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8.1 Introduction:

In the present study an attempt has been made to find out “Critique of the Law relating to Narcotic Drugs in India”. Very few attempts have been made in this direction. In recent years, India is facing a major problem with the illicit use of drug, drug trafficking, consuming and so on. Therefore, the Narcotic Drugs and Psychotropic Substances Act, 1985 is enacted. This Act provides enhanced and stringent penalties for the offences relating to narcotic drugs and psychotropic substances. But these crimes are constantly increasing among all classes of the society. Therefore, the sole aim of this research is that to find out the generic answer on it.

For this purpose, the research has been divided this research project in 8 chapters. In the 1st chapter, the researcher has introduced about the problem and studied various causes of drug abuse. She has explained the significance of the problem. There are four objectives of the research such as to study the various causes of the drug abuse, to study the present Act, to study the reasons of the failure of the prosecution in punishing criminals and to study the government policy. Researcher formulated three hypotheses and she has been used the Doctrinal research method majorly and non-doctrinal research method as per the need.

In the 2nd chapter, she has studied the present statutory law and also the American law. When any person commits crime, there is a fixed procedure of administration of criminal justice. Therefore, in the 3rd chapter, she has studied the procedural law. Researcher also studied the investigation of drug cases in the 4th chapter.

Researcher has studied 155 trial of drug cases. These cases collected from 22 districts of Maharashtra State in the 5th chapter. In the 6th chapter, the researcher has studied judicial decisions of various the High Courts and the Supreme Court and in the 7th chapter; she has studied the government policy.
While studying all these chapters, the researcher has concluded and presented the suggestions over the research topic in this chapter.

8.2 Conclusion:

The researcher concludes as follows -

1) Statutory Law: The NDPS Act prohibits cultivation of opium poppy, cannabis and coca plant. It prohibits production, manufacture, possession, sale, purchase, transport, warehousing, use, consumption, import, export or transhipment of any narcotic drug and psychotropic substance except for medicinal and scientific purposes and as per the rules or orders and conditions of licence issued. Violation of any rule of either the state or Central Narcotic Drugs and Psychotropic Substances Rules attracts punishment under this Act.

2) Offences and penalties: The punishments for various offences under the NDPS Act depend on the quantity of drug involved with three levels of punishment for small, more than small and less than commercial; and commercial quantities.

There is a criticism of the amendment that the quantity fixed is so small that it may not suffice for even a single use and that such provisions make it difficult for long addicts to openly seek medical help and rehabilitation.

3) Provision for establishment of a Special Court: Section 36 empowers the government to constitute Special Courts for the offences relating to the NDPS Act. But it has been observed that the most of state governments has not established the Special Court.

4) Enforcement Agency: The central government and state government has empowered various officers relating to the excise, narcotics, customs, revenue, intelligence, para-military force and armed forces, police for enforcement of the Act. They can use all the powers of searches, seizures, detention and arrest of person. It has been observed that, the investigation of narcotic cases is carried out by more than one
investigating officers with the result that the proper creeps in the investigation benefiting the accused on technical grounds.

5) **Law of America**: In the Law of America, there is a provision of Special Court as Drug Court to solve cases involving alcohol and drug abusing offenders. It is remarkable that the government concentrated towards alcohol and drug rehabilitation.

6) **Procedural Law**: All the processes of Procedural Law such as summons, warrants of arrest, search, seizure, search warrant issued by the court are meant to facilitate the investigation by police. The police station is the unit where all powers as to investigation under the Code are concentrated. Of course, subject to the supervision of the supervisor police officers and the court, the sole aim of the law is approximation of justice. A Judge is looked upon as an embodiment of justice.

7) **Investigation of drug cases**:

- **Responsibilities of police**: For the administration of criminal justice, the police are responsible for performing multifaceted functions such as prevention of crime, maintenance of law and order, conduct of investigation of crime, production of under trials before the court. Under the NDPS Act, the Act gives enormous powers to the investigating officers. Any empowered officer appointed by the central government or state governments have power to investigate such cases relating to NDPS Act.

- **Difficulties in investigation**: Chapter V of the NDPS Act gives detail procedure for the investigation. There are some mandatory procedure and some directory procedure. There are many difficulties in investigating NDPS cases. Many times, it is very difficult to find independent witnesses due to variety of reasons such as threats from accused, long period of time taken in attending courts and lack of concern for the problems posed by drugs to the society. Many times, accused even bribe the witnesses to turn hostile to the prosecution.

- **Drug detection kits**: Its cost is between Rs. 3,000/- to 4,000/-. It's life of 6 months from the date of manufacture. State police do not
have the funds for the kits and when they are supplied, they expire within 3 to 4 months from the date of supply.

- **Lack of training**: Most police officers are not aware about precursors. Hence even if they find a precursor being diverted or transported, they may not even realize the significance of it.

- **Malkhana**: Narcotic Control Bureau issued detailed instructions on storage and disposal of seized drugs. These instructions require such drugs to be stored in a proper Malkhanas under the supervision of a gazette officer. State police do not follow these instructions and store them in the Malkhanas of the police stations which have inadequate storage facilities with little security.

- **Honest error by the police as well as witnesses**: The witnesses and the police may commit honest error while giving or recording the statements. The error can be wrong identity or wrong description of the accused.

- **Judicial and public image of the police**: The image of an Indian police is full of adverse comments made against them for their dishonesty, corruption, unscrupulous methods in investigation and general lack of efficiency. It has clearly failed to secure the confidence and cordial co-operation of the people.

- **Extra workload**: The police officers can not concentrate in one case properly because of extra workload.

- **Strength of police staff**: With the growth of population and crime, the police department is very small. There are too much lacunae in the investigation, it gets benefit to the accused on technical grounds and thereby making the stringent provisions of the Act.

8) **Bail provisions**: One of the key features of the NDPS Act is stringent bail provision. Courts cannot grant bail to those accused of offences under commercial quantity. If precursor chemicals are seized in large quantities from a person, the strict bail provisions under Section 37 of the NDPS Act, 1985 does not apply.
9) **Courts' views regarding investigation**: The court gives such enormous importance to the statement recorded by the police at the time of application for bail. The bail can be rejected on the statements recorded by the police during the course of investigation. But the same statement is not believed at the state of trial. This is a paradox.

10) **Pre-trial disposal**: Section 52-A of the NDPS Act provides for the pretrial disposal of the narcotic drugs and psychotropic substances but no of controlled substances.

11) **Reports of the Doctor under Section 27 of NDPS Act**: Consumption of narcotic drugs and psychotropic substances is an offence under the NDPS Act, but no investigating officer knows how to prove it. Doctors in government hospitals are not trained in identifying whether the suspect consumed drugs.

    Often, doctors of government hospital and dispensaries give reports only on the general medical conditions of the accused which does not help in prosecuting the case in a court of law.

12) **Causes of acquittal**:

   - **Technical grounds**: Most of the offences relating to the NDPS Act acquitted on the grounds of non compliance of mandatory provisions of sections 42 and 50 of the NDPS Act.

   - **Examination of important witnesses**: It creates doubts in the mind of the court and the evidence of such witnesses may be rejected on the ground of unnecessary delay in the examination of important witnesses.

   - **Lack of public co-operation**: It has been noticed that in various cases people are not willing to testify against the offender due to risk of threats and violence. People are unwilling to help police in crime detection due to lack of sense of social responsibility among people.

   - **Method of investigation**: Number of police officers do not have sufficient training in the procedure of investigation. There are not
sufficient training facilities in investigation. There is unnecessary delay by the need obtained reports from the chemical examiners.

One of the causes of low conviction rate is the excessive minimum sentence under the Act. Therefore, it is impossible to ultimate check the problem of drug trafficking.

There is gap between investigation and the law therefore, the rate of acquittal is very high.

No single agency is responsible for enforceable legislation or not exercising discretion within the prescribed frame work.

- **Statement of witnesses**: In such cases, the ratio of acquittal is high due to contradictory statements of witnesses.

13) **Findings of the studied trial cases**:

- The ratio of acquittal is very high and the ratio of conviction is very low.
- The investigation officers have inadequate knowledge of the Act.
- In each case, there are lacunae to complete mandatory provisions.
- Non co-operation of witnesses as well as independent and respectable persons.
- Lacuna in panchanama.
- Material evidence on record was not sufficient.
- Non compliance of mandatory provisions.

14) **Judicial decisions**:

- There are different views among various high courts about remand.
- This Act is remarkably silent about the anticipatory bail. In the case of *Baljit Singh Vs State of Assam*, the Hon’ble Guahati High Court held that it is high time that this lacuna in the law should be cured legislatively.
• In the bail provision, there is controversy about Section 37 of the NDPS Act and in the view of the Supreme Court.

• In the case of *Radheprasad Chaurasia S/o Late Bhagat Chaurasia Vs State of Bihar*, the Hon’ble Court held that the effective implementation of the NDPS Act will reduce the problem of trafficking of drugs and would fulfill the intention of legislation to ameliorate the impact of drug abuse from the society.

• As per various decisions of the cases, the view of the Supreme Court is not clear about the meaning of Section 42 of the NDPS Act.

• By studying various cases, it is observed that Section 50 of NDPS Act is mandatory provision. The Constitution Bench in Baldev Singh’s case gave a conclusion about the mandatory provision of Section 50 of the NDPS Act. But thereafter also number of cases acquitted on the ground of non-compliance of Section 50 of NDPS Act. Because there is no specific guideline about the requirement of mandatory provision mentioned in Section 50.

• By studying various cases, various high courts held to clarify the confusion about the correct proposition of law relating to the consequences of illegality in search and arrest and its effects in the trial.

• By studying various cases, the view of the Supreme Court is different about the meaning of Section 55 whether it is mandatory or not.

• By studying various cases, it is observed that the courts in India have ignored the compassionate spirit and intent of the law by imposing arbitrary restrictions on immunity claim.

• By studying cases, it is observed that various High Courts and Supreme Court held that Section 32A of the NDPS Act is unconstitutional to the extent that it takes away the right of the court to suspend the sentence of a convict under the Act.

• By studying the cases, the Bombay High Court has held that Section 31A of NDPS Act which provides for death sentence for an accused
in case of second conviction was violative of Article 21 of the Constitution.

15) Establishment of Drug De-addiction Centres: At present, 122 De-addiction centres have been established across the country. But all these centres are established in big cities and not in rural and tribal areas. They are not adequate in the present situation.

- Narcotic Control Bureau: It is a central authority for the purpose of exercising the powers and functions of the central government under the Act. It has been gathering statistics on seizure etc. from various states and central law enforcement agencies; and has been gathering the National Drug Enforcement Statistics, every month; these statistics represent the drug law enforcement as well as the comparative performance of various agencies.

But, there is no similar mechanism to regularly collect statistics on the drug addiction.

16) Government policy: Government policy focuses on the punishment and stringent penalties rather than attempting to rehabilitate those individuals who are offenders or victims of drug abuse.

It is observed that drug abuse in India is found with quite varied political, social and cultural system.

There is a lack of public opinion and public awareness. The impact of such offences on the society is neglected. Nobody bothers to bring the matter to light unless somebody in the family is affected by the problem of drug addiction.

- Laboratories: The NDPS Act establishes several agencies in several parts of the country such as Central Revenue Chemical Laboratories (CRCL), Central Forensic Science Laboratories (FSL), State Forensic Science Laboratories (SFSL) of each state. But they are established only in big cities. They are not adequate.
17) **Experts' opinion**: In the present research, researcher has taken ten experts' opinion of Advocates who are leading practitioners in the field of NDPS cases. Researcher provided questionnaire regarding NDPS Act and took their responses through the questionnaire. The questionnaire was made by the researcher herself. Necessary precautions were taken while preparing the same.

To answer question No. 1 to 4, all experts are responded that this Act is necessary to prevent the crime and it is enough for merits but the procedure relating to arrest, investigation, search and seizure under this Act are not appropriate.

To answer question No. 5, all experts are responded that empowered officers who commence to investigate the case under this Act shall be in-charge of the case till investigation is complete as far as possible.

To answer question No. 6 and 7, all experts are not of same opinion. Six of them are disagreed that the punishment imposed under this Act is appropriate and there is no need to change the provisions of sentence prescribed in sections 13 to 25 of the NDPS Act. Remaining four of them are agreed to the punishment imposed under this Act is appropriate, but there is need to change the provisions of minimum sentence prescribed in sections 13 to 25 of the Act.

To answer question No. 8 to 10, all experts are agreed that the speedy disposal of cases is needed and there is need to establish an independent court of special judges for the trial of cases under this Act. And they are also agreed that committing crimes are not reduced due to the entire system. There is need to make specific provision for creation of social awareness.

To answer question No. 11, all experts are not of same opinion. Eight of them are agreed that the government has not established adequate centres for the identification, treatment and rehabilitation of addicts. Remaining two of them are agreed that the government has
established adequate centres for the identification, treatment and rehabilitation of addicts.

To answer question No. 12, all experts are agreed that it should be mandatory by suitable amendment in the Act that at least one de-addiction centre for the identification and treatment of addicts should be established in every tahsil and district place.

To answer question No. 13, experts in majority suggested that provisions of NDPS Act are very harassing in nature. Considering the mandatory provisions of this Act and the view of the Apex Court, the investigation carried by the officers do not know the provisions of the Act and they are not so serious. Hence, the ratio of conviction is not more than 10%. Therefore, special trained and intelligent officers should be appointed. According to them, the implementation of the provisions of the Act is not proper. The techniques which are followed during investigation must be improved. Investigation must be prompt and cases should be conducted with the co-ordination between investigating officers and the prosecution.

In brief, the suggestions given by the researcher and experts are majorly similar.

8.3 Suggestions:

1) It is necessary that the provisions in the NDPS Act prescribing sentences requires a fresh look on the basis of sentencing method. A lenient sentence does not always meet the needs of justice.

2) To establish special courts in each state without any delay, the state is under a constitutional mandate to ensure speedy trial. Therefore, mandatory provisions should be incorporated for the creation of appropriate number of special courts in every state of the country without any delay.

3) To establish a Drug Court to handle cases involving less serious drug using offenders through a supervision of treatment programme. The addiction treatment should be mandatory so that drug addict and
alcoholics will be given an opportunity of treatment without any fear of arrest and it should be established in each tahsil level.

4) To establish a governmental hospital attached with special court and the addiction treatment should be mandatory so that the drug addicts and alcoholics will be given an opportunity of treatment without any fear of arrest.

To change the system of investigation, it should be conducted and completed by one investigating officer as well as adequate supply of kits, quick disbursal and training are essential for effective use of kits.

The investigating staff should be separated from the law and order staff to enable the investigating officer to devote undivided attention to investigation work. There should be expertise police officers in investigation work. Adequate number of training institutions should be set up by each state government and by central government. Superior officer should insist on strict observance on case diary and police statements so that investigating officer must give a satisfactory explanation for it in the case diary so that investigation does not come under a cloud of suspicious.

5) Doctors in hospital, should be well trained to get an accurate report of the test of suspect.

6) Adequate storage facilities to store seized drug is essential.

7) Need an independent agency to supervise the recording the statements of the police, effective supervision is essential. The duty of the supervisory officers will to guide properly in the investigation right from the beginning.

8) Witness should be allowed to read his statements to refresh his memory. The witness shall be allowed to refresh his memory in the witness-box. The statement of the witness who is willing to write out his own statement, should be allowed to do so.

Frequent changes in statements, by the witness during the course of investigation and more particularly, at the trial are to really disturbing
this result in miscarriage of justice. Hence, modern science and technology should be used in such cases such as tape-recording or video recording of statement of witnesses would be meaningful for purposive steps in this direction.

9) With the growth of population, with the growth of new offences, there is need to increase the staff.

10) To develop the police image and their relationship and interaction with the general public with the help of orientation programmes for the police personnel.

11) Need to increase the number of forensic science laboratories. Delay investigation results into delay trial.

12) The process of administration of criminal justice is very lengthy. It is a serious crime. Therefore, there should be minimum fixed time for investigation, inquiry and trial. And it should be mandatory by this Act.

13) There should be co-operation amongst investigators, forensic experts and prosecutors for this purpose following stages should be implemented –
   • Initial investigation of the crime scene level.
   • Search of the suspect, suspect’s premises and collection of evidence.
   • Framing request for laboratory analysis.
   • Interpreting the analytical results of the laboratory.
   • Evaluative the probative value of the results in accordance with the prosecution need.
   • Pre-trial discussion with the prosecutors.
   • Offering the testimony before the court.
   • Prosecutors argument on the case.
   • Review of effectiveness of forensic evidence.
   • There is need to change the existing law.
   • All departments of the state are expected to work in unison or with utmost co-ordination to control this drug abuse problem.
   • The criminal justice delivery system needs better support.
   • Police and other agencies should optimally operate and define the levels of discretion. They ought to exercise within that frame work.
• Under the offences relating to NDPS Act, there should be ‘Fixed’
time limitation for investigation inquiry and trial.

14) Spread of awareness: Citizens who may have to participate in criminal
justice system as complainants/informants/victims/accused/witnesses are
often not aware of their rights and obligations. They also do not know
whom and how to approach and what to expect from them. Awareness
of these matters will help the citizen to assert their rights and to protect
themselves from unreasonable, arbitrary and corrupt officials.

15) The time has come that all prosecuting agencies, the legislature, the
judiciary, scientists, common man and students from all schools should
come together to solve drug abuse problem.

16) The criminals and the victims both need rehabilitation and support.

17) To frame a policy for drug trafficking convicts, such convicts while
serving prison terms, be periodically taken to hospital, drug de-addiction
centres so that they see the pain and agonies of victims and such visuals
would leave an indelible impression on their mind.

18) The counseling and awareness programmes should be conducted through
village panchayat.

19) Every limb of the state administration has to play a definite and
pragmatic role to achieve the object underlying the provisions of the
NDPS Act. The state should support for undertaking scientific research
in the development of new form and methods for the treatment of drug
addiction. It is necessary that the government of India give more
concentration towards alcohol and drug rehabilitation by increasing
number of de-addiction centres. There should be co-ordination among
all de-addiction centres.

20) For the effective results, it is necessary that the government shall
guarantee the patient with drug addiction to get free medical assistance
in the procedure defined by the government, which includes an
examination, consulting, diagnosis, treatment and medical and social
rehabilitation. And the procedure for the medical observation and
registration of the drug addicts shall be established by the Government of India.

For this purpose, to establish de-addiction centres in each tahsil place. If any person found to be under the influence of drug, it is necessary that it shall be immediately examined by the forensic medical officer with a view to ascertaining his condition and to referring him to a public or private rehabilitation establishment. The forensic medical officer shall specify the duration of medical treatment and the physician or therapist shall provide the authority which handled the case with periodic report on the state of health and rehabilitation of the drug addict. The procedure for the medical observation and registration of the drug addicts shall be established by the Government of India.

According to researcher, prevention is the most effective approach to combat with the drug abuse problem. Therefore, the state government should develop prevention programmes at all levels means –

i) Family Programme: Under this programme, it should develop family bounding and relationship parental skill practice, to develop discussing and enforcing family policies on substance abuse and training of drug education and information.

ii) School Programme: To address risk factors for drug abuse such as aggressive behaviour, to develop variety of skills such as self control, emotional awareness, communications, solve social problems, drug resistance skills, self efficiency, study habit and academic support.

iii) Community Programme: Media is more effective to develop multiple base programme.

iv) There should be continuously research programme and follow up studies and engaged in experiments.