ABSTRACT

The Narcotic Drugs and Psychotropic Substances Act, 1985 prescribes stringent minimum punishment of rigorous imprisonment for ten years and a fine of Rs. One lakh, for most of the drug offences. In 1989, the Act was amended so as to provide also for the imposition of death sentence for some of the repeat offences. The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 was enacted for the purposes of preventive detention of persons indulging in illicit trafficking in drugs. In spite of all these measures, drug abuse and illicit trafficking is constantly on the increase. This study aims at investigating the reasons behind the apparent failure of law and its enforcement to check the onslaught of illicit drugs.

Methodology

The research methodology adopted for the present investigation included:

(1) Study of all available books, journals and research monographs on the subject in the libraries at Calcutta, Delhi, Guwahati and Shillong,
(ii) Interviews with the enforcement officials in Police, Customs, Central Excise, Revenue Intelligence and Narcotics Control Bureau, at Calcutta, Delhi, Guwahati, Imphal and Shillong;

(iii) Study of judgements of High Courts and the Supreme Court, relating to drug offences, as reported during January, 1987 to April, 1993;

(iv) Interviews with legal practitioners, teachers and social workers;

(v) Study of newspaper reports on the subject in major English dailies during January, 1987 to July, 1993;

(vi) Visit to the Central Jail, Imphal, housing about 800 addicts, for the purposes of interviewing such addicts as well as the jail staff handling them;

(vii) Interviews with medical practitioners and psychiatrists engaged in the treatment of addicts, at Shillong, Imphal, Calcutta and New Delhi; and a visit to Divine Light Rehabilitation and After-care Centre, Imphal.
Conclusions

The following major conclusions are reached after the investigation of the problem:

1. The number of addicts in the country is above 25 lakhs at present. Easy availability of illicit drugs is the main factor behind the spurt in drug abuse.

2. About 35% of the opium cultivated under licence from the Central Government gets diverted to the illicit market. A part of this opium is consumed orally by the addicts, while the rest is converted to brown sugar in make-shift laboratories in the opium-growing areas. Opium and heroin from Myanmar and Pakistan, and ganja from Nepal, are also smuggled into the country on a large scale.

3. The penalties stipulated under the NDPS Act, 1985 are harsh and disproportionate to the nature and gravity of offence in many situations, and hence the judges appear to be reluctant to convict the offenders involved in petty cases. A large number of such offenders are, therefore, acquitted by the courts on technical grounds. The conviction rate for drug offences is estimated to be below 10% after the first appellate stage. There is a need for rationalizing the sentencing policy.
4. Some of the procedural provisions contained in the NDPS Act, 1985 are complex, cumbersome and impractical. Non-compliance with these provisions by the law enforcement officials is the major cause for the acquittal of offenders in most of the cases. The courts have also been giving conflicting interpretations to these provisions, and this leads to further confusion amongst the law enforcement officials.

5. The stringent provisions relating to bail have been liberally interpreted by the courts contrary to the apparent intention of the Legislature, due to the reason that the trials remain pending for years. The matter regarding setting up of adequate number of Special Courts for speedy trial of drug offenders has been given a low priority by the State Governments.

6. The provisions relating to preventive detention under the PITNDPS Act, 1988 are generally invoked against the persons who are already facing trial for specific offences under the NDPS Act, 1985. Most of the detention orders are quashed by the courts on technical grounds.

7. The provisions relating to forfeiture of drug-related property, as contained in the NDPS Act, 1985, have failed to be effective due to the faulty drafting of Sec. 68A of the Act.
8. The existing legal framework for reformation of addicts has failed to cope with the problem of drug addiction, and hence an alternate strategy based on a non-punitive and sympathetic, yet sufficiently deterrent, system of reformation is needed.

9. The functioning of enforcement agencies is adversely affected by the shortage of staff, lack of training, corruption, absence of public cooperation, insufficiency of technological support, lack of legal assistance, and faulty policies as regards rewards and transfer of enforcement officials. Consequently, the performance of these agencies is extremely poor.

10. There is little stress by the Government on the demand-reduction strategies. The facilities available at present for treatment, rehabilitation and after-care of the existing addicts are too inadequate.

11. Drug menace is going to endanger the social, economic and political systems in the country in the near future unless efforts are made on war-footing to control it by specific legislative and executive interventions, about which recommendations, based on research findings, are being made at the end of the work.