CHAPTER - 3

DRUG LAWS IN INDIA - A BRIEF INTRODUCTION

3.1 INTRODUCTION.

Historical evidences reveal that at the end of the nineteenth century, the question of narcotic drugs was not widely regarded as an international problem calling for concerted action worldwide. Developments in the later part of the nineteenth century, however, gave a new dimension to the problem. The control of narcotic drugs and psychotropic substances worldwide is according to multilateral treaties concluded between 1912 and 1988. The operation of the international system is based on national control by individual states within the limits of their territorial jurisdiction. In compliance with stipulations of the narcotic treaties, the states are bound to adopt appropriate legislation, introduce necessary administrative and enforcement measures and co-operate with international control.

3.1.1 Drug Abuse Legislations in India - Historical Background

The Opium Act, 1857

In India, the earliest enactment on narcotic came on the statute book on 6th June, 1857 in the shape of the Opium Act, XIII of 1857 with a view to consolidating and amending the law relating to the cultivation of the poppy and the manufacture of opium. The Opium Act 1857, was concerned with the issue of licenses to cultivators for the cultivation of poppy, the delivery of produce to the officers of the Central Government at the established rate the limits to be fixed from time to time within which such license could be issued, the fixation from time to time of prices to be paid for the opium produced in respect of which it ensured, through its various provisions, a central government monopoly over it. It provided for penalty on cultivator receiving advances and not cultivating full quantity of land, penalty for embezzlement of opium by cultivators, penalty for illegal purchase of opium from cultivator penalty for unlicensed cultivation, penalty on officers of opium department taking bribes for enhanced penalty and for adjudication of penalties. It fixed the duties of landholders and others and police and other officers for giving information of illegal cultivation and provided for the attachment in case of illegal cultivation, confiscation of adulterated opium.1

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The Opium Act, 1878

The Opium Act, 1857 was followed by the Opium Act 1 of 1878. The following statements of objects and reason of the opium bill was published in the Gazette of India 1877 Part V, page 465: “The Present Bill has the following objects:²

1. To enable the Governor General in council to bring the Opium Act 1878 into force in such local areas and at such respective dates as he think fit.
2. To remove the doubts as to whether Sections 4 and 5 of that Act of the free export and import of opium when thought desirable.
3. To permit and regulate by rules framed under that act the form of opium duties and to facilitates the recovery of their dues by the farmers.
4. To correct a clerical error in section 22 of the same Act

Thus this Act sought to regulate the possession, transport export, import and sale of opium. The prohibition of poppy cultivation and possession etc. of opium was provided in this Act. It provided penalty for the illegal cultivation of poppy and for bond. It also provided for warehousing of opium, confiscation of opium disposal of things confiscated and rewards powers and procedures for entry, arrest, seizure, search etc. It also provided for presumption in prosecution under the Act.

In Nalin Pad Manabham versus Sait Badrinath Sarda,³ it has been held that, “The opium control legislation has its primary aim as the protection of public welfare by preserving health, eliminating undesirable moral and social effects, commonly associated with the indiscriminate use of this drug. The court should give a liberal interpretation to effectuate the object and purpose of such legislation. Since the effectiveness of this legislation is dependent upon its rigid enforcement, its purpose should not be defeated by hyper technicalities particularly when the infirmity, if any can be effectively remedied without any injustice.

The Dangerous Drugs Act, 1930

In accordance with the resolution of the assembly of League of Nations, dated 27 September, 1923, the second international opium conference was convened at

³ICR 35 Madras 582
Geneva on 17th November 1924, where in a convention rating to Dangerous Drugs was adopted in 19th February 1925. India was not only a participant to the said conference but was also a signatory to the Geneva Convention. The contracting parties to the said convention resolved to take appropriate measures to suppress contraband traffic and abuse of dangerous drugs especially those derived from opium, Indian hemp and coca leaf. In order to honour their commitments the government of India placed the Dangerous Drugs Act (II of 1930) on the statute book on 1st March, 1930 with a view to controlling certain operations in dangerous drugs and to centralize and vest the same in the central government. The Act also aimed at increasing penalties for certain offences relating to dangerous drugs and to render uniform all penalties relating to certain operations concerning such drugs. The Dangerous Drugs Act came into force on the Ist February, 1931.

With that object this Act provided for the exercise of control by the Central government over the cultivation of dangerous drugs, production and supply of opium and opium derivatives, manufacture of manufactured drugs like cocaine, morphine and other narcotic substances, medical opium, export, import and transshipment of dangerous drugs. It dealt with opium, Indian hemp and coca leaves. It also provided for penalties for various offences under the Act for their attempts and abetments and also provided enhanced penalties ranging from a maximum of 3 years imprisonment with or without fine to a maximum of four years imprisonment with or without fine but no minimum punishment was provided therein. It prescribed procedure including power to issue warrants, power of seizure and arrest in public places. The State governments were vested with the power to invest excise officers with the powers of an officer in charge of a Police Station. The provisions of the Sea Customs Act 1878 were made applicable.

Apart from these three Central Acts, several state Acts namely, The Madhya Pradesh Opium Smoking Act 1929, the Orissa Opium Smoking Act 1947, the Uttar Pradesh Opium Smoking Act 1929, the Orissa Opium Smoking Act 1947, the Uttar

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5Ibid.
Pradesh Opium Smoking Act 1934, the Assam Opium Prohibition Act 1947, the Bombay Opium Smoking Act 1936, also exercised control over the narcotic drugs.

The main legislation to control drug abuse in India namely The Narcotic Drugs and Psychotropic Substances Act, 1985 (For short: NDPS Act, 1985) came into effect on 14th November, 1985 replacing the Opium Act, 1857, the Opium Act, 1878, and the Dangerous Drugs Act, 1930. The NDPS Act, 1985 was followed by the enactment of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (For short: PITNDPS Act, 1988). The provisions of the Drugs and Cosmetics Act, 1940, and the Prevention of Money Laundering Act, 2002 as amended up to date, supplement the provisions of the NDPS Act, 1985, the matter of control over manufacture and supply of some of the drugs and forfeiture of property derived from or used in illicit traffic of such drugs and substances.

Hence, for our study, the brief sketch of following drug laws enacted in India is necessary:–

(4) Drugs and Cosmetics Act, 1940.


Narcotic Drugs and Psychotropic Substances Act, 1985 was enacted 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 and for matters connected therewith.

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 Dangerous Drugs Act, 1930 were enacted a long time back. With the passage of time and developments in the field of illicit.

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drug traffic and drug abuse at national and international level and many deficiencies in the existing law, there was an urgent need 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 control over the drugs of abuse, considerably enhance the penalties exercising effective control over psychotropic substances and make provisions for the implementation of inter-nation conventions relating to narcotic drugs and psychotropic substances to which India has become a party. As the result, the present Act was enacted in the year 1985. The only deficiency which was noticed by the Court in the enactment is the absence of death penalty for an accused person found guilty of some of the offences enumerated in it.

The NDPS Act, 1985 has been enacted to make stringent provisions for the control and regulation of operations relating to Narcotic Drugs and Psychotropic Substances to provide for deterrent punishment including forfeiture of property. The Central Government is charged with the duty of taking all such measures as it deems necessary or expedient for preventing and combating the abuse of Narcotic Drugs and Psychotropic Substances and the menace of illicit traffic therein.

NDPS Act, 1985 is a “Special Law”. As such various provisions incorporated in the Act regulating procedure to be followed for offences under the Act are applicable to the exclusion of Criminal Procedure Code, 1973.

The principal objectives behind enacting the NDPS Act, 1985 were:

1. To provide for stringent punishment for the persons indulging in illicit drug trafficking as the maximum term of imprisonment under previous Acts was for a maximum period of 3 years (4 years in case of repeat offences), and to take advantage of such laxity of law the international drug smugglers started operating from India;

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8Department of Central Excise (H.O.) Bombay Versus Rajesh Tulsidas Vendanti, 1989(1) MhLR 313 (Bom).
9Raj Kumar versus Union of India AIR 1991 SC 45.
10R.Muthu versus State 1992 (2) EFR 509(Madras).
(2) To broaden the enforcement base by conferring power of investigating of drug related offences also on a member of Central enforcement agencies like customs, central excise, narcotic, revenue, intelligence etc. also;

(3) To fulfill the international obligations under various international treaties and conventions to which India is a party;

(4) To bring the new drugs of addiction i.e. psychotropic substances under strict statutory control in the manner as envisaged in the Convention on Psychotropic Substances 1971 which has been acceded to by India in 1975.

The NDPS Act, 1985 came into force on the 14th November, 1985. It had originally six chapters with 83 sections but two new chapters i.e. Chapter II-A and V-A were inserted later on by the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1988 with effect from the 29th May, 1989. Chapter I of the NDPS Act, 1985 deals with the short title and definitions.

Chapter II relates to the appointment of authorities and officers who are to exercise powers and perform various functions under the Act. The Central Government shall take the measures which it thinks necessary to prevent and combat abuse of narcotic drugs and psychotropic substances and the illicit traffic therein. The Central Government shall appoint a Narcotics Commissioner and may also appoint such other officers with such designations as it thinks fit for the purpose of the Act to 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 by the Central Government. The Central Government may constitute “The Narcotic Drugs and Psychotropic Substances Consultative Committee” to advise the Central Government on such matters relating to the administration of act as are referred to it by that Government from time to time. The committee shall consist of a Chairman and such other members not exceeding twenty. The State Government may also appoint such officers as it thinks fit for the purpose of this Act.

11Section 4 of the NDPS Act, 1985.
12Section 5 of the NDPS Act, 1985.
13Section 6 of the NDPS Act, 1985.
14Section 7 of the NDPS Act, 1985.
Chapter II-A deals with constitution of national fund called as “National Fund for Control of Drug Abuse.” The sale proceeds of any property forfeited under Chapter VA are to be credited in that fund\(^{15}\). The fund is to be utilized by the Central Government to meet the expenditure in combating drug abuse and illicit trafficking.

Chapter III of the Act contains prohibitions relating to the cultivation of coca plant, opium poppy and cannabis plants and the production, manufacture, possession, sale, purchase, transport, warehouse, use, consumption, import inter-state, export inter-state, import into India, export from India or tranship any narcotic drug or psychotropic substance. The prohibition does not apply to the aforesaid operations for medical or scientific purposes. The export of poppy straw for decorative purposes is not prohibited\(^{16}\). Section 8-A of the Act prohibits certain activities relating to property derived from offence. The Central Government has power to permit, control or regulate it\(^{17}\). If the Central Government is of 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\(^{18}\).

Narcotic drugs and psychotropic substances etc. are not liable to distress or attachment by any person for the recovery of any money under any order or decree of any court or authority or otherwise\(^{19}\). External dealing in narcotic drugs and psychotropic substance is prohibited except with previous authorization of the Central Government and subject to such conditions as may be imposed by that Government in this behalf\(^{20}\). The cultivation of any coca plant etc. 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

\(^{15}\)Section 7-A of the NDPS Act, 1985.

\(^{16}\)Section 8 of the NDPS Act, 1985.

\(^{17}\)Section 9 of the NDPS Act, 1985.

\(^{18}\)Section 9-A of the NDPS Act, 1985.

\(^{19}\)Section 11 of the NDPS Act, 1985.

\(^{20}\)Section 12 of the NDPS Act, 1985.
such use can be permitted by the Central Government\textsuperscript{21}. The Central Government may allow cultivation of any cannabis plant for industrial purposes only for obtaining fiber or seed or for horticulture purposes by general or special order and subject to such conditions as may be specified in such order\textsuperscript{22}.

Chapter IV deals with offences and penalties and defines the offences under the Act and prescribes the penalties for the same. The NDPS Act, 1985 was enacted under the impression that stringent punishment like rigorous imprisonment for a minimum of ten years would effective deter those indulging in illicit trafficking in drugs. But by the Amendment Act 9 of 2001 which came into force on 2.10.2001 overhauled Chapter IV relating to 'offences and penalties'. Prior to 2001 amendment, only one category of sentence was prescribed for each kind of offence. Now all the offences have been divided into three categories i.e. Small quantity, in between small quantity and commercial quantity (may be called medium quantity) and commercial quantity\textsuperscript{23}.

The amended Act of 2001 grades punishments in following three categories depending on the quantity of drugs seized.

(a) Where the contravention involves small quantity, attracts 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 but greater than small quantity (may be called medium quantity), is punishable with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lac rupees;

(c) Where the contravention involves commercial quantity, is 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 liable to fine which shall not less than one lakh rupees but which may extend to two lakh rupees. The Court has power to impose a fine exceeding two lakh rupees by recording reasons in the judgment.

\textsuperscript{21}Section 13 of the NDPS Act, 1985.

\textsuperscript{22}Section 14 of the NDPS Act, 1985.

\textsuperscript{23}Section 15 to 40 of the NDPS Act, 1985.
Small and commercial quantity for various drugs have been notified by the Central Government vide Notification No.77/2001 dated 19.10.2001/S.O. 1055 (E) dated 19.10.2011. The details of some of the important drugs for the purpose of this research are given as under:

<table>
<thead>
<tr>
<th>Sr.No.</th>
<th>Drug/Psychotropic Substance</th>
<th>Small Quantity</th>
<th>Commercial Quantity</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Poppy straw</td>
<td>1 kg</td>
<td>50 kgs</td>
</tr>
<tr>
<td>2.</td>
<td>Ganja</td>
<td>1 kg</td>
<td>20 kgs</td>
</tr>
<tr>
<td>3.</td>
<td>Opium</td>
<td>25 gms</td>
<td>2.5 kgs.</td>
</tr>
<tr>
<td>4.</td>
<td>Cannabis</td>
<td>100 gms</td>
<td>1 kg.</td>
</tr>
<tr>
<td>5.</td>
<td>Cocaine</td>
<td>2 gms</td>
<td>100 gms.</td>
</tr>
<tr>
<td>6.</td>
<td>Heroine</td>
<td>5 gms</td>
<td>250 gms.</td>
</tr>
<tr>
<td>7.</td>
<td>Codeine</td>
<td>10 gms</td>
<td>1 kg</td>
</tr>
<tr>
<td>8.</td>
<td>Opium Derivatives</td>
<td>5 gms</td>
<td>250 gms</td>
</tr>
<tr>
<td>9.</td>
<td>Diazepam</td>
<td>20 gms</td>
<td>500 gms</td>
</tr>
<tr>
<td>10.</td>
<td>Morphine</td>
<td>5 gms</td>
<td>250 gms</td>
</tr>
</tbody>
</table>

However, this categorization has been excluded in Sections 16, 19, 20 (9) and 24 of the Act. These offences relate to cultivation of Coca plant, embezzlement of opium by cultivator, cultivation of cannabis and external dealings in narcotic drugs and psychotropic substances.

A new section was inserted in this chapter in order to prescribe death penalty for an offender who had been convicted previously and he has again committed an offence involving commercial quantity and committed the offence in the manner as specified in the said provision\(^\text{24}\).

\(^{24}\)Section 31-A of the NDPS Act, 1985 introduced by the NDPS (Amendment) Act, 1988.
Chapter-V of the Act deals with the statutory procedure relating to search, seizure, arrest and other matters\(^{25}\). This chapter shall be discussed in details in Chapter No.5 of this research being Drugs laws enforcement: Judicial response.

Chapter-V-A was inserted by the NDPS (Amendment) Act 1988 to provide for the forfeiture of property derived from or used in illicit traffic in drugs. This chapter also lays down procedure for identification, seizure or freezing and forfeiture of drug related property\(^{26}\) as well as release of property in certain cases\(^{27}\).

Chapter-VI of the NDPS Act, 1985 deals with the miscellaneous matters. It casts an obligation on the Central Government and State Governments to have regard to International conventions to which India is a party while framing the rules under the Act\(^{28}\). This chapter\(^{29}\) also provides for the establishment of centers for identification, treatment, education, aftercare, rehabilitation and social reintegration of addicts\(^{30}\). 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 directions\(^{31}\). Subject to the other provisions of this Act, the Central Government may, by notification in the official Gazettee, make rules for carrying out the purposes of this Act\(^{32}\).

3.3 The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (PITNDPS Act, 1988).

In recent years, India has been facing a problem of transit traffic in illicit drugs. The spillover from such traffic has caused problems of abuse and addiction. This trend has created an illicit demand for drugs within the country which may result in the increase of illicit cultivation and manufacturing of drugs. Although a number of legislative, administrative and other preventive measures, including the deterrent

\(^{25}\)Section 41 to 68 of the NDPS Act, 1985.

\(^{26}\) Section 68 A to 68 Y of the NDPS Act, 1985.


\(^{28}\) Section 70 of the NDPS Act, 1985.

\(^{29}\) Section 69 to 83 of the NDPS Act, 1985.

\(^{30}\) Section 71 of the NDPS Act, 1985.

\(^{31}\) Section 74-A of the NDPS Act, 1985 inserted by Act 2 of 1989,(w.e.f. 29.5.1989).

\(^{32}\) Section 76 of the NDPS Act, 1985.
penal provisions in the NDPS Act 1985, have been taken by the Government, the transit traffic in illicit drugs had not been completely eliminated. It was, therefore, felt that a preventive detention law should be enacted with a view to effectively immobilizing the traffickers. The conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 provides for preventive detention in relation to smuggling of drugs and psychotropic substances, but it cannot be invoked to deal with persons engaged in illicit traffic of drugs and psychotropic substances within the country. It was, therefore, felt that a separate legislation should be enacted for preventive detention of persons engaged in any kind of illicit traffic in narcotic drugs and psychotropic substances 33. Accordingly, the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Ordinance, 1988 was promulgated by the President of India and ultimately, the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 was passed by the Parliament which deemed to have come into force on 4th day of July, 1988 containing only sixteen sections.

This Act provides for detention of not only those dealing in narcotic drugs or psychotropic substances but also those handing or letting any premises for the carrying on of any of the activities. The various activities covered under the Act for the purpose of preventive detention are wide covering inter-alia, cultivation of coca plant, opium poppy or any cannabis plant, 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. Wide meaning to 'illicit traffic' has been given in this Act34.

Under the Act, the Central Government or a State Government or any officer of the Central Government, not below the rank of a Joint Secretary to that Government, or any Officer of a State Government, not below the rank of a Secretary to that Government, specially empowered for the purpose of this section, can make an order for detention of a person with a view to prevent him from engaging in illicit

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34Section 2(e) of the PITNDPS Act, 1988.
traffic in narcotic drugs and psychotropic substances\textsuperscript{35}. The provision has been made to constitute Advisory Boards by the central and State Governments, whenever necessary for seeking its opinion regarding sufficient cause for the detention of a person\textsuperscript{36}. Even though this discretionary provision can be misused but still it is very effective, moreover any wrong committed by any government agency/officer can be challenged in court and corrected through judicial intervention. Some important judicial decisions under PITNDPS Act, 1988 are discussed here to gauge the judicial response towards the provisions of the Act and their implementation.

In \textit{Ayyub Khan versus State of Maharashtra}\textsuperscript{37}, it was held that mere delay ipso facto in passing the detention order from the date of committing the particular offence is not fatal but if such delay has been explained properly, the detention order is not invalid.

Where detenu has absconded and he was arrested 10 months thereafter, mere omission to take necessary steps under Sections 82 and 83 Cr.P.C. in issuing proclamation etc. will not per se render the detention order either illegal or malafide as held by Hon'ble Apex Court in judgment titled \textit{Indrodeo Mahto versus State of Maharashtra}\textsuperscript{38}.

In \textit{Yakub Ebrahim Patel versus Sh.Shool}\textsuperscript{39} the Mumbai High Court while considering the fact that where the detaining authority had considered likelihood of his being released on bail and also the rejection of bail application about three weeks before passing of detention order was also not considered by the Detaining Officer, therefore, continued detention of the petitioner-detenu was held vitiated. Similar view has been taken by Hon'ble Delhi High Court in a case \textit{Sumita versus Union of India}\textsuperscript{40} where detenu was already in jail, held that mere fact of arrest of detenu in the past in some cases would not be sufficient to give rise to inference or satisfaction that she was earlier released on bail. As there was no cogent material before the Detaining

\textsuperscript{35}Section 3 of the PITNDPS Act, 1988.

\textsuperscript{36}Section 9 of the PITNDPS Act, 1988.

\textsuperscript{37}1998 Bom.LR 348.

\textsuperscript{38}AIR 1973 SC 1062.

\textsuperscript{39}2003 Cri.L.J.1167 (Bom.).

\textsuperscript{40}2003 Cri.L.J.2928 (Delhi).
Authority on the basis of which it could be inferred that there was likelihood of detenu's release on bail and thus, compelling necessity to detain her. Therefore, detention was vitiates.

If there is unreasonable delay between the date of order of detention and the date of arrest of the detenu, such delay unless satisfactorily explained throws a considerable doubt on the genuineness of the requisite subjective satisfaction of the detaining authority in passing the detention order and consequently renders the detention order as bad and invalid because the 'live and proximate link' between the ground of detention and the purpose of detention is snapped in arresting the detenu. A question whether delay is unreasonable and stands unexplained depends on the facts and circumstances of each case.41

There is conflict of opinion in decisions in Sanjay Kumar Agarwal versus Union of India42, and Noor Salman Makani versus State of India43 on the one hand and Kamarunmissa versus Union of India,44 on the other hand, inasmuch as according to the ratio in both the former two decisions mere bald statement that the detenu is likely to be released on bail or that he would repeat the criminal activities after release, is enough for making order of detention while as per ratio in later case reliable material must be before the detaining authority that there is real possibility of the detenu being released on bail and that on being so released, he would in all probabilities indulge in prejudicial activities before an order of detention is made. These three decisions have been handed down by two-Judge Benches of the Apex Court.

In Dharmendra Suganchand Chelawat versus Union of India45, it was held:-

The decisions referred to above lead to the conclusion that an order for detention can be validly passed against a person in custody and for that purpose, it is necessary that the grounds of detention must show that (i) the detaining authority was aware of the fact that the detenu is already in

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44 AIR 1991 SC 1640.
45 AIR 1990 SC 1196.
detention, and (ii) there were compelling reasons justifying such detention despite the fact that the detenu is already in detention. The expression compelling reasons in the context of making an order for detention of a person already in custody implies that there must be cogent material before the detaining on the basis of which it may be satisfied that (a) the detenu is likely to be released from custody in the near future and (b) taking into account of the nature of the antecedent activities of the detenu, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities.

Where the possibility of the detenu being released on bail is remote, the order of his detention merely on that ground of being released on bail is invalid.\textsuperscript{46}

Under Section 12 of the PITNDPS Act, 1988, the Central Government has got power to revoke or modify a detention order. Detenu invoked that power by causing a representation to be sent to the Central Government. Non-consideration of the representation by the Central Government is violation of the right conferred under Article 22 (5) of the Constitution read with Section 12 of the PITNDPS Act.\textsuperscript{47}

3.4 THE PREVENTION OF MONEY LAUNDERING ACT, 2002 AND (AMENDMENT) ACT 2005

The Prevention of Money Laundering Act, 2002 (more commonly known as PMLA 2002) came into force w.e.f. 1st July, 2005. The Parliament has enacted the Prevention of Money Laundering Act 2002 (hereinafter referred as the Act) to give effect to the resolution adopted by the General Assembly of the United Nations on the Political Declaration and Global Programme of Action in February 1990 which calls up the Member States to enact money laundering legislation and programmes. This Act extends to the whole of India. It aims at combating channelizing of money into illegal activities, provides for attachment and seizure of property and records, stringent punishment, including rigorous imprisonment upto 10 years and fine upto Rs.5 lakhs. The preamble of the Act provides that it aims to prevent money-laundering and to provide for confiscation of property derived from, or involved in

\textsuperscript{46}Jagdish Chander versus State, 2000 Cri.L.J. 3162 (Delhi) (DB).

\textsuperscript{47}Supra Note 29 at 829.
money-laundering and for matters connected therewith or incidental thereto. This legislation is very recent and most essential provisions have been discussed to make aware the ethos behind the work.

In order to further strengthen the existing legal framework and to effectively combat money laundering, terror financing and cross-border economic offences, an Amendment Act, 2009 was passed by the Parliament which was notified on 3rd June 2009. The new law seeks to check use of black money for financing terror activities. Financial intermediaries like full-fledged money changer, money transfer service providers such as credit card operators have also been brought under the ambit of this Act. Consequently, these intermediaries, as also casinos, will be brought under the reporting regime of the enforcement authorities. It would also check the misuse of promissory notes by FIIS, who would now be required to furnish all details of their source. The new law would check misuse of 'proceeds of crimes' be it from sale of banned narcotic substances or breach of the Unlawful Activities (Prevention) Act 1967. The passage of the Prevention of Money Laundering (Amendment) 2009 will enable India's entry into Financial Action Task Force (FATF), an inter-governmental body that has the mandate to combat money laundering and terrorist financing.

The salient features of this Act 2002 as amended upto date are summarized as under:-

1.4.1. Definitions

**Major Definitions**

(a) **Money-laundering**-clause (p) of sub-section 1 of Section 2 of the Act provides that money-laundering has the meaning assigned to it in Section 3 of the Act which means that whosoever directly or indirectly attempts to indulge or knowingly is a party or is actually involved in any process or activity connected with proceeds of crime and projecting it as untainted property shall be guilty of offence of money laundering.48

(b) **Proceeds of crime**-It is defined as any property derived or obtained, directly or indirectly by any person as a result of criminal activity relating to a scheduled offence or the value of any such property.49

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48Section 3 of the PMLA 2002.

49Section 2(1) (u) of the PMLA 2002.
(c) **Property**: Property means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located.\(^{50}\)

(d) **Payment System**: Payment system means a system that enables payment to be effected between a payer and a beneficiary, involving clearing, payment or settlement service or all of them. It includes the systems enabling credit card operations, debit card operations, smart card operations, money transfer operations or similar operations.\(^{51}\)

(e) **Schedule Offence**: It means:

(i) The offences specified under Part A of the Schedule; or

(ii) The offences specified under Part B of the Schedule if the total value involved in such offences is thirty lakh rupees or more.

Actually to understand the meaning of money-laundering, it is essential to define proceeds of crime, property and scheduled offence and all the above definitions have to be read together.

### 3.4.2. Attachment, Adjudication and Confiscation.

Chapter III containing Sections 5 to 11 deals with attachment, adjudications and confiscation of property involved in money-laundering. The Act authorizes the officers to attach the property pending decision of adjudication and confiscation. Where the attachment of any property or retention of the seized property or record becomes final under clause (b) of sub Section 3 of Section 8, the Adjudicating Authority shall, after giving an opportunity of being heard to the person concerned, make an order confiscating such property.\(^{53}\) The Act vests adequate power with the Central Government. The Officers of the directorate are empowered to act as Civil Courts for the purpose of production of documents and collection of evidence.\(^{54}\) The

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\(^{50}\)Section 2(1) (v) of the PMLA 2002.

\(^{51}\)Section 2(1) (rb) of the PMLA 2002 as introduced by the Amendment Act, 2009.

\(^{52}\)Section 2(1) (y) of the PMLA 2002.

\(^{53}\)Section 8(6) of the PMLA 2002.

\(^{54}\)Section 11 of the PMLA 2002.
Adjudicating authority shall consist of a Chairperson and two members. On receipt of a complaint, the adjudicating authority shall issue notice to a person who has committed an offence as per procedure prescribed in the act.55

**3.4.3. Searches and Seizures.**

The directorate can effect search of a person. The directorate has also power to make surveys, 56 searches and seizures 57 for collection of material. Power for making arrest has also been given.58 The arrested person has to be produced before the Magistrate within 24 hours 59. Provisions enabling retention of property 60 and records 61 also exist in the Act. The authorities are also enabled by way of provisions in Sections 22 and 23 of the Act which allow presumption as to records and interconnected transactions in certain cases. When a person is accused of having committed the offence under Section 3 of the Act, the burden of proving that proceeds of crime are untainted property shall be on the accused. 62

**3.4.4. Appellate Tribunal.**

Chapter VI of the Act deals with formation of Appellate Tribunal, its powers and procedure to be followed. The Central Government is empowered to establish an Appellate Tribunal by notification for hearing appeals against the orders of the Adjudicating Authority and the authorities under this Act.63 The Appellate Tribunal shall consist of a chairperson and two other officers. Their qualifications, 64 terms of office and conditions of service 65 have also been prescribed in the enactment.

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55 Section 8 of the PMLA 2002.
56 Section 16 of PMLA 2002.
57 Section 17 of PMLA 2002.
58 Section 19 of PMLA 2002.
59 Section 19(3) of PMLA 2002.
60 Section 20 of PMLA 2002.
61 Section 21 of PMLA 2002.
62 Section 24 of PMLA 2002.
63 Section 25 of PMLA 2002.
64 Section 28 of PMLA 2002.
65 Section 30 of PMLA 2002.
The Appellate Tribunal shall not be bound by the procedure, laid down by the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice and subject to the other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure. The decision of the Appellate Tribunal shall be made by majority and authorized representatives are permitted to participate in the proceedings. Jurisdiction of Civil Court is barred under the Act. Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal on any question of law or fact arising out of such order.

3.4.5. Special Courts.

In addition to enforcement machinery, there is a provision of establishing Special Courts for the trial of offences punishable under Section 4 of the Act. The scheduled offence and offence punishable under Section 4 shall be triable only by the Special Court constituted for the area in which the offence has been committed. It has been laid down that the Criminal Procedure Code shall be applicable to the proceedings of the Special Courts and there would be Public Prosecutor for conducting the cases under the Act appointed by the Central Government. Offences under the Act shall be cognizable and non-bailable. Appeal and revision shall lie to High Court against the decision of the Special Court. It may be observed that a comprehensive machinery of adjudication has been created under the Act.

Section 35 of PMLA 2002.
Section 38 of PMLA 2002.
Section 39 of PMLA 2002.
Section 41 of PMLA 2002.
Section 42 of PMLA 2002.
Section 44 of PMLA 2002.
Section 46 of PMLA 2002.
Section 45 of PMLA 2002.
Section 47 of PMLA 2002.
3.4.6. Authorities

There shall be the following classes of authorities for the purposes of this Act, \(^{75}\) namely:-

(a) Director or Additional Director or Joint Director,
(b) Deputy Director;
(c) Assistant Director, and
(d) such other class of officers as may be appointed for the purposes of this Act.

The Directors, Additional Directors, Deputy Directors, Assistant Directors are the executive authorities who are to initiate steps for adjudication, confiscation and prosecution in the special courts established for the purpose. There could be an appeal from the adjudication authority's decision to the appellate authority and beyond the appellate authority; the High Court can exercise appeal and revisional jurisdiction. The Act is so comprehensive that all aspects of prevention of money laundering have been captured and provisions made to deal with them. \(^ {76}\)

The authorities under the Act shall have powers to issue summons etc. to carry out their duties. The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act. \(^ {77}\) The Central Government may, from time to time, issue such orders, instructions and directions to the authorities as it may deem fit for the proper administration of this Act and such authorities and all other persons employed in execution of this Act shall observe and follow such orders, instructions and directions of the Central Government. \(^ {78}\) Certain officers mentioned in Section 54 of the Act are empowered and required to assist the authorities in the enforcement of this Act.

\(^ {75}\) Section 48 of PMLA 2002.

\(^ {76}\) The Indian Law Institute, New Delhi “Prevention of Money Laundering Legal and Financial Issues” (2008), p.83.

\(^ {77}\) Section 50(2) of the PMLA 2002.

\(^ {78}\) Section 52 of the PMLA 2002.
3.4.7. International cooperation

Chapter IX containing Sections 55 to 61 deals with reciprocal arrangement for assistance in certain matters and procedure for attachment and confiscation of property.

Considering the international dimensions, the offence of money laundering has of late assumed a lot of importance. The enactment makes detailed provisions for reciprocal arrangements for ensuring assistance from other countries under Section 56 of the Act. Section 61 lays down the provisions enabling the Indian authorities to render/receive assistance to the authorities in other contracting states in carrying out measures of provision of Money Laundering Act, 2002.79


The last Chapter X containing Sections 62 to 75 deals with miscellaneous provisions as a safeguard against misuse of this act pertaining to certain aspects. The Act makes a provision for punishing authorities who resort to vexatious search.80 There is a provision for punishment for giving false information or failure to provide information etc.81 No Court shall take cognizance of any offence under Section 62 or 63(1) except with the previous sanction of the Central Government.82 No suit shall be brought in any civil court to set aside or modify any proceeding taken or order made under this Act and no prosecution, suit or other proceeding shall lie against the Government or any officer of the Government for anything done or intended to be done in good faith under this Act.83

Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company, for the conduct of the business of the company as well as

79 Supra Note 29 at 86.
80 Section 62 of the PMLA 2002.
81 Section 63 of the PMLA 2002.
82 Section 64 of the PMLA 2002.
83 Section 67 of the PMLA 2002.
the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.\textsuperscript{84}

It is worthwhile to note that the Act provides a provision for punishment of companies. It is the Central Government which has been authorized to make rules under the Act\textsuperscript{85} which further shall be laid before both the houses of Parliament for necessary approval.\textsuperscript{86}

3.4.9. Analysis of Effectiveness of the Act.

Definition of money laundering by way of confining to the scheduled offences only, has limited the scope of this Act. An offence can be classified as a money laundering offence only if the property involved is worth a particular amount or more which may encourage the money launders to keep the transactions below this limit and can easily be escaped from the grip of the law. Hence, money laundering upto a limited amount can still be out of the limit of this Act. The technique of identifying the money laundering offences as enumerated in the Act has its own limitations. The list of offences enumerated in the schedule is very narrow and limited as the same has left out many other offences involving monetary gains. The Act does not specify the agency or authority that may investigate the cases and file charge-sheet in the Court. Only banks, financial institutions and certain securities related services are brought under the regime of record-keeping and reporting whereas activities of certain real estate agents and dealers in jewellery and precious stones are not covered in India. However, efforts have been made to cover activities of casinos and financial intermediaries in latest Amendment Act of 2009. There is a large gap between the law and enforcement as the predicate crimes are state level and the present Act provides the investigation of offence of money laundering by the Central Government which may create a serious enforcement problem. No effective role has played by this Act in preventing or prohibiting the Hawala transaction and transactions which are the frequently used channel for money laundering, particularly from drug trafficking.

\textsuperscript{84}Section 70 of the PMLA 2002.

\textsuperscript{85}Section 73 of the PMLA 2002.

\textsuperscript{86}Section 74 of the PMLA 2002.
In India, no specific case pertaining to this new Act has come across decided by Hon’ble Supreme Court of India but in judgment *Binod Kumar Sinha versus State of Jharkhand*, a controversy was raised before Hon’ble Jharkhand High Court about whether the Special Court can proceed simultaneously with the trial of scheduled offence as well as trial of offence punishable under Section 4 of the Prevention of Money Laundering Act. The Hon’ble High Court observed as under:-

“37. No doubt it is true that procedure relating to investigation, enquiry etc. of the scheduled offence is different from the procedure of the investigation of the offence under Section 4 of the Prevention of Money Laundering Act but that difficulty would have arisen when the question would have been there for clubbing of the charges.

38. Here, the point is never related to clubbing of the charges, rather the point is whether the Special Court can proceed simultaneously with the trial of the scheduled offence as well as trial of the offence punishable under Section 4 of the Prevention of Money Laundering Act. Keeping in view the provision as is enshrined in Section 3 postulating therein that whoever is connected with the proceeds of the crime projecting it as untained property would be committing offence of Money Laundering Act and further that the proceeds of crime must have been derived or obtained, directly or indirectly by any person as a result of criminal activity relating to scheduled offence in terms of sub-section (u) of Section 2 of the Prevention of Money Laundering Act, there has been no doubt that unless one is held guilty for the scheduled offences, he cannot be held guilty of the offence punishable under Section 4 of the Prevention of Money Laundering Act but hardly there appears to any embargo for the special Court to proceed with the trial of the scheduled offences as well as offence under Section 4 of the Prevention of Money Laundering Act simultaneously particularly when there has been nothing in the Act nor intention of the legislator seems to be there of taking of the trial of the offence punishable under Section 4 after one is found guilty for the scheduled offence. Of course, the Special Court trying the offence under the PMLA Act will have to wait for the result of the trial relating to scheduled offence. This recourse not only

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seems to be the practical solution of the matter but it will also expedite the trial.

39. Accordingly, I do come to the conclusion unhesitatingly that the Special Court may proceed with the trial for the scheduled offence as well as trial of the offence punishable under the PMLA Act simultaneously. The question posed is answered accordingly.”

Despite shortcomings, the present Act is a recent legislation and it would certainly have a far reaching impact as the subject is a major issue of concern at the international level. All the sectors of business across the globe like insurance, retail, real estate, stock market, entertainment etc. are getting flooded with money and more money and at this stage, it can surely be doubted that it might be a case of money laundering. Hence, the provisions of this enactment have become important being a tool for prevention of money laundering in India.

New offences like piracy of entertainment and software products are not covered in PMLA at all and same are to be included in the list of schedule of offences. There is also an urgent need to include Section 13 of the Prevention of Corruption Act 1988, Section 4 of the Immoral Traffic (Prevention) Act 1956 and Sections 417 to 420 of the Indian Penal Code 1867 in the schedule under the Act for effective operation of the provisions of this Act.

3.5 THE DRUGS AND COSMETICS ACT, 1940

3.5.1 Historical Background.

In 1937, a Bill was introduced in the Central Legislative Assembly to give effect to the recommendations of the Drugs Enquiry Committee to regulate the import of drugs into British India. This Bill was referred to the Select Committee and the Committee expressed the opinion that a more comprehensive measure for the uniform control of manufacture and distribution of drugs as well as imports was desirable. The Central Government suggested to the Provincial Governments to ask the Provincial Legislatures to pass resolutions empowering the Central Legislature to pass an Act for regulating such matters relating to control of drugs as falling within the Provincial sphere. Provincial Governments got the resolution passed from the Provincial Legislatures and sent them to the Central Government for getting through the Bill to
regulate the import, manufacture, distribution and sale of Drugs. Thereafter the Drugs Bill was introduced in the Central Legislative Assembly.

In order to give effect to the recommendations of the Drugs Enquiry Committee, in so far as they relate to matters with which the Central Government is primarily concerned, a Bill to regulate the import of drugs into British India was introduced in the Legislative Assembly. The Legislative Assembly was of the opinion that a more comprehensive measure providing for the uniform control of the manufacture and distribution of drugs as well as of import was desirable. The Government of India accordingly asked Provincial Governments to invite the Provincial Legislatures to pass resolutions under Section 103 of the Government of India Act, 1935, empowering the Central Legislature to pass an Act for regulating such matters relating to the control of drugs as falling within the Provincial Legislative List. Such resolutions have now been passed by all Provincial Legislatures.

Chapter II of the Bill establishes a Board of Technical Experts to advise the Central and Provincial Governments on technical matters.

Chapter III provides for the control of the import of drugs into British India. The executive power under this chapter will accordingly be exercised by the Central Government.

Chapter IV relates to control of the manufacture, sale and distribution of drugs and contains the provisions which it is proposed should be enacted in exercise of the powers conferred by the resolutions under Section 103 of the Government of India Act passed by the Provincial Legislatures. The executive power under Chapter IV will be exercised by the Provincial Government.

The First Schedule prescribes the standards to be complied with by imported drugs and the Second Schedule prescribes the standards to be complied with the drugs manufactured, sold or distributed in India. The standards prescribed in the two Schedules are identical. The Central Government will have power to amend the First Schedule, but power to amend the Second Schedule will rest with Provincial Government.

The Government of India has considered to what extent provision can be made to secure the maintenance of uniformity in standards and in other important matters in
which uniformity is desirable. There is need to understand that it would be ultra virus of Central Legislature to assign to any authority other than the Provincial Government’s authority conferred by the bill in respect of matters falling within the provincial legislative purview. For this reason it is not possible to assign the power to fix standards and to make rules to any single authority. In order to assure that before any action is taken, due consideration is given to the desirability of maintaining uniformity, provision has been made in Chapter VI for a single Technical Advisory Board which both Central and Provincial Government will be required to consult before modifying the standards set up by the Bill or before making rules under the Bill.

The drugs bill having been passed by the Central Legislative Assembly received the assent of the Governor General on 10th April, 1940 and it came on the Statute Book as the Drugs Act, 1940. By Section 2 of the Drugs (Amendment) Act, 1962 its nomenclature has been amended by adding the words “and Cosmetics” after the word “Drugs”. Now it stands as The Drugs and Cosmetics Act, 1940 (23 of 1940).

The Drugs and Cosmetics Act, 1940 was amended in the year 2008 vide Act no.26 of 2008 and highlights of this amendment are as under:-

3.5.2 Statement of Objects and Reasons of Amending Act 68 of 1982.

The Drugs and Cosmetics Act, 1940 regulates the import into, manufacture, distribution and sale of drugs and cosmetics in the country. The problems of adulteration of drugs and also of production of spurious and substandard drugs are posing serious threat to the health of the community. It is, therefore, considered necessary to amend the Drugs and Cosmetics Act, so as to impose more stringent penalties on the antisocial elements indulging in the manufacture or sale of adulterated or spurious drugs or drugs not of standard quality which are likely to cause death or grievous hurt to the user. This opportunity is also being availed of to incorporate certain other provisions on the other aspects of effective control on the manufacture, distribution, sale of drugs and cosmetics on the basis of experience gained in the working of the Act.88

Some of the important proposals envisaged are set out below:-

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(a) Widening of the definition of the expression ‘cosmetics’ so as to bring within its scope ‘toilet soaps’ in order to exercise control over such soaps which may contain harmful ingredients like hexachlorophene [vide clause 3(c)];

(b) The definition of the expression ‘drugs’ to be expanded to enable control being exercised over the components of drugs including empty gelatine capsules and also devices which are intended for internal or external use in the diagnosis or treatment of diseases in human beings or animals [vide clause 3(d)];

(c) Widening of the scope of the expression ‘patent or proprietary medicine’ so as to include patent or proprietary medicines which relate to Ayurveda, Siddha or Unani Tibb systems of medicines but not including such medicines as are administered by parenteral (i.e. by means of injections) route [vide clause 3(f)].

(d) Incorporation of a new provision for the purpose of defining certain terms like ‘spurious drugs’ and ‘spurious cosmetics’ and making of suitable consequential amendments in the definitions of other expressions like ‘misbranded drugs’, ‘adulterated drugs’ and ‘misbranded cosmetics’. Analogous provisions of a like nature are also to be included in respect of drugs relating to Ayurveda, Siddha or Unani Tibb systems of medicines [vide clauses 6, 13 and 31].

(e) New provisions to be incorporated to empower the Central Government to prohibit import or manufacture of drugs and cosmetics in the public interest where that Government is satisfied that the use of any drug or cosmetic is likely to involve any risk to human beings or animals or where the drug does not have any therapeutic justification [vide clauses 8 and 21].

(f) Insertion of a mandatory provision so as to make it obligatory for any person who is a holder of a licence to maintain such records, registers and other documents as may be prescribed and to produce them to the authority concerned if and what required [vide clause 15].

(g) Provision to empower the Inspector to stop and search any vehicle, vessel or other conveyance which he has reason to believe is being used for carrying
any drug or cosmetic in respect of which an offence under the Act is being committed [vide clause 19].

(h) Enhancement of the quantum of punishment for offences relating to the manufacture or sale of adulterated, spurious drugs or drugs not of a standard quality which are likely to cause death or grievous hurt to the user. Penalties provided in respect of other offences are to be revised on a more rational basis.

(j) The proposed scale of punishment in respect of the first offence shall be as set out below [vide clause 22]:

(i) imprisonment for not less than five years which may extend to life and with fine of not less than rupees ten thousand for the manufacture and sale of adulterated or spurious drugs or drugs not of standard quality which are likely to cause death or harm on the patient's body as would amount to grievous hurt;

(ii) imprisonment for not less than one year which may extend to three years and fine of not less than rupees five thousand for manufacture and sale of any adulterated drugs or manufacture and sale of drugs without a valid licence;

(iii) imprisonment for three years which may extend to five years and with fine of not less than rupees five thousand for manufacture or sale of spurious drugs;

(iv) imprisonment for other offences shall be not less than one year which may extend to two years and with fine.

(k) The proposed scale of punishment for subsequent offence shall be as set out below [vide clause 25]:

(i) imprisonment for not less than two years which may extend to six years and with fine of not less than rupees ten thousand for manufacture and sale of any adulterated drug or manufacture and sale of drugs without a valid licence;

(ii) imprisonment for not less than six years which may extend to ten years and with fine of not less than rupees ten thousand for manufacture and sale of spurious drug;
(iii) imprisonment for a term not less than two years which may extend to four years and with fine of not less than rupees one thousand or with both for other offences.

(l) Provision to be made in Section 33-C to give representations to experts in the Ayurvedic, Siddha and Unani systems of medicines in the Ayurvedic, Siddha and Unani Drugs Technical Advisory Board [vide clause 30].

(m) Another proposal relates to the constitution of an Advisory Committee to be called Ayurvedic, Siddha and Unani Drugs Consultative Committee to advise the Central Government, the State Governments and the Ayurvedic, Siddha and Unani Drugs Technical Advisory Board on any matter intended to secure uniformity throughout India in the administration of the Act. The Committee shall consist of two persons to be nominated by the Central Government and one each by the State Government [vide clause 31].

(n) Punishments for manufacture, sale, etc. of Ayurvedic, Siddha or Unani drugs in contravention of the provisions of the Act are sought to be enhanced as under:

(i) imprisonment upto one year or with fine of not less than rupees one thousand for the manufacture of adulterated, Ayurvedic, Siddha and Unani drugs of its manufacture without a valid licence;

(ii) imprisonment for one year which may extend to three years and fine of not less than rupees five thousand for the manufacture of spurious, Ayurvedic, Siddha and Unani drugs;

(iii) imprisonment for three months and fine of not less than rupees five thousand for other offences.

(o) The proposed scale of punishment for subsequent offences shall be as set out below:

(i) imprisonment for a term which may extend to two years and with fine of not less than rupees two thousand for offences of manufacturing, sale or distribution of any Ayurvedic, Siddha or Unani drug;

(ii) imprisonment for two years which may extend to six years and with fine of not less than rupees five thousand for manufacturing of any spurious Ayurvedic, Siddha or Unani drug or sale thereof;
(iii) imprisonment for six months and with fine of rupees one thousand for other offences.

A new provision to be made to provide for summary trial in case of offences where the penalty is not more than three years’ imprisonment. The Bill seeks to achieve the above objects. The above apart, the other amendments sought to be effected are of a general or consequential nature.

3.5.3. THE PRESENT POSITION OF THE DRUGS AND COSMETICS ACT, 1940 (AS AMENDED IN THE YEAR 2008)

The salient features of this Act, 1940 as amended up to date in the year 2008 are summarized as under:-

The chapter one deals with short title, extent and commencement of the Act as well as definitions of drugs and cosmetics.

Chapter two of this Act provides formation of Drugs Technical Advisory Board, Central Drugs Laboratory and the Drugs Consultative Committee. The Technical Advisory Board can advise both the Central and the State Governments on technical matters arising out of the Administration of the said Act. Since the Constitution of the Board is provided, it would not be for the Court to mandate any change in the statutory provisions relating to the Constitution of the Board as that is the function of the Parliament only as held in judgment *Shri Krishna Homoeo Pharmacy Versus Union of India*.

Chapter three of this Act deals with the import of drugs as well as of cosmetics. This chapter deals with offences as well as punishment prescribed thereof. Any import of goods of which the importation is prohibited by law, cannot be a valid import under the Act as held by Calcutta High Court in *S. Mohammad versus Assistant Collector, Customs*. The tainted goods may be confiscated without proceeding personally against any person and without coming to a finding as to who was smuggler as held in judgment *Shermal Jain versus Collector of Central*

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89 Section 5(2) of The Drugs and Cosmetics Act, 1940.

90 (2006) 1 MAH.L.J., p.325

91 Section 8 to 15 of The Drugs and Cosmetics Act, 1940.

Excise. This Act makes the offence of import as offence if conducted in violation of the provision of this Act and also suggested the punishment thereof. The consignment of drugs or cosmetics in respect of which offence has been committed shall be liable to confiscation and no Court inferior to that of a Metropolitan Magistrate or of a Magistrate of the Ist Class shall try an offence punishable under Section 13.

The chapter 4 of this Act comprises of Section 16 to Section 33-A deals with manufacture, sale and distribution of drugs and cosmetics. This chapter deals with misbranded, adulterated, spurious drugs as well as cosmetics. There is a provision of appointment of Government Analyst by the State Government as well as Central Government. This chapter also deals with appointment, powers of Inspectors and what procedure is to be followed by them while taking sample etc. The Act deals with penalty for manufacture, sale etc. of drugs in contravention of this chapter. A harsh penalty has been provided for subsequent offences in this Act.

Chapter 4-A of this Act shall apply only to Ayurvedic, Siddha and Unani drugs. Chapter 5 is a miscellaneous dealing with power of Central Government to give directions to any State governments as well as the offences if committed by Companies and government departments. As per this Act, certain offences are to be tried summarily. A provision has been made for establishing Special Courts for trial of offences under this Act. The offences under this Act are to be cognizable and non-bailable in certain cases.

93AIR 1956 Calcutta, p.121.
94Section 13 of the of The Drugs and Cosmetics Act, 1940.
95Section 14 of The Drugs and Cosmetics Act, 1940.
96Section 15 of The Drugs and Cosmetics Act, 1940.
97Section 20 of The Drugs and Cosmetics Act, 1940.
98Sections 27 and 27-A of The Drugs and Cosmetics Act, 1940.
99Section 30 of The Drugs and Cosmetics Act, 1940.
100Section 36-A of The Drugs and Cosmetics Act, 1940.
101Section 36-AB of The Drugs and Cosmetics Act, 1940.
102Section 36-AC of The Drugs and Cosmetics Act, 1940.
While summarizing the finding of this chapter the researcher concludes that the legislative framework for dealing with the menace of drug abuse and trafficking has evolved with time in India and it has become more stringent and the punishments have been made more harsher and their effective implementation is the key to successfully challenge the menace of drug abuse and trafficking. There are few overlapping provisions and jurisdiction but the confusion and contradiction has been taken care of by the judiciary through their decisions. These ambiguities if remain are bound to adversely affect the functioning of enforcement machinery thus needs to be removed with suitable amendments.