CHAPTER – VI

INDIAN LAW TO CHECK ILLEGAL DRUG TRAFFICKING: A CRITICAL EVALUATION

Introduction

The increase in drug addiction, despite the efforts of the government to monopolise the trade in opium and the existence of stringent legislative measures, would seem to indicate the sly hand of vested interests connected with the drug cartel, in subverting the legal barricade: and inducing drug addiction\(^1\). Increased consumption of opium and other drugs gives tremendous economic advantage to the drug barons. The tycoons of the drug cartel, who have international linkages, are manipulating the unhealthy economic condition, and more particularly the destabilized political situation, to push drugs into the society, totally disregarding the health and well being of the people.

Today, terrorist organizations are increasingly being funded by the drug mafia and the crime world\(^2\). The wide range of illegal activities presents an equally wide range of vulnerability to law enforcement action\(^3\). Trafficking in drugs which have been categorized under white collar crimes, threatens the integrity and stability of Governments too\(^4\). The dimensions of
the drug problem have become so big today that every country has to be concerned about it, and try by various ways to tighten its legal regime in order to protect the national interest⁵.

Drug Law Enforcement Agencies in India

- Narcotics Control Division

Narcotics Control Division in the Department of Revenue facilitates and co-ordinates the functioning of Narcotics Control Bureau (NCB), Central Bureau of Narcotics (CBN) and the Chief Controller of Factories (CCF). Department of Revenue is the nodal department responsible for the administration of the Narcotic Drugs and Psychotropic Substances Act, 1986 and implementation of international conventions, treaties, bilateral agreements and MOUs⁶. The anti-drug laws were further tightened with the enactment of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act (PITNDPS Act) in 1988⁷. The NCB which was created in terms of this Act⁸ acts as the nodal agency for intelligence collection, dissemination, enforcement and co-ordination with various Central and State enforcement organizations and international, regional and foreign enforcement agencies⁹. CBN has been primarily given
the responsibility of licensing and supervising opium cultivation, and procuring opium from the cultivators. In addition, the EXIM Policy, designated it as the competent authority for the following purposes:

(i) Export of psychotropic substances and precursor chemicals.

(ii) For interaction with foreign governments, UN bodies, other international organizations besides Customs, Central Excise and enforcement agencies of various States concerned

(iii) To verify the legitimacy of the foreign trade transactions, and

(iv) Investigation of the suspected consignments in order to prevent their diversion to illicit channels\(^\text{10}\).

The trade nexus between drug traffickers and criminals started corroding the national security and social fabric of the country. To put an end to such practice, the Government of India constituted a Special Appellate Tribunal for Forfeited Property\(^\text{11}\), having five divisions with head offices at Delhi, Mumbai, Kolkata, Chennai and Lucknow\(^\text{12}\).

The Tribunal has jurisdiction over the property of persons convicted under Customs Act and NDPS Act, or detained under COFEPOSA and
PITNDPS. The properties of convicted persons and their relatives are liable to be forfeited to the Central government, unless they are able to prove that the property is not acquired by illegal-means\(^\text{13}\). The properties include movables, immovable, bank balances etc. The legal validity of this provision under SAFEMA was questioned before the Supreme Court but ultimately the Court upheld the provisions, stating that the most effective punishment, which would act as a deterrent, is to deprive the offenders of their ill-gotten wealth\(^\text{14}\).

- **The Narcotic Control Bureau (NCB)**

  The NCB which is responsible for anti-narcotic operations all over the country, checks the spread of the contraband as well as the cultivation of drugs\(^\text{15}\). The administration of the NDPS Act, 1985, as was with the predecessor Acts *viz.* the Opium Act, 1878 and the Dangerous Drugs Act, 1930 falls within the domain of the Department of Revenue, in the Ministry of Finance\(^\text{16}\).

  The Drugs and Cosmetics Act, 1940, continues to be in force in respect of formulations that contain narcotic drugs and psychotropic substances\(^\text{17}\). Various enforcement agencies namely Border Security Force,
Customs and Central Excise, Directorate of Revenue Intelligence, Central Bureau of Narcotics and Central Economic Intelligence Bureau are involved in the administration of this Act. Most of these agencies are under the Department of Revenue itself. The State enforcement agencies including the Police, Excise and Drugs Control Department are also involved in the administration of the NDPS Act. In order to achieve the co-ordination of the multiple bodies, Narcotics Control Bureau was created. The Bureau’s responsibilities include administrative co-ordination with different Union Ministries, State Government Departments and the various Central and State Law Enforcement agencies for effective implementation of the various regulatory, prohibitory penal and administrative provisions of the NDPS Act. The Bureau also acts as the nodal agency for intelligence and enforcement organizations on the one side; and the international, regional and friendly-foreign enforcement agencies on the other side.

**Basic Objectives and Functions of the Narcotics Control Bureau**

National Policy on Narcotic Drugs and Psychotropic Substances is based on one of the directive principles of State policy contained in the Indian Constitution, which directs that the State shall endeavour to bring about prohibition of the consumption, except for medicinal purposes, of
intoxicating drugs injurious to health. The said policy is also shaped by the international conventions on the subject, to which India is a signatory.


The Narcotic Drugs and Psychotropic Substances Act, 1985 empowers the Central Government to constitute a Central Authority for the purpose of exercising the powers and functions under the Act. In exercise of such power the Narcotics Control Bureau was constituted with headquarters at Delhi. The Bureau, subject to the supervision and control of the Central Government, is to exercise the powers and functions of the Central Government for taking measures with respect to:

a) Co-ordination of actions by various offices, State Governments and other authorities under the N.D.P.S Act, 1985.

b) Implementation of the obligation in respect of counter measures against illicit traffic under the various international
conventions and protocols that are in force at present or which may be ratified or acceded to by India in future.

c) Assistance to concerned authorities in foreign countries and concerned international organizations to facilitate co-ordination and universal action for prevention and suppression of illicit traffic in narcotic drugs and psychotropic substances.

d) Co-ordination of actions taken by the other concerned Ministries, Departments and Organisations in respect of matters relating to drug abuse.

e) Identification, treatment, education, aftercare, rehabilitation and social re-integration of addicts.

The Narcotics Control Bureau is the apex co-ordinating agency. It also functions as an enforcement agency through its field units located at Bombay, Delhi, Calcutta, Madras, Varanasi, Jodhpur, Chandigarh, Jammu, Ahmedabad, Imphal and Thiruvananthapuram. The Zonal Units are entrusted with the tasks relating to collection and analysis of substances, study of trends, modus operandi and the collection and dissemination of intelligence.
During the British East India Company rule, collection of revenue from opium formed a part of the fiscal policy; and various Opium Agencies such as the Bengal, Benaras, Bihar, and Malwa Agencies were formed over time. Prior to 1950, the administration of the law relating to narcotics were vested with the Provincial Government. The amalgamation of these Agencies laid the foundation of the Opium Department in November, 1950 which is presently known as the Central Bureau of Narcotics (CBN) headed by the Narcotic Commissioner. The headquarters of Central Bureau of Narcotics was shifted from Shimla to Gwalior in 1960. The CBN is staffed with approximately 1,6000 personnel and is responsible for all aspects of the opium industry and preventing illicit precursor chemical trafficking. CBN has been primarily given the responsibility of licensing and supervising opium cultivation and thereafter, procuring opium from the cultivators. CBN also acts, under the EXIM Policy, as the competent authority for the export of psychotropic substances and precursor chemicals, in addition to interaction with foreign Governments, UN bodies and other international organizations. The responsibilities of CBN include:
• Supervision over licit cultivation of opium poppy in India.

• Investigation of cases under the NDPS Act, 1985 and filing of complaint in the Court.

• Action for tracing and freezing of illegally acquired property\(^{27}\).

• Issue of licenses for manufacture of synthetic narcotic drugs.

• Issuance of Export Authorisations/Import Certificate for export/import of Narcotic Drugs and Psychotropic Substances\(^{28}\).

• Interaction with International Narcotics Control Board, Vienna and the Competent Authorities of other countries to verify genuineness of the transaction prior to authorizing the shipments.\(^{29}\)

• **Other Agencies**

  The **Directorate of Revenue Intelligence** is a part of the Ministry of Finance and is responsible for information on the smuggling of goods, including drugs into, or out of, India. Other law enforcement agencies with counter drug responsibilities are the **Central Bureau of Investigation**, the **Customs Commission**, and the **Border Security**
Force. The Customs Commission has a wide variety of drug law enforcement tasks and falls under the Ministry of Finance’s Central Board of Excise and Customs. The Border Security Force, under the Home Ministry, is a paramilitary force that controls India’s land borders and frequently interdicts drug shipments.

Constitutional Framework in India

The Constitution of India directs the State to regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties, and, in particular, to endeavour to bring about prohibition of consumption, except for medicinal purposes, of intoxicating drinks and drugs which are injurious to health. This directive received legislative endorsement through the Narcotic Drugs and Psychotropic Substances Act, 1985 which provides for stringent control and regulation of operations relating to narcotic drugs and psychotropic substances; and at the same time, empowers the Government to establish as many centres as it thinks fit for identification, treatment, education, after-care, rehabilitation, social re-integration of addicts; and to make rules for the establishment, maintenance, management and superintendence of such centres and for the appointment, training, powers, duties and functions of the persons employed in such centres.
Initiatives of the Legislature

The kingpin legislation on narcotic drugs and psychotropic substances in India is the NDPS Act, 1985. Though the Act repealed the principal Central Acts namely, the Opium Act, 1857, the Opium Act, 1878, and the Dangerous Drugs Act, 1930\textsuperscript{32}, for the better appreciation of the shift in the legislative policy and the challenges before the legislature as well as enforcement officials, a discussion on such repealed laws, is felt necessary:

(i) **The Opium Act, 1857\textsuperscript{33}**

This Act repealed Regulation XXXII, 1795, Section I to XL of Regulation XIII, 1816 and section XXIV of Regulation VII, 1824 of the Bengal Code. The Act was indented to remove certain inconsistencies between the law relating to the cultivation of the opium poppy and the practice which prevailed under the agreement between the government and the opium agents or cultivators\textsuperscript{34}. The Act provided *inter-alia*, for the following:
• Appointment of opium agents; and officers to assist such agents\textsuperscript{35}.

• Fixation by the Central Government, the limit within which licenses might be given for the cultivation of poppy, and the price payable to the cultivators for the opium produced\textsuperscript{36}.

• Issuance of licenses for cultivation of poppy by the District Opium Officers or other officers entrusted with the superintendence of the cultivation of poppy\textsuperscript{37}.

• Levy of penalty by the Deputy Agent or Collector on the cultivator who received advance from the Government and did not cultivate the full area of land for which he received the advance.\textsuperscript{38}

• Delivery of all opium by the cultivator to the District Opium Officer or officers authorized to receive such opium.\textsuperscript{39}

• Weighment and classification of opium by the District Opium Officer or other officers authorized to do so.\textsuperscript{40}

• Weighment and examination of the opium at the factory.\textsuperscript{41}

• Confiscation of adulterated opium.\textsuperscript{42}

• Penalty on officers who took bribes.\textsuperscript{43}

• Penalty for embezzlement of opium by cultivators.\textsuperscript{44}
- Penalty for illegal purchases of opium from cultivators and for illegal connivance at embezzlement to opium officer.  

- Penalty for unlicensed cultivation of poppy.  

- Duty on the proprietors, farmers, tahasildars, gumashtas, other managers of land and all police and other officers of the Government to give information relating to illegal cultivation.  

- Adjudication by the Magistrate, on the information of the Deputy Agent or District Opium Officer in the districts in which poppy is cultivated on account of the Central Government and in other districts on the information of the Collector or officer-in-charge of the abkari mahal.  

- For repetition of offences in addition to the penalty attached to the offence, imposition of imprisonment for a period not exceeding six months and imposition of a like punishment of imprisonment not exceeding six months in addition to the punishment, which might be inflicted for the first offence, upon every subsequent conviction after the second offence.  

- Payment of one-half of all fines and penalties levied from persons convicted of offences under the Act together with a reward of one rupee eight annas for each seer of opium.
confiscated and declared by the Civil Surgeon to be fit for use upon adjudication of the case, to the officer or officers who apprehended the offender; and the other half of such fines and forfeitures, together with a reward of one rupee and eight annas for each seer of opium confiscated, to the informer\textsuperscript{50}.

(ii) **The Opium Act 1878**

The Opium Act, 1878 which was enacted to amend the law relating to opium, provided, *inter-alia*, for the following:

- Power to make rules by the State Government to govern the possession, transport, import or export or sale of opium.\textsuperscript{51}
- Notification by the State Government to declare any place as warehouse for opium legally imported\textsuperscript{52}; and making of rules by the State Government to regulate custody of opium in such warehouses, levy of fees for warehousing, removal of opium for sale or exportation, the manner in which it should be disposed of etc.\textsuperscript{53}
• Punishment upto three years imprisonment and fine for the person, who in contravention of the provisions of the Act possesses, transports, imports, exports, sells, warehouses, or removes opium or does any act in respect of warehoused opium.\(^{54}\)

• Presumption in the prosecutions that until the contrary was proved, that all opium for which the accused was unable to account satisfactorily, was opium in respect of which he had committed an offence under the Act.\(^{55}\)

• Confiscation of opium in the cases when an offence was committed.\(^{56}\)

• Power to make rules by the State Government to regulate disposal of all things confiscated under the Act and the rewards to be paid to the officers and informers.\(^{57}\)

• Authorisation by the Central Government or by the State Government of officers of certain Departments for search, seize, arrest etc. when an offence relating to opium was committed.\(^{58}\)

• Power to search and seize in open places at anytime of the day.\(^{59}\)
• Duty on officers to assist each other.\textsuperscript{60}

• Conferment of power on the State Government to authorise all Collectors, Deputy Commissioners or other officers to issue warrant of arrest.\textsuperscript{61}

• Furnishing a report on the arrest made and articles seized to the immediate superior, within 48 hours.\textsuperscript{62}

(iii) **The Dangerous Drugs Act, 1930.**

This Act was enacted to give effect to the International Opium Convention, adopted by the Second Opium Conference signed at Geneva, on 19\textsuperscript{th} February, 1925\textsuperscript{63}. One of the objectives of the Act was increasing the penalties for certain offences relating to dangerous drugs and rendering uniform penalties relating to certain operations\textsuperscript{64}.

A notable feature of the Act was that it defined the term ‘hemp’ so as to include the leaves and small stalks of the Indian hemp plant; whereas the term as defined in the International Opium Convention, 1925 did not include leaves and small stalks. This definitely underlines the legislative alertness against drug abuse.
The Act envisaged, *inter-alia*, the following:

- Prohibition of cultivation of any coca plant, or gathering any portion of coca plant, manufacture or possession of prepared opium, unless it was prepared from opium lawfully possessed for the consumption of the person so possessing it, or importation into or exportation from India, transshipment or sale of prepared opium\(^{65}\). Any person who contravened these provisions was liable for imprisonment, which might extend to three years with or without fine\(^{66}\).

- The Central Government was empowered to prevent the cultivation of poppy or manufacture of opium, and prescribe the form and conditions of licenses for such cultivation and manufacture; the authorities by which such licenses might be granted, the fees that might be charged, and any other matter requisite to render effective, the control of the Central Government over such cultivation and manufacture. The Central Government might also make rules permitting and regulating the sale of opium from the Government factories for export or to State Governments or to manufacturing
chemists\textsuperscript{67}. Any person who contravened these provisions was liable for imprisonment that might extend to three years with or without fine\textsuperscript{68}.

- No one should make any manufactured drug, other than prepared opium, except in accordance with the rules made by the Central Government\textsuperscript{69}. Any person who contravened this provision was liable for imprisonment that might extend to three years with or without fine\textsuperscript{70}.

- No one should import into India, any dangerous drug other than prepared opium except in accordance with the rules made by the Central Government\textsuperscript{71}. Any person who contravened this provision was liable for imprisonment, which might extend to three years with or without fine\textsuperscript{72}.

- No one should import or export inter-State, transport, possess or sell any manufactured drug, other than prepared opium or coca leaf, or manufacture medicinal opium or any preparation containing morphine, diacetylmorphine or cocaine except in accordance with the rules made by the State Government\textsuperscript{73}. Any person who contravened these provisions was liable for
imprisonment, which might extend to three years with or without fine.

- No one should engage in or control any trade whereby a dangerous drug was obtained outside India and supplied to any person outside India except in accordance with the conditions of a license granted by and at the direction of the Government. Any person who contravened these provisions was liable for a fine, which might extend to one thousand rupees.

- Whoever, being the owner or occupier or having the use of any house, room, enclosure, space, vessel, vehicle, or place, knowingly permitted to be used for the commission by any other person of certain offences punishable under the Act should be punishable with imprisonment which might extend to two years, with or without fine.

- Attempt was punishable with the same punishment provided for the offence attempted to be committed.

- Whoever abetted any offence was; whether such offence be or be not committed in consequence of such abetment; be punished with the punishment provided for the offence.
The Collector or other officer authorized by the State Government or a Presidency Magistrate of the first class, or a Magistrate of the second class specially empowered by the State Government might issue a warrant for the arrest of any person whom he had reason to believe to have committed an offence punishable under the Act or for the search, whether by day or by night, of any building, vessel or place in which he has reason to believe any dangerous drug in respect of which an offence punishable under the Act has been committed or kept or concealed.\textsuperscript{80}

Any officer of the departments of Central Excise, Narcotics, Drugs Control, Customs, Revenue, Police, Excise, superior in rank to a peon or constable, authorized in this behalf by the Central or State Governments who has reason to believe from personal knowledge or from information given by any person and taken down in writing, that any dangerous drug in respect of which an offence punishable under the Act has been committed, was kept or concealed in any building, vessel or enclosed place, might between sunrise and sunset enter into any building, vessel or place; in case of resistance, break open any door and remove any other obstacle to such entry; seize
drug and materials used in the manufacture thereof or other articles liable to confiscation or other articles of evidence and carry out search, arrest and detention relating to such drug. If the officer had reason to believe that a search warrant could not be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he might enter and search such building, vessel or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

- Any such officer referred to above might in any public place, effect seizure, detain or search any person at any time.

- Whenever any person made any arrest or seizure, he should, within forty eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure, to his immediate official superior.

- Any person who vexatiously and unnecessarily detained, searched or arrested any person was liable for a fine, which might extend to five hundred rupees.

- The State Government might invest any officer of the Excise Department or any class of such officer, with powers of an
officer-in-charge of a police station for the investigation of offences under the Act\textsuperscript{85}.

- In trials under the Act it might be presumed, unless and until the contrary was proved, that the accused had committed an offence under the Act in respect of the drugs, articles etc. for the possession of which he failed to account\textsuperscript{86}.

On the whole, the Act conferred drastic powers upon the enforcement officials for the effective implementation of the Act.

(iv) **Opium and Revenue Laws (Extension of Application) Act, 1950.**

The Statutes discussed hitherto had only a limited coverage. The Opium and Revenue Laws (Extension of Application) Act, 1950 extended to certain parts of India, *inter-alia* the Opium Act, 1857, the Opium Act, 1878 and the Dangerous Drugs Act, 1930. Besides extending the application of the said Acts to all parts of India except Jammu & Kashmir, the Act also made certain changes in the definition clauses.
(v) **State Acts**

Even after the extension of Central Acts to all parts of India, except Jammu & Kashmir, issues relating to narcotic drugs and psychotropic substance remained unchecked. Consequently, many States enacted their own laws. For instance, Assam Ganja and Bhang Prohibition Act, 1958; Assam Drugs (Control) Act, 1951; Bihar Drugs (Control) Act, 1948; Bombay Drugs (Control) Act, 1960, East Punjab Drugs (Control) Act, 1949; Madhya Pradesh Drugs (Control) Act, 1949, Mysore Drugs (Control) Act, 1950; Orissa Drugs (Control) Act, 1950; Rajasthan Excise Act, 1950 etc.

With the passage of time and the development in the field of illicit drug traffic and drug abuse at national and international level, the provisions of the aforesaid three principal Central Acts become obsolete. Some of the major deficiencies in these laws were:

1. The scheme of penalties was not sufficiently deterrent to meet the challenge of well organized gangs of smugglers. The Dangerous Drugs Act, 1930 provided for a maximum term of punishment of three years with or without fine and four years imprisonment with
or without fine for repeat offences. No minimum punishment was prescribed; and as a result, drug traffickers have been sometimes let off by the courts with nominal punishment.

2. The Central laws did not provide for investing the officers of a number of important central enforcement agencies like Narcotics, Customs, Central Excise etc. with the power of investigation of offences under the said laws.

3. The vast body of international law in the field of narcotics control that has been evolved through various international treaties and conventions remained outside the purview of these legislations.

4. There was no provision to enable exercise of control over psychotropic substances in India in the manner as envisaged in the Convention on Psychotropic Substances, 1971, to which India has acceded.

In view of what has been stated above, an urgent need for a comprehensive law on narcotic drugs and psychotropic substances, was felt. This culminated in the enactment of the NDPS Act, 1985.

The NDPS Act, 1985 has been enacted primarily with the following objectives:

(i) to provide deterrent punishments to drug offenders.

(ii) invest central agencies with powers of investigation of drug offences.

(iii) to take care of obligations arising under certain international conventions on drugs to which India is a party; and

(iv) to control psychotropic substances covered under the Convention on Psychotropic Substances, 1971.

The NDPS Act, 1985 sets out the statutory framework for drug law enforcement in India. The main elements of the control regime mandated by the Act are as follows:

- The cultivation, production, manufacture, possession, sale, purchase, transportation, warehousing, consumption, inter-State movement, transshipment and import and export of narcotic drugs and psychotropic substances is prohibited except for medical or scientific purposes and in accordance
with the terms and conditions of any licence, permit or authorization given by the Government\textsuperscript{89}.

- Prohibition of certain activities relating to property derived from offences. For instance, conversion/transfer of property knowing that such property is derived from any offence under the Act; concealment of the true nature/source/location of such property; knowingly acquire, possess or use any such property\textsuperscript{90}.

- The Central Government is empowered to regulate the cultivation production, manufacture, import, export, sale, consumption, use etc. of narcotic drugs and psychotropic substances\textsuperscript{91}.

- State Governments are empowered to permit and regulate possession and inter-State movement of opium, poppy straw, the manufacture of medicinal opium and the cultivation of cannabis excluding hashish\textsuperscript{92}.

- All persons in India are prohibited from engaging in or controlling any trade whereby narcotic drugs or psychotropic substances are obtained outside India and supplied to any person outside India except with the previous authorization of
the Central Government and subject to such conditions as may be imposed by the Central Government\(^93\).

- The Central Government is empowered to declare any substance, based on an assessment of its likely use in the manufacture of narcotics drugs and psychotropic substances as a “controlled substance”\(^94\).

- Assets derived from drugs trafficking are liable to forfeiture,\(^95\) and the sale proceeds to be credited to the National Fund for Control of Drug Abuse\(^96\).

- Both the Central Government and State Governments are empowered to appoint officers for the purposes of the Act\(^97\).

- Offences under the Act to be cognizable and non-bailable\(^98\).

The NDPS Act is in effect, a comprehensive code not only for the control and regulation of narcotics drugs and psychotropic substances, but also for the investigation and forfeiture of drug related assets\(^99\).

**Enforcement Machinery**

Given India’s size and the federal nature of our polity, a number of agencies both at the Centre and in the States have been
empowered to enforce the provisions of the Act. These agencies include: the Department of Customs and Central Excise, the Directorate of Revenue Intelligence, the Central Bureau of Narcotics, the Central Bureau of Investigation and the Border Security Force at the Central level, and the State Police and the Excise Departments at the State level. The Union Ministries of Social Justice and Empowerment and Health are responsible for the demand reduction aspects of drug law enforcement which broadly covers health-care and the de-addiction, rehabilitation and social re-integration of addicts.

The Act envisages the creation of a Central Authority to co-ordinate the activities of these Central and State agencies which are involved in drug law enforcement. Consequently, the Narcotics Control Bureau was set up by the Central Government in 1986. Today, the NCB functions as national co-ordinator, international liaison office and the nodal point for the collection and dissemination of intelligence. This system assures co-ordinated implementation within the parameters of a broad national strategy.
Licit Opium Cultivation

The NDPS Act *inter-alia*, prohibits the cultivation of the opium poppy except for medical and scientific purposes and in accordance with the terms and conditions of a license, permit or authorization given by the Government\(^1\). Moreover, the Central Government is empowered to permit and regulate the cultivation of the opium poppy such cultivation only being on account of the Central Government\(^2\), and to appoint a Narcotics Commissioner who shall exercise all powers and perform all functions relating to the superintendence of the cultivation of the opium poppy and the production of opium\(^3\).

India is the largest licit producer of opium in the world, which is both exported as well as used by the domestic pharmaceutical industry\(^4\). The Central Government announces an opium policy each year which sets out the terms and conditions subject to which licenses for the cultivation of opium shall be given, the areas where cultivation shall be allowed, the prices at which the opium crop shall be purchased by the Government and the minimum qualifying yield for a license in the ensuing crop year. The crop cycle runs from October to May. Based on this policy, the Narcotics Commissioner of India issues license to individual cultivators for specified
tract of land. The key elements of the licit opium control regime in India are as follows:

(i) Opium can be cultivated only on fields specifically licensed for the purpose.

(ii) The entire crop must be tendered to the Central Government at prices fixed by the Government.

(iii) Failure to tender the minimum qualifying yield can disentitle the cultivator to a license in the following crop season.

These policy controls are backed by strict enforcement which include: measurement of fields, periodical crop surveys and physical checks to prevent diversion. In addition, failure to tender the entire yield to the Government is treated as a serious offence, and any cultivator who embezzles or otherwise illegally disposes of the opium produced by him, is punishable with rigorous imprisonment for a term between 10 to 20 years and a fine which shall not be less than Rs.100,000/-, but which may extend to Rs. 200,000/-. 

**Special Provisions Relating to Forfeiture of Property**

A new Chapter was introduced into the Act in May 1989 to provide for the investigation, freezing, seizure and forfeiture of property
derived from or acquired through illicit trafficking in narcotic drugs and psychotropic substances. This Chapter prohibits any person from holding any property derived from drugs trafficking; and authorizes officers empowered under the Act to investigate, identify and seize such property. The Chapter also sets out a quasi-judicial procedure for the forfeiture of such property consequent to which it shall vest in the Central Government. The sale proceeds of any such property forfeited shall be credited into the National Fund For Control of Drug Abuse.\textsuperscript{109}

These provisions does not however, constitute a comprehensive code against the laundering of the proceeds of drugs trafficking, in that it is limited to the forfeiture of drug related assets, but does not establish the laundering of the proceeds of drug trafficking or the act of dealing in such proceeds as a punishable criminal offence. This lacuna has however, been catered by the Prevention of Money Laundering Act, 2002.

\textbf{Offences and Penalties}

Chapter IV\textsuperscript{110} of the Act sets out the penalties for offences under the Act. These offences are essentially related to violations of the various prohibitions imposed under the Act on the cultivation, production,
manufacture, distribution, sale, import and export etc, of narcotic drugs and psychotropic substances. All these offences are cognizable and non-bailable; and are triable by Special Courts; and very stringent punishments are provided: ranging from six months minimum to maximum thirty years imprisonment depending upon the nature of offences. Imprisonment range from ten to twenty years for first offences to fifteen to thirty years for any subsequent offences together with fines upto two lakhs; provided that the court may have reasons to be recorded in the judgments, impose a fine exceeding two lakhs rupees; and the punishment shall be based on the “quantity involved”.

The sentencing structure underwent a drastic change with the enactment of the Amendment Act, in 2001. The Act introduced the concept of “commercial quantity” in relation to narcotic drugs or psychotropic substances. Under this rationalized sentencing structure, the punishment would vary depending on whether the quantity of offending material was “small quantity”, “commercial quantity” or “something in between”.
Factors to be considered for Imposing Higher Punishments

While imposing higher punishments than the minimum punishment, the court may, *inter-alia*, consider the following factors:

(a) The use or threat of use of violence or arms by the offender.

(b) The fact that the offender holds a public office and that he has taken advantage of that office in committing the offence.

(c) The fact that the minors are affected by the offence or the minors are used for the commission of an offence.

(d) The fact that the offence is committed in an educational institution or social service facility or in the immediate vicinity of such institution, or in other place to which the school children and students resort for educational, sports and social activities.

(e) The fact that the offender belongs to organized international or any other criminal group which is involved in the commission of the offence; and

(f) The fact that the offender is involved in other illegal activities facilitated by commission of the offence.
Moreover, death penalty can also be imposed for certain offences after previous conviction\(^{117}\). The Act also provides punishments for attempt/abetment/conspiracy and preparation to commit any offence.\(^ {118}\)

In addition to persons directly involved in trafficking narcotic drugs and psychotropic substances, any person who finances trafficking or harbours a person involved in trafficking, are also liable to the same scale of punishments. The Act further mandates that there shall be no suspension, remission or commutation in any sentence awarded under this Act\(^ {119}\).

The Act, however, makes a distinction between possession for personal consumption and trafficking, the punishment for the former being less when compared to that of the latter\(^ {120}\). The application of this provision is subject to the following two qualifications:

(i) The quantity of the drug involved in the offence should be a small quantity as specified by the Central Government\(^ {121}\).

(ii) The onus is on the accused to establish that the drug in question was meant for personal consumption and not for sale, distribution etc\(^ {122}\).
Precursor Control

The 1998 U.N. Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, to which India is a signatory, requires State Parties to impose controls over the manufacture, internal distribution and import and export of chemicals which can be used in the illicit manufacture of narcotic drugs and psychotropic substances. In order to implement India’s obligations under this Convention, the NDPS Act was amended in 1989 in order to empower the Central Government to declare any substance as a “controlled substance”, and to regulate its manufacture, import and export etc. Violations relating to such substances are regarded as criminal offences punishable with imprisonment for a term which may extend to ten years and fine which may extend to one lakh rupee. In 1993, the Government of India promulgated the NDPS (Regulation of Controlled Substances) Order, to regulate the manufacture, distribution etc. of any substance declared to be a “controlled substance”.

In exercise of its powers under the Act, the Central Government has so far notified Acetic Anhydride, which is used in the processing of opium into heroin, N-Acetylanthranilic acid which is used in the illicit manufacture of Methaqualone and Ephedrine and Pseudoephedrine which
are used in the illicit manufacture of Amphetamine type stimulants as “controlled substances”.

**NDPS Act –An Evaluation**

The regulation and availability of recreational drugs through legislation has proved to be a very confusing area. The Narcotic Drugs and Psychotropic Substances Act, 1985 is a draconian Act indeed. Paradoxically though stringent, yet it has not been able to make any significant dent in the anti-drug activities in the country. The figures reveal this loud and clear. The number of persons arrested and convicted for drug trafficking during the period 1\(^{st}\) Jan, 2000 to 31\(^{st}\) March, 2001 is 15284 and 4447 respectively\(^{126}\). Over ten per cent of population in India’s biggest Tihar Jail, in Delhi is booked on drug-related crimes and all this despite the toughness of NDPS Act. Under the Act, the anti drug authorities have been given powers to search, seize, arrest without warrant anyone connected with the sale or the trafficking of banned drugs. The courts have been empowered to publish the names and places of business of arrested persons, order confiscation and attachment of their properties or assets besides stock of drugs (like opium charges and ganja) cultivated illegally. Then how such as
Act failed to deliver the desired results? One potent reason is the slow trial in our procedure-ridden courts leading to more acquittals than convictions.

The NDPS Act, though comprehensive and as stringent as any anti-drug laws in the West, is quite draconian. Some of the defects are discussed hereunder:

- Though the Act provides punishments to the culprits, there is a hitch-slow trial, leading to crowding of jails and acquittals, and hence the Act proved to be a hissing snake without venom in its fangs.

- Under Section 50, if a person who has been arrested for possessing drugs is not taken to the nearest Magistrate or gazetted officer immediately, the contraband seized cannot be used to fix the liability of unlawful possession against him; and the non-compliance of Section 50 vitiate the trial.

- Under section 42, if a police officer makes seizures but does not inform his superiors about its grounds, the accused is liable to be acquitted.
Whenever there is delay in sending samples, the prosecution version becomes vulnerable, and may pave the way for the acquittal of the accused\textsuperscript{130}.

For reducing the flaws, in initially the Act was amended in 1989. The important provisions incorporated by this amendment are: Constitution of National Fund for Control of Drug Abuse, introduction of death penalty on second conviction under specific circumstances, forfeiture of property acquired through drug trafficking, trial by special courts, pre-trial destruction of seized drugs and prompt destruction of illicit cultivation\textsuperscript{131} etc.

The Act was further amended in October, 2001. The most significant amendments include: changing the law to allow for sentencing to be based on the size of the drug seizure, and formally authorizing controlled deliveries inside and outside of India. Prior to these changes, individuals found with small amounts of illicit drugs were subject to the same penalties as large-scale drug traffickers\textsuperscript{132}.

Provisions for streamlining the scheme of illegally acquired property have been added by this amendment. The sale proceeds of illegally
acquired property shall be forfeited and credited to a fund, namely ‘National Fund for Control of Drug Abuse’. The fund could be applied to meet the expenditure incurred in connection with the measures taken for combating illicit traffic, or controlling abuse of narcotics drugs and psychotropic substances. The Amendment in 2001 provided for the rationalization of sentence structure. However, bail provisions were liberalized.

(vii) **Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.**

Illicit traffic in narcotic drugs and psychotropic substances poses a serious threat to the health and welfare of the people; and the activities of persons engaged in such illicit traffic have a deleterious effect on the national economy. Having regard to the persons by whom and the manner in which such activities are organised and carried on; and having regard to the fact that in certain “areas which are highly vulnerable to the illicit traffic in narcotic drugs and psychotropic substances”, such activities of a considerable magnitude are clandestinely organised and carried on, the Parliament found it necessary for the effective prevention of such activities and to provide for detention of persons concerned in any manner
therewith. With these objectives, Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 was enacted.  

For the purpose of this Act "area highly vulnerable to such illicit traffic" means:

(i) The Indian customs waters;
(ii) The customs airports;
(iii) The metropolitan cities of Bombay, Calcutta, Delhi, Madras and the city of Varanasi;
(iv) The inland area one hundred kilometres in width from the coast of India falling within the territories of the States of Andhra Pradesh, Goa, Gujarat, Karnataka, Kerala, Maharashtra, Orissa, Tamil Nadu and West Bengal and the Union territories of Daman and Diu and Pondicherry;
(v) The inland area one hundred kilometres in width from—

(a) The India-Pakistan border in the States of Gujarat, Punjab and Rajasthan;
(b) The India-Nepal border in the States of Bihar, Sikkim, Uttar Pradesh and West Bengal;
(c) The India-Burma border in the States of Arunachal Pradesh, Manipur, Mizoram and Nagaland;
(d) The India-Bangladesh border in the States of Assam, Meghalaya, Tripura and West Bengal;

(e) The India-Bhutan border in the States of Arunachal Pradesh, Assam, Sikkim and West Bengal

(vi) Such other area or customs station, as the Central Government may, having regard to the vulnerability of such area or customs station, as the case of be, to illicit traffic, by notification in the Official Gazette, specify in the behalf.

The Act empowers the Central Government and State Governments to make order directing any person including a foreigner be detained with a view to prevent him from engaging in illicit traffic in narcotic drugs and psychotropic substances.\(^{135}\) Thus, the Act provides for preventive detention. The Act further states that ‘no detention order shall be invalid or inoperative merely by reason – (a) that the person to be detained thereunder is outside the limits of the territorial jurisdiction of the Government or the officer making the order of detention; or (b) that the place of detention of such person is outside the said limits.\(^{136}\) Moreover, if the person absconds or conceals himself, he shall be punishable with imprisonment for a term which may extend to one year, or with fine or, with both; and the offence shall be cognizable.\(^{137}\)
(viii) **Juvenile Justice (Care and Protection of Children) Act, 2000**

To prevent illegal supply of narcotic drugs to persons below the age of eighteen, Parliament has enacted this legislation. The penal provision is extracted hereunder:

> Whoever gives, or causes to be given, to any juvenile or the child any intoxicating liquor in a public place or any narcotic drug or psychotropic substance except upon the order of duly qualified medical practitioner or in case of sickness, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine. The offence shall be cognizable.

**Conclusion**

The legal provisions in India are very stringent: the law provides for preventive detention, prohibition of giving drugs to juveniles; and even death penalty in certain cases. However, the issue of death penalty for drugs has received attention from non-governmental organizations worldwide.
The International Covenant on Civil and Political Rights, 1966 (ICCPR) grants an exception to the right to life to countries that have not as yet abolished the death penalty, but only in relation to ‘the most serious crimes’. The jurisprudence has developed to the point where human rights bodies have declared that drug offences are not among the ‘most serious’ crimes: indeed that the death penalty, pending universal abolition, should be restricted to wilful murder, and even then be a discretionary penalty.

Going beyond this, there are thirty-two countries that retain the death penalty in law for certain drug offences, but, in recent years, only six of them have enforced it through executions on a scale that could be described as indicating a ‘high commitment’ to the practice: China, Iran, Saudi Arabia, Viet Nam, Singapore and Malaysia. Among these, it appears that Singapore and Malaysia have recently greatly reduced the number of persons they execute each year and that Viet Nam may be giving serious consideration to its policy and practice.

In December 2007, the International Harm Reduction Association (IHRA) produced a major report on the death penalty for drug offences, which provided a detailed review of the use of capital punishment for drug
offences worldwide and argued that the application of the death penalty for drugs was in violation of international law.\textsuperscript{141} It has received heightened scrutiny from international human rights monitors, including the UN High Commissioner for Human Rights and the UN Special Rapporteur on torture, who have also found the practice to violate international human rights law.

Based upon the IHRA report, the United Nations Office on Drugs and Crime (UNODC) has also explicitly stated its opposition to the application of the death penalty for drug offences. According to Amnesty International, the death penalty has been abolished in law or practice in 139 countries\textsuperscript{142}.

While many retentionist governments argue that drug offences fall under the umbrella of ‘most serious crimes’, this is not the perspective of the UN Human Rights Committee or the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, both of which have stated that drug offences do not constitute ‘most serious crimes’ and that executions for such offences are therefore in violation of international human rights law. In recent years there has also been increasing support for the belief that capital punishment in any form violates the prohibition of
cruel, inhuman or degrading treatment or punishment, as enshrined in numerous UN and regional human rights treaties. Although some retentionist governments claim that human rights are a foreign construct and that capital punishment reflects accepted social or cultural norms, within many death penalty states there is a keen domestic debate about the legitimacy of executing drug offenders.

In its 2007 report on the death penalty for drug offences, IHRA found that, despite the global trend towards abolition of capital punishment, the number of states expanding their domestic death penalty legislation to include narcotics offences had actually increased over the past two decades. However, as reflected in the Global Overview 2010, this trend appears to have peaked and begun to reverse. The number of states carrying out the death sentences for drug offences prescribed in law appears to be declining, while a number of others are observing moratoria on all executions.\textsuperscript{143}

Despite these developments, the fact remains that those States responsible for the highest proportion of executions of drug offenders have continued to do so and in some cases have intensified the practice. In some countries, drug offenders continue to comprise a significant proportion of
all annual executions. The Global Overview 2010 has been able to identify hundreds of executions for drugs annually, yet the actual figure likely exceeds one thousand, as several of the leading death penalty states keep figures on executions secret.

In Oman, the Law on the Control of Narcotic Drugs and Psychotropic Substances 2000 allows for death penalty for trafficking in certain drugs and also for drug offences involving officials, cases of recidivism, minors or an international drug smuggling organisation.\textsuperscript{144} Within two years of the law’s enactment, Oman had executed 14 people,\textsuperscript{145} at least four of them for drug offences.\textsuperscript{146} In United Arab Emirates also drug trafficking has been a capital offence since 1986, following the introduction of Federal Law No. 6 of 1986 Concerning the Fight Against Narcotics.\textsuperscript{147} Moreover, the law on the Countermeasures Against Narcotic Drugs and Psychotropic Substances adds: violation of the provisions regulating cultivation, import, export, purchase or use shall be punished by imprisonment for a period of not less than ten years and not exceeding fifteen years and a fine of not less than fifty thousand dirhams and not exceeding two hundred thousand dirhams. If the offence was committed with the intention of trafficking or promotion, the penalty shall be execution.\textsuperscript{148} It is to be noted that Oman and UAE are not parties to ICCPR.
In Baharin, the Law on Controlling the Use and Circulation of Narcotic Substances and Preparations allows for the death penalty for drug trafficking.\textsuperscript{149} Although it has been reported that one person was sentenced to death in 1990,\textsuperscript{150} it is not known whether anyone has ever been executed under this law.\textsuperscript{151} There are conflicting reports about Bahrain’s position on drug offences and capital punishment. In 2007 an amendment was proposed to remove the death penalty for drug offences from law, but this was rejected by the Shura Council.\textsuperscript{152} However, the same year Human Rights Watch reported that Bahrain enacted a new Drugs and Psychotropic Substances Law that prescribes the death penalty for certain offences.\textsuperscript{153} After a period of ten years during which Bahrain carried out no executions for any crime, the country resumed executions in 2006.\textsuperscript{154} However, Bahrain ratified the International Covenant on Civil and Political Rights in 2006.

In India, 1989 amendment to the Narcotics and Psychotropic Substances Act imposes a mandatory death penalty for certain quantities of drugs, but only following a previous conviction.\textsuperscript{155} In the last decade, executions have been rare in India, and it is thought that no one has been
executed under this Act.\textsuperscript{156} India ratified the International Covenant on Civil and Political Rights in 1979.

The figures collected for the Global Overview 2010 demonstrate that the number of executions worldwide each year for drug offences is at least in the hundreds, and is likely well over a thousand when factoring in estimates from countries such as China, Singapore and Viet Nam, which keep their death penalty data secret. In many more countries, death sentences for drugs continue to be pronounced even if actual executions are rarely, if ever, carried out. Numerous scholars, human rights monitors and UN human rights bodies agree that the death penalty for drug offences is a violation of international law. Despite this finding, many jurisdictions continue to use death penalty legislation as part of their domestic drug control and criminal justice policies.

In many countries, this violation is compounded by related human rights abuses such as mandatory death penalties for drug offences, confessions extracted under torture, specialized courts for drug cases or capital drug trials lacking the most basic safeguards. Nevertheless, not all countries with legislation providing for the death penalty for drug offences
enforce these sanctions with equal enthusiasm. Indeed, State practice in this regard varies enormously from one country to the next.

Even among States that do actively execute for drug offences, there is a marked difference in the ferocity with which they enforce the penalty of death. There are relatively few countries with a ‘high commitment’ to implementing the death penalty for drug offences, i.e. those that regularly impose death sentences and carry out executions. China, Iran, Saudi Arabia and Viet Nam are widely known to execute high numbers of drug offenders each year. Historically, Malaysia and Singapore have also put many people to death for drug-related crimes. Despite the small number of these high commitment States, these countries carry out the majority of executions for drug offences worldwide every year.

It is also worth noting that the alarming growth in the number of States prescribing the death penalty for drug offences since the mid-1980s appears to have stalled, and begun to reverse. Since the publication of IHRA’s 2007 report, a number of States have initiated unofficial moratoria and others have abolished the death penalty for drugs outright. The death penalty for drug offences is an issue of considerable human rights concern, one demanding the attention of abolitionists, harm reductionists and drug policy reformers alike.
Thus one can see that though thirty two States including India retain death penalty in their domestic laws for drug offences, after the ratification of ICCPR, 1966, the said provision in many of the statutes got eclipsed; and consequently much of the teeth and claws of such stringent laws have been shed.
References

6. “Role of Narcotic Control Bureau”, *indiaimage.nic.in*.
7. *Supra.n.1 at p.25.*
8. Section.4.
10. The two Government Opium and Alkaloid Factories at Neemuch and Ghazipur under the CCF process the raw opium for export purposes and manufacturing opiate alkaloids.
11. It was constituted under Smugglers and Foreign Exchange Manipulators Act (SAFEMA), 1976 and also under NDPS Act, 1985.
12. Madhya Pradesh comes under the jurisdiction of the Delhi office.
14. *Supra.n.2*.
15. “Law Enforcement in India”, *en.wikipedia.org*.
17. See, Section 80, NDPS Act, 1985; Mehanathan M.C., *Law of Control on Narcotic Drugs and Psychotropic Substances in India*, p.82.
18. Article 47.
20. See, Sections 4-7 (Chapter II) of the Act.
21. “Role of Narcotic Control Bureau”, *indiaimage.nic.in*.
25. Website of Central Bureau of Narcotics- “abtcbn” cbn.nic.in.
26. “Role of Narcotic Control Bureau”, *indiaimage.nic.in*.
27. As per the provisions of Chapter V-A of the NDPS Act, 1985.
28. Import of poppy seeds are permitted only from Austria, Australia, France, China, Hungary, the Netherlands, Poland, Slovenia, Spain, Turkey and Czech Republic on production of an appropriate certificate from the Competent Authority of the exporting country that the opium have been grown licitly/legally in that country. All
import contracts for this item shall compulsory be registered with the Narcotics Commissioner, Gwalior prior to import.

“abteben” cbn.nic.in.


Article 47.

See, Section 82, NDPS Act (repeal clause)

Passed by the Legislative Council of India and was originally known as Act No. XIII of 1857. It received the assent of the Governor General on 6th June, 1857. It was enacted to consolidate and amend the law relating to the cultivation of the opium poppy and manufacture of opium in the Presidency of Fort William in Bengal.

See the Preamble.

Section 3, Opium Act, 1857.

Section 7.

Section 8.

Section 10.

Section 11.

Section 12.

Section 13.

Section 14.

Section 17.

Section 19.

Section 20.

Section 21.

Section 22.

Section 26.

Section 28.

Section 30.

Section 5, The Opium Act 1878.

Section 7.

Section 8.

Section 9.

Section 10.

Section 11.

Section 13.

Section 14.

Section 15.

Section 17.

Section 19.

Section 21.

See Preamble, The Dangerous Drugs Act, 1930.

India ratified the Convention on 17th February, 1926.

Section 4.

Section 10.

Section 5.

Section 11.

“Basic Features of Narcotic Drugs and Psychotropic Substances Act, 1985”. www.narcoticsindia.nic.in.

Section 8.
Section 8-A inserted by the Amendment Act, 2001.

Section 9.

Section 10.

Section 12.

Section 9-A

Chapter V-A

S.7-A inserted by the Amendment Act of 1989.

Sections 4,5 and 7.

Section 37.

“Drug Demand Reduction And Preventive Policies: Government of India’s Approach”,

social justice.nic.in

Section 4 (3)

Section 8.

Section 9.

Section 5.

Supra.n.1 at p.6.


Ibid.

Section 19.

Chapter V-A (Ss.68A-68Z)

See, Chapter II – A (Ss-7A and 7B) inserted by 1989 Amendment Act. See also NDPS (National Fund for Central of Drugs Abuse) Rules, 2006.

Sections 15-40.
Section 37.


“Any quantity greater than the quantity specified by the Central Government by notification in the official Gazette”. (Section 2 (viii a).)


Section 32 –B.

See, Section 31-A inserted by 1989 Amendment Act.

Section 28, 29 and 30.

Section 32-A; However, “parole” can be given, See, Dada v. State of Maharashtra, (2000) CrLJ.4619 (SC).

Section 27.


Section 9-A.

Section 25-A.

GSR 295(3) dated.24.3.1993, See also, GSR 26(3) dated.12.1.1996.

Lok Sabha Starred Question No. 496 to be answered on 20.4.2001.


See the Preamble of the Act.

Explanation 1 to Section 10.

Section.3.

Section.7.

Section.8.

Section 25.

Section 27.

See, Articles 6(1) and 6(2), ICCPR, 1966.


Hands Off Cain (20 July 2001) Police said that three Pakistanis convicted of trafficking have been executed by firing squad: www.handsoffcain.

Article 48.


Decretal Law No: 10 of 1984.

The Death Penalty: No Solution to Illicit Drugs, p.17.

http://english.nessunotocchicaino.it/archivio.


Ibid.


These thresholds were 10 kg opium, 1 kg morphine, 1 kg heroin, 1 kg codeine, 500 g cocaine, 20 kg hashish, 500 g LSD and 1500 g methamphetamine.

US Department of State, INCSR (2009).