Chapter 2

STATUTORY LAW

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2.9 Summary
Chapter 2
STATUTORY LAW

2.1 Introduction:

All the branches of law closely related with man and his day-to-day affairs. The law tries to define Crime. What kinds of act or omission amount to a crime? The notion of crime is changing from time to time and from place to place. E.g. Drunkenness is not a punishable in India. However, and under the influence of the alcohol, negligent driving, rioting, public nuisance and serious offences like murder and rape lead to offence. In the USA, drunkenness is punishable in many jurisdictions.¹

During the first two decades of the 20th century, State as well as national policy was steadfastly opposed to manufacture, sale and consumption of narcotics and alcohol except for medical purposes.

2.2 History of drug laws in India (Pre-independence):

The use of psychoactive or mood altering substance has long existed in the country. Cannabis and opium were consumed for medical as well as recreational purposes. Cannabis was associated with religious occasion whereas opium was served at family/community ceremonies. Besides, these substances were administered to persons suffering from migraine, malaria, cholera or other minor sickness. Their use was regulated by social rather than legal norms. Excessive or problematic drug use was rarely reported. Opium poppy was one of the main commodities for export and generated considerable revenue during the sixteenth to nineteenth centuries period.

The first statutory law that regulated narcotic drugs in India was the Opium Act, 1857. The Act was introduced against the backdrop of the Opium wars (1839-1842 and 1856-1860) between Britain and China; and consolidated the colonial state’s control over the profitable poppy trade. The Opium Act of 1857 introduced licenses for growing poppy – a practice that

continues till date. It appointed Opium Agents and Opium Officers to supervise licensing and collection of opium, on behalf of the Government.

The Opium Act of 1878 strengthened Government control over cultivation, possession, transport, import, export, sale and warehousing of opium. It conferred enforcement powers on officers of Departments of Central Excise, Narcotics, Drugs Control, Customs and Revenue.

In 1930, the Dangerous Drugs Act extended regulation to coca leaves and hemp, besides opium and its synthetic varieties. It united in one punishment for unlicensed cultivation, possession, manufacture and import of dangerous drugs upto a maximum of three years imprisonment.

None of these Acts penalized consumption of drugs and/or possession for personal consumption.

2.3 Historical view of International Drug laws:

In the nineteenth century, various efforts were made to create multilateral framework for narcotic substances. They were led by China and the United States of America. In 1909, the Shanghai Opium Commission was established to collect data and estimate the extent of international opium trade. Three years later, thirteen States adopted the Hague Convention, 1912 to control the production, manufacture and distribution of opium. The Hague Convention came into force only after principles of ratification were clarified under the Treaty of Versailles, 1919. In 1920, the League of Nations passed a Resolution creating an Opium Advisory Committee to oversee the implementation of the Hague Convention.

By 1925, two international agreements led to the international community to commit itself to a reduction, as opposed to control of opium production. The first agreement concerning the Manufacture or Internal Trade in and Use of Prepared Opium, was concluded in Geneva on 11th February 1925 where signatory nations stated that they were “Fully determined to bring about the gradual and effective suppression of the manufacture of, internal trade in and use of prepared opium”. The second treaty, called the
International Opium Convention, 1925 also referred to as the Geneva Convention relating to Dangerous Drugs, extended control to cannabis and institutionalized the international system of regulation by creating a Permanent Central Opium Board to maintain statistics on international trade in narcotics. The series of conventions led down administrative measures, without criminalizing users and/or producers of opiates, cocaine and cannabis.

The Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, 1931 sought to limit supplies of potentially addicting but medicinally useful substances, such as morphine and codeine to amount necessary for medical and scientific purposes. It introduced a system for countries to submit estimates of the quantity of drugs produced and consumed for medical reasons. This practice continues under the existing international framework for drug control.

In 1936, Convention for the Suppression of the Illicit Traffic in Dangerous Drugs was the first treaty to focus on illegal trade in drugs. Proposing a semi-punitive approach, the Convention mandated signatories to designate certain activities as offences while regulating other acts. Signed by thirteen states, the Convention came into force in 1939.

In 1946, the League of Nations' drug control functions passed on to the United Nations (Hereinafter referred to as the ‘UN’). The League’s Advisory Committee on Opium became the UN Commission on Narcotics Drugs, which presently leads drug policy making within the UN system. Thereafter, in 1953, the Opium Limitation Protocol was adopted, which authorized seven countries including India to grow opium for export.

The UN Single Convention on Narcotic Drugs, 1961 was introduced to consolidate existing drug control measures into a ‘Single’ treaty. The 1961 Convention aims to balance the use of narcotic drugs by ensuring their availability for medical and scientific pursuits while simultaneously discouraging production, manufacture, export, import, distribution of, trade in, use and possession for non-medical purposes. The treaty laid down a 15 years period for states to remove non-medical use of opium and 25 years for coca
and cannabis. Drugs are classified according to their perceived liability to abuse and risk to public health under a fourfold system of Schedules. Schedule I contains drugs subject to the strictest controls including heroin, cocaine and cannabis, Schedule II lists out substances that require less stringent regulations, Schedule III covers drugs that are perceived to be at least risk of abuse and Schedule IV applies to drugs that are permitted for medical and scientific use.

The 1961 Convention also created the International Narcotics Control Board, a body comprising thirteen independent experts to oversee the implementation of international drug conventions.

The 1972 Protocol amending the 1961 Single Convention on Narcotic Drugs called upon member states to take increased efforts to prevent the illicit production of, traffic in and use of narcotic drugs and to provide treatment and rehabilitation to persons addicted to drugs.

In 1971, the Convention on Psychotropic Substances was adopted as a companion instrument to introduce controls over the manufacture, export and import of psychotropic substances such as amphetamines, barbiturates and hallucinogens like LSD. Its provisions are similar to those of the 1961 Convention.

Growing concern over transnational drug crimes and the difficulty in prosecuting persons involved in international drug trafficking led to the adoption of the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances in 1988. The 1988 Convention seeks to harmonize national laws and enforcement actions against drug trafficking, including provisions on extradition, mutual legal assistance, co-operation and assistance for transit states, controlled delivery, money laundering, asset seizure, the diversion of precursor chemicals and illicit traffic by sea and via the mail.

Together, the three drug conventions of 1961, 1971 and 1988 constitute the international legal framework for drug control. Like other international treaties, these drug conventions are not self-executing. Their provisions must be incorporated into domestic law by legislative acts, in
accordance with constitutional principles and the basic concepts of the legal system of that state.²

2.4 Legislative history of the NDPS Act:


According to the statement of objects and reasons of the NDPS Act, 1985. India was becoming a transit for drug trafficking and then the legislation was ineffective in countering the problem. The following deficiencies were noted in the law prevailing at the time –

1) Absence of stringent penalties against drug trafficking,
2) Weak enforcement powers,
3) Development of a vast body of international law, which India was a signatory to and
4) Lack of regulations over psychotropic substances.

The NDPS Act, 1985 was introduced as a comprehensive legislation to tighten control over abuse on narcotic drugs and psychotropic substances, enhance penalties, especially for trafficking in drugs, strengthen regulations over psychotropic substances and provide for the implementation of international conventions, to which India was a party.

The NDPS Act, 1985 combines elements of regulation with prohibition of narcotic drugs and psychotropic substances. The Act prescribes cultivation, production, manufacture, possession, sale, purchase, transport, warehousing, use, consumption, inter-state import and export, import and export outside India and transhipment of narcotic drugs and psychotropic substances except for medical and scientific reasons and in accordance with the statute and rules

² Indian Harm Reduction Network Vs Union of India, Criminal Writ Petition No. 1784/2010, pp.6-9
thereunder. At the same time, it empowers the Central and State Governments to frame rules and permit the above mentioned activities. For example, although consumption of morphine is illegal, the drug can be administered to patients suffering from severe pain as the latter constitutes legitimate medical use under the Act.

To deter drug crimes, the Act introduced a mandatory minimum penalty of rigorous imprisonment for ten years and a fine of Rs. One lakh.

The NDPS Act, 1985 was supplemented by the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988, which provides for preventive detention of persons involved in illicit traffic in narcotic drugs and psychotropic substances.

In 1989, the NDPS Act underwent the first set of amendments for combating drug traffic and abuse recommended that the law be made more stringent. At the time, among other provisions, the impugned Section 31A was also incorporated into the statute. On the procedural side, powers were conferred upon the Government to constitute special courts for speedy trial of cases and all offences under the Act were made cognizable and non cognizable.

Thereafter in 2001, Parliament passed the NDPS (Amendment) Act. The NDPS (Amendment) Act, 2001 sought to rationalize the sentencing structure, which was considered harsh and disproportionate. Earlier, a person with a small amount of contraband could be sentenced to ten years imprisonment and a fine of rupees one lakh if he failed to prove that the drug was meant for personal consumption. The NDPS (Amendment) Act, 2001 prescribes punishment according to the drug and quantity seized – according to whether the amount is ‘Small’ and ‘Commercial’. Under the present Act, a person dealing in small quantity of illicit drugs is subject to imprisonment of upto six months and/or fine of Rs. Ten thousand while a person dealing in commercial quantity can be sentenced to jail for a period of ten to twenty years and a fine from one to two lakh rupees. A person caught with an amount
between small and commercial quantity is punishable with imprisonment upto ten years and with fine extending to one lakh rupees.

2.5 Act at a glance:

The Narcotic Drugs and Psychotropic Substances Act is consisting 83 sections which are divided into 6 chapters as follows-

Chapter I : contains the title of the Act, definitions of various terms and expressions used therein.

Chapter II : empowers the Central Government as well as the State Government to make appointments of certain officers for the purpose of the Act.

Chapter II-A : provides for the constitution of a national fund for control of drug abuse.

Chapter III : provides for prohibition, control and regulations for cultivation, production, manufacture, etc. of any narcotic drugs and psychotropic substances.

Chapter IV : deals with the offences punishable under the Act and prescribed severe penalties viz – minimum imprisonment of ten years and fine upto Rs. two lakhs. When commission of offence is repeated by a person, death penalty has also been prescribed.

Chapter V : prescribes the procedure to be followed by the officers appointed for the implementation of various provisions of the Act.

Chapter V-A : deals with forfeiture of properly derived from and used in illicit traffic of drugs.

Chapter VI : contains miscellaneous provisions.

2.6 Important provisions:

This Act prohibits –

- Cultivation of opium, poppy, cannabis and coca plant.
• Production, manufacture, possession, sale, purchase, transport, warehousing, use, consumption, import, export or transhipment of any narcotic drug or psychotropic substance except for medical and scientific purposes and as per the rules or orders and conditions of licence issued.

The NDPS Act empowers Central Government to frame rules for certain purposes and State Governments to frame rules for certain others. Thus, there are Narcotic Drugs and Psychotropic Substances Rules, 1985 of the Central Government and Narcotic Drugs and Psychotropic Substances Rules of different states.

Violation of any rule of either the State or Central Narcotic Drugs and Psychotropic Substances Rules attracts punishment under this Act.

2.6.1 Small and Commercial Quantities of important drugs:

The punishments for many offences under the Narcotic Drugs and Psychotropic Substances Act depend on the quantity of drug involved with three levels of punishment for small, more than small but less than commercial and commercial quantities.³

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Drug</th>
<th>Small Qty.</th>
<th>Commercial Qty.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Amphetamine</td>
<td>2 Grams</td>
<td>50 Grams</td>
</tr>
<tr>
<td>2</td>
<td>Buprenorphine</td>
<td>1 Gram</td>
<td>20 Grams</td>
</tr>
<tr>
<td>3</td>
<td>Charas/Hashish</td>
<td>100 Grams</td>
<td>1 Kg.</td>
</tr>
<tr>
<td>4</td>
<td>Cocaine</td>
<td>2 Grams</td>
<td>100 Grams</td>
</tr>
<tr>
<td>5</td>
<td>Codeine</td>
<td>10 Grams</td>
<td>1 Kg.</td>
</tr>
<tr>
<td>6</td>
<td>Diazepam</td>
<td>20 Grams</td>
<td>500 Grams</td>
</tr>
<tr>
<td>7</td>
<td>Ganja</td>
<td>1 Kg</td>
<td>20 Kg</td>
</tr>
</tbody>
</table>

³ Published by V. K. Singh Kushwah, Additional Director General, National Academy of Customs, Excise and Narcotics, Faridabad
<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Drug</th>
<th>Small Qty.</th>
<th>Commercial Qty.</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>Heroin</td>
<td>5 Grams</td>
<td>250 Grams</td>
</tr>
<tr>
<td>9</td>
<td>MDMA (Ecstasy)</td>
<td>0.5 Gram</td>
<td>10 Grams</td>
</tr>
<tr>
<td>10</td>
<td>Methamphetamine</td>
<td>2 Grams</td>
<td>50 Grams</td>
</tr>
<tr>
<td>11</td>
<td>Methaqualone (Mandrax)</td>
<td>20 Grams</td>
<td>500 Grams</td>
</tr>
<tr>
<td>12</td>
<td>Morphine</td>
<td>5 Grams</td>
<td>250 Grams</td>
</tr>
<tr>
<td>13</td>
<td>Poppy Straw</td>
<td>1 Kg</td>
<td>50 Kg</td>
</tr>
</tbody>
</table>

2.6.2 **Investigation period:**

According to section 36-A(4), the provisions of NDPS Act, investigation should have completed within 180 days.

If the investigation was not completed within the stipulated period as provided under section 167 of the Code of Criminal Procedure, 1973, thereof ‘Ninety days’, an indefeasible right was created in favour of the accused seeking bail.

There is no doubt that an investigation normally should be completed at the earliest. However, the legislature was aware of the fact that the cases involving narcotic drugs and psychotropic substances were not ordinary cases where investigation could be completed in the same time as in IPC cases. It is for this reason that the legislature, in its wisdom, by section 36-A(4) amended provisions of section 167(2) of the Code of Criminal Procedure and substituted ‘180 days’ in place of ‘90 days’ for NDPS offences. The legislature further provided that if it is not possible to complete the investigation within the said period of 180 days, the Special Court may extend the said period upto ‘One year’ on the report of the public prosecutor.⁴

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⁴Narcotic Control Bureau Vs Naresh Kumar Jain, Cri. Rev. Petition No. 329/2010
2.6.3 **Offences and penalties:**

The punishment for many offences under this Act depends on the quantity of drug involved with 3 levels of punishment.

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Offence</th>
<th>Penalty</th>
<th>Sections</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Cultivation of opium, cannabis or coca plants without licence</td>
<td>Rigorous imprisonment upto 10 years and fine upto Rs. 1 lakh</td>
<td>Opium-18(c), Cannabis-20, Coca-16</td>
</tr>
<tr>
<td>2</td>
<td>Embezzlement of opium by licensed farmer</td>
<td>Rigorous imprisonment i.e. 10 to 20 years and fine Rs. 1 to 2 lakhs (Regardless of the quantity)</td>
<td>19</td>
</tr>
</tbody>
</table>
| 3       | Production, manufacture, possession, sale, purchase, transport, import inter-state, export inter-state or use of drugs | • **Small quantity:** Rigorous imprisonment upto 6 months or fine upto Rs. 10,000/- or both.  
• **More than small quantity but less than commercial quantity:** Rigorous imprisonment upto 10 years and fine upto Rs. 1 lakh.  
• **Commercial quantity:** Rigorous imprisonment from 10 to 20 years and | Cannabis-20, Opium-18, Prepared opium-17, manufactured drugs or their preparation-21 |
<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Offence</th>
<th>Penalty</th>
<th>Sections</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>fine Rs. 1 to 2 lakhs.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Small and commercial quantities are defined for each drug separately through a notification.</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Import, export or transhipment of the narcotic drugs and psychotropic substances</td>
<td>Same as above.</td>
<td>23</td>
</tr>
<tr>
<td>5</td>
<td>External dealing in the narcotic drugs and psychotropic substances i.e. engaging in or controlling trade whereby drugs are obtained from outside India and supplied to a person outside India</td>
<td>Rigorous imprisonment from 10 to 20 years and fine of Rs. 1 to 2 lakhs (Regardless of the quantity)</td>
<td>24</td>
</tr>
<tr>
<td>6</td>
<td>Knowingly allowing one’s premises to be used for</td>
<td>Same as for the offence</td>
<td>25</td>
</tr>
<tr>
<td>Sr. No.</td>
<td>Offence</td>
<td>Penalty</td>
<td>Sections</td>
</tr>
<tr>
<td>---------</td>
<td>--------------------------------------------------</td>
<td>-------------------------------------------------------------------------</td>
<td>-------------------</td>
</tr>
<tr>
<td>7</td>
<td>Violations pertaining to controlled substances (Precursors)</td>
<td>Rigorous imprisonment upto 10 years and fine of Rs. 1 to 2 lakhs</td>
<td>25-A</td>
</tr>
<tr>
<td>8</td>
<td>Financing traffic and harbouring offenders</td>
<td>Rigorous imprisonment from 10 to 20 years and fine Rs. 1 to 2 lakhs.</td>
<td>27-A</td>
</tr>
<tr>
<td>9</td>
<td>Attempts, abetment and criminal conspiracy</td>
<td>Same as for the offence.</td>
<td>Attempt – 28, abetment and criminal conspiracy – 29</td>
</tr>
<tr>
<td>10</td>
<td>Preparation to commit an offence</td>
<td>Half the punishment for the offence.</td>
<td>30</td>
</tr>
<tr>
<td>11</td>
<td>Repeat offence</td>
<td>One and half times the punishment for the offence. Death penalty in some cases.</td>
<td>31 and Death – 31A</td>
</tr>
<tr>
<td>12</td>
<td>Consumption of drugs</td>
<td>a) Cocaine, morphine, heroine – rigorous imprisonment upto one year or fine upto Rs.20,000/- or both.</td>
<td>27 and Immunity – 64A</td>
</tr>
<tr>
<td></td>
<td></td>
<td>b) Other drugs –</td>
<td></td>
</tr>
<tr>
<td>Sr. No.</td>
<td>Offence</td>
<td>Penalty</td>
<td>Sections</td>
</tr>
<tr>
<td>--------</td>
<td>-------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------</td>
<td>----------</td>
</tr>
<tr>
<td></td>
<td></td>
<td>imprisonment upto six months or fine upto Rs.10,000/- or both.</td>
<td></td>
</tr>
<tr>
<td>c)</td>
<td>Addicts volunteering for treatment enjoy immunity from prosecution.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Punishment for violations not elsewhere specified</td>
<td>Imprisonment upto six months or fine or both.</td>
<td>32</td>
</tr>
</tbody>
</table>

In the NDPS Act, in most of the offences, the minimum punishment is 10 years rigorous imprisonment and fine of rupees one lakh. It is well recognized principle that punishing is an art which involves the balancing of several factors like gravity of the offence and other circumstances. It is also accepted by the jurists that the provisions of the Indian Penal Code, 1860 have fairly stood, the test of the time in the matter of awarding punishment. On the same lines, the provisions in the NDPS Act prescribing sentences requires a fresh look on the basis of sentencing methods reflected in the Indian Penal Code and other amendments. It is needless to mention that a merciful sentence does not always meet the needs of justice, but at the same time the Courts also are generally unwilling to award always a severe sentence irrespective of the gravity.⁵

⁵ 155th report of the Law Commission of India
2.6.4 Death penalty for certain offences after previous conviction 
(Section 31A):

1) Notwithstanding anything contained in section 31, if any person who has been convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, any of the offences punishable under (section 19, section 24, section 27-A and for offences involving commercial quantity of any narcotic drugs and psychotropic substances) is subsequently convicted of the commission of or attempt to commit, or abetment of, or criminal conspiracy to commit, an offence relating to —

a) Engaging in the production, manufacture, possession, transportation, import into India, export from India or transhipment of the narcotic drugs or psychotropic substances specified under column (1) of the table and involving the quantity which is equal to or more than the quantity indicated against each such drug or substance as specified in column (2) of the said table.

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Particulars of Narcotic Drugs/ Psychotropic Substances (1)</th>
<th>Quantity (2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>i</td>
<td>Opium</td>
<td>10 Kg.</td>
</tr>
<tr>
<td>ii</td>
<td>Morphine</td>
<td>1 Kg.</td>
</tr>
<tr>
<td>iii</td>
<td>Heroin</td>
<td>1 Kg.</td>
</tr>
<tr>
<td>iv</td>
<td>Codeine</td>
<td>1 Kg.</td>
</tr>
<tr>
<td>v</td>
<td>Thebeine</td>
<td>1 Kg.</td>
</tr>
<tr>
<td>vi</td>
<td>Cocaine</td>
<td>500 grams</td>
</tr>
<tr>
<td>vii</td>
<td>Hashish</td>
<td>20 Kg.</td>
</tr>
<tr>
<td>viii</td>
<td>Any mixture with or without any neutral material of any of the above drugs</td>
<td>Lesser of the quantity</td>
</tr>
<tr>
<td>Sr. No.</td>
<td>Particulars of Narcotic Drugs/ Psychotropic Substances (1)</td>
<td>Quantity (2)</td>
</tr>
<tr>
<td>---------</td>
<td>----------------------------------------------------------</td>
<td>--------------</td>
</tr>
<tr>
<td></td>
<td>between the quantities given against the respective narcotics drugs and psychotropic substances mentioned above forming part of the mixture</td>
<td></td>
</tr>
<tr>
<td>ix</td>
<td>LSD, LSD-25(+)N,N-Diethyllysergamide (d-lysergic acid diethylamide)</td>
<td>500 grams</td>
</tr>
<tr>
<td>x</td>
<td>THC (Tetrahydrocannabinols, the following isomers: 6-a (10a), 6-a (7), 7, 8, 9, (11) and their stereochemical variants)</td>
<td>500 grams</td>
</tr>
<tr>
<td>xi</td>
<td>Msethamphetamine (+)-2-Methylamine-1-Phenylpropane</td>
<td>1500 grams</td>
</tr>
<tr>
<td>xii</td>
<td>Methaqualone (2-Methyl-3-0-toly1-4-(3H)-Quinanzolinone)</td>
<td>1500 grams</td>
</tr>
<tr>
<td>xiii</td>
<td>Amphetamine (+)-2-amino-1-Phenylpropan</td>
<td>1500 grams</td>
</tr>
<tr>
<td>xiv</td>
<td>Salts and preparations of the Psychotropic Substances mentioned in (ix) to (xiii)</td>
<td>1500 grams</td>
</tr>
</tbody>
</table>

b) Financing, directly or indirectly, any of the activities specified in clause (a) shall be punishable with death.

2) Where any person is convicted by a competent court of Criminal Jurisdiction outside India under any law corresponding to the provisions of (section 19, section 24 or section 27-A and for
offences involving commercial quantity of any narcotic drug or psychotropic substance) such person, in respect of such conviction, shall be dealt with for the purpose of sub-section (1) as if he had been convicted by a Court in India.

2.6.5 Establishment of a Special Court:

Section 36 empowers the Government to constitute Special Courts for trying offences under the Act. The offences under the NDPS Act are exclusively triable by such special courts (Sec. 36-A of the Act). The Special Court shall consist of a single judge who have held the office of the Sessions Judge or Additional Sessions Judge immediately before his appointment as a Special Judge (Sec. 36).

Under Sec. 36-A, all the offences under the Narcotic Drugs and Psychotropic Substances Act shall be triable only by the Special Court or until the Special Court is constituted, by the Session Judge.

Magistrate is empowered to authorize detention for a period not exceeding 15 days. The Magistrate is then required to forward the accused to the Special Court which possesses the same power which the Magistrate has under Sec. 167 of the Code of Criminal Procedure. The Special Court is empowered to take cognizance of a crime under the Act upon perusal of the police report or upon a complaint made by an officer of the Central Government or State Government authorized in that behalf.6

Although the aforesaid section inserted by the Amendment Act 1989 came into force with effect from 29th May 1989 yet even the lapse of years, most of the State Governments have not constituted the Special Court. For the speedy trial of the offences, it is necessary to establish special courts in every state without delay. It must be remembered by every State Government that the administration of criminal justice is the primary duty of every State Government and the constitution of the special court envisaged in the Act passed by the

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Parliament should not be held up due to financial constraints. The State Government cannot avoid its constitutional obligation to provide speedy trial to the accused by pleading financial or administrative inability. The state is under a constitutional mandate to ensure speedy trial and whatever is necessary for this purpose has to be done by the state. Therefore, mandatory provisions should be incorporated for the creation of appropriate number of special courts in every state of the country without any delay.\textsuperscript{7}

\textbf{2.6.6 Enforcement Agency :}

1) \textbf{Narcotic Control Bureau :} The Narcotic Control Bureau was set up on 17\textsuperscript{th} May 1986 as a primary enforcement agency to deal exclusively with drugs.

It is the chief law enforcement and intelligence agency of India responsible for fighting drug trafficking and the abuse of illegal substances. This high power body is controlled by the Director General.

It has direct liaison with the United Nations’ Narcotic Control Bureau and other international agencies working against drug trafficking\textsuperscript{8}.

2) \textbf{Other Enforcement Agencies :} A number of other enforcement agencies have been provided effective support with the Narcotic Control Bureau acting as a nodal agency to enforce the law. It includes –

a) The Central Excise

b) Customs

c) Border Security Force (BSF)

d) Central Bureau of Narcotics (CBN)

e) Central Bureau of Investigation (CBI)

\textsuperscript{7} 155\textsuperscript{th} report of the Law Commission of India.

\textsuperscript{8} Y. K. Sabharwal, Former Chief Justice of India, an article, Seminar organized by Delhi High Court, p.8
f) Directorate of Revenue Intelligence (DRI)
g) Coast Guard
h) Sashastra Seema Bal (SSB)
i) State Police, Excise and Forest Authorities

2.6.7 Powers under the Act:

Officers of the following departments can be empowered by the Government by a general or special order to enforce the Narcotic Drugs and Psychotropical Substances Act such as –

- Central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military and armed forces.

- Revenue, drug control, excise, police or any other department of the State Government.

They enjoy the following powers for the enforcement of the Act -

A) Searches:

1) A gazetted officer can authorize any officer subordinate to him not below the rank of sepoy, peon or constable to search any building, conveyance or place by day or night [Section 41(2)].

2) Any officer not below the rank of sepoy, peon or constable can without warrant (From a magistrate) or authorization (From a gazetted officer), search between sunrise and sunset (Section 42). He can also search between sunset and sunrise under certain circumstances.

B) Seizure: Any officer not below the rank of sepoy, peon or constable can seize drugs and materials used in their manufacture, controlled substances (i.e. Precursors), conveyances, evidentiary material, etc. (Section 42).

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9 Y. K. Sabharwal, Former Chief Justice of India, an article, Seminar organized by Delhi High Court, p.9
C) **Detention, search and arrest of persons**: Any officer empowered under Sections 41 and 42 can detain, search and if thinks proper, arrest any person whom he has reason to believe to have committed an offence punishable under the Act [Section 42(1)(d)].

D) **Public places**: Any officer of the departments empowered to enforce NDPS Act can search, seize and arrest in public places (Section 43).

E) **Conveyances**: Any officer authorized under section 42 can stop search, rummage and examine any animal or conveyance. He can compel the animal or conveyance to stop and if all lawful means of stopping. If fail, he can fire upon such animal or conveyance (Section 49).

F) **Powers with respect to illegal crops**: Any gazetted officer empowered under section 42 or a magistrate can attach illegally cultivated opium, cannabis or coca plants and order their destruction (Section 48).

G) **Power to call for information**: During enquiry in connection with any contravention of any provisions of the Act, any officer empowered under section 42 can

- Call for information from any person
- Require any person to deliver any document or thing useful for the enquiry
- Examine any person acquainted with the facts and circumstances of the case (Section 67).

It has been seen that the investigation of narcotic cases is carried out by more than one investigating officers with the result that the proper investigation is not there and some lacunae creeps in the investigation benefiting the necessary that investigation of the case
under the Act should be conducted and completed by one Investigating Officer.\textsuperscript{10}

\textbf{2.6.8 Officer's responsibilities under the Act:}

1) Officer should take down any information given by any person in writing before authorizing a search (Section 41).

If the search is under section 42, the officer should also send a copy of the information taken in writing or the grounds of belief for search within 72 hours to his immediate superior officer.

2) Before searching any person by the officer appointed under the Act, explain to him that he has a right to be searched before a gazetted officer or a magistrate. If he so requires, take him to a gazetted officer or a magistrate before whom he can be searched (Section 50).

If officer have reason to believe that it is not possible to take him to a gazette officer or a magistrate, without giving him a chance to part with the drug, controlled substance, etc., officer can search him under section 100 of the Cr.P.C. [Sections 50(5) and 50(6)].

3) Officer should inform the arrested person as soon as the grounds of his arrest [Section 52(1)].

4) If a person is arrested or an article has been seized under a warrant issued by a magistrate, same should be forwarded by the officer to that magistrate [Section 52(2)].

5) If the person has been arrested or the article has been seized otherwise than under a warrant, the same should be forwarded by the officer to the nearest police station or any other officer empowered under sections 53 and 52(3).

\textsuperscript{10} 155\textsuperscript{th} report of the Law Commission of India, p.62
6) The officer should assist officers of any other department empowered under section 42 if they give a notice or make a request (Section 56).

7) Whenever the officer arrests any person, he should make a full Report to his superior within 48 hours (Section 57).

2.6.9 **Immunities in drug cases**:

1) **Officers**: Officers acting in discharge of their duties in good faith under the Act are immune from suits, prosecution and other legal proceedings (Section 69).

2) **Addicts**: Addicts charged with consumption of drugs (Section 27) or with offences involving small quantities will be immune from prosecution, if they volunteer for de-addiction. This immunity may be withdrawn if the addict does not undergo complete treatment (Section 64-A). It is pertinent to note that it is not essential that the drug, if any found with the addict in small quantity, need not be for personal use.

3) **Offenders**: Central or State Governments can tender immunity to an offender in order to obtain his evidence in the case. This immunity is granted by the Government and not by the court (Section 64).

4) **Minors**: All offences committed under any law by persons under the age of 18 will be converted by the Juvenile Justice (Care and Protection) Act. This Act seeks to reform such juveniles rather than punish them under the respective Acts. It prevails over any other Act in respect of persons below the age of 18. Hence such persons cannot be prosecuted under the Narcotic Drugs and Psychotropic Substances Act also.
2.6.10 Preventive Detention:

Drug traffickers can be obtained to prevent their illicit traffic through an executive order issued under the prevention of illicit traffic in Narcotic Drugs and Psychotropic Substances Act, 1988. Proposals for preventive detention along with justification can be sent to Joint Secretary (NC) in the Department of Revenue or to designated detaining authorities of the State Governments.

2.6.11 Forfeiture of illegal acquired property:

The officer can hurt the drug traffickers if he deprives them of their ill-gotten wealth. Illegally acquired property of drug traffickers, their relatives and associates can be frozen or seized by the investigating officer under Chapter V-A of the Act.

A quasi-judicial authority called the Competent Authority and Administrator decides the confirmation of such freezing/seizing order and the ultimate forfeiture of the property\(^{11}\).

2.6.12 National Fund for Control of Drug Abuse:

Central Government may, constitute a fund to be called ‘the National Fund for Control of Drug Abuse’. It shall be applied in connection with the measures taken for –

1) combating illicit traffic in narcotic drugs, psychotropic substances or controlled substances,

2) controlling the abuse of narcotic drugs and psychotropic substances,

3) identifying, treating and rehabilitating addicts,

4) preventing drug abuse;

5) educating public against drug abuse and

\(^{11}\) P. V. Subba Rao, Joint Director, an article published by V. K. Singh Kushwah, Additional Director General, National Academy of Customs, Excise and Narcotics, Faridabad
6) supplying drug to addicts where such supply is medical necessity\textsuperscript{12}.

\textbf{2.6.13 Establishment of Centres :}

1) The Government may, in its discretion establish as many centres at it thinks fit for identification, treatment, education, after care, rehabilitation, social reintegration of addicts and for supply, subject to such conditions and in such manner as may be prescribed, by the concerned Government of any narcotic drugs and psychotropic substances to the addicts registered with the Government and to others where such supply is a medical necessity.

2) The Government may make rules consistent with this Act providing for the establishment, appointment, maintenance, management and superintendence of, and for supply of narcotic drugs and psychotropic substances from the centres referred to in above sub-section (1) and for the appointment, training, powers, duties and persons employed in such centres\textsuperscript{13}.

Although the provision has been inserted in the Act for the establishment of centres for identification, treatment and rehabilitation of addicts, but it has been observed that some of the State Government have not established such centres with the result that the addiction are running after drug traffickers for getting the drug require and the purposes of this provision for getting the drugs require and the purpose of this provision for de-addiction and rehabilitation has been frustrated. There is need for the Government to see that the object underlying the section is achieved by utilizing the service of non-governmental organizations and if necessary by establishing a wing in government hospitals.\textsuperscript{14}

\textsuperscript{12} Dr. Rakesh Lal, Manual for physicians, Substance Use Disorder, Oct-2005, website www.google.co.in

\textsuperscript{13} R. P. Kataria, Law Relating to Narcotic Drugs and Psychotropic Substances in India, Edn 2\textsuperscript{nd}, 2008, Orient Publishing Company, p.438

\textsuperscript{14} 155\textsuperscript{th} report of the Law Commission of India
2.7 Comparative Study with the Law of America:

2.7.1 Introduction:

Drug and alcohol abuse causes many social problems not only in India but also in American Society. There is no exact record of when men started using drugs for non-medical purposes. Alcohol and drug gives a lot of pleasure and have their advantages when reasonably used. However, when they are used excessively, they become poison. Thus, the history of drug use can be understand through the history of attempts to regulate it. In modern times, no country has ever attempted prohibition on a larger scale than the United States. In America, the first significant prohibitory drug legislation was enacted in 1875. this legislation primarily attacked the use of Chinese opium in the United States. Then according to the provisions of Hague Convention, the US enacted the Harrison Act in 1914 to demonstrate the nation’s attempt to carry out the international effort of suppressing the abuse of opium, morphine and cocaine.

After 2nd world war, 2 Acts were passed viz – the Buggs Act in 1951 and the Narcotic Control Act in 1970, imposing heavy penalties for drug-law-violations.

In 1960, with the awareness of treatment, a new policy in the history of event of alcohol and drug addiction was born. It is remarkable that the government shifted its strategy towards alcohol and drug rehabilitation. Between 1969 to 1974, the number of federally funded Drug Rehabilitation Programmes dramatically increased from 16 to 926\(^\text{15}\).

2.7.2 Alcoholism and Drug Addiction as disabilities under the Americans with Disabilities Act:

The significance of the Act is that -

1) Ensuring help for addicts who don't normally want to expose their problems for fear of losing their jobs or because of disadvantages, they may suffer and;

2) In providing additional rehabilitation to the individual who might relapse after years of successful recovery.

3) The ADA authorizes the employer to control alcohol and drug abuse in the workplace.

The employer can prohibit the use of alcohol and the illegal use of drugs in the workplace and it can require employees not to be under the influence of alcohol or drugs while at work.

2.7.3 Drug Courts as a new way to Alcohol and Drug Problem:

The United States has developed unique problem solving courts to treat cases involving alcohol and drug abusing offenders and to help them to deal with their substance abuse problems by judicial intervention. Now there are more than 1200 drug courts in operation and more than 470 drug courts in the planning process throughout the United States. Drug Court has received enormous public support. It is so successful that many judges celebrate it as a new way of justice.¹⁶

A Drug Court is a special court given the responsibility to handle cases involving less serious drug using offenders through a supervision and treatment programme. These programs include frequent drug testing, judicial and professional supervision, drug counseling, treatment, educational opportunities and the use of sanctions and incentives. The Drug Treatment Courts (DTCs) are approaching the problem of drug offenders with the view that substance abuse is a chronic, progressive, relapsing disorder, a condition requiring therapeutic remedies rather than severe punishment. Drug Courts' Judges are also open to reduce or set aside sentences once the offender complete their treatment programs successfully.

¹⁶ http://www.whitehousedrugpolicy.gov/enforce/drugcourt.html
The court found it would be cruel and unusual punishment to make a criminal offence of such disease. Otherwise, a person could be continuously guilty of the offence without being guilty of actual criminal conduct. Also, the court found addiction to narcotics and alcohol to be not only a mental but also a physical illness appropriate for treatment.

Under such cases, the main actors are the clients and the judge, who interacts with the client like a proactive therapist. In Drug Treatment Courts, the judge is considered to be the leader of this team.

2.7.4 The Role of Drug Court:

In DTCs, the roles are totally different because lawyers are mostly silent and play less prominent roles. The main actors are the client and the judges, who interacts with the client like a proactive therapist. In DTCs, the judge is considered to be the leader of this team, taking up duties beyond his traditional role as objective arbiter and requiring him to develop new expertise. As stage director and primary actor, "the drug court judge is expected to engage the community, campaigning on behalf of the programme, pulling different resources and services together and developing relationships with the media, garnering support from the police.

The prosecutor is expected to ensure that the offender does not have a violent history and will not pose risks to the public while attending a treatment programme and to ensure that the client follows all drug court requirements. Similar to the prosecutor, the defense attorney departs from his traditional duty of exercising his client's full judicial rights, trying instead to help the addicted defendant stay in the treatment programme and encouraging him not to fail and relapse until graduation. In sum, these transformed roles ask both sides to achieve the top priority of helping to solve the client's drug addiction problem.
2.7.5 The Drug Court Treatment Programme:

The Drug Court Treatment Programme has divided into following 3 phases – (1) Detoxification, (2) Stabilization and (3) Aftercare. Phase I-Detoxification lasts twelve to fourteen days, but may be longer if the client suffers difficulties getting off drugs. Every defendant is appointed a counselor, who makes sure that the defendant’s appointments are kept and that the client appears every day to leave a urine specimen, the results of which the counselor tracks. Also, the counselor offers individual or group counseling and a 12-step programme. “An important component of this phase is the development of the defendant’s treatment plan.” Acupuncture is commonly used during this phase to reduce cravings, minimize withdrawal symptoms, and minimize the feelings of fear and uncertainty commonly experienced by defendants during the first several days or weeks after withdrawals from drugs. If the defendant is unable to control his cravings, he may be imprisoned for two weeks in the jail’s treatment beds reserved specifically for the drug court programme. After the defendant has proved to the judge that he is able to function in a less structured environment, he is able to advance to Phase II-Stabilization.

Programme rules required the defendant to complete 12 scheduled sessions with his primary counselor and to produce seven clean urine samples in order to proceed to the second phase. During Phase II, individual and group counseling continues and the defendant also attends 12-step fellowship meetings in an effort to maintain his drug-free status with continuing acupuncture a couple times a week. Yet, the defendant has freedom in choosing the treatment options he wishes to participate in as long as his urine tests clean. Typically, Phase II is programmed to last 14 to 16 weeks, but may be extended for months or even a year, based on the client’s needs. Furthermore, if the client experiences extreme difficulty staying off drugs, the judge will send him back to Phase I. Once treatment staff members have
determined that the defendant has made sufficient progress, he is able to advance to Phase III. During this phase, the defendant focuses more on preparing himself for the future, academically and occupationally, than on staying away from drugs. The defendant still returns to court on a regular basis and urine tests are required during aftercare. However, the defendant is encouraged to act without the aid of a treatment staff and to focus on his educational and vocational needs.

Since drug court started in 1989, the drug court movement has become an international movement.

2.8 **The US experience could be useful to India:**

The problems of alcoholism and drug addiction are major concerns in India. Drug abuse has been identified as playing a significant part in the spread of diseases like AIDS$^{17}$. The recent trend in drug abuse among youth people indicate that, the abuse of illicit drugs has become more popular among mainstream youth. There is also risk that drug abuse in recreational setting in increasingly becoming part of the lifestyle of certain youth groups. The new patterns of drug abuse requiring enhance efforts in prevention and the development of new approaches to it$^{18}$. If we adopt US experience as a Drug Treatment Court, it will help to control the drug problem successfully.

2.9 **Summary:**

Thus, it is observed that the Indian Government cannot handle the drug related criminals. An Addiction treatment policy is needed rather than severe punishment. The Addiction treatment should be mandatory so that drug addicts and alcoholics will be given the opportunity of treatment without any fear of arrest. In America, there is an effective enactment such as the Americans with Disabilities Act (ADA). Still there is no such enactment in India. It is remarkable that the American Government concentrated towards alcohol and drug rehabilitation. Between 1969 to 1974, the number of

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$^{17}$ Y. K. Sabharwal, former Chief Justice of India, an article, the National Seminar organised by Delhi High Court

$^{18}$ Commission on Narcotic Drugs, 45th Session, March 2002, Vienna
federally funded drug rehabilitation programs dramatically increased from 16 to 926 in 1974. In India, there are 122 de-addiction centres. They are established in big cities only and not a single de-addiction centre is established in rural and tribal areas today also. In America, Drug Court is a new way to solve Alcohol and drug problem. In 1989, the first Drug court was established in Florida. At present, there are more than 2000 courts through out the United States. In India, there is need to adopt such new idea of the Drug Court. In America, there is Drug Court Treatment Programs. It is mandatory and it is divided into 3 phases such as (1) detoxification (2) stabilization and (3) after care. The treatment is purely scientific basis. The treatment is given for 2 to 3 years. During the period the defendant still return to court on a regular basis. Now the Drug court movement has become an international movement. The US experience could be useful our society. In India, there is the legal procedure of treatment, they are not operating effectively. There is no mandatory after care program. Usually such patient gets treatment for only one or two months. India has seen a sharp increase in drug-related crimes, mainly caused by recreational drug users. The numbers of habitual drug users are exceeding. This result from cheaper and new drug offering strong effect which are smuggling from other countries. At present, there is stringent law to regulate of alcohol and drug addiction. However in enforcing the law, it is not so effective. There is no separated hospital for the treatment of drug addicts in rural areas and tribal areas. The present Government policy favours punishment. This policy is increasing the problem because alcoholics and drug addicts refuse admitting their addiction. There is need for taking action for improving the capability of treatment and rehabilitation processes for drug addict.