on Narcotics Drugs 1961, the Convention on Psychotropic Substances, 1971 and the Convention on Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.

The basic legislative instrument of the Government of India in the regard is the Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act). This Act prohibits, except for medical or scientific purposes, the manufacture, production, trade, use, etc. of NDPS.

Laws on Drugs and allied field in India

It is not possible to discuss each and every law concerning directly and indirectly dealing about drugs in India. The following table highlights the law on the matter:

Table No. 1: showing laws concerning drugs in India

Sl.No.	Title of legislation
1.	Narcotics Drugs and Psychotropic Substances Act, 1985
2.	Narcotics Drugs and Psychotropic Substances Rules, 1985
3.	Jammu and Kashmir Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988
4.	Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988
5.	Illegal Acquired Property (Receipt, Management and Disposal) Rules, 1989
6.	Narcotic Drugs and Psychotropic Substances (Regulation of Controlled Substances) Order, 2013
7.	NDPS (Execution of Bond by Convicts or Addicts) Rules, 1985
8.	NDPS Consultative Committee Rules, 1988
9.	Appellate Tribunal for Forfeited Property (Conditions of Service of Chairman and Members) Rules, 2006
10.	Appellate Tribunal for Forfeited Property (Fees) Rules, 1989
11.	Appellate Tribunal for Forfeited Property (Procedure) Rules, 1989
12.	Guidelines for funding from narcotic drugs and psychotropic substances (National Fund for Control of Drug Abuse) Rules 20016
13.	Drugs and Cosmetics Act, 1940
14.	Drugs and Cosmetics Rules, 1945
16.	Customs Act, 1962

17.	Central Bureau of Investigation Act, 2010
18.	Pharmacy Act, 1948
19.	Poisons Act, 1919
20.	Drugs and Medic Remedies (Objectionable Advertisement) Act, 1954
21.	Medical and Toilet Preparations (Excise Duties) Act, 1956
22.	Drugs (Price Control) Order 1995
23.	Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974
24.	Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976
25.	Foreign Exchange Regulation Act, 1973
26.	Foreign Exchange Management Act, 1999
27.	Gujarat Prohibition Act, 1949
28.	Gujarat Poppy Capsules Rules, 1963
29.	Juvenile Justice (Care and protection of Children) Act, 2015
30.	State NDPS Rules
31.	T. N. Prevention of Dangerous Activities of Botleggers, Cyber Law Offenders, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Sexual Offenders, Slum Offenders and Video Pirates Act, 1982
32.	Telangana Prevention of Dangerous Activities of Botleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986
33.	Kerela Anti-Social Activities Prevention Act, 2007
34.	Maharashtra Control of Organized Crime Act, 1999
35.	Legal Services Authorities Act, 1987
36.	NALSA (Legal Services to the Victims of Drug Abuse and Eradication of Drug Menace) Scheme, 2015
37.	Juvenile Justice (Care and Protection of Children) Act, 2015
38.	Mental Healthcare Act, 2017
39.	Indian Penal Code, 1860
40.	Indian Evidence Act, 1872
41.	Code of Criminal Procedure, 1973

(Compile from various sources)

Sociology of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act)

The Narcotic Drugs and Psychotropic Substances Bill, 1985 was introduced in the Lok Sabha on 23 August 1985. It was passed by both the Houses of Parliament and it was assented by the President on 16 September 1985. It came into force on 14th November 1985. Under the NDPS Act, it is illegal for a person to produce, manufacture, cultivate, possess, sell, purchase, transport, store, and or consume any narcotic drug or psychotropic substance. The objects and aims of enacting the Act are enumerated in the Preamble as:

- 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 Convention on Narcotic Drugs and Psychotropic Substances and for matters connected therewith.

The Act covers three broad classes of substances: 1) narcotic drugs, that is, those covered under the 1961 Convention; 2) psychotropic substances or those covered under the 1971 Convention as well as other

psychoactive substances such as ketamine which are not yet classified under international conventions; and 3) “controlled substances” that are used to manufacture narcotic drugs or psychotropic substances, for example precursor chemicals such as acetic anhydride, ephedrine and pseudoephedrine (Tandon, 2015).

Narcotic drugs include:

- Cannabis: plant; resin or charas and its concentrated variant called hashish; dried flowering or fruiting tops of the plant, that is, ganja and any mixture of charas or ganja. Importantly, bhang or cannabis leaf is excluded (in accordance with 1961 Convention) and regulated through state excise laws
- Coca plant: leaf; derivatives include cocaine and any preparation containing 0.1% of cocaine
- Opium: poppy plant; poppy straw; concentrated poppy straw; juice of opium poppy; mixture of opium poppy juice; preparations with 0.2% morphine; derivatives include heroin, morphine, codeine, thebaine, etc.

Narcotic drugs also fall under the overlapping category of “manufactured drugs”. Psychotropic drugs are not defined but include all drugs notified by the government as such, which the government may expand or constrict on the basis of evidence of actual or potential ‘abuse’ or changes in scheduling under international conventions.

In 1988, the NDPS Act was supplemented by the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act to provide for preventive detention of people suspected or accused of involvement in drug trafficking.

Unlike the earlier Opium Acts and the Dangerous Drugs Act which it replaced, the NDPS Act has given the power of enforcement to various central and state law enforcement agencies, thus spreading the net of law enforcement far and wide. It is also possible for the central and state governments to notify any class of officers of any department to enforce the NDPS Act. The Act divides the powers and responsibility of regulation of licit activities. Section 9 has listed various activities which the Central Government can, by rules, regulate while Section 10 lists various activities which State Governments can, by rules, regulate. Thus, we have NDPS Rules of the Central Government and the State NDPS Rules frame by each State Government under the same Act. These are enforced by the Central or concerned State Government.

The NDPS Act has created statutory authorities such as the Narcotics Commissioner (Section 5), the Competent Authority (Section 68D) and the Administrator (Section 68G). The organization headed by the Narcotics Commissioner is known as the Central Bureau of Narcotics (CBN). Another authority called the Narcotics Control Bureau was created through a notification under Section 4 of the Act. Each of these authorities has specified functions.

The Act has been amended three times – in 1998, 2001 and most recently in 2014. The 2014 Amendment recognizes the need for pain relief as an important obligation of the government. It creates a class of medicine called Essential Narcotic Drugs (ENDs). Power for legislation on ENDs has been shifted from the state governments to the central government so that the whole country now can have a uniform law covering these medicines which are needed for pain relief. Subsequently, NDPS rules which would be applicable to all states and union territories has been announced by the government of India in May 2015. It also has included 6 drugs namely Morphine, Fentanyl, Methadone, Oxycodone, Codeine and

Hydrocodone. According to these rules, there is a single agency – the state drug controller – who can approve recognized medical institutions (RMI) for stocking and dispensing ENDS, without the need for any other licenses. The RMIs are obliged to ensure proper documentation and to submit annual consumption statistics to the drug controller of the state.

The Act extends to the whole of India and it applies also to all Indian citizens outside India and to all persons on ships and aircraft registered in India.

The NDPS Act as a whole make a body presumption and burden of proof lies to the accused that make a strong case against the accused by the court. The following table shows the presumption against the accused in case relating to narcotic drugs and psychotropic substances –

Table 2: showing presumptions ^[1] under the NDPS Act

Section	Subject matter	Presumption/burden of proof
35	Presumption of culpable mental state	Shall presume
54	Presumption from possession of illicit articles	May presume
66	Presumption as to documents in certain cases	Shall presume
68J	Burden of Proof	Shall be on the person affected

The Act clearly says that in any prosecution for an offence under the Act which requires a culpable mental state of the accused, the Court shall presume the existence of such mental state (Section 35). The Section runs as under:

“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 belief, 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.”

The Section 35 is supplemented by Section 54 that is related to presumption from possession of illicit articles. The Section says:

“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 specially 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 manufacture of a narcotic drug or 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.”

Sections 66 and 68J also goes to that way. Section 66 is about the presumption (may presume) as to documents in certain cases and Section 68J deals about burden of proof in any proceedings under Chapter VA (Forfeiture of Illegal Acquired Property) under the Act. The Section read as –

“63J. Burden of proof – In any proceedings under this Chapter, the burden of proving that any property specified in the notice served under section 68H is not illegally acquired shall be on the person affected.”

Government business is divided in the Central Government as per the Allocation of Business Rules. As per these Rules, the NDPS Act is administered by the Ministry of Finance, Department of Revenue. However, matters pertaining to Drug Demand Reduction are handled by the Ministry of Social Justice & Empowerment (MSJE). MSJE supports various NGOs involved in Drug Demand Reduction. Ministry of Health, Government of India, which is responsible for all health issues, runs several drug de-addiction centres in the Government hospitals across the country. Various actions by various functionaries (Central and State) under the NDPS Act are coordinated by the Narcotics Control Bureau, which is under the Ministry of Home Affairs (MHA). In addition, the State Government also has their own Health Departments and Social Welfare Departments each of which has its own set of activities relating to Drug Demand Reduction.

Some other organizations, despite having no direct role under the NDPS Act, are closely connected to the problem of trafficking and abuse of drugs. For example, the staffs of prisons have to deal with the problem of addiction which is much higher among inmates than among the general population. The National AIDS Control Organization (NACO) which is concerned with AIDS has to deal with the problem of spread of HIV among injecting drug users (IDUs).

Procedural safeguards and immunities under the NDPS Act

The NDPS Act views drug offences very seriously and prescribes stiff penalties. Alongside these stringent provisions, the Act has procedural safeguards as follows:

- **Personal search:** Any person being searched has a right to be searched before a Gazetted Officer or a Magistrate (Section 50). The officer searching the person has to explain to the person that he has a right to be searched before a Gazetted Officer or a Magistrate and if the person wishes to be searched before a Gazetted Officer or a Magistrate he should be taken to the Gazetted Officer or the Magistrate and searched. However, if the officer has reason to believe that it is not possible to take him to a Gazetted officer or a magistrate without giving him a chance to part with the drug, controlled substance, etc., he can search him under Section 100 of the Cr. P. C. [Section 50(5) and 50 (6)].
- **Searches:** As per Section 41 of the NDPS Act, Gazetted Officers of the empowered Departments can authorize searches. Such authorization has to be based on information taken down in writing. As per Section 42, searches can be made under certain circumstances without a warrant (from a magistrate)

or an authorization (from a Gazetted Officer). In case of such searches, the officer has to send a copy of the information taken in writing or the grounds of his belief to his immediate official superior within 72 hours.

- **Arrests:** The person who is arrested should be informed, as soon as may be, the grounds of his arrest [Section 52 (1)]. If the arrest or seizure is based on a warrant issued by a magistrate, the person or the seized article should be forwarded to that magistrate [Section 52(2)].
- The officer who arrests a person has to make a full report to his official superior within 48 hours [section 57].

Immunities for drug offence

- **Officers:** Officers acting in discharge of their duties in good faith under the Act are immune from suits, prosecution and other legal proceedings (Section 69).
- **Addicts:** Addicts charged with consumption of drugs (Section 27) or with offences involving small quantities will be immune from prosecution if they volunteer for de-addiction. This immunity may be withdrawn if the addict does not undergo complete treatment (Section 64A).
- **Offenders:** Central or state governments can tender immunity to an offender in order to obtain his evidence in the case. This immunity is granted by the government and not by the court (Section 64).
- **Juvenile offenders:** Juvenile offenders (below 18 years of age) will be governed by the Juvenile Justice (Care and Protection of Children) Act, 2015.
- Immunities to diplomats as applicable (Dept. of Revenue, Ministry of Finance).

Punishment for Offences

NDPS Act views drug offences very seriously and penalties are stiff. The quantum of sentence and fine varies with the offence. For many offences, the penalty depends on the quantity of drug involved - small quantity, more than small but less than commercial quantity or commercial quantity of drugs. Small and Commercial quantities are notified for each drug.

Table No. 2: showing small and Commercial Quantities of important drugs

Drug	Small Quantity	Commercial Quantity
Amphetamine	2 grams	50 grams
Buprenorphine	1 gram	20 grams
Charas/Hashish	Charas/Hashish	1 kg
Cocaine	2 grams	100 grams
Codeine	10 grams	1 kg
Diazepam	20 grams	500 grams
Ganja	1 kg	20 kg
Heroin	5 grams	250 grams
MDMA	0.5 gram	10 grams
Methamphetamine	2 grams	50 grams
Methaqualone	20 grams	500grams
Morphine	5 grams	250 grams
Poppy straw	1 kg	50 kg

*The same quantities apply to preparations of these drugs also.

(Source: Department of Revenue, Ministry of Finance, Government of India Available at <https://dor.gov.in/narcoticdrugspsychotropic/punishment-offences>)

It was held by Apex Court in *E. Michael Raj* (2009) that “for drugs mixed with ‘neutral substances’, only the actual content of the narcotic drug is relevant for determining whether it constitutes a smaller or commercial quantity. A year later, the government declared that in calculating the quantity, the total

weight of the seized product must be considered and not the pure drug content (Notification through S.O. 2941 (E), Dated 18 Nov. 2009).

Under NDPS Act, abetment, criminal conspiracy and even attempts to commit an offence attract the same punishment as the offence itself. Preparation to commit an offence attracts half the penalty. Repeat offences attract one and half times the penalty and in some cases death penalty.

Table No. 3: showing Offences and Penalties under the NDPS Act

Offences	Penalty	Sections
Cultivation of opium, cannabis or coca plants without license	Rigorous imprisonment-up to 10 years + fine up to Rs.1 lakh	Opium - 18(c) Cannabis - 20 Coca-16
Embezzlement of opium by licensed farmer	Rigorous imprisonment -10 to 20 years + fine Rs. 1 to 2 lakhs (regardless of the quantity)	19
Production, manufacture, possession, sale, purchase, transport, import inter- state, export inter-state or use of narcotic drugs and psychotropic substances	Small quantity - Rigorous imprisonment up to 6 months or fine up to Rs. 10,000 or both. More than small quantity but less than commercial quantity - Rigorous imprisonment. up to 10 years + fine up to Rs. 1 Lakhs. Commercial quantity - Rigorous imprisonment 10 to 20 years + fine Rs. 1 to 2 Lakhs	Prepared opium-17 Opium – 18 Cannabis - 20 Manufactured drugs or their preparations-21 Psychotropic substances - 22
Import, export or transshipment of narcotic drugs and psychotropic substances	Same as above	23
External dealings in NDPS-i.e., engaging in or controlling trade whereby drugs are obtained from outside India and supplied to a person outside India	Rigorous imprisonment 10 to 20 years + fine of Rs. 1 to 2 lakhs (Regardless of the quantity)	24
Knowingly allowing one's premises to be used for committing an offence	Same as for the offence	25
Violations pertaining to controlled substances (precursors)	Rigorous imprisonment up to 10 years + fine Rs. 1 to 2 lakhs	25A
Financing traffic and harboring offenders	Rigorous imprisonment 10 to 20 years + fine Rs. 1 to 2 lakhs	27A
Attempts, abetment and criminal conspiracy	Same as for the offence	Attempts-28 Abetment and criminal conspiracy - 29
Preparation to commit an offence	Half the punishment for the offence	30
Repeat offence	One and half times the punishment for the offence. Death penalty in some cases.	31 Death - 31A
Consumption of drugs	Cocaine, morphine, heroin - Rigorous imprisonment up to 1 year or fine up to Rs. 20,000 or both. Other drugs- Imprisonment up to 6 months or fine up to Rs. 10,000 or both. Addicts volunteering for treatment enjoy immunity from prosecution	27 Immunity - 64A
Punishment for violations not elsewhere specified	Imprisonment up to six months or fine or both	32

(Compile from the Act)

No suspension, remission or commutation in any sentence awarded under the Act (other than Section 27) is allowed as per Section 32A of the Act. The Section is subject the provisions of Section 33. Section 33 delas about application of Section 360 of the Code of Criminal Procedure, 1973 and of the Probation of Offenders Act, 1985 and Section 27 is about punishment for consumption of any narcotic drug or psychotropic substance. In addition to it Section 32B provides ‘factors to be taken into account for imposing higher than the minimum punishment’. Those listed aggravating factors are:

- a) the use or threat of use of violence or arms by the offenders;
- 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 facility 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 offences; and
- f) the fact that the offender is involved in other illegal activities facilitated by commission of the offence.

In *Union of India v. Niyazuddin SK* (2017), the Supreme Court clearly laid down the law that in granting bail under the NDPS Act the Court should strictly followed the mandatory requirements, viz. satisfaction of Court that accused is not guilty of offences under the Act and accused not likely to commit any offence as a rule. It is imperative that the law the Court should follow for awarding conviction under the provisions of NDPS Act is “stringent the punishment stricter the proof”. In such cases, the prosecution evidence has to be examined very zealously so as to exclude every chance of false implication (AIR 2018 SC 609).

Seizure, freezing and forfeiture of property under the NDPS Act

Drug offences, unlike most other offences, are committed only with profit motive. One of the strategies to fight drug trafficking is denying the traffickers the fruits of their trafficking. Chapter VA of the NDPS Act provides for forfeiture of such illegally acquired properties. This chapter applies to (Section 68A):

- (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 or under the Jammu and Kashmir Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988:

Provided that such order of detention has not been revoked on the report of the Advisory Board constituted under the said Acts or such order of detention has not been set aside by a court of competent jurisdiction;

- (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, is or was a transferee in good faith for adequate consideration.

Procedure

The procedure to be followed under Act is supplemented by the Code of Criminal Procedure, 1973 (Cr.P.C.). The procedure is summed up as under:

- Every officer empowered under section 53 and every officer in-charge of a police station shall, on receipt of information, proceed to trace and identify the illegally acquired properties (section 68E).
- The officer may issue an order seizing the properties and if it is not possible to seize, freezing the properties. He shall send a copy of the order within 48 hours to the Competent Authority.
- The Competent Authority has to confirm the order within 30 days, else, it will not be valid.
- The Competent Authority issues a Notice to the affected person and after considering the reply and other records of the case, passes an order forfeiting the properties or otherwise.
- If the person is only arrested, the issue of Notice and subsequent forfeiture will proceed only after his conviction or after an order of preventive detention is issued.
- The Burden of Proving that the properties are not illegally acquired is on the affected person.
- Appeals against the orders of forfeiture lie with the Appellate Tribunal for Forfeited Properties.
- Seized or forfeited properties are managed and disposed by the Administrators as per Illegally Acquired Property (Receipt, Management and Disposal) Rules. So far, the Government of India appointed officers as Competent Authority cum Administrator (Dept. of Revenue, Ministry of Finance).

In *Jitendra & another v. State of M.P.* (2003), the Apex Court held that ‘the best evidence would have been the seized materials which ought to have been produced during the trial and marked as material object ... Where the offence is punishable with a stringent sentence as under the NDPS Act.’ In another landmark case (*Gorakh Nath Prasad* AIR 2018 SC 704), the Apex Court held that “Seizure of contraband – testimony of police officer itself not sufficient to prove seizure – non-production of seized material, fatal to prosecution case – accused entitled to benefit of doubt.”

Licit cultivation and production of opium poppy

India has been a traditionally producer of opium and has been recognized as such internationally. In other words, India is one of the few countries that legally grow opium poppy and the only country which legally produces opium gum.

Opium poppy (*Papaver somniferous*) plant is the source of opium gum which contains several indispensable alkaloids such as morphine, codeine and thebaine. Morphine is the best analgesic in the world. In case of extreme and excruciating pain such as that of terminally ill cancer patients, nothing alleviates the suffering except morphine. Codeine is commonly used in manufacture of cough syrups.

The NDPS Act empowers the Central Government to permit and regulate cultivation of opium poppy for medical and scientific purposes. The Government of India notifies the tracts where opium cultivation can

be licensed as well as the General Conditions for issuance of license every year. These notifications are commonly referred to as Opium Policies. Opium cultivation is permitted in the notified tracts in the states of Madhya Pradesh, Rajasthan and Uttar Pradesh. Such cultivation is only on Central Government account (Department of Revenue, 2017). The General Conditions, among others, include a Minimum Qualifying Yield (MQY) to be tendered by the cultivators of each of these three states, to be eligible for license in the succeeding year.

The Central Bureau of Narcotics (CBN), Gwalior (Madhya Pradesh) under the Narcotics Commissioner issues licenses to the farmers to cultivate opium poppy. Opium gum produced by the cultivators is procured by the officers of Central Bureau of Narcotics (CBN) and transferred to the Government Opium and Alkaloid Works (GOAW). There are two GOAWs one in Ghazipur (Uttar Pradesh.) and the other in Neemuch (Madhya Pradesh). Each GOAW has an Opium Factory and an Alkaloid Plant. The Opium Factories dry the opium for export and for use in the Alkaloid Plants. The Alkaloid Plants extract alkaloids from opium and sell them to manufacturers of pharmaceutical preparations.

Opium Poppy is also cultivated for production of poppy seeds which is not narcotic and are used as condiment in Indian cooking. All contacts for import of poppy seeds will be compulsorily registered with the Narcotics Commissioner.

As per the NDPS Act, poppy straw means 'all parts of the plant of opium poppy seeds'. The husk of the pods is called poppy straw. There are poppy straw addicts who are supplied poppy straw. Section 10 of the NDPS Act empowers the State Government to permit and regulate, transport, sale, use, etc. of poppy straw. This power of the State Governments is subject to the restriction under Section 8 by which no narcotic drug or psychotropic substance can be used except for medical or scientific purposes. The State Governments may fix the minimum price which the licenced buyer should pay to the farmers for the poppy straw.

Poppy straw is one of the narcotic drugs under the NDPS Act, 1985. Hence, anyone possessing, selling, purchasing or using poppy straw without a license or authorization or in violation of any conditions of the license is liable to prosecution under the NDPS Act.

Licensing other companies to manufacture alkaloids of opium

Of the various Alkaloids, Codeine Phosphate is required in the largest quantity. The total production of codeine phosphate by the two GOAWs is not sufficient to meet India's needs. Hence, we import Codeine Phosphate every year. The Government has relaxed the rules to allow private manufacturers to be licensed for production of alkaloids from Indian opium, if it is in public interest to do so and in consonance with India's obligations under international treaties, conventions or protocols. Further, Government has also initiated the process of allowing private companies to produce Concentrate of Poppy Straw (CPS) and manufacture alkaloids from the same.

Cultivation of Cannabis

Section 10 of the NDPS Act read with Section 8 of the Act empowers the State Governments to licence cultivation of cannabis for medical and scientific purposes. Medical use of cannabis has so far been extremely limited and confined to alternate medicine such as homeopathy and ayurveda. State Governments have actually not been licencing cultivation of cannabis.

Bhang is a preparation made from cannabis leaves consumed in parts of India on some festivals. As it is not made from cannabis resin or from flowering tops, it is not covered under the NDPS Act (Dept. of Revenue, 2017).

Cannabis plant can be a source of biomass and fibre for industrial purposes. Cannabis seeds can be used to produce cannabis seed oil – a high value oil. Section 14 of the NDPS Act empowers the Government to, by general or special order, permit cultivation of cannabis exclusively for horticultural and industrial purposes.

Cultivation of Coca bush

Section 9 of the NDPS Act empowers the Central Government to licence cultivation of coca bush for medical and scientific purposes. The Central Government has so far not licenced cultivation of coca plant in India.

Illegal cultivation

Illegal cultivation of opium poppy (*Papaver somniferum*) and cannabis (*Cannabis sativa*) are offences under the NDPS Act. Anyone cultivating opium poppy without a licence is liable for punishment under Section 18 while anyone cultivating cannabis is liable under Section 20. As per Section 44, all officers of State and Central Governments who are empowered under Sections 41, 42 or 43 shall have the power of entry, search, seizure and arrest in relation to offences of illegal cultivation. Any Metropolitan Magistrate, Judicial Magistrate of first class or any Magistrate empowered in this behalf by the State Government or any officer of Gazetted rank empowered under Section 42 may attach any opium poppy, cannabis or coca plant which, he has reason to believe, is illegally cultivated and while doing so, may pass such order as he thinks fit, including an order to destroy the crop (Section 48).

The land holder has an obligation under Section 46 to give information of illegal cultivation in his land to any officer of the police or any department mentioned in Section 42 and any land holder who knowingly neglects to give such information shall be liable to punishment. This provision of the NDPS Act is applicable equally to officers of the Government, when such illicit cultivation occurs on land owned by the Government. Every officer of the Government and every panch, sarpanch and other village officer of whatever description has an obligation under Section 47 to give immediate information of illegal cultivation to any officer of the Police or of any of the departments mentioned in Section 42 when it comes to his knowledge and any officer of the Government, panch or sarpanch and other village officer who neglects to give such information shall be liable to punishment regarding illegal cultivation.

The overall responsibility of tackling the problem of illicit cultivation shall lie with the Central Government. The Central Economic Intelligence Bureau (CEIB) will vigorously continue Satellite Surveys of illicit opium poppy cultivation and will share the images with the NBC and CBN. The NCB, in coordination with the CBN and State authorities, shall carry out destruction operations. The responsibility of collecting field intelligence and destroying illegal cultivation and arresting and prosecuting the offenders shall lie primarily with the State Governments. The State Governments shall also render all necessary help and security to any central drug law enforcement agency in their illicit crop destruction operations. At the field level, as far as possible, joint operations between the central and State Governments shall be conducted to identify and destroy illicit opium poppy and cannabis crops (Dept. of Revenue, 2017).

International travelers requiring NDPS for medical use

In India, narcotic drugs and psychotropic substances listed in Schedule I of the NDPS Rules, 1985 are prohibited. International travelers wishing to bring any narcotic drug or psychotropic substance may, well before their departure from their country, seek permission of the Narcotics Commissioner to import the drugs. Their application should be accompanied by the prescription and any other relevant papers. After obtaining permission, they may bring the drugs with them.

Manufacture of Narcotic Drugs

Manufacture of narcotic drugs can be summarized as a) completely prohibited drugs, b) manufacture only by the GOAW, and c) manufacture after obtaining a licence.

- a) Drugs whose manufacture is completely prohibited: Crude cocaine, ecgonine and diacetylmorphine (commonly known as heroin) and their salts.
- b) Drugs which can be manufactured only by the Government Opium and Alkaloid Works or when a license is issued if the Government determines it to be in public interest to issue a license: Morphine, codeine, dionine, thebaine, dihydrocodeinone, dihydrocodeine, acetyldihydrocodeine, acetyldihydrocodeinone, dihydromorphine, dihydromorphinone, dihydrohydroxy codeinone, pholcodine and their respective salts.
- c) Drugs which can be manufactured after obtaining a license: Narcotic drugs other than the above can be manufactured after obtaining a license from the Narcotics Commissioner (subject to the International Narcotic Control Bureau approved estimate of each such drug for the year). The Narcotics Commissioner issues a license only if the conditions are fulfilled including producing a manufacturing license from the Drugs and Cosmetics Act/Rules from the State Drugs controller and the licenses to be obtained from the State Government under the State NDPS Rules for possession, use and sale of narcotic drugs.

Manufacture of Psychotropic Substances

Psychotropic substances have several medical uses but they are also liable to be abused. Hence, manufacture of psychotropic substances is regulated. All psychotropic substances have been listed in the Schedule to the NDPS Act, 1985. These may be categorized into:

a) Psychotropic substances whose manufacture is completely prohibited: These substances are listed in Schedule I of the NDPS Rules, 1985. Thus, this is a sub-set of the List of Psychotropic Substances in the Schedule to the NDPS Act.

b) Psychotropic substances whose manufacture is permitted but only for export: These substances are listed in Schedule III of the NDPS Rules, 1985. This is also a sub-set of the List of Psychotropic Substances in the Schedule to the NDPS Act. These are substances which are not medically used in India but they are so used in some other countries. Hence, any company interested in manufacturing these can do so but only for export.

c) Psychotropic substances which can be manufactured for sale in India or for export: Any psychotropic substance not listed in Schedule I and Schedule III of the NDPS Rules, 1985 can be

manufactured (for sale in India or for export) after obtaining a license from the State Drugs Controller under the Drugs and Cosmetics Act and Rules. Thus, if anyone manufactures a psychotropic substance without a license from the State Drugs Controller, he will also be liable for punishment under the NDPS Act since the NDPS Rules require that a license should be obtained.

The licensing authorities shall keep a record of the licences issued and the manufacture, trade, consumption, etc. of each psychotropic substance.

Import and Export of narcotic drugs and psychotropic substances

Narcotic drugs and psychotropic substances can be imported and exported subject to the following restrictions:

- 1) Import and export of narcotic drugs and psychotropic substances listed in Schedule I to the NDPS Rules is prohibited.
- 2) Import of opium, concentrate of poppy straw, and morphine, codeine, thebaine and their salts is prohibited except by the Government Opium Factory. However, certain manufacturers who require these substances only for export, and importers of samples of these substances up to 1 kg in a year can import the substances after following the due procedure, provided they are notified by the Government to do so.
- 3) Export of some psychotropic substances is not permitted to specific countries. These substances and the countries to which each substance cannot be exported are listed in Schedule II of the NDPS Rules, 1985.
- 4) To import any narcotic drug or psychotropic substance, one should apply for and obtain an import certificate from the Narcotics Commissioner for each consignment.
- 5) To export any narcotic drug or psychotropic substance, one should apply for and obtain an export authorization from the Narcotics Commissioner for each consignment.

Import and Export of Precursors and regulation of it (control substances)

Precursors are chemicals which can also be used to manufacture narcotic drugs and psychotropic substances. These substances also have a number of legitimate uses. Hence, these chemicals are regulated balancing the need for their legitimate trade with the need to prevent their diversion to illicit channels. The Section 2(viii) of NDPS Act empowers the Central Government to declare any substance as 'controlled substance' after considering its possible use in the production or manufacture of narcotic drugs or psychotropic substances. Earlier five substances (Acetic anhydride, N – Acetylanthranilic acid, Anthranilic acid, Ephedrine and its salts, Pseudoephedrine and its salts) were declared as 'controlled substance'. Vide notification S.O. 834(E) dated 26.03.2012, twelve (12) more substances, and the preparations of Ephedrine and Pseudoephedrine have been notified as 'controlled substance'.

Power to control and regulate controlled substances is provided in Section 9A of the NDPS Act. Accordingly, vide notification G.S.R. 191(E) dated 26.03.2013, a revised Narcotic Drugs and Psychotropic Substances (Regulation of Controlled Substances) Order, 2013 has been notified by replacing the earlier Order of 1993. The Order dated 26.03.2013 has been further amended vide notification G.S.R. 649(E) dated 23.09.2013.

Drugs of Abuse

Drugs that are abused can be classified into: Natural drugs, Semi-synthetic drugs and Synthetic drugs. Natural drugs come from one of these three plants: i) Opium poppy (*Papaver somniferous*), ii) Cannabis and iii) Coca. Thus, opium, ganja, hashish (charas), hashish oil, coca leaves and coca paste are natural drugs.

If the natural drug is treated chemically to either isolate its active ingredient or to modify it, semi-synthetic drugs are produced. Morphine, codeine, heroin, etc. are semi-synthetic drugs produced from opium while cocaine is a semi-synthetic drug produced from coca plant. Synthetic drugs are produced purely through chemical processes. Amphetamines, ecstasy, diazepam, methaqualone (commonly called mandrax) are some examples of synthetic drugs.

Both traditional and semi-synthetic and synthetic drugs are abused. Drugs are smoked, snorted, consumed orally or injected depending on the nature of drug. Some drugs can be used in more than one way. For instance, heroin can be smoked while purer form of heroin can be injected. Injections give a greater high than oral use or smoking and hence injecting drug use (IDUs) is more harmful than oral use or smoking. Intravenous drug use and HIV/AIDS driven by such use have added a new dimension to the problem, especially in the North-eastern States of the country.

When abused, drugs produce a variety of effects depending upon the drug, viz. Stimulants (e.g., Amphetamines), Sedatives (e.g., opium and opiates), Hallucinogens (e.g., LSD), and Tranquilizers.

Illicit manufacture and trafficking

Synthetic and semi-synthetic drugs are illicitly manufactured in clandestine laboratories (commonly known as clan labs) the world over and India is no exception. Traditionally, clandestine laboratories in India are of two kinds – small, makeshift manufacturing facilities which process opium into heroine and large industries scale facilities which manufacture methaqualone.

A more recent phenomenon in India is the clan labs manufacturing amphetamines. These clan labs pose a potentially large threat as precursors such as ephedrine and pseudoephedrine are legally produced and traded in the country in significant quantities. Instances have also come to notice where pharmaceutical preparations containing ephedrine were diverted from domestic distribution channel and extract of ephedrine there from for illicit manufacture of ATS. Some consignments of green tea extracts containing 'ephedra vulgaris' were seized and detained abroad as the regulations of European Union and some countries in South Africa do not permit use of ephedra preparations in which small amount of ephedrine was found. These can be diverted from the illicit trade and converted into amphetamines for trafficking both within and out of India.

Diversion of licit pharmaceuticals containing narcotics drugs and psychotropic substances for abuse has been a significant problem in India. Preparations containing drugs such as codeine, buprenorphine, diazepam and alprazolam are commonly abused. On other hand, as precursors are difficult to produce, illicit drug manufacturers usually obtain them by diverting from licit production and trade of precursors. Countries with large chemical and pharmaceutical industries including India are natural targets for traffickers of precursors. The Government of India has declared certain precursor chemicals as controlled

substances. The manufacture, trade, transport, consumption and use of these substances are regulated in terms of a revised Narcotic Drugs and Psychotropic Substances (Regulation of Controlled Substances) Order, 2013.

Located between two of the world's largest illicit drug producing regions, India has been a transit country for long. Smuggling of drugs into and out of the country has been a very important problem of drug control in India and hence will be an area of focus.

There are several layers of major drug traffickers in the illicit drug market who form the vital link between the illicit manufacturers/smugglers and the street peddlers who actually sell the drugs to addicts. Apprehending and prosecuting them is one of the most important elements of drug control. As they are highly organized and efficient, apprehending them requires concerted efforts and specialized skills.

While as per the NDPS Act, any officer empowered under the Act may arrest and prosecute drug traffickers, it shall be the primary responsibility of the specialized drug enforcement organizations such as NCB, CBN, Director General of Revenue Intelligence (DGRI) and the special anti-narcotics cells, by whatever name they are called, in the State Police and other organizations to collect intelligence about drug trafficking, apprehended drug traffickers, investigate cases and prosecute the offenders. In this regard, where necessary, Prevention of Illicit Traffic in NDPS Act may be used to secure preventive detention of the major drug traffickers. As they deal in large volumes, and earn substantially through trafficking, every effort will be made by the concerned organization to identify, seize and freeze his properties and follow up the case vigorously till his properties are forfeited.

Sale of drugs to school and college children and smuggling of drugs into prisons

Adolescents are adventurous, self-confident and often do new things to show that they can. By and large, this is the age at which most addicts get initiated into drugs. Section 32B of the NDPS Act lists *'the fact that the offence is committed in an educational institution or social service facility or in the immediate vicinity of such institution or facility or in other place to which school children and students resort for educational, sports and social activities'* as one of the aggravating factors which may be considered by the Court for imposing higher than the minimum penalty prescribed for the offence.

Under the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act) 'a child who is found vulnerable and is likely to be inducted into drug abuse or trafficking' is included in the meaning of 'child in need of care and protection' (Section 2(14)(ix)) and thereby such child is under the care and protective umbrella of the JJ Act. There are provisions for punishment of such act under Sections 77 and 78 and a provision for transfer of a child who is mentally ill or addicted to alcohol or other drugs under Section 93. Section 77 deals about 'penalty for giving intoxicating liquor or narcotic drug or tobacco products or psychotropic substance, except on the order of a duly qualified medical practitioner'. The penalty for doing so is rigorous imprisonment for term which may extend to seven years and also liable for fine which may extend up to one lakh rupees. Section 78 of the Act read as:

“78. Using a child for vending, peddling, carrying, supplying or smuggling any intoxicating liquor, narcotic drug or psychotropic substance – Whoever uses a child, for vending, peddling, carrying, supplying or smuggling any intoxicating liquor, narcotic drug or psychotropic

substance, shall be liable for rigorous imprisonment for a term which may extend to seven years and shall also be liable to a fine up to one lakh rupees.”

It is a fact that prisons are one of the most tightly secured premises. However, traffickers manage to smuggle drugs into them, and usually, addiction levels among prison populations are much higher than among the general public. India is no exception. Drug addiction breeds crime and criminals come back to prisons and expand the market for drugs within the prisons. If this vicious cycle has to be broken, sale of drugs within prison settings has to be tackled effectively (Department of Revenue, 2017).

It is pertinent to mention Article 33 of the Convention on the Rights of the Child, 1989 that is ratified by India which mandated the protection of children from the illicit use of narcotic drugs and psychotropic substances. The Article read as:

“Article 33 – State Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.”

Drug use in the North Eastern States of India

Of the eight Northeastern states, namely Assam, Meghalaya, Sikkim, Tripura, Arunachal Pradesh, Manipur, Mizoram and Nagaland, the last four share a common international border with Myanmar, the world’s second largest illicit opium producing country. Drug trafficking across the common border of Myanmar and the eastern-most three Northeastern states of India (Manipur, Mizoram and Nagaland) occurs with ease. Production and drug trafficking in Northeast India features the following dimensions: 1) the illicit cultivation of opium and cannabis; 2) the smuggling of heroin and amphetamines into Northeast India from Myanmar in moderate quantities; 3) the trafficking of pharmaceuticals such as dextropropoxyphene (sold under the trade name Proxyvon or Spasmoproxyvon) and codeine containing cough syrups from other parts of country into Northeast India and their smuggling to neighbouring countries and 4) the trafficking of ephedrine and pseudo-ephedrine precursors for the manufacturing of amphetamines from India to Myanmar (UNODC). The report of a survey conducted by the Ministry of Social Justice and Empowerment and UN Office on Drugs and Crime revealed that Manipur, Mizoram, Nagaland, Himachal Pradesh, Punjab, Haryana and western Rajasthan were the regions of high prevalence of opiate use (Ministry of Home Affairs, 2015).

Treatment and Rehabilitation

Drug addiction can be treated. However, after treatment, unless the addict is rehabilitated and helped, he may return to drugs. The addict needs counseling even after treatment not only to retain him clean but also to help him return to a normal life. Thus, a drug addict has to undergo: Treatment, Rehabilitation and Social reintegration.

Treatment and rehabilitation of drug addicts is done by several private clinics, NGO run institutions as well as in the Government hospitals. The Ministry of Health and Family Welfare of the Government of India runs over 100 drug de-addiction centres in various Government hospitals across the country. The Ministry of Social Justice and Empowerment has been implementing a Scheme for Prohibition and Drug Abuse Prevention since the year 1985-86. The Ministry supports over 400 NGOs working in the field of

drug demand reduction. All India Institute of Medical Sciences has a National Drug Dependency Treatment Centre which treats drug addicts and trains doctors in treatment of drug addicts. The National Institute of Social Defence, New Delhi, trains those who work in NGOs in drug de-addiction. Several state governments also have their programs for drug demand reduction.

National Funds for control of drugs abuse

A National Fund for the Control of Drug Abuse was established in May 1989. Rules for its administration were notified almost twenty years later, in 2006. The fund can receive contributions from the central government, individual donors and proceeds from the sale of property forfeited from drug trafficking. NGOs and government departments are eligible to make requests for grants for control activities including treatment. Preventive education and awareness on the 'ills' of drug dependence have been prioritized for funding.

Collection of Statistics, Training and Laboratories

As far as the drug law enforcement is concerned, the Narcotics Control Bureau (NBC) has been compiling statistics, etc. from various State and Central law enforcement agencies and has been compiling the National Drug Enforcement Statistics (NDES) every month. These statistics represent the drug law enforcement as well as the comparative performance of various agencies. On the drug demand reduction side, there is no similar mechanism to regularly collect statistics on the drug addiction other than the Drug Abuse Monitoring System (DAMS) which shows the profiles of treatment seekers who approach the drug de-addiction centres supported by MSJE.

As far as monitoring licit trade is concerned, statistics are compiled and are readily available for such activities as are monitor centrally by the Narcotics Commissioner. These include import and export of narcotic drugs. Statistics are also available where the activities are exclusively conducted by the Chief Controller of Factories such as drying of opium, manufacture of alkaloids from opium and import of narcotic drugs. With the introduction of the system for distribution of approved estimates of narcotic drugs as among users by the Narcotics Commissioners, all data pertaining to estimates and consumption of narcotic drugs will also be available with the Narcotics Commissioner. Domestic trade in precursors is monitored by the Zonal Directors of NCB who thus, have all necessary statistics. However, an administrative mechanism to compile all these statistics has yet to be developed by the NCB.

Statistics in respect of consumption of narcotic drugs as well as manufacture, trade, use, stocks and consumption of psychotropic substances are not collected under the NDPS Rules. These need to be obtained from the State Drugs Controllers and in this respect, our mechanism of collection of statistics needs improvement.

Training and capacity building form a very important component of the policy on drug control. At present, customs and police academies and the police training colleges across India conduct programmes in drug law enforcement. The National Institute of Criminology and Forensic Sciences (NICFS) train chemists in testing drugs. The National Drug Dependence Treatment Training Centre (NDDTTC) of the AIIMS trains doctors in treating drug addicts. The National Centre for Drug Abuse Prevention (NCDAP) in the National Institute of Social Defence trains personnel working in NGOs in treatment and rehabilitation of drug addicts.

The total number of seizures in the country is about 20,000 per year by several agencies in several parts of the country. Several forensic labs in the country test these samples. These are the Central Revenue Chemical Laboratory (CRCL), the Central Forensic Science Laboratories (CFSL) and the State Forensic Laboratories (FSL) of each State. Successful prosecution of offenders' hinges on the quality of test reports (Dept. of Revenue, 2017).

Major suggestions and Conclusion

It is found that despite stringent legal provisions, instances of illegal cultivation of opium poppy and cannabis have been noticed. Such instances are a matter of serious concern and in this regard, the Central and State Governments need to work together vigorously to combat this and shall follow a policy of zero tolerance and take severest possible action against anyone involved in illicit cultivation. The NCB and CBN and concerned State Governments shall also prosecute officials under their respective control who violate Section 47 of the NDPS Act.

It is a fact that synthetic and semi-synthetic drugs are illicitly manufacture in clandestine laboratories in India. The effective strategy to combat illicit manufacture, problem of diversion of licit pharmaceuticals and precursors from international and domestic trade need to be formulated by the Central and State Governments in many fronts.

Located between two of the world's largest illicit drug producing regions, India has been a transit country for long. Smuggling of drugs into and out of the country has been a very important problem of drug control in India and hence will need to be an area of focus. North Eastern part of country is vulnerable to this phenomenon.

It is found that 'peddlers' are the final link in the chain from manufacturer to addicts and hence an effective strategy is required to handle them to tackle the drug problem. Regarding the problem of selling drugs to school and college children as a serious form of drug abuse, it needs to tackle in holistic manner even including a mandatory and comprehensive chapter on drug abuse and illicit trafficking and its socio-economic cost to self, society and the country in the syllabus for 10+1 and 10+2 students; schools and colleges will be encouraged to constitute Anti-Drug Club to promote a drug free among its members and also in the institution.

Another glaring problem facing by our country is smuggling of drugs into prisons. This issue should also take seriously.

In the final analysis is it is found that 'drug abuse' is a result of two factors – the availability of drugs and the psycho-social conditions which result in their abuse. Hence, equal emphasis will be placed on supply and demand reduction. Drug abuse is a psycho-socio medical problem, which needs both medical intervention and community-based interventions.

We have a large number of agencies for seizing drugs in the country. The total number of seizures in the country is about 20,000 per year which is not very large compared to the size and population of the country. It suggests beyond reasonable doubt that there are some loopholes in functioning in seizing authorities and thereby criminals are moving scot-free.

Several large illicit Internet pharmacies have been detected by the Indian authorities in recent years. In this regard, India needs further enhance the measures against the illicit Internet pharmacies and call centres, which are illegally supplying pharmaceutical preparations containing narcotic drugs or psychotropic substances to persons in India and other countries. In this connection, India needs to compile with the recommendations contained in the INCB “*Guidelines for Governments on Preventing the Illegal Sale of Internationally Controlled Substances through the Internet*” published by the Board in 2009.

It is also found that in many parts the country, farmer traditionally cultivating opium poppy illegally. In such places, mere enforcement and crop destruction will not work. The best workable solution for this problem is the ‘alternative development’ approach, farmers should be trained in and helped to develop alternative means of livelihood. The lessons learnt from some countries of the Golden Triangle such as Laos and Thailand, where alternative development programmes have been hugely successful.

Cannabis grows wild in many parts of the country and the world. Hilly areas with cold climates of North East region of the country are particularly prone to growth of cannabis. Such wild growth of cannabis shall be destroyed as far as possible by the State Government officials empowered under the NDPS Act. It is clear that wildy grown cannabis shall not be permitted to be used for any purpose except the leaves of wildy grown cannabis for production of *Bhang*.

It is a fact that ‘morphine’, a derivative of opium, is known to be the best analgesic and which alone will relieve extremely excruciating pain such as the pain of a terminally ill cancer patient or a victim of gunshots. In this regard, Guideline of WHO will be a guiding standard and adopted to extent possible, to maintain the balance between the need to make available opioids for palliative care and pain relief and preventing their diversion for abuse.

Last but not the least, the relationship between drug and crime is now too well known and drug addicts are likely to commit several offences every year. Thus, drug addiction is not only a problem in itself but is also a precursor for increase in crime rate in the society. If the nexus between drug and crime is broken, the crime rate is likely to decline.

Notes

1. Definitions of ‘may presume’, ‘shall presume’ are spelled out in Section 4 of the Evidence Act, 1872 as
May presume – Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless it is disproved, or may call for proof of it.
Shall presume – Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved.

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