CHAPTER - 4

ROLE OF ENFORCEMENT AGENCIES IN THE ENFORCEMENT OF DRUG LAWS IN INDIA

4.1 INTRODUCTION

National Policy on Narcotic Drugs and Psychotropic Substances is based on the Directive Principles of State Policy contained in Article 47 of the Indian Constitution which directs that the “State shall endeavour to bring about prohibition of the consumption, except for medicinal purpose, of intoxicating drugs injurious to health.” The Government policy on the subject which flows from the aforesaid constitutional provision is also guided by the International Conventions on the subject as the India is a signatory to 1961 Single Convention in Narcotic Drugs as amended by the 1972 Protocol, Convention on Psychotropic Substances 1971 and United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.

The broad legislative policy in the matter is contained in the three Central Acts, viz. Drugs and Cosmetics Act, 1940, The Narcotic Drugs and Psychotropic Substances Act, 1985 and The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988. The responsibility of drug abuse control, which is a central function, is carried out through a number of Ministries, Departments and organizations. While the overall coordination in the drug control matter is the function of the Narcotics Central Bureau, Department of Revenue. Various other functions in the matter are carried out by various Departments and Organizations. The Licensing functions for medicinal and scientific purposes are preferred by the Narcotics Commissioners under the Department of Revenue, the Drug Controllers and Excise Commissioners of the States/Union Territories. They also have enforcement powers for dealing with complaints and detecting contraventions. The health, treatment and hospitalization facilities are the responsibility of the Ministry of Health and Family Welfare and Health Departments of the States/Union Territories. They also administer the Drugs and Cosmetics Act, 1940 which has an important bearing on licensing and regulation in respect of Psychotropic substances. Public Welfare aspects of prevention
of addiction and de-addiction efforts, public education for demand reduction, rehabilitation and social reintegration of the addicts are the responsibilities of Ministry of Welfare and the Welfare Departments of the States/Union Territories who operate mainly through the non-governmental social welfare organizations. General enforcement of the provisions of the N.D.P.S. Act, 1985 is looked after by various other enforcement agencies like custom and Central Excise, State Police, Directorate of Revenue Intelligence (DRI), Central Bureau of Narcotics (CBN), Central Bureau of Investigation etc. Para-Military forces like B.S.F., C.R.P.F., Coast Guards etc. are also required to play an important role in tackling smuggling of drugs. Now we shall discuss in brief the role played by important enforcement agencies vis-à-vis judicial appraisal made by various courts in India.

4.2 NARCOTICS CONTROL BUREAU (NCB)

The Narcotic Drugs and Psychotropic Substances Act, 1985 which came into effect from 14th November, 1985 made an express provision for constituting a Central Authority for the purpose of exercising the powers and functions of the Central Government under the Act. In exercise of the powers, the “Narcotics Control Bureau” was constituted with Headquarters at Delhi w.e.f. 17th March, 1986. The Bureau, subject to the supervision and control of the Central Government, exercises the powers and functions of the Central Government for taking measures with respect to:-

(i) Co-ordination of action by various offices, State Governments and other authorities under the NDPS Act, Custom Act, 1962, Drugs Act and Cosmetics Act, 1940, and any other law for the time being in force in connection with the enforcement provisions of the NDPS Act, 1985

(ii) Implementation of the obligation in respect of counter measures against illicit traffic under the various international conventions and

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1 Section 4(3) of the NDPS Act, 1985.

2 Section 4(3) of the NDPS Act, 1985,
protocols that are in force or which may be ratified or acceded to by India in future.

(iii) Assistance to concerned authorities in foreign countries and concerned international organizations to facilitate coordination and universal action for prevention and suppression of illicit traffic in these drugs and substances.

(iv) Co-ordination of action taken by the other concerned Ministries, Departments and Organizations in respect of matters relating to drug abuse.

The Narcotics Control Bureau (NCB) is the apex coordinating agency. It also functions as an enforcement agency through its units located at Bombay, Delhi, Calcutta, Madras, Varanasi, Jodhpur, Chandigarh, Jammu, Ahmadabad, Imphal and Tiruvananthapuram as these locations are considered to be sensitive from the point of view of drug trafficking. The Zonal units collect intelligence and work in close co-operation with the Customs and other law enforcement agencies. The Narcotics Control Bureau strives to promote inter-agency co-operation in India and abroad and implements the provisions of various International Conventions relating to drug abuse and illicit drug trafficking, interalia, liaisoning with international agencies, such as Interpol, Customs Cooperation Council, SAARC and enforcement agencies of various other countries. All the cases of international ramifications are reported to the concerned agencies with a request to pass on and cause necessary enquiries in the concerned countries. In turn cases, referred by them are got investigated by the NCB through suitable agency located in India. NCB is a catalytic agent of harmonious multi-disciplinary process of imparting dynamism in the overall enforcement effort throughout the country.

The Central Government is obliged to take all such measures as are deemed necessary for the purpose of preventing and combating the abuse of Narcotic Drugs and Psychotropic Substances and the illicit traffic therein. By Notification S.O. No. 96(E), dated 17th March, 1986, the Central Government constituted the NCB in

\[\text{Section 4(1) of the NDPS Act, 1985}\]
exercise of its powers under Section 4 (3)\(^4\) of the Act to discharge the powers and functions of the Central Government under the Act subject to the superintendence and control of the Central Government.

Controlled delivery is an investigative tool used by the enforcement agencies to identify and neutralize drug trafficking networks and syndicates across the world. The Director General, NCB is the Competent Authority to allow controlled Delivery Operations within and outside the country.\(^5\) During the year 2009, one controlled delivering operation was undertaken with the help of enforcement agency of USA.

The NCB assists the other drugs law enforcement agencies in enhancing their capabilities in combating the menace of drug. Assistance is provided by way of financial support for procurement of equipments and vehicles, skill up-gradation through training and supply of investigative tools like drug detection kits.

In view of above discussion, the primary areas of focus for counter narcotics efforts made by the Narcotics Control Bureau (NCB) may be summarized as under:-

- Intensive preventive and interdiction efforts on known drug routes.
- Identification of illicit cultivation of the opium poppy and the wild growth of cannabis and eradication of these sources of supply.
- Strict surveillance and enforcement at import and export points, land borders, airports, foreign post offices and production areas etc.

\(^4\) Section 4(3) of NDPS Act, 1985:- The Central Government may, if it considers it necessary or expedient so to do for the purposes of this Act, by order, published in the Official Gazette, constitute an authority or hierarchy of authorities by such name or names as may be specified in the order for the purpose of exercising such of the powers and functions of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order, and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise the powers and take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers and take such measures.

\(^5\) Section 50 A of the NDPS Act, 1985.
• Strict control over the movements of precursor chemicals.

• Improved coordination between various drug law enforcement agencies in order to effectively implement the Drug laws.

• Building of an electronic database of offenders and suspects.

• Strengthening of international liaison to improve the collection, analysis and dissemination of operation intelligence in order to keep a complete watch on drug smugglers.

• Implementing a scheme of monetary rewards for information leading to seizures of Narcotic drugs to informants and officers.

• Using satellite imagery for monitoring identified areas for illicit growth of cannabis or opium.

• Targeting illicit manufacturing units of brown sugar and methaqualone (Mandrax).

• Conducting training programmes for law enforcement officials for upgrading their skill to combat drug trafficking.

• NCB strives to promote interagency co-operation in India and abroad in order to implement the provisions of various international conventions relating to drug abuse and illicit drug trafficking.

If the record of Narcotics Control Bureau is appreciated as regards to the seizures of contrabands made from 2009 to 2013, it can be said that the NCB has done a tremendous job in this regard and succeeded in its mission to control the supply of contrabands. As per annual report issued by Narcotics Control Bureau, Department of Revenue, Ministry of Finance, Government of India, the performance
of the NCB as regards seizure of contrabands is reflected as under ⁶:-

(in Kgs.)

<table>
<thead>
<tr>
<th>Year</th>
<th>Opium</th>
<th>Morphine</th>
<th>Heroin</th>
<th>Ganja</th>
<th>Hashish</th>
<th>Cocaine</th>
<th>Methaqualone</th>
<th>Ephedrine</th>
<th>L.S.D.(in grams)</th>
<th>Acetic Anhydrid</th>
</tr>
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<tbody>
<tr>
<td>009</td>
<td>33</td>
<td></td>
<td></td>
<td>483</td>
<td>17</td>
<td>0</td>
<td>17</td>
<td>18</td>
<td>0</td>
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<tr>
<td>010</td>
<td>2</td>
<td></td>
<td></td>
<td>642</td>
<td>51</td>
<td>17</td>
<td>8</td>
<td>31</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>011</td>
<td>4</td>
<td></td>
<td></td>
<td>124</td>
<td>91</td>
<td>0</td>
<td>0</td>
<td>143</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>012</td>
<td>17</td>
<td></td>
<td></td>
<td>622</td>
<td>62</td>
<td>1</td>
<td>8</td>
<td>273</td>
<td>0</td>
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<tr>
<td>013</td>
<td>11</td>
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<td></td>
<td>546</td>
<td>89</td>
<td>0</td>
<td>0</td>
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</tr>
</tbody>
</table>

From the aforesaid table it reflects that the NCB has worked a tremendous job as far as seizure of contraband is concerned in last five years. As per this seizure it appears that ganja is being carried out by the carrier of drug smugglers to a great extent as recovery of this contraband is on higher side. Recovery of heroin and hashish during last five years is also alarming which reflects that the consumption of illegal drugs has an increasing trend despite the best efforts of the enforcement agencies in combating this drug menace.

To appreciate the role of the NCB, it is necessary to make reference of certain important cases dealt with or investigated by the officers of NCB and the findings of the various courts particularly Apex Court given as regards the manner of investigation conducted by this agency. In *Francis Stanly @ Stalin versus Intelligence Officer, Narcotic Control Bureau, Thiruvananthapuram* the Apex Court observed that tainted evidence cannot corroborate another tainted evidence. As per facts of this case, on 1.10.2000 at about 3.45 p.m., PW7, Radhesh, Intelligence Officer, received information that one person was standing in the parking area between Gandhi Park and Pattomthanu Pillai Park at East Fort, Thiruvananthapuram waiting for somebody to dispose of about one kilogram of heroin which was in his possession. PW7 recorded the information and submitted Ext.P10 report to PW5, the Superintendent, Narcotic Control Bureau Regional Intelligence Unit, Thiruvananthapuram. PW7 alongwith the informant proceeded to the place where the Ist accused was waiting and the Ist accused was shown to PW7 by the informant. PW5 alongwith PW4 and PW6 reached near Pattomthanu Pillai Park about 4.30 p.m. and PW7 pointed out the Ist accused to them. PWs 4,5 and 6

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7(2006) 13 SCC 210
along with the witnesses approached the accused who was holding M.O. 2(a) bag. PWs 4 to 6 disclosed their identity and expressed their desire to search the Ist accused. He was also informed of his right to be searched in the presence of a Gazetted Officer or a Magistrate. The Ist accused waived the right and expressed his willingness to be searched by the officers. When PW1 asked the Ist accused whether he was possessing any narcotic drug, the Ist accused handed over M.O. 2(a) bag to PW4. The bag was found to contain M.O. 2(d) white full shirt and a bundle of M.O. 2(b) and M.O. 2(c) lungies. When the lungies were removed, a transparent polythene cover containing brownish powder was recovered. PW4 opened the polythene packet and took a pinch of the powder and tested it with a Field Drug Detection Kit. Since the test gave positive result, PW4 seized the narcotic drug. The polythene cover and the drug were found to weigh 1.110 kilograms. Two samples were taken and the samples were separately packed and sealed. The remaining drug was also separately packed and sealed. PW4 prepared Ext.P1 Mahazar. At the request of PW4, PW6, served Ext.P2 summons on the Ist accused directing him to appear on the N.C.B. office at 7 p.m. on the same day. Since the Ist accused did not know the place, PW7 was asked to accompany the Ist accused to the N.C.B. office. In obedience to the summons the Ist accused appeared before the N.C.B. office and gave Ext.P12 statement in Tamil which was recorded by PW6. Thereafter PW6 arrested the Ist accused. On the next day the Ist accused was produced before the Magistrate who remanded him to the Sub-Jail. Since the name of the 2nd accused was also mentioned in Ext.P12 statement, PW5 proceeded to Idinthikara of Thirunalveli District on the morning of 2.10.2000 and Ext.P15 summons was served on the 2nd accused directing him to appear before the N.C.B. Office at Thiruvananthapuram at 5 p.m. on that day. The 2nd accused appeared before the N.C.B. Office in the evening and gave Ext.P16 statement in his own handwriting. PW6 arrested the 2nd accused. The 2nd accused was also produced before the Magistrate, who remanded him to the Sub-Jail. The investigation was handed over to PW7. The samples were sent to the Customs Laboratory, Cochin and Ext.P5 report was obtained. After completing the investigation, PW7 lodged the complaint before the Court.

The accused denied the charge. Thereupon the prosecution examined PWs1 to 7, marked Exts.P1 to P20 and identified M.Os. 1 to 4. After the close of the
prosecution evidence the accused were examined under Section 313 of the Cr.P.C. They denied the prosecution evidence and pleaded that they were innocent.

A perusal of the facts of the case would show that there is no allegation that the appellant/accused no.2 himself was found in possession of any narcotics. The allegation was only that he handed over some narcotics to accused No.1. The only evidence against the appellant is the retracted statement of accused No.1 and the appellant’s own retracted confession. The Hon’ble Apex Court has given warning to the investigating agency in this case that a confession must be subject to closure scrutiny when made before an officer of Department of Revenue Intelligence under N.D.P.S. Act than a confession made to private citizens or officials who do not have investigating powers under the Act. In the present case, confession was made by accused not before an ordinary police officer, but before an officer under N.D.P.S Act, who was an officer of the Department of Revenue Intelligence and involvement of the appellant in this case on the basis of statement of co-accused was held illegal and his conviction was set aside. This judgment is a guiding factor to the investigating agency that every precaution is to be taken in a case when a person is being involved in such a heinous crime only on the basis of confessional statement of co-accused.

Similar opinion was expressed by Hon’ble Apex Court at earlier occasion in Chonampara Chellappan versus State of Kerala\(^8\) that it is equally well settled that one tainted evidence cannot corroborate another tainted evidence because if this is allowed to be done then the very necessity of corroboration is frustrated. A similar nature case was investigated by the officer of Central Bureau of Narcotics (CBN) and the accused was implicated on the confessional statement of the co-accused. The Hon’ble Rajasthan High Court in judgment Arif Khan versus Central Bureau of Narcotics\(^9\), made observations that usually court requires some corroboration to the confessional statement which can be used in view of Section 30\(^{10}\) of the Evidence Act, 1872.

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\(^8\) AIR 1979 SC 1761

\(^9\) 2001 Drugs Cases 99 (Raj.)

\(^{10}\) Section 30 of the Evidence Act, 1872: Consideration of proved confession affecting person making it and others jointly under trial for same offence.-When more persons than one are being tried jointly for
The settled law is that the statement of one accused cannot be read against another. When it is so, the order of charge against the accused petitioner may not be maintained only on the basis of statement of co-accused.

Authorised officer of the Narcotic Control Bureau appointed under Section 42\(^\text{11}\) of the NDPS Act is not invested with the power of police officer under Section 53 of the Act for the purpose of investigating the offences under the Act and without lodging the First Information Report under Section 154 of the Code of Criminal Procedure. Such officer can proceed to investigate the offence under the Act. He is authorized to enter into and search any building, conveyance or place, seize the drugs or substance and arrest the accused without warrant or authorization under Section 42 of the Act.\(^\text{12}\) Hon’ble Delhi High Court while giving findings in Emma Charlotte

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\(^{11}\) Section 42 of the NDPS Act, 1985:- **Power of entry, search, seizure and arrest without warrant or authorization.**- (1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government if he has reason to believe from persons knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegality acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset, - (a) enter into and search any such building, conveyance or place; (b) in case of resistance, break open any door and remove any obstacle to such entry; (c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding an illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and (d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

Provided that if such officer has reason to believe that a search warrant or authorization cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief (2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate superior.

\(^{12}\) David Bertrand vs. Narcotic Control Bureau, 2000(1) EFR 270:1999(2) ACC 25 (HP).
Eve versus Narcotic Control Bureau\textsuperscript{13} held that the prosecution has failed to prove beyond any shadow of doubt that the parcel containing the contraband was recovered from the conscious and intelligent possession of the appellant. Consequently, the provision of Section 54 of the Act cannot be invoked to raise a presumption of guilt against the appellant. In case Kalema Tumba versus Narcotic Control Bureau,\textsuperscript{14} the officer of the Narcotic Control Bureau received the information and that intelligence information report recorded by the officer in the presence of superior officer but it was not sent to superior officer, it was held that mere non-sending of report to superior officer in this case will not violate Section 42 of the N.D.P.S.Act.

In Kuldip Singh versus Narcotic Control Bureau,\textsuperscript{15} the investigation of this case was also conducted by the Officers of the NCB. In this case, an illicit article was seized from the person of an accused during search made by the officer of the NCB. No notice under Section 50 of the NDPS Act was given to the accused. It was held that the search conducted in violation of Section 50 of the NDPS Act cannot be used as evidence of proof of unlawful possession of the contraband against the accused. Consequently, impugned order of conviction and sentence cannot be sustained. The Narcotic Control Bureau dealt with another case where contraband was recovered from the premises of the accused but the investigating agency has not collected any evidence of ownership as well as possession of the accused over the premises from which the contraband was recovered, the Hon’ble Apex Court while delivering judgment in Mohd. Alam Khan versus Narcotic Control Bureau,\textsuperscript{16} held the accused entitled to acquittal. From these findings, it can be inferred that in absence of ownership and possession over the buildings, the accused cannot be convicted for recovery of article in his absence and therefore, the investigating agencies must keep in mind while investigating such cases that collection of evidence regarding ownership and possession of the accused over the premises is necessary.

A very interesting case was investigated by the officer of NCB where nine accused suspected of concealing certain foreign substances in body cavity were

\textsuperscript{13}2001(1) EFR 37 (Delhi).
\textsuperscript{14}1998 Cri.L.J.2205(Bom.)(D.B.).
\textsuperscript{15}2000(1)EFR 557 (Delhi).
\textsuperscript{16}AIR 1996 SC 3033.
brought to hospital; subjected to radiological test kept under observations, thereby, sachets purged by each of accused were collected, sealed and sent for chemical examination whereby showed that they contained narcotic drugs. The prosecution failed to establish the recovery of these sachets from the respondent accused beyond all reasonable doubt. Therefore, acquittal was held proper.  

This is regarded for the sole reason that seizure Mahazar did not disclose the compliance of Section 50\textsuperscript{18} of the NDPS Act. Compliance of the requirements of Section 50(1) can be established by oral evidence of sole witness, if there is absence of independent witness. The evidence of intelligence officer that the accused was informed of his right to have search in presence of Magistrate/Gazetted Officer can be believed even though no independent witness was examined. The sample taken in presence of Magistrate sent to chemical analyst, seal was found intact by the chemical analyst, identity was established and discrepancy in weight of sample was held of no consequence.\textsuperscript{19}

In a case investigated by intelligence officer of Narcotic Control Bureau, there was seizure of mandrax, a high potency narcotics substance and charge was framed under Section 29\textsuperscript{20} read with Section 23\textsuperscript{21} of the NDPS Act. The Hon’ble

\textsuperscript{17}Narcotics Control Bureau, Mumbai versus Abdulla Hussain Juma, 2003 Criminal Law Journal 3850 (SC).

\textsuperscript{18} Section 50 of the NDPS Act, 1985:- Conditions under which search of persons shall be conducted.-(1)When any officer duly authorized under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, if such person so requires, take such person without necessary delay to the nearest Gazetted Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.

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

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

(4) No female shall be searched by anyone excepting a female. (5) When an officer duly authorized under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under Section 100 of the Code of Criminal Procedure, 1973 (2 of 1974). (6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior.

\textsuperscript{19} Pong Adithn versus Deputy Director, Narcotics Control Bureau, Madras 1999 Cri.L.J. 3663 (SC).

\textsuperscript{20} Section 29 of the NDPS Act, 1985:- Punishment for abetment and criminal conspiracy.-(1) Whoever abets, or is a party to a criminal conspiracy to commit an offence punishable under this Chapter, shall, whether

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Apex Court in *Umar Abdul Sakoor Sorathia versus Intelligence Officer, Narcotic Control Bureau*, cautioned the court at the time of framing the charge with the findings that at the stage of framing charge, the court is not expected to go too deep into the probative value of the materials on record. If on the basis of materials on record, the court could come to the conclusion that the accused would have committed the offence, the court is obliged to frame charge and proceed to trial.

In the end, it is worthwhile to mention here that the Narcotic Control Bureau has been constituted by the Central Government with certain powers to deal with the drugs cases in such a manner that accused should not take any benefit of the technicalities of the NDPS Act. The material collected by the Officers of NCB is to be appreciated by the Courts keeping in view the provisions of the NDPS Act. Under Section 4(1) of the NDPS Act, the Central Government is obliged to take all such measures as are deemed necessary for the purpose of preventing and combating the abuse of Narcotic Drugs and Psychotropic Substances and the illicit traffic therein.

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**Section 4(1) of the NDPS Act, 1985:**

- A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning of this section, who, in India abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which would constitute an offence if committed within India; or
- under the laws of such place, is an offence relating to narcotic drugs or psychotropic substances having all the legal conditions required to constitute it an offence punishable under this Chapter, if committed within India.

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**Section 23 of the NDPS Act, 1985:**

- Punishment for illegal import into India, export from India or transshipment of narcotic drugs and psychotropic substances. -Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence or permit granted or certificate or authorization issued thereunder, imports into India or exports from India or transships any narcotic drug or psychotropic substance shall be punishable. - where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine, which may extend to ten thousand rupees or with both, where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years, and with fine; which may extend to one lakh rupees; (c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.
By Notification S.O. No.96 (E), dated 17th March, 1985, the Central Government constituted the Narcotics Control Bureau (NCB) in exercise of its power under Section 4(3) of the Act to discharge the powers and functions of the Central Government under the Act subject to the superintendence and control of the Central Government. It is, in the circumstances, clear that when cases are started on the complaints of the NCB, it is not a mere complainant but is the executive action and it must act and discharge its function mandated by the statute that is to effectively check among other activities, the illegal dissemination and smuggling of drugs.

Narcotic Control Bureau is not the authority which is empowered to perform functions under Sections 41, 42, 53 and 67 of the Act, any investigation, recovery or proceedings taken by it under the Act would be void ab initio, illegal and therefore, cannot be relied upon as material for the purposes of maintaining a prosecution and conviction under the Act as held by Hon’ble Apex Court in Roy V.D. versus State of Kerala.\(^2\) It was further held in this judgment that any collection of material, detention or arrest of a person or search of a building or conveyance or seizure effected by an officer not being an empowered officer or an authorized officer authorized under Section 41(2) of the Act, lacks sanction of law and is inherently illegal and as such the same cannot form the basis of a proceeding in respect of offences under Chapter IV of the Act and use of such a material by the prosecution vitiates the trial.

It may be noted here that in this case the prosecution has failed to prove investing of powers to authorize persons of NCB particularly empowering to perform functions under Sections 41, 42, 53 and 67 of the NDPS Act. Therefore, it is necessary for the Central Government to notify the officers of NCB and other agencies authorizing them for seizure and investigation of NDPS cases empowering them with necessary powers as required under the Act for proper investigation of the cases in view of Section 53\(^2\) of the NDPS Act.

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\(^2\) AIR 2000 Supreme Court, 137

\(^2\) Section 53 of the NDPS Act, 1985:- **Power to invest officers of certain departments with powers of an officer-in-charge of a police station.**-(1) The Central Government, after consultation with the State Government, may, by notification published in the Official Gazette, invest any officer of the department of central excise, narcotics, customs, revenue intelligence (or any other department of the Central Government
4.3. LOCAL POLICE

The major responsibility for controlling street level peddling and trafficking including its interfaces with transit traffic falls upon the State enforcement agencies, particularly the police. The State police has concurrent powers of enforcements and several States, particularly Maharashtra, Tamilnadu, Gujarat, Uttar Pradesh, Madhya Pradesh and North Eastern States have taken initiative to strengthen anti-Narcotics work by setting up dedicated cells for narcotics.

Periodic drives are launched by police agencies in the States to combat the narcotics menace. The spurt in tourism, which led to a massive influx of foreigners in areas like the Kulu Valley, has given a fillip to drug trafficking. The menace, which has acquired alarming proportions, threatens to destroy the social fabric of hill communities. Villagers including women, unemployed youths and even school children have been drawn into the trade. Taxi drivers, tourist guides, waiters and other connected with the tourist trade have drawn to easy money. The easy availability of high quality cannabis, at a very cheaper rates, attracts a large number of foreigners to the Kulu Valley every years. In such circumstances, the role of local police is very important to deal with the specific area problem.

The Narcotics Control Bureau has been carrying out joint operations with the State police to destroy illegal crops every year but to no avail. In 2003, standing crop over 2990 bighas, including 1700 bighas in Kulu and 650 bighas in Mandi (H.P.) was destroyed.

With some innovative action plan, the war against drugs has been accorded a top priority for the police force in Punjab. The anti-narcotics cell has been given a free hand leading to a record seizure of 163 Kg. of heroine till October, 2009. Following

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including para-military forces or armed forces) or any class of such officers with the powers of an officer-in-charge of a police station for the investigation of the offences under this Act. (2) The State Government may, by notification published in the Official Gazette, invest any officer of the department of drugs control, revenue or excise (or any other department) or any class of such officers with the powers of an officer-in-charge of a police station for the investigation of offences under this Act.


26 Ibid.
this resolve, the Punjab Director General of Police “exhorted the policemen to grid up their loins to rein in the culprits involved in drug trafficking” and also sought the cooperation of society by saying that the public must be partner with the police if the nefarious designs of peddlers had to be defeated.27

The Local Police has played a great role in drug cases as most of the cases are being investigated by the local police. Generally, public witnesses are reluctant to join the investigation and due to lack of independent corroboration, the accused are being acquitted by the courts at different levels. This approach of the court was not appreciated by the Apex Court and gave a caution to the courts in India that the statement of police officials could not be discarded only on the ground that no disinterested or public witness was associated in the investigation if their statements are reliable and worthy of credence. As a caution to the courts, the Hon’ble Apex Court in Government of NCT of Delhi versus Sunil and another, 28 lauded the role of the local police with the following observations:

We feel that it is an archaic notion that actions of the police officer should be approached with initial distrust. We are aware that such a notion was lavishly entertained during the British period and policemen also knew about it. Its hangover persisted during post-independent years but it is time now to start placing at least initial trust on the actions and the documents made by the police. At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognized even by the legislature. Hence when a police officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the accused it is open to the court to believe the version to be correct if it is not otherwise shown to be unreliable. It is for the accused, through cross-examination of witnesses or through any other materials, to show that the evidence of the police officer is either unreliable or at least unsafe to be acted upon a particular case. If the court has any good reason to suspect the truthfulness of such records of the police the


28(2001) 1 SCC 652
court could certainly take into account the fact that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions.

In another latest judgment of Hon’ble Apex Court titled Ram Swaroop versus State (Govt.NCT) of Delhi, accused charge sheeted for illegal possession of 64 Kgs. of poppy straw powder in 32 bags of polythene. Seizure was made from a crowded place, yet no independent witness was associated as no passerby agreed to be witness in this case. It was held by Hon’ble Apex Court that there was nothing to show that evidence of police witnesses was untrustworthy and conviction on the basis of evidence of police cannot be faulted and made following observations appreciating the role of local police:

To appreciate the first limb of submission, we have carefully scrutinized the evidence brought on record and perused the judgment of the High Court and that of the trial Court. It is noticeable that the evidence of PW-7 Sub Inspector Ritesh Kumar, has been supported by Constable Balwant Singh PW5, as well as other witnesses. It has come in the evidence of Sub Inspector Ritesh Kumar that he had asked the passerby to be witnesses but none of them agreed and left without disclosing their names and addresses. On a careful perusal of their version we do not notice anything by which their evidence can be treated to be untrustworthy. On the contrary it is absolutely unimpeachable. We may note here with profit there is no absolute rule that police officers cannot be cited as witnesses and their depositions should be treated with suspect. In this context we may refer with profit to the dictum in State of U.P. versus Anil Singh,AIR 1988 SC 1998, wherein this Court took note of the fact that generally the public at large are reluctant to come forward to depose before the court and, therefore, the prosecution case cannot be doubted for non-examining the independent witnesses.

29 AIR 2013, Supreme Court 2068
In *Kashmiri Lal versus State of Haryana*, 30 5-1/2 Kgs. of opium was recovered from the accused containing in a polythene bag and the accused was convicted and sentenced under Section 18 of the NDPS Act, 1985 and his conviction and sentence was upheld upto the Hon’ble High Court and he preferred criminal appeal before Hon’ble Apex Court contending that the prosecution has only examined police official witnesses, whereas opium was recovered from the accused in a public place and the conviction of accused could not be warranted solely on the statements of police official witnesses. The Hon’ble Apex Court discarded this contention of the accused and observed in para no.9 of the judgment as under:

As far as first submission is concerned, it is evincible from the evidence on record that the police officials had requested the people present in the ‘dhaba’ to be witnesses, but they declined to co-operate and, in fact, did not make themselves available. That apart, there is no absolute command of law that the police officers cannot be cited as witnesses and their testimony should always be treated with suspicion. Ordinarily, the public at large show their disinclination to come forward to become witnesses. If the testimony of the police officer is found to be reliable and trustworthy, the court can definitely act upon the same. If in the course of scrutinizing the evidence the court finds the evidence of the police officer as unreliable and untrustworthy, the court may disbelieve him but it should not do so solely on the presumption that a witness from the department of police should be viewed with distrust. This is also based on the principle of quality of the evidence weighs over the quantity of evidence. These aspects have been highlighted in *State of U.P. versus Anil Singh, AIR 1988 SC 1998, State, Govt. of NCT of Delhi versus Sunil and another,*(2001) 1 SCC 652 and *Ramjee Rai and others versus State of Bihar, (2006) 13 SCC 229*. Appreciating the evidence on record on the unveil of the aforesaid principles, we do not perceive any acceptable reason to discard the testimony of the official witnesses which is otherwise reliable and absolutely trustworthy.”

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If the sum and substance of the above referred three judgments is appreciated, it reflects that the Hon’ble Apex Court has given healthy sign to the enforcement agencies as regards the investigation of drugs cases. Now a days, generally the public persons are not coming forward to cooperate the investigating agencies and they are always reluctant to join investigation. Some Courts had given indications in judgments that the independent corroboration to support the statements of police witnesses was necessary but the Apex Court in above referred judgments gave a clear indication that the testimonies of police official witnesses cannot be discarded straightway only on the ground that no independent or disinterested witness was joined during investigation if their testimonies are trustworthy and reliable. These findings of Hon’ble Apex Court would give a boost to the moral of the investigating agencies that their investigation would be respected if their evidence is worthy of credence.

The role of local police is very significant particularly while investigating the cases under NDPS Act as compliance of certain provisions is mandatory and non-compliance thereof makes the accused entitled to acquittal. It is necessary for the investigating officer to observe the provisions of this act in right spirit and to give proper opportunity to the accused to meet the mandatory compliance of certain provisions. In *State of Gujarat versus Kalu Bhai Jiva Bhai Dungaria and others*,31 15-1/2 Kgs. contraband was recovered from the possession of four accused which they were having in a bag. On asking by police inspector, they stated that there was ganja in the bag. The police officer informed the accused persons that he is holding the rank of police inspector and whether they would like their searches to be conducted in the presence of an officer of superior rank to him. The accused stated to have declined the offer and agreed to be searched by Mr.Jadav. The raiding officer then searched the bag which was lying near the three accused persons. As the investigating officer failed to give opportunity to the accused pertaining to their legal right as they could have their searches conducted either before a gazetted officer or before a Magistrate and it was held as violation of mandatory provisions of section 5032 of the Act and acquittal of the accused was held proper by the High Court. Therefore, it is the duty

312013, Criminal Law Journal, 1494 (Gujarat).

32Supra Note 18.
of the investigating officer to make compliance of the mandatory provisions of the Act in order to avoid acquittal of the accused by the court in such a heinous crime. Even a very minor negligence of investigating officer may lead to the acquittal of the accused though there is recovery of huge quantity of contraband. The knowledge of provisions of this Act is essential for the investigating officer and it is the duty of the police department to provide necessary training to the investigating officer to enhance their capability to face the situations where such crime has taken place and requires proper investigation.

The acquittal of accused on the ground of procedural lapses left by the investigating agency was observed by Division Bench of Himachal High Court in latest case of State of H.P. versus Simranjit @ Sunny. In this case two accused persons ran away seeing the police party but police caught hold of them and allegedly recovered nine small packets containing smack. The testimony of witness who weighed recovered contraband was inconsistent. NCB Form regarding recovered substance required to be prepared in triplicate was not produced, no link evidence was existed, case property was even not deposited in Malkhana, packets recovered from respective accused persons bore no identification mark and representative samples were not drawn from contraband allegedly recovered from the accused and as a result the acquittal of the accused was held proper. If the role of the investigating agency is appreciated in this case then we find that there was glaring negligence on the part of investigating officer or he was having no proper knowledge of the provisions of this law and rules made thereunder and provided full scope for acquittal of the accused persons. These kinds of shoddy investigations in such cases are highly unwarranted and same cannot be appreciated. The acquittals as a result of such shoddy investigations directly cast reflections on the efficacy of the investigating agency and the same should be deprecated by the controlling authority of the local police.

The Central Bureau of Investigation (CBI) is the premier investigating police agency in India. The powers and functions of this agency are severally limited to specific crimes based on Act namely Delhi Special Police Establishment Act, 1946. It was established on 1 April 1963. The CBI is a government agency of India that serves

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332013, Criminal Law Journal, 2689.
as a criminal investigation body, national security agency and intelligence agency. It is also the nodal police agency of India which coordinates investigation on behalf of Interpol Member countries. The services of its investigating officers are sought for all major investigations in the country. CBI as an organization is held in high esteem by the Supreme Court, the High Courts, the Parliament and the Public. The CBI has to investigate major crimes in the country having inter-state and international ramifications. It is also involved in collection of criminal intelligence pertaining to three of its main areas of operation, viz. Anti-corruption, Economic Crimes and Special crimes.

The following broad categories of criminal cases are handled by the CBI:-

i Anti-Corruption Division:- cases of corruption and fraud committed by public servants of all Central Govt. Departments, Central Public Sector Undertakings and Central Financial Institutions.

ii Economic Crimes Division:- deals with cases including bank frauds, financial frauds, Import Export & Foreign Exchange violations, large-scale smuggling of narcotics, antiques, cultural property and smuggling of other contraband items etc.

iii Special Crimes Division:- deals with case such as cases of terrorism, bomb blasts, sensational homicides, kidnapping for ransom and crimes committed by the mafia/underworld.

The role of CBI in investigation of cases under NDPS Act and other Acts has been discussed by various Courts. The investigation of this agency on the point of evidentiary value of the retracted confessional statement recorded under Section 67 of the NDPS Act or under Section 108 of the Customs Act was analyzed by M.P.High Court in Prem Chand versus Central Bureau of Investigation, 34 with observations that no doubt, the statement recorded by the officers of Central Excise and Customs Department and NCB can be used against the accused in trial as

34(1997) 1 EFR 374 (M.P.).
substantive evidence. However, the texture, tone of the said statement has to be understood. The tendency is growing to record the statement of the accused in view of the provisions of Section 67 of the NDPS Act so as to include confession in it. Some of the Investigating Officers are cleverly recording the said statement for giving go-by to the legal provisions meant for recording the confession of the accused. The tone, texture and tune of such statement has to be ascertained, by a careful scrutiny. The Court should also make the search in the papers of investigation for ascertaining whether there is other material to lend the corroboration to the sentences used in the said statement.

Similar view has also been expressed by Bombay High Court in case of Ashok Hussain Allah versus Assistant Collector of Customs, that cases under NDPS Act and Customs Act the prosecution is, no doubt, entitled to rely upon the statements of the accused recorded during investigation. But they are not entitled to procure statements by coercion, assault or illegal detention and in such circumstances such a statement cannot be termed as voluntary. A retracted confession may form one of the legal basis for conviction if the Court is satisfied that it was true and was made voluntarily, but rule of prudence requires that such a confessional statement cannot be made the sole basis for conviction without any corroboration from independent and distinct evidence. Confession by an accused is not a substantive piece of evidence against co-accused. Confession of an accused can only be used against co-accused for lending assurance to any substantive evidence, if there be any, to be utilized or acted upon. The confessional statement under Section 67 of the Act can be admissible only as against the person who has made such confession but same cannot be the sole basis even for framing charge against other accused persons in absence of any independent affirmative evidence.

35 Section 67 of the NDPS Act, 1985-**Power to call for information, etc.-** Any officer referred to in section 42 who is authorized in this behalf by the Central Government or a State Government may, during the course of any enquiry in connection with the contravention of any provisions of this Act, call for information from any person for the purpose of satisfying himself whether there has been any contravention of the provisions of this Act or any rule or order made thereunder; require any person to produce or deliver any document or thing useful or relevant to the enquiry; examine any person acquainted with the facts and circumstances of the case.

36 1990 Cri.L.J.2201 (Bom.)
4.4 DIRECTORATE OF REVENUE INTELLIGENCE, CUSTOM AUTHORITIES, ENFORCEMENT DIRECTORATE AND SECURITY FORCES.

The role of Directorate of Revenue Intelligence, Custom Authorities, the Directorate of Enforcement and Security Forces in the enforcement of Drug Laws in India is as good as that of the Local Police, Central Bureau of Investigation and Narcotics Control Bureau. These agencies have also performed their part effectively in their sphere to check the growing incidence of Narcotic Trafficking and to enforce the anti-Narcotic Laws. The researcher shall discuss the brief role of these agencies along with some judicial pronouncements made by various courts pertaining to the cases dealt with by these agencies.

4.4.1 Directorate of Revenue Intelligence

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

The original brief of DRI was extensive. There was no separate organization to deal with either evasion of central excise duties or prevent narcotic drug trafficking. Thus, the charter of DRI, as it stood then, encompassed all aspects of work pertaining to customs, central excise and narcotics, which required control, direction and
investigation from the Centre. With the passage of time and the growth in the
problems relating to effective control of violations of such diverse laws, the need for
specialization and expertise was felt. The result was the creation of a separate
Directorate of Anti-Evasion (now known as Directorate General of Central Excise
Intelligence) in 1978 to handle violations of Central Excise laws and creation of the
Central Economic Intelligence Bureau in 1985 to co-ordinate activities amongst
various enforcement agencies of the Department of Revenue. With the growing
incidence of narcotics trafficking and in keeping with India’s commitment to the
international community under various conventions to tackle this problem, the
Narcotics Control Bureau took shape in 1986, to co-ordinate the enforcement of anti-
narcotics laws.

The Directorate of Revenue Intelligence in its present form is a lean
organisation charged essentially with the collection of intelligence, its analysis,
collation, interpretation and dissemination on matters relating to violations of customs
laws, and to a lesser extent, anti-narcotics law. In order to ensure effective discharge
of its responsibilities, DRI maintains close liaison with all the important enforcement
agencies in India like the Central Economic Intelligence Bureau, Income-Tax
Department, Enforcement Directorate, Narcotics Control Bureau, Directorate General
of Foreign Trade, Border Security Force, Central Bureau of Investigation, Coast
Guard, the State Police authorities and also with all the Customs and Central Excise
Commissionerates. It also maintains close liaison with the World Customs
Organisation, Brussels, the Regional Intelligence Liaison Office at Tokyo,
INTERPOL and foreign Customs Administrations.

Directorate of Revenue Intelligence functions under the Central Board of
Excise and Customs in the Ministry of Finance, Department of Revenue, headed by
Director General in New Delhi, it is presently divided into seven zones, each under
the charge of an Additional Director General, and further sub-divided into Regional
Units, Sub-Regional Units and Intelligence Cells with a complement of Additional
Directors, Joint Directors, Deputy Directors, Assistant Directors, Senior Intelligence
Officers and Intelligence Officers.
The land borders of our country, extending to more than 15,000 kms. and a coastline of over 7,000 kms., make the task before DRI very daunting. The progressive economic liberalisation with increasing emphasis on trade facilitation has also led to enormous increase in the misuse of the facilities/concessions resulting in loss of customs duty and foreign exchange. The complexion of economic frauds has changed dramatically. Every enforcement agency in this climate has to tread carefully and strike a fine balance between facilitation- a natural corollary to liberalisation–and enforcement. The events of Sept, 11 and Dec. 13 have also led to change perception of the role of Customs in the future, with security again emerging as an issue at the forefront. This Directorate has risen to this challenge and would like to believe that it has largely met with success in its mission.

The Charter of the DRI includes

* Collection of intelligence about smuggling of contraband goods,narcotics, under-invoicing etc. through sources of India and abroad, including secret sources.

* Analysis and dissemination of such intelligence to the field formations for action.

* Working out of intelligence by the Directorate officers themselves to a successful conclusion, where necessary.

* Keeping watch over important seizures and investigation cases.

* Associating or taking over the investigations which warrant specialised handling by the Directorate.

* Guiding important investigation/prosecution cases.

* Functioning as the liaison authority for exchange or information among United Nations Economic and Social Commission for Asia and the
Pacific(ESCAP) countries for combating international smuggling and customs frauds in terms of the recommendation of the ESCAP conference.

* Keeping liaison with foreign countries, Indian Missions and Enforcement agencies abroad on anti-smuggling matters.

* To keep liaison with C.B.I. and through them with the INTERPOL.

* To co-ordinate, direct and control anti-smuggling operations on the Indo-Nepal border.

* To refer cases registered under the Customs Act to the Income Tax Department for action under the Income Tax Act.

* To keep statistics of seizures and prices/rates etc. for watching trends of smuggling and supply required material to the ministry of Finance and other Ministries.

* To study and suggest remedies for loopholes in law and procedures to combat smuggling.

### NARCOTIC DRUGS & PSYCHOTROPIC SUBSTANCES SEIZED BY DRI FROM 2009 TO 30.11.2013

<table>
<thead>
<tr>
<th>Year</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
</tr>
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<tbody>
<tr>
<td>Opium</td>
<td>0</td>
<td>0</td>
<td>10</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

37National Drug Enforcement Statistics (Provisional) as on 30.11.2013 issued by NCB, Ministry of Finance, Government of India.
<table>
<thead>
<tr>
<th>Substance</th>
<th>1</th>
<th>0</th>
<th>0</th>
<th>0</th>
<th>0</th>
</tr>
</thead>
<tbody>
<tr>
<td>Morphine</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Heroin</td>
<td>194</td>
<td>138</td>
<td>182</td>
<td>47</td>
<td>42</td>
</tr>
<tr>
<td>Ganja</td>
<td>45,579</td>
<td>12,297</td>
<td>38,762</td>
<td>8003</td>
<td>1843</td>
</tr>
<tr>
<td>Hashish</td>
<td>158</td>
<td>695</td>
<td>748</td>
<td>1601</td>
<td>0</td>
</tr>
<tr>
<td>Cocaine</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Methaqualon</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>39</td>
<td>123</td>
</tr>
<tr>
<td>Ephedrine</td>
<td>500</td>
<td>101</td>
<td>5798</td>
<td>176</td>
<td>0</td>
</tr>
<tr>
<td>L.S.D.(in grams)</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Acetic Anhydride</td>
<td>118</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>ATS</td>
<td>0</td>
<td>0</td>
<td>469</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

In the above referred table, the seizure of ganja was on higher side and seizure of heroin as well as hashish were also alarming. Even Ephedrine was seized by the DRI in a large quantity. These seizures reflect that the drug trafficking is not completely under control of the Enforcement agencies and some stringent measures are also required to check the drug trafficking in India.

It is necessary to make reference of certain cases wherein investigation was conducted by the officers of Directorate of Revenue Intelligence and decided by the Courts. In *Narayanaswamy Ravishankar versus Assistant Director, Directorate of Revenue Intelligence*, 385940 gms. of heroin was recovered from the suit case of appellant, going from Chennai to Singapore. He was arrested later in the day and charge-sheeted. Search and seizure was taken at airport which was a public place. It was held, that Section 43 only would be attracted and not Section 42. Question of

38 AIR 2002 SC 3658.
non-compliance of Section 42 did not arise. As no search and seizure was conducted on the person of accused, therefore, Section 50 was also not attracted. The accused was rightly convicted for possession of heroin.

In *State of Kerala vs. Intelligence Officer, DRI Bangalore*, the prosecution was launched by the DRI but the investigation had already been completed by other investigating agency. It was held that where investigation by one authority had already been completed, another authority could not start investigation to launch prosecution in respect of same offence but any additional material collected by that authority had to be taken note of by the court.

If the overall view of the DRI is appreciated, it can be concluded that role of this enforcement agency is very important as the same is dealing with Anti-Narcotic Laws in an effective manner.

### 4.4.2 Custom Authorities

The major responsibility for controlling the transit traffic along the land borders falls on the BSF (Border Security Force) and Customs anti-smuggling formations. At the sea ports, there is major presence of customs and on the high seas, the responsibility is discharged jointly by the custom Authorities and the Coast Guard. The customs service, by their very presence at the border posts, be they land borders, sea ports or airports, play a very crucial role the world over in this fight against drug smuggling. It is a daunting task for the customs officers to fight against drug trafficking into or out of national border. A significant part of their overall work involves fighting against smuggling of diverse goods such as drugs, wildlife, environmentally sensitive goods and goods susceptible to duty evasions or trade restrictions. The custom officers have acquired a domain knowledge and expertise about the methods of combating smuggling and the best use of human intelligence, scrutinizing of customs documents as well as handling sophisticated technology for the purpose. The other agencies dealing with controlling drug problems have often used this expertise of customs officers.

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392003 Cri.L.J.3210 (Kant.)
Indian Customs, not only tackles drug trafficking at the borders but is also mandated to fight this menace within the country. The specialized agency of Indian Customs i.e. Directorate of Revenue Intelligence (DRI) has booked significant cases of Heroin and Ganja (Cannabis) trafficking within India. The seizures of Heroin by DRI have generally been a major portion of the total seizures during last couple of years. The Indian Customs has been in the forefront of fight against drug trafficking. The networking of Indian Customs with other agencies in India and in foreign countries has resulted in interception of a large number of drug consignments and action against prominent drug traffickers both within India and abroad. The Indian Customs acknowledges the importance of coordination between various national and international agencies and is an active participant in these efforts to fight drug trafficking. It actively encourages the informers to provide intelligence about drug trafficking.

The custom authorities have also dealt with the cases under the NDPS Act and investigation of such cases was also conducted by the officers of the custom authorities. In *Kulwant Singh versus Assistant Collector, Customs, Amritsar,* there the vehicle driven by the accused was got stopped by the custom authorities on suspicion but option was not given to the accused to have the search in presence of Gazetted Officer despite the fact that contraband was recovered from his possession. It was held that mandatory provisions of Section 50 was not complied with and search was held invalid with the findings that search and seizure is made before Gazetted Officer of the Department (Custom Authorities) is no compliance of Section 50 of NDPS Act. From this judgment, it is to be seen by the investigating agencies that at the time of search of the person of the accused, it is mandatory for them to apprise the accused his legal right as to whether he is to be searched before a Gazetted Officer or a Magistrate and in lacking thereof entire search and seizure is invalid.

Keeping in view the scheme of the Act and the provisions thereunder, particularly, Sections 50, 41, 42 and 43 it is transparently clear that even if the officer authorized under Section 42 who is about to search a person is a Gazetted Officer, he has to discharge the obligation under Section 50(2) of the NDPS Act so as to take the

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401996 Cri.L.J.1925 (P&H) (DB).
person about to be searched, before any other Gazetted Officer or Magistrate and merely because such Officer authorized under Section 42 himself is a Gazetted Officer is not a valid ground to dispense with the requirement of Section 50(2) of the NDPS Act so as to enable another Gazetted Officer or Magistrate to examine as to whether the person sought to be searched is required to be discharged forthwith or the search is actually required to be made.\footnote{Mangalsingh Bansingh Rajput versus Collector of Customs, 2002 Cri.L.J 2264 (Guj.)(FB).}

Where necessary link between the contrabands seized and the report of Chemical Examiner was missing, it is not possible to salvage the prosecution case out of guilt. In this case, the minimum requirement with regard to preservation of the seized contraband and sending of the samples to the chemical examiner without any suspicion with regard to tampering or meddling with the articles has not been established. The prosecution evidence was accepted by the trial Court without taking notice of infirmities and impugned judgment of conviction and order of sentence were set aside by Delhi High Court.\footnote{Rita Karoline Kummel versus Customs, 1999 (82) Delhi Law Times, 245 (Del.).}

The custom authorities made seizure of contraband but no report of arrest or seizure was made alongwith all the particulars of such arrest or seizure to his immediate official superior within 48 hours next after such arrest or seizure. It was held violation of Section 57 of NDPS Act which clearly lays down that whenever any person makes any arrest or seizure under this Act, he shall within 48 hours make full report of all the particulars of such arrest or seizure to his immediate official superior.\footnote{Zubeda Khatoon versus Assistant Collector of Customs, 1991 Cri.L.J. 1392 (Kant.)}

The law requires that search of a female suspect must be carried out by a female and no male member of the police team is authorized to cause search of a female accused. Absence of female witness to seizure list makes the prosecution case doubtful. The Court gave a word of caution to the custom authorities in a case\footnote{1997 (2) Mh.L.J. 337.} Veneela Tilak versus Assistant Collector of Customs, that while conducting a search
on a woman accused should be searched in presence of a female officer and female panchas. Search must be done in a secluded place. Proper procedure must be followed and the investigating agencies must refrain from diluting it.

By virtue of the powers conferred under sub-section (1) of Section 52-A of the NDPS Act, 1985, as amended by NDPS Act, 1989 (2 of 1989), the Central Government have issued a Standing Order No.1/89, dated 13th June, 1989, detailing the elaborate procedure to be adopted by the drug law enforcement agencies while seizing drugs, drawing samples therefrom, proper storage and the manner in which such drugs could be disposed of by the officer concerned. An elaborate procedure had been prescribed respecting the drawal of sample, dispatch of a representative sample, dispatch of sample for testing, etc. It is not disputed that, in the instant case, the procedure prescribed in the standing order referred to above had not been violated in respect of these aspects of the matter.\(^45\)

The officer empowered under Section 53 of the NDPS Act for the purpose of his enquiry shall have the powers of an officer-in-charge of Police Station at the time of investigation for the offences under this Act. Section 37 of the NDPS Act provides that every offence punishable under this Act is a cognizable offence. Therefore, the officer empowered under Section 53 of the Act shall have all the powers of an officer-in-charge of a police station investigating a cognizable case. But these powers are only limited for the purpose of investigation and it does not include the power of filing the charge-sheet as held by Gujarat High Court in *Alok Badridas Agarwal versus B.M.Bhatt, Superintendent, Central Excise.*\(^46\)

The custom authorities recovered huge quantity of hashish and the investigating officer recovered documents. Documents, seizure were produced before the Court and the question on the admissibility of documents was raised before the Court and this issue was dealt with by Bombay High Court in judgment *Assistant Collector of Custom versus Firoz Hasan Ali Rupani.*\(^47\) In this case, huge quantity of

\(^{45}\text{Rekha Parameswari versus Asstt. Collector of Custom, 1992 Cri.L.J. 901 (Mad).}\)

\(^{46}\text{1989 Cri.L.J.765 (Guj.).}\)

\(^{47}\text{1992 Cri.L.J.360 (Bom.)}\)
Hashish was recovered at Bombay Port Trust dockyard and the investigating officer recovered two sets of documents (shipping) which they produced before the trial Court through the Appraiser and it was contended on behalf of the accused that the documents cannot be admitted into evidence. The documents sought to be relied upon by the prosecution were produced by the present respondent No.3 and the respondent No.4 was accompanying him and the said documents were seized by the said officer of the Customs Department, and therefore, presumption would arise that the signature and every other part of the said documents purport to be in the handwriting of a particular person as well as that they were signed by the person who purports to have signed them and as per Section 66 of the NDPS Act, they were to be admitted in evidence on the basis of the said presumption. It was not necessary for the prosecution to lead oral evidence to prove the same and the learned Additional Sessions Judge was in error in holding that the said provision did not exempt the prosecution from leading evidence to prove the said documents. As a matter of fact, Section 66 of the NDPS Act further provides for presumption about the truthfulness of the contents of such documents and this presumption is always open to be rebuttable. It appears from the order passed by the learned Additional Sessions Judge that he felt that in spite of the said provisions of Section 66 of the NDPS Act and Section 139 (b) of the Customs Act, it is necessary for the prosecution to lead evidence to prove the said documents in the normal manner under the Indian Evidence Act. Now it is true that the said documents were seized by the appraiser, but there is evidence in his oral testimony that he is a Gazette Officer of the Customs Department and that would empower him to seize the said documents and he is a proper officer under Section 2(34) of the Customs Act. At least prima facie at this stage there is no reason to conclude that he is not such an officer. Under these circumstances, the view of the learned Additional Sessions Judge is not correct. High Court rejected the objection raised relating to the admissibility of the documents.

There is a specific statutory presumption in relation to contraband, that comes within the ambit of NDPS Act. The law, therefore makes provisions for certain legal presumptions that arise and for good reasons, as otherwise, in our considered view, it would be a stereo-type defence raised in every case where accused are found in possession of contraband, to contend it was given to her by a third party, that the
accused is not concerned with the baggage but is simple an innocent carrier. Experience shows that such statements are made in almost every case. In a large number of instances the racketeers and dealers deliberately pick passengers whom the authorities are least likely to suspect or persons who on the face of it may not appear to be regular smugglers and who are carriers for a small consideration. It is for this reason that the law has made specific provisions under which any person found in possession of substances that come within the ambit of the NDPS Act shall be presumed to have knowledge of the nature of the contraband and the law presumes such guilty knowledge. This provision is undoubtedly harsh but it is still very necessary because in the absence of these provisions in all such cases, the defence would be that the accused was innocent carrier and that consequently, the Court should go back to the principle of conscious possession. To our mind, that principle which may apply to any other cases would not be applicable here in view of the specific provisions of the present Act.\(^{48}\)

If the investigations of above referred cases conducted by the custom authorities under the NDPS Act, their role has been appreciated by the Courts in certain cases. It may be noted here that the Courts by way of judicial pronouncements have strengthened the role of enforcement agencies by interpreting the necessary provisions of the Act regarding presumption of correctness of the documents as well as presumption of possession of contrabands in certain cases which is otherwise not rebutted by the accused. Therefore, as and when the investigating agencies have conducted the investigation in a fair manner, no remarks otherwise from the courts have come on record and the court has shown the appreciation to the investigating agencies as well as fair trial to the accused.

4.4.3. **Enforcement Directorate**

The Enforcement Directorate, with its Headquarters at New Delhi has seven zones at Mumbai, Kolkata, Delhi, Jalandhar, Chennai, Ahmedabad and Bangalore. The offices are headed by the Deputy Directors. The Directorate has nine sub-zones at Agra, Srinagar, Jaipur, Varanasi, Trivandrum, Calicut, Hyderabad, Guwahati, Pajirm

\(^{48}\) Khan Rukhsena Banoo versus Asstt. Collector of Customs, 1994 Cri.L.J. 785 (Bom.).
which are headed by the Assistant Directors. The Directorate has also a unit at Madurai which is headed by a Chief Enforcement Officer. Besides, there are three Special Directors of Enforcement and one Additional Director of Enforcement and two Deputy Director at Head Office. The main functions of the Directorate are:


* To collect and develop intelligence relating to violation of the provisions of Foreign Exchange Management Act and Prevention of Money Laundering Act 2002.

* To conduct searches of suspected persons, conveyances and premises and seize incriminating materials (including Indian and foreign currencies involved).

* To enquire into and investigate suspected violations of provisions of Foreign Exchange Management Act and Prevention of Money Laundering Act 2002.

* To adjudicate cases of violations of Foreign Exchange Management Act penalties departmentally and also for confiscating the amounts involved in violations.

* To realize the penalties imposed in departmental adjudication;

* To attach and confiscate properties involved in the act of Money laundering.

* To arrest and prosecute person suspected to be involved in the act of money laundering.

In addition to the above functions relating to the Foreign Exchange Management Act, Directorate also processes and recommends cases for detention of habitual offender under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA), which provides interalia for detention of a person with a intention of preventing him from acting in a manner prejudicial to the conservation and augmentation of exchange.
The question was raised in a case *Deepak Mahajan versus Directorate of Enforcement*, 49 whether the officer of Narcotic Department invested with the powers of officer-in-charge of police station who conducted the search and seizure and arrested the accused, could seek his remand for the purpose of investigation under Section 167 Cr.P.C. Such officer having custody of accused is bound to produce him before the Magistrate concerned within the period mentioned in Article 22 of the Constitution. He cannot detain the accused beyond the period as the same would amount to the breach of fundamental rights of the accused and therefore, the Magistrate is also bound to remand the accused. In view of these circumstances, the fact that such officer is not designated as police officer empowered to seek remand would not be sufficient to say that he is not entitled to seek remand. There is no expression police officer deployed in Section 167(1) nor does it appear in any part of Section 167(1) Cr.P.C.. The authority for detaining a person as contemplated under Section 167 (2) is in aid of investigation to be carried on by any prosecuting agency who is invested with the power of investigation. Their Lordships in this case further said: There is a series of decision of various High Courts, of course with some exception, taking the view that a Magistrate before whom a person arrested by the competent authority under FERA or Customs Act is produced, can authorize detention in exercise of his powers under Section 167 Cr.P.C. otherwise the mandatory direction under the provisions of Section 32(2) of FERA or 104(2) of the Customs Act to take every person arrested before the Magistrate without unnecessary delay when the arrestee was not released on bail under the sub-section (3) of those special Acts, will become purposeless and meaningless and to say that the Courts even in the event of refusal of bail have no choice but to set the person arrested at liberty by folding their hands as a helpless spectator in the face of what is termed as legislative casus omissus or legal flaw or lacuna, it will become utterly illogical and absurd. In view of the judgment of the Apex Court, on the same analogy, it can be concluded that the Magistrate can order remand of an accused into the custody of the authority under the NDPS Act.

49 AIR 1994 Supreme Court 1775.
In a case investigated by the officers of Directorate of Enforcement, the
case was raised whether non-compliance of mandatory statutory procedure makes
the accused entitled to bail or the FIR can be quashed in such circumstances. The
Supreme Court in Dr. Partap Singh versus Director of Enforcement, FERA,\(^{50}\)
observed that illegal search and seizure in violation of procedures of law cannot be the
ground for quashing the FIR.

What is the effect of their non-compliance on convictions on the one hand and
on arrest and detention on the other hand. So far as the first is concerned, it can be
unhesitatingly said that merely because the provisions are not observed, the
conviction would not fail as an automatic consequence as the conviction would be
based upon evidence adduced during the trial as to the offence committed by the
accused. The illegality in the search, seizure and arrest would not necessarily vitiate
the conclusion reached regarding the culpable conduct of the accused unless it is
shown that non-compliance with the provisions makes the very prosecution case
untruthful or doubtful or that the accused has been seriously prejudiced in the trial by
reason of such non-compliance. The position is not the same so far as an arrest is
made or detention is continued in contravention of the provisions. If the law requires
and expressly mandates that certain steps are to be taken before an arrest is made or
detention is continued, it must be ordinarily the rule that such steps are to be followed
at the risk of arrest or the detention becoming illegal otherwise. To that extent the
provisions must be regarded as mandatory as otherwise the protection afforded by the
statute would become illusory which is not what the statute must have intended. If a
departure is made either the arrest or the detention would become vulnerable with the
onus squarely resting upon the authority making the arrest or establish that in the
circumstances of the case the departure was unavoidable and was necessitated in the
very exigencies of the situation. Hence, when a complaint is made of the arrest and
the detention to be illegal because of violations of the provisions of Sections 50, 52
and 57 or any of them, the arrested person may become entitled to liberty, the arrest
having been unauthorized or even if the arrest is valid the detention to be
unauthorized, unless the contravention is otherwise justified.

\(^{50}\) AIR 1985 Supreme Court 989.
The extraordinary power under Article 226 of the Constitution of India and/or the inherent power under Section 482 of the Cr.P.C. can be exercised either to prevent abuse of the process of any Court or otherwise to secure ends of justice. It is not possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formula and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. But it has to be borne in mind that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. The court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the first information report or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice. To interfere under Section 482 of the Cr.P.C. while dealing with a bail application to quash arrest and detention, though not impermissible should be done in exceptional cases. It has to be kept in mind that Section 37 puts embargo on grant of bail to an accused under the Act. If that be so, would exercise of jurisdiction under Section 482 Cr.P.C. to quash detention be desirable on the ground that there is infraction of some statutory provisions. It is stressed that Article 21 of the Indian Constitution prohibits detention without due authority of law. True it is, it can be urged that there has been infraction of some statutory protection. But it would not be desirable for the Court to the trial. Where however there is unrebutted acceptance by the prosecutor that a particular procedure intended to safeguard the personal liberty of a person is affected, interference is to be made. If, however there is denial of the allegations of infraction, the Court should not embark upon an elaborate enquiry and evaluation of the respective stands. That may prejudicially affect trial, and would not sub serve the interest of justice.

If the aforesaid principle is kept in view and the case of an accused involved in commission of offence under the NDPS Act is considered for being released on bail, and the legislative intent in grafted in Section 37 of the Act, is taken into consideration, no doubt accused will not be entitled to be released on bail unless the conditions prescribed in Section 37 are fulfilled and it would be improper for the court to quash the FIR for non-compliance of provisions under Sections 50, 52 and 57 of the NDPS Act in exercise of powers under Section 482 Cr.P.C.
4.4.4. Security Forces

For control of drug supply different activities are undertaken by enforcement agencies from the Central and State level administration. From the Central level the agencies involved are Narcotics Control Bureau, Directorate of Revenue Intelligence, Customs and Control, Central Bureau of Narcotics, Border Security Force (BSF) or Coast Guard and Central Bureau of Intelligence. At the State level the agencies are Police and Excise. Here, under this head, we will discuss the role of security forces in controlling the drugs supply during their search operations and while performing other duties.

4.4.4.1 Border Security Force (BSF)

The Border Security Force (BSF) is a border guarding force of the Government of India. Established on December 1, 1965, it is one of the Central Armed Police Forces. Its primary role is to guard India's international borders during peacetime and also prevent trans-border crime. Like all paramilitary forces of India, the BSF is under the administrative control of the Ministry of Home Affairs. It is one of the many law enforcement agencies of India.

Given these challenges, protecting the borders against violations by either traffickers or terrorists becomes critical. BSF played an excellent role in protecting our borders for such acts. Exploitation of the trafficking routes with the help of well entrenched criminal networks by terrorists to infiltrate with arms and explosives adds a critical dimension to the security of the borders. Composite seizures of drugs and arms by security forces at the borders, especially along the borders with Pakistan demonstrate a close nexus between drug traffickers and anti-national elements. For instances, in 2009, the BSF seized 23 kg of heroin along with 12 pistols and several rounds of ammunition in Punjab. In the same year, consignments of 58 kg of heroin, 10 kg of hashish as well as pistols and RDX were seized by the BSF along Rajasthan border.\(^\text{51}\)

4.4.4.2. Indian Coast Guard

\(^{51}\) Annual Report, 2009, Narcotics Control Bureau, Department of Revenue, Ministry of Finance, Government of India, p.36.
The Indian Coast Guard (ICG) is a branch of the Indian Armed Forces. Its mission is the protection of India’s maritime interests and maritime law enforcement with jurisdiction over both territorial and international waters. ICG was formally established on 18th August 1978 as an armed force of the Union by the Coast Guard Act, 1978. It operates under the Department of Defence of the Union Ministry of Defence. The Coast Guard works in close cooperation with the Indian Navy, Department of Fisheries, Department of Revenue (Customs) and the Central and State Police Forces. The ICG is generally headed by a naval officer of the rank of Vice Admiral, who is called Director General of Coast Guard.

The Indian Coast Guard operations are split into four regions. Western Region headquartered in Mumbai, Eastern Region headquartered in Chennai and the Andaman & Nicobar Region headquartered in Port Blair and North West Region headquartered at Gandhinagar. Each region is headed by an Inspector General (IG) or a Deputy Inspector General (DIG). Each of the regions is further divided into multiple districts, typically covering a coastal state or a union territory. By the end of 2012, the Indian Coast Guard is on track to operate:

(i) 42 Coast Guard Stations

(ii) 5 Coast Guard Air Stations

(iii) 10 Coast Guard Air Enclaves

The Indian Coast Guard undertakes following functions:

* Protection of maritime resources
* Maritime safety, search and rescue
* Law enforcement in territorial as well as international waters
* Protection of marine ecology and environment
* Scientific data collection and support
* Maritime defence support
As the mission of this agency is to protect the India’s maritime interest and maritime law enforcement with jurisdiction over both territorial and international waters, trafficking of Narcotic Drugs is checked by this agency when routed through the waters. Further, this agency works in close cooperation of Department of Revenue and Custom as well as with the Central and State Police Forces, the role of this agency in search and seizure of contraband cannot be ignored.

4.4.4.3. Central Industrial Security Force (CISF)

CISF came into existence in 1969 as a specially trained Force for providing security cover to the Public Sector Undertakings of the country. In a span of four and a half decades, the Force has grown manifold with strength of more than one lakh thirty three thousand. With growing profile and expanding service base, CISF is no longer a PSU-centric Force, instead it has become a premier multi-skilled security agency of the country, mandated to provide security cover to major critical infrastructure and very important persons of the country in diverse areas. CISF is currently providing security cover to Airports, Sea Ports, Department of Atomic Energy, Department of Space, Power Plants, Steel Plants, Oil Refineries, Coal Mines, Delhi Metro, National Monuments, Very Important Persons (VIPS), Sensitive Government Buildings, and Indian Embassy in Nepal. CISF has also deployed a Formed Police Unit (FPU) of the UN at Haiti since 2008 and deployed in private critical industries like Infosys, Electronic City and Reliance Industries. The increased demand for CISF is a testimony of its professionalism and commitment towards the assigned task.\(^{52}\)

To meet any challenge at Airports, CISF personnel are trained in profiling and behavior detection in order to detect and neutralize the persons, who could be a potential threat to the security of the airports. This endeavor has resulted in an excellent performance of CISF, where in the cases of smuggling/carrying of drugs and arms and ammunition were detected and recovered at airports. During routine/random checks and profiling of the potential suspects at entry point, CISF personnel have detected a huge quantity of drugs like Opium, Methamphetamine, Heroin, Pseudo-

Ephedrine and Methaqualone drug and arms and ammunition at airports. Many Foreign Nationals were also apprehended for carrying contraband items at IGI Airport, New Delhi, by the CISF personnel.53

During the year 2012, a large number of cases were detected by CISF in airports, details of which in brief are as under:-

(i)  Detection of contraband items : 11 cases  
(ii) Detection of wildlife : 2 cases  
(iii) Apprehension of touts : 905 cases  
(iv) Recovery of unclaimed property : 18.34 crores  
(v)  Detection of Arms and Ammunition : 203 nos.

Two cases of baggage lifting gangs were also apprehended by the CISF personnel at Kolkata and IGI Airport, New Delhi.54

Keeping in view the efficacy of this agency, the Government of India has decided to hand over the security of Delhi Metro to CISF and CISF has already taken over the charge of Delhi Metro on 15.4.2007. Since then CISF is performing its duty with full appreciation of the commuters. Admittedly, CISF as an armed force of the nation is doing its bit to provide safe and secure environment to the national assets and economy activities. As the security of all the airports have been given to CISF personnel and cases of smuggling of drugs were detected and recoveries at airports through this agency have been effected which makes out the role of this agency as eminent as regards to deal with the menace of drugs trafficking. As a professional organization, CISF efforts are for constant upgradation of capacity, technology and man power which will provide a total crime free climate to the citizens of the country. Therefore, the role of the CISF as enforcement agency of drug laws in India cannot be diluted in any manner. More so, this agency has also played a great role in enforcement of drug laws in India.

53 Pib.nic.in/newsite/efeatures.aspx?relid=91716  
54 Ibid.
4.5. INTERNATIONAL CO-OPERATION

India has been endeavouring to enter into bilateral agreements with like minded countries in the matter of combating illicit traffic in drugs in view of the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances which entered into force with effect from 15th December 1993. India has signed extradition treaties, mutual legal assistance agreements and other specific agreements to combat terrorism and organized crime. Extradition treaties exist with Canada, UK, Netherlands, Belgium, Nepal, Bhutan, USA. Mutual legal Assistance Treaties have been signed with UK, Canada, Turkey and Switzerland. The agreements with Russian Federation, Bulgaria, Egypt, Romania are aimed at combating international terrorism, organized crime, illegal economic activities including illicit trafficking in narcotic drugs and psychotropic substances. India and Pakistan have a bilateral arrangement in this regard. India has signed the bilateral agreements with USA in March 1990, Mauritius (January 1990), Afghanistan (August 1990) Russian Federation (January 1993), Myanmar (March 1993) Zambia (October 1993) and U.A.E. (January 1994). Internatión co-ordination in details can be discussed in the following manners under different heads:-

4.5.1. International Cooperation

4.5.1.1. Bilateral Agreements

NCB/Govt. of India has entered into Bilateral Agreements for manual cooperation for reducing demand and preventing illicit trafficking in narcotics drugs, psychotropic substances and precursor chemicals with 22 countries namely Afghanistan, Bangladesh, Bulgaria, Cambodia, China, Croatia, Cyprus, Egypt, Israel, Italy, Kuwait, Loas, Mauritius, Myanmar, Poland, Romania, Russia, Tajikistan, Turkey, UAE, USA and Zambia.55

4.5.1.2. Memoranda of Undertaking

55 Annual Report 2009, Narcotics Control Bureau, Ministry of Home Affairs, Govt. of India, Chapter 10, p.52.
NCB/Govt. of India also has signed Memorandum of Understanding on Narcotics Drugs related matters with Bhutan, Indonesia, Iran, Oman and USA. Further, MoU with Pakistan has also been initialed on 26th November 2008.  

4.5.1.3. Mutual Legal Assistance

Agreements on Mutual Legal Assistance have been signed with the 22 countries (Bahrain, Belarus, Canada, France, Kazakhstan, Kuwait, Mauritius, Mongolia, Russia, Singapore, Spain, South Africa, South Korea, Switzerland, Tajikistan, Turkey, Ukraine, Uzbekistan, UAE, UK and USA with objectives of:\n
- Taking evidence or statements from persons
- Effecting service of judicial documents.
- Executing searches and seizures.
- Examining objects and sites.
- Providing information and evidentiary items.
- Providing originals or certified copies of the relevant documents and records including bank, financial, corporate and business records.
- Identifying or tracing process, property, instrumentalities or other things for evidentiary purposes.

4.5.1.4. Joint Working Groups on Counter Terrorism

India has established Joint Working Groups (JWG) on Counter Terrorism with 27 countries namely Egypt, Canada, Germany, UK, USA, France, European Union (Regional Group), China, Israel, Kazakhstan, Russia, Croatia, Uzbekistan, Thailand,

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56 Ibid.

57 Annual Report 2009, Narcotics Control Bureau, Ministry of Home Affairs, Govt. of India, Chapter 10, p.53.
Turkey, Singapore, Australia, Tajikistan, Mauritius, Indonesia, Myanmar, Poland, Japan, Cambodia, Pakistan and Italy.\textsuperscript{58}

JWG meetings are organized by Counter Terrorism Cell (CTC), MEA, drug offences are usually one of the issues covered in JWGs and NCB represents India on matters related to drug offences.\textsuperscript{59}

\textbf{4.5.1.5. Drug Liaison Officers.}

Constant interaction is also maintained with Drug Liaison Officers of foreign countries viz USA, UK, France, Canada and Germany posted in the region for sharing intelligence, joint operations/ investigation and Controlled Deliveries.\textsuperscript{60}

\textbf{4.5.1.6. Regional Corporation with South Asian Association for Regional Cooperation (SAARC) member countries.}

India is a signatory to the SAARC Convention on Narcotics Drugs and Psychotropic substances, 1993. Under the SAARC convention, meetings are held among the SAARC interior/Home Ministers and the SAARC interior/Home Secretaries and members of SAARC Conference on cooperation in Police matters. The 1st and 2nd meetings were held in Oct. 2007 and April, 2008. No meeting was held during the year 2009.SAARC Drug Offences Monitoring Desk (SDOMD) was launched on 1st January, 1992 at the Police Narcotics Bureau (PNB) in Colombo, Sri Lanka to create a data bank in respect of all major drug offences in the SAARC region, with periodical analysis of seizures, trafficking trends, methods of concealment, modus operandi and activities or drug syndicates which could help the member countries to improve their drug interdiction capabilities.

Each country had nominated an officer as local point on SDOMD who meet on regular basis.\textsuperscript{61}

\textbf{4.5.1.7. Indo-Bangladesh Co-operation}

\textsuperscript{58} Ibid.
\textsuperscript{59} Ibid.
\textsuperscript{60} Ibid.
\textsuperscript{61} Annual Report 2009, Narcotics Control Bureau, Ministry of Home Affairs, Govt. of India, Chapter 10, p.54.
India and Bangladesh have signed a bilateral agreement on cooperation in matters relating to narcotic drugs and psychotropic substances in 2006. Home Secretary level talks between India and Bangladesh were held at New Delhi from Nov. 29th to Dec. 2nd, 2009. DG level talks between the apex Drug Law Enforcement agencies of both the countries were organized at New Delhi in March, 2009. India also interacts with Bangladesh in DG level talks between DG BSF and DG BDR on Border Co-ordination where drug trafficking issues are also discussed.62

4.5.1.8. Indo-Myanmar Co-operation

India and Myanmar have signed a bilateral agreement on cooperation in matters relating to narcotic drugs and psychotropic substances in 1993. India and Myanmar hold national level, sectoral and cross-border meetings to assess drug situation and specific problems relating to trafficking.63

4.5.1.9. Multilateral Platforms

Meaningful liaison on drug related matters is also maintained with several other countries at multi-lateral platforms like the Bay of Bengal initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC) and the Pentalateral Cooperation on Drug Control.64

4.5.2. International Conference/Meetings

The officers of NCB participated in the following international meetings/conferences on drug related matter:

4.5.2.1. Commission on Narcotics Drugs (CND)

The Economic and Social Council (ECOSOC) established the Commission on Narcotic Drugs (CND) in 1946 as a central policy making body of the United Nations in drug related matters. The Commission is empowered to consider all matters

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62 Ibid.
63 Ibid.
64 Ibid.
pertaining to demand and supply reduction, including the scheduling of substances to be brought under international control.

The 52nd Session of CND was held at Vienna, Austria from 10th – 14th March, 2009. The CND delegation was led by Secretary Revenue accompanied by representatives from DoR, MHA, NCB etc. as members.65

4.5.2.2. Heads of National Drug Law Enforcement Agencies (HONLEA)

The HONLEA, Asia and Pacific, an apex forum for drug related issues, was established to:

(i) Identify/salient policy and enforcement issues in the region.

(ii) Establish working groups to analyze the issue and give recommendations.

(iii) Bring the reports and recommendations to the attention of the CND.

This meeting is organized by UNODC. The 32nd meeting was held at Bangkok, Thailand from February 10th – 13th, 2009.66

4.5.2.3. Asia-Pacific Operational Drug Enforcement Conference (ADEC)

The ADEC is organized by National Police Agency (NPA), Japan with the objectives of:

(i) Promoting exchange of information on drug related matters including trends.

(ii) Working jointly on establishing a regional network in drug control among various law enforcement agencies.

The 14th ADEC meeting was held at Tokyo, Japan, from February 17th – 20th, 2009.67

4.5.2.4. Regional International Drug Enforcement Conference (IDEC)

Regional IDEC is organized by Drug Enforcement Administration, (DEA), USA. IDEC concentrate in the following areas:

65 Annual Report 2009, Narcotics Control Bureau, Ministry of Home Affairs, Govt. of India, Chapter 10, p.55.
66 Ibid.
67 Annual Report 2009, Narcotics Control Bureau, Ministry of Home Affairs, Govt. of India, Chapter 10, p.55.
(i) Drug trafficking.

(ii) Money Laundering and

(iii) Diversion of essential and precursor chemicals

(iv) Regional and global initiatives for control of international drug trafficking.

The Regional IDEC was held at St. Petersburg, Russia, from March 30th – April 2nd, 2009.68

4.5.2.5. International Workshop for the Suppression of West African Drug Trafficking Syndicate

This international workshop is the result of the latest 14th ADEC meeting held in Japan in February, 2009 that reaffirmed the concern of the threat of the West African drug trafficking syndicate in the region.

This workshop was held at Bangkok, Thailand from April 9th -10th, 2009.69

4.5.2.6. Operation TARCET Afghanistan

This meeting is organized by UNODC Regional Office for Central Asia and the Country Office in Afghanistan, Operation TARCET focuses on identifying and intercepting consignment of precursor chemicals being smuggled into Afghanistan for use in the illicit manufacture of heroin.

The Operation TARCET Afghanistan anti-narcotics policy level planning session was held at Tashkent, Uzbekistan from May 12th – 13th, 2009.70

4.5.2.7. Indo-US and Indo-Canada Joint Working Group meetings.

The Indo-US and Indo-Canada JWG meetings on counter terrorism were held at Washington, USA and Ottawa, Canada on 17th June 2009 and 19th June, 2009 respectively.71

68 Ibid.

69 Annual Report 2009, Narcotics Control Bureau, Ministry of Home Affairs, Govt. of India, Chapter 10, p.56.

70 Ibid.
4.5.2.8. **CPDAP Drug Focal Points Desk Officer Meeting**

The first Colombo Plan Focal Point Desk Officer meeting was held to improve the administrative and technical operation of all CP Programmes.\(^72\)

The first meeting was held at Colombo, Sri Lanka from August 12th – 13th 2009.

4.5.2.9 **Anti-Drug Liaison Officials Meeting for International Cooperation.**

The ADLOMICO is organized by South Korea. The ADLOMICO covers trend of:

(i) New type of drug, trafficking of cultivated narcotics (cannabis, opium, coca etc.) development of techniques of drug signature and analysis (including profiling), precursor chemical control, advanced investigative methods (controlled delivery, money laundering, etc. and drug trafficking on internet).

(ii) Exchange of information on drug crimes and to establish personal contacts amongst drug law enforcement agencies.

The 19th ADLOMICO meeting was held at Bussan, South Korea from 16th-18th, 2009.\(^73\)

4.5.2.10 **Case Strategy meeting regarding investigation into the New Delhi, based Nigerian drug traffickers operating from India, organized by DEA, U.S. Dept. of justice.**

This meeting was mainly focused on the activities and modus operandi of Nigerian drug traffickers operating from India and having links in other countries.

This meeting was held at Jakarta, Indonesia from August 11th-12th, 2009.\(^74\)

4.5.2.11 **ASEAN senior officials on drugs matters (ASOD) and Indian consultation.**

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\(^71\) Annual Report 2009, Narcotics Control Bureau, Ministry of Home Affairs, Govt. of India, Chapter 10, p.56.

\(^72\) Ibid.

\(^73\) Ibid.

\(^74\) Ibid.
The objectives of the consultation are to:  

i. Exchange views of illicit drug trafficking situation in the region.

ii. Combat flow of ketamine in the region.

The second meeting was held on October 18, 2009 at Phnom Penh, Cambodia.

4.5.3. Visit of Foreign Delegations to Ncb Headquarters

The following foreign delegations visited India to discuss drug related issues:

The delegations from Bangladesh visited Delhi for the 1st DG level talks between Narcotics control Bureau, India and the Department of Narcotics control, Bangladesh which was held on 25th and 26th March, 2009 in New Delhi. The delegations from Hong Kong special administration region led by Minister Ambrose-S.K. Lee, Secretary visited NCB Head Quarters on 14th September, 2009 and interacted with Senior NCB Officers.

4.5.4. INCB/UNODC Reporting.

As a Signatory to the various international conventions on Narcotics Drugs and Psychotropic substances. India is under obligation to submit the required information to the United Nation Office on Drugs and Crime (UNODC) and international Narcotics Control Board (INCB) in the prescribed formats. This information assists in controlling the licit production and international trade of Narcotics drugs and psychotropic substances. NCB is the nodal/Central Agency for implementation of the India’s obligations under various international conventions.

4.5.5. International Narcotics Control Board (INCB).

To meet the international obligations under the three UN conventions, NCB submits seven reports in the prescribed formats to INCB Vienna. It has been seen that the information required for preparing these reports has not been received from concerned agencies in time. To streamline the system of reporting to INCB, NCB in

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75 Ibid.
76 Annual Report 2009, Narcotics Control Bureau, Ministry of Home Affairs, Govt. of India, Chapter 10, p.58.
77 Annual Report 2009, Narcotics Control Bureau, Ministry of Home Affairs, Govt. of India, Chapter 10, p.59.
co-ordination with the other agencies has institutionalized a mechanism of Nodal Officers for compiling and reconciling the figures and data before sending to INCB. NCB has also organized workshops for State Drug Controllers to familiarize and sensitize them in this regard. Department of Revenue (DoR) reviewed the system for reporting to INCB and proposed that rather than depending upon the State Drug Controllers, there should be a Central Authority which will directly interact with pharmaceutical Companies, allocate quota of various Narcotics Drugs, get information directly on estimates and consumption from manufacturing units, so that information could be sent to INCB in time. At present Central Board of Narcotics(CBN) has entrusted with the said responsibility.\textsuperscript{78}

4.5.6. **United Nations Office on Drugs And Crime (UNODC)**

Each country has to provide inputs in the annual report questionnaire (ARQ) every year on the working of the international drug control treaties to UNODC. The ARQ has three parts as detailed below:

- Part –I: Legal and administrative aspects of the working of the treaties.
- Part-II: Drug abuse situation, extent, pattern and trends of drug abuse.
- Part-III: Illicit supply and traffic in drug, extent, pattern and trends of illicit drug cultivation, manufacture and trafficking.

The NCB furnishes the ARQ to UNODC which forms the basis of World Drug report published every year.\textsuperscript{79}

4.6. **NATIONAL COORDINATION SCHEME:**

Besides, international coordination, the national coordination of various agencies of control and State Governments with regard to drug laws enforcement in the country is essential. The Narcotics Control Bureau is the national nodal agency for matters relating to the drug law enforcement in India. There are different coordination forums which can be discussed in the following manners:

\textsuperscript{78} Ibid.

\textsuperscript{79} Ibid.
Coordination Forums:

4.6.1. Narcotics coordination committee of Secretaries:

The Ministry of Finance, as per the recommendation of the Cabinet Sub Committee on Drug Abuse Control, formed a Narcotics Committee of Secretaries to review the incidence of drug abuse, control and counter measures, drug problems in the States and the functioning of the de-addiction centers. The committee consists of the Secretaries of the Department of Revenue, Ministry of Social Justice and Empowerment, Ministry of Health and Family Welfare, Ministry of Home Affairs with DG, NCB as the Convener.  

4.6.2. Regional Coordination Meetings:

The meetings for Regional Coordination are periodically conducted by the NCB. During 2009, such meetings were held under the chairmanship of Director General, Narcotics Control Bureau in 4 regions of the country as under:

<table>
<thead>
<tr>
<th>Region</th>
<th>Member States/UTs</th>
<th>Date of Meeting</th>
<th>Agencies participated</th>
</tr>
</thead>
<tbody>
<tr>
<td>West</td>
<td>Maharashtra, Goa, Gujarat, Chhattisgarh, Madhya Pradesh</td>
<td>25.05.2009</td>
<td>State Police, State Excise, Forest</td>
</tr>
<tr>
<td>North</td>
<td>Jammu &amp; Kashmir, Himachal Pradesh, Haryana, Punjab, Delhi, Chandigarh, Uttar Pradesh, Uttarakhand</td>
<td>09.09.2009</td>
<td>Drug Controllers, CBN, Competent Authority, Customs</td>
</tr>
</tbody>
</table>

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80 Annual Report 2009, Narcotics Control Bureau, Ministry of Home Affairs, Govt. of India, Chapter 10, p.44.
<table>
<thead>
<tr>
<th>Region</th>
<th>States</th>
<th>Date</th>
<th>Agencies</th>
</tr>
</thead>
<tbody>
<tr>
<td>South</td>
<td>Tamil Nadu, Kerala, Karnataka, Andhra Pradesh &amp; Puducherry</td>
<td>13.11.2009</td>
<td>DRI, ED, CBI, IB, Border Guarding Forces</td>
</tr>
<tr>
<td>East</td>
<td>Assam, Arunachal Pradesh, Meghalaya, Mizoram, Nagaland, Tripura, Manipur, Sikkim, West Bengal, Bihar, Jharkhand, Orissa &amp; Andaman &amp; Nicobar</td>
<td>25.11.2009</td>
<td>RPF, Coast Guard etc.</td>
</tr>
</tbody>
</table>

In depth discussions during above meeting lead to formulation of appropriate strategies for combating the drug menace.\(^{81}\)

NCB assesses the problems relating to trafficking and abuse of narcotic drugs prevailing in various states. It seeks their cooperation in taking steps to reduce the problem and advises them suitably during the Regional Coordination meetings inter alia on the latest trends of drug trafficking and techniques adopted by the traffickers. Such meetings for regional coordination are held periodically under the chairmanship

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\(^{81}\) Annual Report 2012, Narcotics Control Bureau, Ministry of Home Affairs, Govt. of India, p.33.
of DG, NCB. Discussions during these regional meetings lead to formulation of appropriate strategies for combating the drug menace. Following meetings were organized in the four regions of the country during 2012:

(a) Western Regional Conference at Mumbai on 7th November, 2012.
(b) Eastern Regional Conference at Kolkata on 23rd November, 2012.
(c) Southern Regional Conference at Bangalore on 14th December, 2012.

The representatives of Central/State Drug Law Enforcement Agencies, State Police, Forest, DRI, State Excise, Custom, Central Excise, IB, CBI, State Drug Controllers etc. participated in these conferences.  

4.6.3. Multi Agency Center (MAC):

MAC meetings are conducted by the intelligence Bureau and are attended by Nodal Officers of various law enforcement agencies. The main purpose of this meeting is to exchange relating to terrorism, organized crime including drug trafficking and Narco-terrorism. Similar meetings are organized in the States (State Level Multi Agency Center (SMAC) by subsidiary intelligence Bureau (SIB) regularly.

4.6.4. Regional Economic Intelligence Council (REIC):

The REIC meetings are convened by the Chief Commissioner of customs and Central Excise/Income Tax and deal mainly with exchange of information regarding economic offences and organized crime having economic ramifications including drug trafficking. The participants include State and Central enforcement/Security Agencies, Revenue Agencies, RBI and SEBI etc.

4.6.5. Lead Intelligence Agency (LIA):

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82 Annual Report 2012, Narcotics Control Bureau, Ministry of Home Affairs, Govt. of India, p.34.

83 Ibid.

84 Ibid.
This meeting is organized by the border guarding agency deployed in the State/region. MHA has designated SSB (Nepal Border), BSF (Pakistan and Bangladesh border), Assam rifles (Myanmar border) and coast guard (coastal States) as lead intelligence agency for convening the meeting to share intelligence and discuss issues relating to terror, smuggling, organized crime including drug trafficking and other security issues. Participants for this issue include State and Central enforcement/intelligence agency.85

4.6.6. Meetings of Nodal Officers on destruction of illicit cultivation:

The meeting of Nodal Officers of the ten States (Jammu and Kashmir, Himachal Pradesh, Uttarakhand, Bihar, Jharkhand, West Bengal, Orissa, Arunachal Pradesh, Manipur and Karnataka) prone to illicit Opium Poppy cultivation was held on March 9, 2009 at NCB Headquarters for assessment of illicit Poppy cultivation situation by the respective Nodal Officers of the affected States. Subsequently in another meeting held on September 8, 2009 NCB Headquarters the action plan for identification and destruction of illicit Poppy cultivation for the crop season 2009-10 was finalized and issued.86

STATE LEVEL MEETINGS

4.6.7. State Level Apex Committee Meeting:

This meeting is conducted by the Chief Secretary/Senior Secretary of State Periodically for reviewing drug abuse and trafficking problems in the State and for evolving appropriate counter measures. The jurisdictional Zonal Director of NCB is a member of this Apex Committee which has representation from all important govt. Departments like Excise, Education, Youth, Welfare, Health and the concerned enforcement agencies.87

4.6.8. Anti-Narcotic talks force meeting:

85 Ibid.

86 Annual Report 2009, Narcotics Control Bureau, Ministry of Home Affairs, Govt. of India, Chater 10, p.46.

87 Ibid.
This meeting is conducted on a quarterly basis by the head of the anti-narcotic talks force of the concerned State. Representatives from various State enforcement agencies, a part from NCB, participate in the meeting to exchange intelligence and draw action plan for effective enforcement.\(^{88}\)

We have discussed the role and function of various agencies who are involved in investigation of cases under NDPS Act and other related acts. Now we are critically elaborating the defective investigations conducted by these agencies facilitating the acquittal of the offenders under such heinous crime. The enforcement agencies must take a note of the legal propositions laid down by various courts while discussing the role of investigating agencies pertaining to investigation conducted by these agencies.

The concept of a reasonable and fair trial would be one in which the accused as well as the victim or the aggrieved person gets justice. Various reasons have been cited above for these acquittals under NDPS Act but some focus is required on faulty investigation. Many of the cases fail on account of faulty investigation. If we identify the reasons for defective investigation, we will find that it occurs due to problems faced right from the stage of filing of FIR, to maintenance of case diary, procedure of search and seizure of articles/contrabands and documents, delay in investigation and service of summons to witnesses etc. It is the duty of the investigating agencies to investigate fairly and thoroughly and collect all evidence whether for or against the accused. Protection of society being the paramount consideration, the laws, procedures and police practice must be such as to ensure that the guilty are apprehended and punished with utmost dispatch and in the process, the innocent are not to be harassed.

Keeping in mind the grave consequences which are likely to follow on proof of possession of illicit articles/contrabands under the NDPS Act, namely, the shifting of the onus to the accused and severe punishment to which he becomes liable, the legislature has enacted and provided certain safeguards in various provisions of the Act including Sections 42 and 50 of the Act. A constitutional bench of Hon’ble Apex

\(^{88}\) Ibid.
Court in *State of Punjab v. Baldev Singh* has held that while conducting search and seizure in addition to the safeguards provided under the Code of Criminal Procedure, the safeguards provided under the Act are also required to be followed. The harsh provisions of the Act cast a duty upon the prosecution to strictly follow the procedure and compliance of the safeguards as observed by Hon’ble Supreme Court in judgment titled *Beckodan Abdul Rahiman v. State of Kerala*. If the search is not carried out strictly in accordance with the safeguards indicated or in violation of procedural prescription, anything recovered suffers from illegality. The courts have held that no reliance can be placed on the evidence when there is failure to comply with provisions relating to search and seizure.

In *Ram Kumar Singh v. State of Rajasthan*, investigation was conducted by some police officer who made recovery, seized the contraband and arrested the accused, held invalid. Investigation should be conducted by some other independent officer. In another case *Gopal Vs. State of Rajasthan* it was observed that if investigation is defective, conviction cannot be sustained. Hon’ble Apex Court in another case *Mahmood Vs. State of U.P.* held that it is the duty of investigating officer to take necessary precaution after sealing the article to entrust his seal to the respective person (independent witness) so as to avoid the chance of tampering the seal.

Investigation conducted by Assistant Sub Inspector without any proper authorization by the Central Government or the State Government was wholly held without jurisdiction by Hon’ble Rajasthan High Court in *Amar Chand v. State*.

Investigation of offence under the Act, can be done by complainant or detecting officer himself, investigation proceedings under the Act are not vitiating in absence of proof of specific prejudice to accused as held in *Kader @ Kader Babu Vs.*

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91 1994 Cri.L.J.951 (Raj.).
92 1988 (3) Crimes 485 (Raj.).
94 1991 Cri.L.R. 668 (Raj.): 1991 (1) R.L.W. 137 (Raj.).
State of Kerala. 95 In Roy V.D. v. State of Kerala, 96 the Supreme Court has quashed the proceedings since it was found that the officer, who had conducted the search and seizure, was not authorized officer. Dealing with that question, the Supreme Court held thus:

16. Now, it is plain that no officer other than an empowered officer can resort to Section 41 (2) or exercise powers under Section 42 (1) of the NDPS Act or make a complaint under clause (d) of sub section (1) of Section 36-A of the NDPS Act. It follows that any collection of materials, detention or arrest of a person or search of a building or conveyance or seizure effected by an officer not being empowered officer or an authorized officer under Section 41 (2) of the NDPS Act, lacks sanction of law and is inherently illegal and as such the same cannot form the basis of a proceeding in respect of offences under Chapter IV of the NDPS Act and use of such a material by the prosecution vitiates the trial.

17. To the same effect is the view expressed by this court in State of Punjab v. Balbir Singh AIR 1994 SC 1872: (1994) 3 SCC 299. In para 13 Jaya Chandra Reddy, J. speaking for the Court observed thus:

Therefore, if an arrest or search contemplated under Sections 41 and 42 is made under a warrant issued by any other magistrate or is made by any officer not empowered or authorized, it would per se be illegal and would affect the prosecution case and consequently vitiate the trial.

Now, there has been a shift in the approach adopted by the Courts in cases of faulty or defective investigation. The Supreme Court has in various cases held that cases where faulty investigation is evident, it is required that they be dealt with utmost sensitivity. In such cases, the broader probabilities are required to be examined and the courts are not to get swayed by minor contradictions or insignificant discrepancies which are not of substantial character. The evidence is required to be appreciated having regard to the background of the entire case and not in isolation. The ground

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95 2001 Cri.L.J.4044 (Kerala).
96 2001 Cri.L.J.165 (SC).
realities are to be kept in view. Thus, it must be kept in view that every defective investigation need not necessarily result in the acquittal. In defective investigation, the only requirement is of extra caution by courts while evaluating evidence. It would not be just to acquit the accused solely as a result of defective investigation. Therefore, a pro-active approach of the court can be useful to meet the ends of justice where the investigating officer has deliberately rendered the investigation defective. The Hon’ble Supreme Court in the celebrated case of *Zihira Habibullah Sheikh Vs. State of Gujarat* 97 reiterated the point that if “primacy is given to designed or negligent investigation, to the omission or lapses by perfunctory investigation or missions, the faith and confidence of the people would be shaken not only in the law enforcing agency but also in the administration of justice.”

It has been observed in various judgments that the investigating agencies are lacking in basic knowledge of the laws pertaining to the topic and they are leaving lacunas during investigation which ultimately, lead to the acquittal of the accused. The Hon’ble Apex Court in latest judgment *Sukhdev Singh vs. State of Haryana* 98 made emphasize to make compliance of Section 42 of the Act, which is mandatory. In this case search was conducted after receipt of information. No effort was made by investigating officer to reduce information in writing and to inform his higher authorities instantaneously or even after of reasonable delay. No evidence was produced to show as to what prevented the investigating officer from recording information and sending it to superior. It was held as total non-compliance with the provisions of Section 42 of the NDPS Act and such a defect is incurable and the accused is liable to be acquitted. While parting with the judgment, the Hon’ble Apex Court issued warning to the investigating agencies in such matters and that part of judgment is referred as under:

“25. Before we part with this file, we consider it the duty of the Court to direct the Director General of Police concerned to all the States to issue appropriate instructions directing the investigating officers to duly comply with the provisions of Section 42 of NDPS Act at the appropriate stage to avoid such


98 A.I.R. 2013 Supreme Court 953.
acquittals. Compliance to the provisions of Section 42 being mandatory, it is the incumbent duty of every investigating officer to comply with the same in true substance and spirit in consonance with the law stated by this Court in the case of Karnail Singh versus State of Haryana, AIR 2009 SCW 5265.

The researcher while concluding the findings of this chapter submits that the efficiency of these enforcement agencies is the key in preventing the menace of illicit drug trafficking. Their professional competence i.e. skill in conducting investigation, collecting evidence and following due procedure in search and seizure will undoubtedly enhance the conviction rate in such cases and that will have deterrent effect. These agencies need to incorporate judicial guidelines issued from time to time in respect of their functioning because on analysis of the above referred judgments, it is established that a proactive approach has been adopted by the Courts to meet the ends of justice, where the investigating officers have deliberately rendered the investigation defective and rightly concluded that for the fault of investigating agency, no victim is liable to be suffered. The Courts in India have interpreted the law in such a manner so that the accused in such cases cannot get acquittal due to lapses by perfunctory investigations. Despite some lacunas in the investigations of cases, still the role of these enforcement agencies is laudable and can be made more effective by proper coordination among different agencies and strict implementation of due procedure established by law and judicial guidelines.