CHAPTER - I
INTRODUCTION

1.1 GENERAL INTRODUCTION.

Drug abuse is a social evil. Narcotics and other dependence producing substances have been used in the world in one form or another since times immemorial. Likewise trading in these substances has been carried on over a considerable period of time. Narcotics came into widespread use in Western medical practice during the latter part of the 19th century. They had in their crude form, been known for the so-called beneficial effects for centuries and had been extensively used, both therapeutically and non-therapeutically, for their calming, intoxicating and presumed curative properties.\(^1\) However, introduction of these drugs shortly led to their abuse. Looking back, we can recollect that the addict of the Chinese Government in 1800 AD prohibiting import of opium as it constituted a threat to the health of the Chinese people resulted in the infamous Opium War in the name of right of free trade. European powers organized massive smuggling of the substance into China which was resisted by the Chinese resulting in the Opium War. Just as any virus, use of drugs and drug trafficking knows no bonds or limitations. It spreads all over a country from nation to nation to the entire globe infecting every civilized society irrespective of caste, creed, culture and the geographical location.

As early as in 1917, Mahatma Gandhi while addressing the All India Social Service Conference in Calcutta had said:

*The cocaine habit was sapping the nation’s manhood, and that like the drink habit, it was on the increase in its effect more deadly than drink.*

In its report of 2001, the International Narcotics Control Board (INCB) has observed\(^2\):

*Narcotic drugs such as cocaine, opium and heroin appreciated and enthusiastically applied worldwide in medicine until their addictive properties*

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and therapeutic limitations in wide-scale application were recognized. It was soon universally accepted that the health and social risks that such drugs posed to individual consumers and society, associated with their uncontrolled or excessive use and easy availability, largely outweighed the benefits derived from their medical use.

Narcotic drugs and psychotropic substances have been regarded as one of the worst enemies of the humans through centuries and continue to be regarded so in this scientific and technological age. Drug trafficking and abuse is a global phenomenon, has acquired the dimensions of an epidemic, affects the economic policies of the State, corrupts the system and is also detrimental to the future of the country. The illicit trafficking and abuse of these drugs is rising at alarming rates and if the trafficking of these dependence-producing substances is not controlled and prevented, the same will bring volumes of disaster for our present and future generations. Highlighting, the adverse effects of trafficking and abuse of narcotics, the Supreme Court in State of Punjab versus Baldev Singh has observed:

“4.Drug abuse is a social malady. While drug addiction eats into the vitals of the society, drug trafficking not only eats into the vitals of the economy of the country, but illicit money generated by drug trafficking is often used for illicit activities including encouragement of terrorism. There is no doubt that drug trafficking, trading and its use, which is a global phenomenon and has acquired the dimensions of an epidemic, affects the economic policies of the State, corrupts the system and is detrimental to the future of a country. It has the effect of producing a sick society and harmful culture. Anti-drug justice is a criminal dimension of social justice. The United Nations Conventions Against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances which was held in Vienna, Austria in 1988 was perhaps one of the first efforts, at an international level, to tackle the menace of drug trafficking throughout the comity of nations. The Government of India has ratified this Convention.”

AIR 1999 Supreme Court 2378.
The illicit drugs have been invading the human system for centuries and killing and making captive millions and millions of people, before the nations wake up against its rapidly increasing domination. The drugs are cultivated and manufactured in some parts of the globe and are trafficked/smuggled to other parts of the world by international criminal syndicates to satisfy the demands of the consuming public. Trafficking in narcotics is, therefore, a big challenge faced by the world community and the same needs to be addressed in order to find some practicable and long lasting solution. Inspite of the concerted efforts by various enforcement agencies both at the national and international level, the problem of trafficking/smuggling continues to remain a big issue. There are a number of reasons for this illicit trade to continue and thrive unabated and it is believed that the most important factor which makes trafficking in narcotics a highly attractive proposition is that it is a high profitable criminal activity.

Whatever be the origin or source of drug abuse, this deadly practice gravely affects the most productive and dynamic section of our society, that is the age group between 15-40. There is, thus, inestimable loss to the social, economic and cultural life of the people and to wealth of the nation. Drug abuse has been identified as playing a significant part in the spread of diseases like AIDS. Drug problems are part of the larger problems of disease, poverty, unemployment, violence, economic disparity and styles of living. It destroys not only vitals of the society but also adversely affects the economic growth of the country because this is a trade which generates large un-accounted money which, in turn, leads to adoption of several means of money laundering.

The money generated is used for various purposes including anti-national and terrorist activities and even clandestine trading in arms and ammunition. A new concept of ‘Narco- Terrorism’ has come in International sphere that huge money earned through the drug trafficking activities having been used by the terrorist for their illegal activities in certain part of the world. Drug trafficking activities have sharply increased over the years and unscrupulous persons dealing in drugs have flourished despite hard punishments provided under the law because they have been able to evade the process of law. It spreads all over a country, from nation to nation, to the entire globe infecting every civilized society irrespective of caste, creed, culture
and geographical location. Therefore, the drug trafficking has no boundaries or limitations.

The link between drug traffickers and insurgents has been termed as Narco-Terrorism. Narco-Terrorism, simply defined, is the involvement of terrorist organizations and insurgent groups in the trafficking of narcotics. The first documented instance of an insurgent force financed, at least in part, with drug money, came to light during an investigation of the virulent anti-Castro omega 7 groups in the early 1980s. Clear-cut evidence of modern narco-terrorism, however, is difficult to obtain, contemporary insurgent organizations with links to drug dealers probably include (1) the 19th of April Movement (M-19) operating in Colombia, (2) Peru’s sender luminoso (shining path), (3) the Revolutionary Armed Forces of Colombia, and (4) the large Farabundo Marti National Liberation Front (FMLN), which has long sought to overthrow the elected government of El Salvador.4

The symbiotic relationship which exists between terrorist organizations and drug traffickers is mutually beneficial. Insurgents derive financial benefits from their support role in drug trafficking, while the traffickers themselves receive protection and benefit from the use of terrorist tactics against foes and competitors.5

To emphasize the need for providing a panacea to this problem while preventing retrogression of socio-economic values all over the world, it would be logical to refer to the observations of the Supreme Court of Canada in the case of United States of America versus Cotroni 6:

The investigation, prosecution and suppression of crime for the protection of the citizen and the maintenance of peace and public order are an important goal of all organized societies. The pursuit of that goal cannot realistically be confined within national boundaries. That has long been the case, but it is increasingly evident today.

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4 U.S. Department of State, Terrorist Group Profiles, 1989
5 Ibid.
In recent times, there has been significant development of the communication systems and means of transportation. This has also led to considerable increase in Narcotics drug trafficking. The drug traffickers have been able to flourish despite stringent punishments provided under the ‘Narcotic Drugs and Psychotropic Substances Act’. They are able to evade the process of law and cause great harm to the social and economic growth of the country and particularly the young generation. This resulted in seriously hampering the socio-economic growth and multidimensional development of the country. Unfortunately, the kingpins and the carriers of these drugs at the international and national level are concerned with only large undue financial gains and not with massive ill-effects of use of drugs on the society. In order to deal with the increasing drug problem, community of nations, since the early 20th century evolved a global control mechanism intended to limit the availability of drugs only for medicinal and scientific purposes. The punishment for drug trafficking became more and more stringent by the passage of time, but it has not been able to provide real solution to the basic problem. Today, world opinion and effort is united in fighting illicit production, trade and trafficking in drugs as the view is unanimous, that its effects are disastrous.

1.2 HISTORICAL BACKGROUND AND DEVELOPMENT OF DRUG LAWS IN INDIA

There is no part in the world today which is free from the curse of drug trafficking and drug addiction. Millions of drug addicts all over the world are leading a miserable life on the border line between life and death. Addition to Narcotics and Drugs is now recognized globally as one of the major dangers faced by the mankind. Drug abuse is no longer confined to any cultural or socio-economic strata of society but has proliferated amongst all classes. The potential for easy monetary gains through the sale of drugs has emerged as the worst form of organized crime. Illicit trafficking of drugs generates unprecedented profits and has strong linkage with money laundering and financing of terrorism related criminal activities both nationally and internationally. The task of combating drug trafficking, therefore, has become very critical and complicated. It involves tackling violations of national law, international conventions and also all allied economic crimes like corruption, tax evasion, money laundering and terrorism etc.
In present circumstances narcotics interdiction, successful prosecution of drug traffickers and annihilating organized drug trafficking syndicates is a challenge for law enforcement agencies. Probably, we can never eliminate this menace completely due to various constraints such as corruption, defective investigations, non-cooperation of coordinating agencies, defective policies of the government etc. but can certainly contain by attacking it from all quarter, together.

Herbal cannabis and opium have been traditional drugs of abuse in India. In due course of time, the abuse of herbal cannabis or ganja attained considerable religious sanctity primarily because of its association with some Hindu deities. However, despite the long history of abuse of such drugs in India, the problem of drug addiction and drug trafficking didn’t assume such menacing proportions as it has in present scenario. India’s narcotic problem arises pre-dominantly due to its proximity to the two major opium producing regions which flank the country on either side, namely, the Golden Crescent (Pakistan, Afghanistan, Iran) in the west and Golden Triangle (Myanmar, Thailand and Laos) on the east. Nepal also is a traditional source of cannabis, both herbal and resinous. Further, being a licit producer of raw opium for medicinal and research purposes (India is the only such country), there is scope for some leakage from the licit to the illicit channel despite stringent controls. Some reports of domestic manufacture of brown sugar have, of late, caused alarm. With the growing liberalization of commerce, there is an ever-increasing danger of exploitation of trade channels for narcotics trafficking as has been experienced the world over.\(^7\)

National policy on Narcotic Drugs and Psychotropic Substances is based on the directive principles contained in Articles 47 of the Indian Constitution which directs that the “State shall endeavor to bring about prohibition of the consumption, except for medicinal purposes, of intoxicating drugs injurious to health.” The Government's policy on the subject which flows from the above said constitutional provision is also guided by the international conventions on the subject. India is a signatory to:

* 1961 Single Convention in Narcotic Drugs as amended by the 1972 protocol.

\(^7\) Drug Law Enforcement Training Compendium, Vol.1, Narcotics Control Bureau, India, p.3
The broad legislative policy mechanism in this matter is contained in three Central Acts, viz. Drugs and Cosmetics Act, 1940, The Narcotic Drugs and Psychotropic Substances Act, 1985, and the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988. The responsibility of drug abuse control, which is a central function, is carried out through a number of Ministers, Departments and Organizations. These include Ministry of Finance, Department of Revenue which is having the nodal co-ordination role as administrators of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) and the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (PITNDPS Act). The Narcotic Drugs and Psychotropic Substances Act, 1985 which came into effect from the 14th November, 1985 made an express provision for constituting a central authority for the purpose of exercising the powers and functions of the central government under the Act. In exercise of the powers, the "Narcotics Control Bureau" was constituted with headquarters at Delhi with effect from the 17th March, 1986. The bureau, subject to the supervision and control of the central government, exercises the powers and function of the central government.

The main legislation to control drug abuse in India namely the N.D.P.S. Act, 1985 came into effect on 14th November, 1985 replacing the Opium Act, 1857, the Opium Act, 1878 and Dangerous Drugs Act, 1930. The earlier Acts were mainly regulatory or restrictive in character. Against the ever increasing complex scenario, the responsibilities of enforcement personnel are also increasing. Since there are many angles to the drug problem of the country, the government has a multi-pronged anti-drug policy laid down in the NDPS Act, 1985 and PITNDPS Act, 1988.

The objectives of this policy are regulation of the production and supply of distribution of narcotic drugs and psychotropic substances for medical and scientific research purposes, complete prohibition of consumption or use of such drugs and substances for purposes other than medical or scientific, prevention of illicit traffic in such drugs and substances and treatment, counseling, de-addiction and social rehabilitation of drug addicts in the larger interests of the society. The last one is a humanitarian or philanthropic angle which was totally absent in the pre-1985 drug laws in India. Therefore, if these objectives have to be fulfilled, there should
definitely be a vastly improved and cooperative coordination among the enforcement agencies.

The Government of India in order to exercise strict control over narcotics drugs and psychotropic substances in the manner envisaged in the United Nations Conventions, consolidated the erstwhile laws and the NDPS Act provides for stringent provisions for control and regulations of narcotics drugs and psychotropic substances besides providing for the forfeiture of property derived from, or used in, illicit traffic of narcotic drugs and psychotropic substances. One of the significant deterrents to the drug traffickers is the provisions authorizing freeze or seize and forfeit any illegally acquired property or asset of any description derived from or used in illicit trafficking of drugs. Such properties even in the name of relative or any other person can be forfeited and the burden of proof that the property is acquired legally lies on the person affected.

The recent amendment i.e. NDPS (Amendment) Act 2001 is yet another legislative attempt to iron out the anomalies and to remove the technical snags recasting almost entire statute. The current amendment extended the scope of the operation of the Act to all citizens of India outside India and all persons on ships or aircrafts registered in India.

Drug control legislation has, as its primary aim, the protection of public welfare by preserving health and eliminating undesirable social and moral effects commonly associated with the indiscriminate use of narcotic drugs and psychotropic substances. The Supreme Court of India has appreciated the role of Indian Parliament in a very clandestine manner, how the effective provisions have been introduced in the NDPS Act, 1985 in judgment Durand Didier versus Chief Secretary, Union Territory of Goa, in the following words:-

With deep concern, we may point out that the organized activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportion in the recent years. Therefore, in

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8AIR 1989 Supreme Court 1966.
order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious effects and deadly impact on the society as a whole, the Parliament in its wisdom has made effective provisions by introducing this Act 61of 1985 specifying mandatory minimum imprisonment and fine.

The overall coordination in the drug control matter is the function of the Narcotic Control Bureau, Department of Revenue. Various other functions in the matter are carried out by various Departments/Organizations. The licensing functions for medicinal and scientific purposes are performed by the Narcotic Commissioner under the Department of Revenue and the Drug Controllers and Excise Commissioners of the State/Union territories. They also have enforcement powers for dealing with complaints and detecting contraventions. The health, treatment and hospitalization facilities in respect of drug addicts are the responsibility of the Ministry of Health and Family Welfare and Health Department of the States/Union Territories. They also administer the Drugs and Cosmetics Act, 1940 which has an important bearing on licensing and regulation in respect of psychotropic substances. Public welfare aspects of prevention of addiction and de-addiction efforts, public education for demand reduction and rehabilitation and social reintegration of the addicts are the responsibilities of the Ministry of Welfare and the Welfare Departments of the States/Union Territories which operate mainly through the non-governmental social welfare organizations.

General enforcement of the provision of the N.D.P.S. Act, 1985 are looked after by various other enforcement agencies like Customs and Central Excise, State Police, NCB, Enforcement Directorate and Central Bureau of Investigation, Para Military forces like B.S.F., C.R.P.F. and Coast Guards etc. also has very significant role to play in tackling smuggling of drugs. A detailed mechanism has been evolved in order to have a coordinated strategy against the evil of narcotics trafficking and abuse.

At the Central Govt. level, the Ministry of Home Affairs has evolved a scheme of periodic meetings with state ministers/secretaries and other high level functionaries. For this purpose, the states have been divided in zones. Narcotics are frequently discussed agenda item in these meetings, particularly in respect of
vulnerable states. Periodical coordination meetings are held with representatives of
the various ministers, organizations, state governments dealing with drug law
enforcement and drug related issues. The Government of India has also constituted a
high level committee to undertake comprehensive review of the present arrangements
for dealing with various aspects related to the problem of drug abuse.

Keeping in view the spirit of the 1988 UN Convention against Illicit Traffic in
Narcotic Drugs and Psychotropic Substances, India has been endeavoring to enter into
bilateral agreements with like-minded countries for combating illicit trafficking of
drugs. But the menace is not getting controlled rather spreading and this indicates that
the mechanism is not sufficient to tackle this problem and enforcement agencies also
have their own limitations and suffer from various shortcomings. The probable reason
again is the improper/poor implementation of policies along with poor/corrupt
functioning of enforcement mechanism. The primary reason for poor functioning of
enforcement mechanism/implementation of policy is role of the human resource as it
is the quality and quantity of human resource which contributes in success/failure of
any policy/mechanism. Due to these factors any enforcement effort, however, gigantic
it may be, is just not enough to save and protect the mankind from the evil spirit of
drug addiction.

1.3 INTERNATIONAL PERSPECTIVE

The problem of drug trafficking and abuse is not a local/ domestic
phenomenon and to check this menace there is need for concerted effort on the part of
world at large. Keeping this issue in to consideration the first international Opium
Convention was signed at Hague on 23rd January, 1912. It formulated the basic
principles of international control over the drug abuse. Since the main drugs of abuse
were opium, morphine and cocaine, in the first half of 20th century, the international
treaties adopted during this period were designed to bring about the production of
these drugs and their derivatives to the minimum level and only for medical and
scientific needs. The main objective of these treaties by way of meeting was to
suppress illicit traffic of the drugs. These treaties also provided for review monitoring
of the implementation by the competent international organ viz. Permanent Central
Opium Board, the predecessor of the International Narcotics Control Board. Finally,
all such treaties had been merged into the 1961 Convention known ‘The Single
Convention on Narcotics Drugs, 1961’. This convention came into force in the year
1964, whereby all the contracting parties extended the whole apparatus of international control to all the drugs and narcotic substances for the first time in order to give a signal to the international community that combating with this evil is not possible by a single country.

Under the aegis of the United Nations, a convention called the "The Convention on Psychotropic Substances, 1971" was adopted for providing an international mechanism for psychotropic substances which was lacking in earlier convention of 1961. This convention also laid down the cardinal principles that the availability of psychotropic substances should be limited for legitimate purposes only and effective measures against abuse of such substances requires coordination and universal action on the part of contracting parties under the supervision of the United Nations. This Convention has also stressed the need for prevention of abuse of psychotropic substances and early identification, treatment, education, after care, rehabilitation and social reintegration of the person involved. It has also provided a number of measures dealing with drug control, drug trafficking, treatment as well as rehabilitation strategy for addicts. Later on, the Single Convention on Narcotic Drugs, 1961, was amended by 1972 Protocol providing the similar basic principles for adequate control mechanism for narcotic drugs and psychotropic substances.

The United Nations Convention against illicit trafficking in Narcotic Drugs and Psychotropic Substances which was held in Vienna, Austria in 1988 was perhaps one of the first international effort to take action against the illegal proceeds of drug trafficking throughout the comity of nations and manifested the desirability of mutual legal assistance between Member States to deal with the menace so as to provide for confiscation of the moneys and for extradition of the offenders. The Government of India has ratified the Convention.

India has long recognized the problems of drug trafficking and abuse. The Opium Act of 1857 and of 1878 and the Dangerous Drugs Act, 1930 manifest the same. As a result of experience gained on account of India's participation in various international conventions and realizing gravity of the problem and the need to enact laws in tune with times, the Narcotic Drugs and Psychotropic Substances Act of 1985 was passed by Indian Parliament as a comprehensive legislation on narcotics, providing for stringent and long term prison sentences and heavy fines for offenders. Offender under this Act includes the cultivator, supplier, seller as well as the drug
consumer. Bail provisions were made very stringent. The minimum sentence is ten years. The amended Drugs and Cosmetics Act and Rules also provide for deterrent punishment and stringent control over manufacture, sale distribution of psychotropic substances.

The operation of the international system is based on national control by individual states within the limits of their jurisdiction. In compliance with the stipulations of the narcotics treaties, the states are bound to adopt appropriate legislation, introduce necessary administrative and enforcement measures and cooperate with international control. Society’s defensive reaction against drug pollution has now reached the level of the International community. The worldwide control of narcotic drugs and psychotropic substances rests upon the multilateral treaties concluded between 1912 and 1988.

The international control organs, functioning under the auspices of the United Nations include one policy making organ, the commission on narcotic drugs, succeeding the league of Nations Advisory Committee on Traffic in opium and other Dangerous Drugs, which was a general organ of control, and one specialized administrative organ, the International Narcotics Control Board which is charged particularly with the supervision of provision of the narcotics treaties dealing with measures of Quantitative Control (statistics and estimates). Both the Commission and the Board report to the Economic and Social Council.

1.3.1. Development of International Drug Control

In 1909, the use and abuse of narcotic drugs was wide spread in other regions besides the Far East when the first attempt at international level was made, opium abuse was the center of gravity. There had been the opium wars in China in middle of the nineteenth century to keep Chinese market open to the trade in opium from British India, and then the great increase in opium from British India and then the great increase in the consumption of Morphine during the American Civil War. In 1906, a big step forward was taken with the passing of an edict in China which prohibited the cultivation of the opium poppy. This was the first move towards the ultimate goal of a total ban on opium smoking.

1.3.2. Shanghai Opium Commission
The stage was set for the first international conference on narcotic drug which led to the signing of the first treaty three years later. Upon the initiative of the United States government under President Theodore Roosevelt, thirteen powers with interest in the Far East appointed an Opium Commission which met at Shanghai in 1909. The commission adopted nine resolutions dealing with various aspects of the opium problem. The main object of the commission, in the words of the Viceroy of the Liang Kiang was, “to consider the question of putting a stop to consumption of opium…. For the whole world, if by the labours of the conference a way is found to shorten the limit and bring about the abolition of opium at an early date.”

The commission urged gradual suppression of opium smoking and recommended measures intended to stop smuggling of narcotics, especially by prohibiting their export to territories which did not legally admit them. Appeal was also made to the governments controlling foreign concessions and settlements in China to take various measures to cooperate with the government of China. Governments were also strongly urged to take drastic steps to control the manufacture and distribution of morphine and other derivatives of opium. Although the commission did not establish any binding obligations but it indicated the direction of future action.

1.3.3 The Hague Convention, 1912

The Hague Opium Convention of 1912 was the first international convention in which an attempt was made to suppress the abuse of opium and other related substances. The Preamble of the convention read: “Desirous of advancing a step further on the road opened by the International Commission of Shanghai of 1909.” This convention consists of six chapters which dealt exclusively with opium (raw and prepared) and related substances (cocaine, morphine etc.) although a special chapter (VI) was made applicable only to China giving effect to some of the Shanghai resolutions. The convention came into force on 28th June, 1919.

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This convention established international co-operation in the control of narcotic drugs as a matter of international law and principles laid down in it have remained the basis of international narcotics control. The convention stipulated that the production and distribution of raw opium were to be controlled by law, that opium smoking was to be gradually suppressed, and that the manufacture, sale and use of manufactured narcotic drugs (that is of morphine, other opiates and cocaine) were to be limited, by law exclusively to medical and legitimate needs, manufacturer of and traders in such drugs were also subjected to a system of permit.

The League of Nations Covenant provided that the members of the League should “entrust the League with the general supervision over agreements with regard to the traffic in opium and other dangerous drug.” The first League assembly created an Advisory Committee on Traffic in opium and other Dangerous Drugs to assist and advise the League’s council in these tasks.11

1.3.4. The Geneva Convention, 1925

The Geneva International Opium Convention of 1925 was the first convention concluded during the League period is an attempt to suppress the drug menace. This convention, which was adopted at the second opium conference held at Geneva from November 1924 to February 1925, was found necessary because of the failure of The Hague Opium Convention of 1912 to control contraband trade in and abuse of narcotics substances. The object of this convention was to bring about a more effective limitation of the production or manufacture of narcotic substances by exercising a closer control and supervision of the International trade. This Convention consists of seven chapters. Chapter VI of the convention was devoted to the Permanent Central Board which was created for the purpose of international supervision of drug industry. Under this convention governments were required to submit to Permanent Central Board annual statistics concerning production of opium and coca leaves and the manufacture, consumption and stocks of narcotic drugs and quarterly reports on the import and export of such drugs, including opium and coca leaves. It also established the system of import certificates and export authorization requiring governmental approval of each import and export.12

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11 Art. 23(c) of League of Nations Covenant

12 Art. 24 of the Geneva Convention, 1925
Thus, the Permanent Central Board was established to supervise the statistical system introduced by the convention. It was composed of eight independent experts serving in their personal capacity and not as representative of their government.

Thereafter, The Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, 1931 was held whereby contracting parties declared that this convention was concluded not only to supplement the Hague Opium Convention of 1912 and the Geneva Opium Convention of 1925 but also to render effective control over the narcotic drugs. The Convention for the Suppression of the Illicit Traffic in Dangerous Drugs, 1936 was signed at Geneva on 26 June, 1936 and came into force in October 1939, calls for the severe punishment for illicit traffickers. The Paris Protocol of 1948 came into force on December 1949 authorizing the World Health Organization to place under full international control any drug (including synthetic drugs).

Thereafter, The Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of International and Wholesale Trade in and Use of Opium, 1953 came in existence with the objective to limit the use of drugs for medical and scientific needs and to regulate the production of raw materials from which natural narcotic drugs are obtained. In this manner the nations continued their efforts to combat drug addiction and illicit traffic in narcotic substances by close collaboration among all states and to strengthen the system of narcotics control at both National and International level.

1.3.5. Single Convention on Narcotic Drugs, 1961

The single convention on Narcotic Drugs 1961 was held at Geneva from 6th March, 1972 to 24th March 1972 under the auspices of United Nations. It was a maiden attempt to simplify and consolidate international drug central machinery. This instrument codified all existing multilateral treaties and merged the permanent Central Board and Drug supervisory Board into the International Narcotics Control Board (INCB) a relevant authority in the international arena which lays down the rules and restrictions regarding narcotics.  

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The single convention was not simply a synthesis of previous international instruments. It also extended the scope of control of other drugs (e.g. cannabis and coca leaf) and introduced a number of new control measures. Its main provisions are as follows:

(a) It prohibits the production, trade and use for non-medical purposes of all narcotics drugs;  
(b) It extends the scope of control to cannabis and coca leaf;  
(c) It limits possession of narcotics drug to medical and scientific purposes and to persons authorized to possess them.  
(d) It makes obligatory for manufactured drug, the limitation based on estimates introduced by the 1931 Convention (narcotic raw materials were excluded);  
(e) It incorporates the basic provisions of the 1953 Protocol (national opium monopoly licensing of farmer etc.) and extends these provisions also to cannabis and coca leafs.  
(f) It extends the system of import certificates and export authorizations introduced by the 1925 convention to poppy straw;  
(g) It completes the international system of statistical control by extending it over the entire range of transactions concerning all drugs covered by the convention.

Another commendable feature of this convention is that it introduced new obligations related to medical treatment and rehabilitation of addicts.

1.3.6 Convention on Psychotropic Substances, 1971

Another important international instrument in the series is the Convention on Psychotropic substances signed in 1971 which came into force on 16th August 1976. Its object was to extend control of a board range of man-made behavior altering substances that could lead to harmful dependencies. Basing on various risks in using the wide variety of substances placed under control by this convention, and their widely varying therapeutic values, four separate scheduled was appended. The task of determining whether medically a new substance should be covered under the

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convention is placed on the World Health Organisation. Once this task is determined by WHO, the final decision on scheduling the drug lies with the commission on Narcotic Drugs which has taken into consideration, certain other factors like the extent of known risks, abuse and trafficking.

The convention has also emphasized prevention of abuse of psychotropic substances and early identification, treatment, education, after care, rehabilitation and social reintegration of the persons involved.\textsuperscript{15}

Apprehension about the sharp increase in drug problems during the late seventies led to formulation by the General Assembly in 1981, of an International Drug Abuse Control strategy and a five year action programme. It provided for a series of policy measures dealing with various aspects of drug control, traffic and treatment of addicts. The six point strategy called for,

(i) Improving the international drug control system through wider adherence to existing treaties;

(ii) Co-coordinating efforts to ensure balance between supply and demand of drugs for legitimate use;

(iii) Steps for eradication of illicit drug traffics including finding income producing alternatives for illicit drug producers;

(iv) Intensifying efforts to detect and dismantle clandestine laboratories and trafficking organizations.

(v) Measures to prevent drug abuse and promote treatment, rehabilitation and social integration of drug abusers. The programme of action set out specific activities for UN and member governments to achieve these objectives. The commission on Narcotics Drugs was asked to monitor and coordinate their implementation.

\textbf{1.3.7 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988}

A convention against illicit traffic in narcotic drugs and Psychotropic substances was held at Vienna, from 25\textsuperscript{th} November to 20\textsuperscript{th} December 1988 under the

\textsuperscript{15}Art.20 (1) of the Convention on Psychotropic Substances, 1971
auspices of the United Nations. The parties to this convention were deeply concerned that there was a rising trend in the illicit production of, demand for and traffic in narcotic drugs and psychotropic substances, which posed a serious threat to the health and welfare of human beings and adversely affect the economic, cultural and political foundations of society. The parties were determined not only to deprive persons engaged in such an illicit traffic, but were desirous to eliminate the root cause of the problem of abuse of narcotic drugs and psychotropic substances. Since the eradication of illicit traffic is a collective responsibility of all states, co-ordinated action within the framework of international cooperation, including such cooperation is the suppression of illicit traffic by sea is necessary. The parties agreed that the guiding principles of existing treaties in the field of narcotic drugs and psychotropic substances have to be re-affirmed that there is need to reinforce and supplement the measures of that convention on Narcotic Drugs 1961 and the 1971 convention on psychotropic substances. They also recognized the importance of strengthening and enhancing legal means for international co-operation in criminal matters for suppressing the international criminal activities of illicit traffic.

The purpose of this convention was to promote cooperation among the parties so that they may address more effectively the various aspects of illicit traffic in narcotic drugs and psychotropic substances having an international dimension, and they could take necessary legislative and administrative measures in conformity with fundamental provisions of their respective domestic systems as well as in a matter consistent with the principles of sovereign equality and integrity of states and that of non-intervention in the domestic affairs of other states. Under the convention of 1988 providing guidelines for determining offences and sanction required each party to adopt such measures as may be necessary to establish as criminal offences under its domestic law when committed internationally. The lists of criminal offences as suggested by the convention are as follows:16

A (i) The production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation

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16 Art.3 of the Convention, 1988
of any narcotic drug or any psychotropic substance contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention;

(ii) The cultivation of opium poppy, coca bush or cannabis plant for the purpose of the production of narcotic drugs contrary to the provisions of the 1961 Convention and the 1961 Convention as amended;

(iii) The possession or purchase of any narcotic drug or psychotropic substance for the purpose of any of the activities enumerated in (i) above;

(iv) The manufacture, transport or distribution of equipment, materials or of substances listed in Table 1 and Tale II, knowing that they are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances;

B (i) The conversion or transfer of property, knowing that such property is derived from any offence or offences established in accordance with subparagraph (a) of this paragraph, or from an act of participation in such offence or offences, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property knowing that such property is derived from an offence or offences established in accordance with subparagraph (a) of this paragraph or from an act of participation in such an offence or offences;

The Convention made provision for extradition also. There were provisions for other forms of cooperation, training and controlled delivery. The participants of the convention also agreed to afford to one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings etc. There are further directions of the convention to the effect that each party shall adopt such measures as may be necessary to establish as a criminal offence under its domestic law in this respect and that each party will take into account punishments such as
imprisonment or other forms of deprivation of liberty, pecuniary sanctions and confiscation.

1.3.8 The Drug Abuse Legislation in Other Countries

1.3.8.1 Drug Abuse Legislations in USA

Antidrug Abuse legislation in the United States dates back to around 1875 when the city of San Francisco enacted a statute prohibiting the smoking of opium, other Western were quick to follow San Francisco’s lead. The San Francisco law and others like it however, clearly targeted Chinese immigrants and were rarely applied to other ethnic groups which may have been involved in the practice. The first major piece of federal anti-drug legislation came in 1914, with enactment of the Harrison Act. The Harrison Act required persons dealing in opium, morphine, heroin, cocaine, and specified derivatives of these drugs, to register with the federal government and to pay a tax of $1.00 per year. The only people permitted to register were physicians, pharmacists and members of the medical profession. Non-registered drug traffickers faced a maximum fine $2000 and up to five years in prison. Because the Harrison Act allowed physicians to prescribe controlled drugs for the purpose of medical treatment, heroin addicts and other drug users could still legally purchase the drugs they needed. All the law required was a physician’s prescription. But in Webb vs. US in 1920 the court ruling has established that drug ‘maintenance’ only prolonged addiction and did not qualify as treatment. The era of legally available heroin is ended.\(^{17}\)

By the 1930’s government attention was riveted on Marijuana. At the urging of the Federal Bureau of Narcotics, Congress passed the Marijuana Tax Act in 1937. As the title of law indicates the Marijuana simply placed a tax of $100 per ounce on cannabis. Individuals not paying the tax were subject to prosecution. With the passage of the Boggs Act in 1951, however, marijuana along with a number of other drugs entered the class of federally prohibited controlled substances. The Boggs Act also removed heroin from the list of medically useful substances and required the removal within 120 days of any medicines containing heroin from pharmacies across the country.

The Narcotic Control Act of 1956 increased penalties for drug trafficking and possession and made the sale of heroin to anyone under age eighteen a capital offence.

\(^{17}\)Frank Schmalleger, “Criminal Justice Today”, fourth edition (1999) at p.578
Unlawful possession is punishable by two to ten years imprisonment and up to twenty thousand dollars fine for the first offence; a second offence may bring five to twenty years; third and subsequent offences—ten to forty years. Penalties for unlawful sale are five to twenty years and a fine up to twenty thousand dollars for the first offence; subsequent offences may bring ten to forty years. All minimum sentences are mandatory leaving the trial judge without discretion. Convictions for sale or subsequent convictions for any other offence automatically preclude the granting of probation or suspension of sentence.\textsuperscript{18}

The Import and Export Act neglected the flow of narcotic drug into the United States. The act specifically prohibits the importation of opium for the purpose of manufacturing heroin. Accordingly heroin has a rather special status is that it may not be lawfully imported or manufactured under any circumstances so that all transactions in and possession of that drug are criminal per se.\textsuperscript{19}

The Opium Control Act prohibits any production, transfer or possession of the opium poppy without license. Not surprisingly no license has yet been granted under its provisions. The Uniform Narcotics Drug Act, 1967 also makes offences for the possession and sale of opium, its derivatives cocaine and marijuana except as authorized under the act. Doctors or dentists are authorized to dispense narcotic drugs if done in good faith and only in the course of their professional practice. The act has been adopted as the control statute in most states including Illinois and New York.

By 1970 America’s drug problem was clear to almost everyone, and legislature was anxious to return to a more punitive approach to controlling drug abuse. Under President Nixon legislation designed to encompass all aspects of drug abuse and to permit federal intervention at all levels of use was enacted. Termed the Comprehensive Drug Abuse Prevention and Control Act of 1970, the bill still forms the basis of federal enforcement efforts today. Title II of the Comprehensive Drug Abuse Prevention and Control Act is the controlled substance Act (CSA). The CSA

\textsuperscript{18} Ibid.

\textsuperscript{19} Guy P. Seaberg, “The Drug Abuse Problems and Some Proposals” (1967) 58 Criminal Law, Criminology and Police Science, at p.357.
sets up five schedules which classify psychoactive drugs according to their degree of psycho activity and abuse potential.\textsuperscript{20}

\textbf{1.3.8.2 The Anti Drug Abuse Act of 1988}

In 1988 the country’ Republican leadership under then President Reagan capitalized upon the public’s frustration with rampant drug abuse and stepped up to the ‘war on drugs’. The President created a new cabinet level post, naming a ‘drug Czar “who was to be in charge of Federal drug fighting initiatives through the Office of National Drug Control Policy (ONDCP) William Bennett, a former secretary of education was appointed to fill the post. At the same time the Anti Drug Abuse Act was passed by congress. The overly optimistic tenor of the act is clear from its preamble which reads: “It is the declared policy of the United States Government to create a Drug Free America by 1995”.\textsuperscript{21}

Even the Anti Drug Abuse Act of 1988 had plenty of teeth. Under the law penalties for ‘recreational’ drugs users increased substantially and weapons purchases by suspected drug dealers became more difficult. The law also denied federal benefits, ranging from loans (including student loans) to contracts and licenses, to convicted drug offenders. Earned benefits such as social security, retirement, health and disability benefits are not affected by separate legislation nor are the welfare payments or existing public housing arrangements. Under the law, civil penalties up to $10000 may be assessed against convicted ‘recreational’ users for possession of even small amounts of drugs.\textsuperscript{22}

The legislation also included the possibility of capital punishment for drug related murders. The killing of a police officer by offenders seeking to avoid apprehension or prosecution was specifically cited as carrying a possible sentence of death although other murders by major drug dealers also fall under the capital punishment provisions. One especially interesting aspect of the Anti Drug Abuse Act is its provision for designating selected areas as high-intensity drug trafficking areas

\textsuperscript{20}http://en.wikipedia.org/wiki/controlled substance Act


\textsuperscript{22} Ibid.
making them eligible for federal drug fighting assistance in order that joint interagency operations can be implemented to reduce drug problems.

1.3.8.3 Drug Abuse Legislations in United Kingdom

In Great Britain, addiction is treated as a disease and physicians are permitted to maintain addicts on drugs in the course of a doctor-patient relationship. The Dangerous Drugs Act 1920 emerged as the first substantial attempt in English law to control drugs. This act dealt primarily with opium, cocaine, morphine and diamorphine (heroin), and made provision for the control of new drugs or derivatives with similar effects by order in council. An import and export licensing system was set up, and unauthorized possession became an offence. Prescriptions were introduced, records were to be kept and made available for inspection and detailed safety regulation drawn up.²³

The act gave no indication of what was to be deemed proper medical practice with regard to addicts and indeed the terms “addiction” and “drug addict” are not mentioned Regulations under the act authorized a registered medical practitioner to possess and supply the drugs only so far as may be necessary for the practice and exercise of his said profession. To clarify the position, the Departmental Committee on Morphine and Heroin Addiction produced a report (The Rolleston Report, 1926) which in practice served as the basis of law for some forty years.

Meanwhile, the Single convention on Narcotic Drugs, 1961 had codified the existing treaty law. It was implemented by the Dangerous Drugs Act 1965, which (together with the Dangerous Drugs Act 1967) controlled the opiates, their derivatives, cocaine and cannabis offences against the acts were punishable on indictment by a fine not exceeding Pounds 1,000 and/or ten years imprisonment.²⁴

The main illicit drug legislation in the UK is the Misuse of Drugs Act 1971 (MDA). This legislation and its regulations (misuse of Drugs Regulations 1985) control the use of listed drugs (including both medical drugs and drugs with no medicinal use). They set out the circumstances in which it is lawful to import, produce, supply, possess with intent to supply and possess controlled drugs.²⁵

²⁴ Id. at 228.
Under schedule 2 of this act drugs are classified as either A, B or C in theory to reflect the degree of harm they are considered to cause to the individual or society when misused. Each class has different maximum penalties that apply to prohibited activities in relation to drugs.

- Class A is reserved for the more harmful drugs to which more severe penalties apply. This class includes among others, heroin, morphine, methadone, cocaine, opium and hallucinogens such as Ecstasy and LSD. Also included are liquid cannabis (hashish oil), cannabinal and cannabinal derivatives and any class B drug prepared for injection.

- Class B includes cannabis, cannabis resin less potent opioids (codeine), strong synthetic stimulants (oral amphetamines) and sedatives (barbiturates).

- Class C is reserved for drugs that are considered the least harmful such as tranquillizers, some less potent stimulants and mild opioid analgesics.

The Home Secretary can change the classification of drugs through delegated legislation. Any such change by order in council or regulations must be preceded by consultation with the Advisory Council on the Misuse of Drugs. The council is a statutory body which keeps under review drugs which are or are likely to be misused and advises government on measures necessary for the prevention of drug misuse. The Advisory Council has published several reports related to drug use in UK.

The act set out which activities in relation to drugs are prohibited. They exclude importation and exportation, production supply, possession, and possession with intent to supply. Cultivation of cannabis is a separate offence but is also considered production. Under this act, it is prohibited for the occupier knowingly to permit premises to be used for production; the supply of any controlled drug, the preparation of opium for smoking, or the smoking of cannabis, cannabis resin or prepared opium. The act provides a series of offences related to opium including

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26Sections 3 to 6 of the MDA 1971

27Section 8 of the MDA 1971
smoking or otherwise using opium. Sections 18 to 21 create other offences mainly dealing with incitement to commit an offence under the MDA.

Penalties are set out in sections 25 and 26. Section 27 deals with forfeiture. A table of relevant penalties are as follows:

- For class A drugs the maxim penalties are as follows: seven years and/or unlimited fine for possession; life and/or unlimited fine for production or trafficking with a mandatory seven years sentence for a third conviction for trafficking. The mandatory sentence for a third conviction of trafficking is found in the Criminal Sentences Act 1997.
- For class B drugs the maximum penalties are: five years and/or unlimited fine for possession; and fourteen years and/or unlimited fine for production or trafficking.
- For classes C drugs the maximum penalties are: two years and/or unlimited fine for possession; and five years and/or unlimited fine for trafficking.

In the UK, most drug offences may be tried summarily by magistrate or on indictment with a jury at a crown court. It tried summarily the maximum punishment cannot exceed six months and/or Pounds 5000 fine or three months and/or fine for less serious offences.

The act allows for regulations to be made to exempt certain activities from the offence provisions. This allows for the use of drugs for medicine and for scientific research. The MDA allows the Secretary of State to withdraw the authority of a doctor dentist or pharmacist to prescribe, administer, manufacture or supply specified controlled drugs. This decision may be reviewed.

1.3.8.4 Other Relevant Legislation in the Field of Drug Misuse in UK

The Medicine Act, 1968 regulates the production and distribution of medicinal drugs and other medicinal products in the UK. It generally requires a marketing authorization or license before a product may be distributed. The Act deals with the testing, sale, supply, packaging, labeling prescribing dispensing by pharmacists and

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28Section 9 of the MDA 1971
29Sections 25 and 26 of MDA 1971
30Section 8 of the MDA 1971.
 selling in shops of medicinal products. Many controlled drugs are also medicinal products and must thus satisfy the requirements of both MDA and the Medicines Act, 1968. Part II of the Criminal Justice (International Co-operation) Act, 1990 controls the manufacture and supply of certain precursor chemicals which can be used in the manufacture of illicit drugs. Manufacture or supply contrary to the Act is a trafficking offence for the purpose of the Drugs Trafficking Act, 1994. Regulation may be made dealing with notifications of exports record keeping and the supply of information.

The Drug Trafficking Act, 1994 was adopted to enable the UK to meet its obligation under the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988. It creates offences in connection with laundering and handling of the proceeds of drug trafficking, and introduces confiscation measures. The burden of proof is placed on the defendant to prove that the assets were lawfully acquired and applies the civil standard of proof on the balance of probabilities.

The MDA does not distinguish between trafficking and non-trafficking offences. Rather, this distinction is made in the Drug Trafficking Act, 1994 the main consequences of designating an offence as a trafficking offence is that the confiscation provisions apply. In addition, an offender is liable for a third trafficking offence involving a class A drug to a minimum penalty of seven years imprisonment under the Crime Sentence Act 1997.

All these international conventions and legislation reflect that the magnitude of this problem very wide and whole international community is putting its efforts to check this menace.

1.4 DRUG ABUSE IN INDIA

Drug Abuse in some form or other is a universal phenomenon. India is also not exception. The traditional drugs of abuse in India have been herbal cannabis and opium which were available in restricted quantities from licensed shop till recently.

As long as Drug addiction was confined to certain types of Individuals, the problem was managed by the informal mechanism of social Control and there was not a much problem but the situation had altered dramatically in last two decades, because of the steady increase in the demands for hard drugs like Heroin and cannabis in the
affluent western countries, which have led to the development of Illicit conversion of opium into Heroin by the Laboratory in 'Golden Crescent' and 'Golden Triangle'. Hashish production was increased in Nepal and India's Geographical location made it a conduit for transit of these drugs from the aforesaid source countries to Europe, America and other countries.

Smuggling, in everyday parlance, implies carrying across the international borders prohibited and contraband articles. It is a worldwide phenomenon engulfing almost all the countries of the world. Both developed and developing countries have fallen an easy prey to this illegitimate activity of the international criminal syndicates. India, commonly known as smuggler’s paradise is no exception to this worldwide illegal phenomenon. Smuggling of dependence-producing drugs has assumed the dimensions of an alarming and frightening proportion in India also. India is both a producer as well as an important transit country for these substances.

Many states in the Indian Union are considered to be highly vulnerable for the trafficking of these dependence-producing substances and in this regard the State of Jammu and Kashmir (particularly the Valley of Kashmir) has become highly famous for its involvement in the production of charas and also the smuggling of drugs like heroin into the valley from across the Line of Actual Control for onward transmission to different world destinations.

Illicit trafficking in drugs in the country has also assumed alarming position in the North and North-Eastern States. The smuggling of Heroin through Indo-Pakistan, Indo-Burma, and Indo-Nepal Border has been matter of serious concern at the highest level. The emerging of business in drugs as the worst form of organized crime has not only affected the well-being and welfare of the large population but also has posed an unprecedented threat to the quality of the life for the future generation. In Manipur, people have picked up the habit of consumption through intravenous injections from their Burmese contacts across the border. Besides, the lure of high profits by smuggling to outside countries has introduced cultivation and production of illicit drugs in areas where it was not done before. There are also make-shift Laboratory arrangements for manufacture of Heroin and Hashish oil in some part of India, with raw materials either procured from illicit plantations or through leakage from legal production. It was found in surveys that in some Metropolitan Cities and industrial and commercial centers, heroin and hashish addiction is more in congested slum
areas. Raw opium and Herbal cannabis continue to be the main drugs of abuse in the rural areas.

Drugs abuse at work place is another area of concern. Drugs abuse affects the work performance in general and also results in absenteeism, accidents, and sickness with the costs seen in the industry, public sector undertakings, business process outsourcing (BPOs-call centers) and IT industries, migrant workers in the unorganized sector. Women and young girls are affected by drug and alcohol abuse in various ways. They suffer the economic, social and physical consequences as partners of male drug users. Some of them may themselves become addicted, increasing their vulnerability to exploitation. The drug abuse in India particularly the abuse of hard drugs in the beginning was confined to the big cities only. In recent years, it has spread to the rural area as well. The abuse of other drugs is also on increase. In most of the cities, a multiple drug culture has developed. It is difficult for any country to have the actual assessment of magnitude of the drug addiction, as the population of addicts is on increase. Almost all the countries in the world are infected by the drug abuse. However, the rate of addiction and magnitude varies from country to country and in the same country, from place to place and time to time. Drug related crimes derive from the fact that the drugs are both expensive for users and extremely profitable for suppliers. The costs of drugs forces many users, some of whom have little income, into the commission of crimes to acquire funds necessary to continue their drug life particularly in India.

A few days ago, hardly anyone in India knew about Hashish, Ganja, Opium, Charas and Chemicals knowing as L.S.D., Heroin and even commonly used drugs as diazepam (commonly known as compose) nitrazepan, barbital etc. The drug addiction is no more a fashion of the West, but it is a menace becoming very common in the modern youth. It is believed that kilogram of Heroin fetches Rs.30,000/- in Pakistan, Rs.One Lacs in New Delhi, twice that figures in Bombay and one million dollar in the streets of New York. Much of the drug trafficking through India goes un-checked. Hence, the Drug Abuse has badly affected the Indian Youth.

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31Lysergic acid diethylamide
The prevailing price of various drugs in four Metropolitan Cities of India is given as under:\(^32\):

**Prevailing Price (in Rs.) of various Narcotics Drugs (per Kg).**

<table>
<thead>
<tr>
<th>Drugs</th>
<th>Delhi</th>
<th>Mumbai</th>
<th>Kolkata</th>
<th>Channai</th>
</tr>
</thead>
<tbody>
<tr>
<td>Heroin</td>
<td>1,20,000-4,00,000</td>
<td>70,000-2,50,000</td>
<td>2,00,000-8,00,000</td>
<td>2,50,000</td>
</tr>
<tr>
<td>Cocaine</td>
<td>12,50,000-25,00,000</td>
<td>25,00,000-35,00,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hashish/charas</td>
<td>10,000-20,000</td>
<td>5000-12,000</td>
<td>10,000-30,000</td>
<td>15,000</td>
</tr>
<tr>
<td>Methaqualone/Mandrax</td>
<td></td>
<td>14,000-16,000</td>
<td></td>
<td>10,000</td>
</tr>
<tr>
<td>Ganja</td>
<td>2000-3000</td>
<td>800-1200</td>
<td>2,000-5,000</td>
<td>2,000</td>
</tr>
<tr>
<td>Opium</td>
<td>12,000-25,000</td>
<td>6000-10,000</td>
<td>20,000-50,000</td>
<td>10,000</td>
</tr>
<tr>
<td>Acetic Anhydride</td>
<td>90-150</td>
<td></td>
<td>2,000-8000</td>
<td>30-40</td>
</tr>
</tbody>
</table>

Developing countries have undoubtedly become a thriving market for this trade which has got the potential power to endanger the social, economic and political security of the state. It has already started affecting the health and food security of many countries implying that human and social dimensions of the problems must also be addressed while combating this menace. Latest studies have shown that cultivation of drugs crops leads to environmental degradation in the form of deforestation, social degradation, water pollution and loss of biodiversity. These adverse impacts would be in the nature of long-term losses to the ecology and the humanity. Therefore,

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\(^32\) Annual report 2001-2002 published by Narcotics Control Bureau, Department of Revenue, Ministry of Finance, Government of India.
concerted global action form a holistic perspective alone can arrest this trend and save humanity from its deleterious impact.33

India's position as regards action taken against persons involved in Drugs Trafficking can be appreciated by a given data of last 10 years (2001-2010)34:-

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of persons prosecuted</th>
<th>No. of persons convicted</th>
<th>No. of persons acquitted</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
<td>12,353</td>
<td>3,419</td>
<td>4,707</td>
</tr>
<tr>
<td>2002</td>
<td>12,388</td>
<td>5,293</td>
<td>5,064</td>
</tr>
<tr>
<td>2003</td>
<td>7,874</td>
<td>3,006</td>
<td>2,369</td>
</tr>
<tr>
<td>2004</td>
<td>10,173</td>
<td>4,294</td>
<td>2,961</td>
</tr>
<tr>
<td>2005</td>
<td>20,138</td>
<td>9,074</td>
<td>4,291</td>
</tr>
<tr>
<td>2006</td>
<td>19,563</td>
<td>9,916</td>
<td>4,563</td>
</tr>
<tr>
<td>2007</td>
<td>23,764</td>
<td>15,390</td>
<td>7,916</td>
</tr>
<tr>
<td>2008</td>
<td>24,931</td>
<td>15,973</td>
<td>6,242</td>
</tr>
<tr>
<td>2009</td>
<td>19,377</td>
<td>11,418</td>
<td>4,725</td>
</tr>
<tr>
<td>2010</td>
<td>19,642</td>
<td>9,770</td>
<td>4,726</td>
</tr>
</tbody>
</table>

The statistics released by the Narcotic Control Bureau also indicate the magnitude of the problem being faced by our country. As per survey report from 1996-2006,35 among others, 21895 kgs of opium, 855667 kgs of ganja, 48278 kgs of


34 Annual report 2001-2010 published by Narcotics Control Bureau, Department of Revenue, Ministry Finance, Government of India,

35 Annual reports 1996-2006 published by Narcotics Control Bureau, Department of Revenue, Ministry of Finance, Government of India
hashish and 10147 kgs of heroin have been seized by various enforcing agencies. In
the cases arising from these seizures, a total of 142337 persons were involved
including the foreigners. Out of these, 38030 persons stand convicted for offences
while 44656 persons have been acquitted. The rate of acquittal has, varied from
27.7% to 59.1% annually during this period.

The persons involved in drug cases, primarily fall in four categories as per my
perception. First category of persons are those who produce these drugs, second are
the kingpin who procure from the producers and deal in the trade of drugs at a large
scale, third are the carriers and in the fourth would fall the consumers, namely drug
addicts. The criticism leveled against NDPS Act is that it treats the drug user and
trafficker on par. The Government has fixed the quantity possessed for personal use
as an offence and provided a punishment for possession of quantities beyond such
limits. One of the criticisms to this provision brought by way of amendment is that
the quantity fixed is so small that it may not suffice for even a single use and that such
provisions make it difficult for drug addicts to openly seek medical help and
rehabilitation. It is also said that one of the cause of law conviction rate is the steep
minimum sentence under the Act. How far these are relevant to ultimately check the
problems of Drug Trafficking are to be examined in this research.

Stringent laws and severe punishments have been able to control the menace
to some extent but still it is one of the most pertinent threats in the progress of any
developing country. Do we need comprehensive legislative changes or is there need of
implementation of existing laws with greater precision and concerted effort by all
concerned to resolve this issue? Laxity or pathetic attitude from any quarter in
dealing with this issue is bound to prove disastrous for the society. All departments of
the State are expected to work in unison and with utmost coordination to give an
impressive display of the will to control, if not, completely eliminate this evil from the
society. All these issues as well as role of enforcement agencies and judiciary would
be analyzed critically during this research.

1.5 RESEARCH METHODOLOGY:

The Research methodology adopted during this research relates to positivism
school of legal research and it is Doctrinal research. The study of researcher is based
on extensive analytical study of available literature and analysis of primary as well as
secondary data from available sources. The in depth analysis of concept with the help
of various books written by eminent writers on the subject, law reporters, websites on internet reflecting the current socio-legal phenomenon all over the country/world have also been undertaken. Various software have been used to make an effective and comprehensive analysis of those case laws which have provided critical analysis about the role and functioning of various provisions of different statutes and various enforcement agencies and have also laid down various dimensions and guidelines with respect to the functioning of enforcement agencies in the enforcement of drug laws in India. The researcher has endeavored to gauge the judicial response thereof. This research methodology is adopted primarily because it is aimed at ascertaining the role of judiciary through critical analysis of the various judgments rendered by different courts. Since the issue covered relates to society and its causes and effects have direct bearing on various segments of the society thus it can also be termed as a ‘Socio Legal research’. The primary and secondary sources used in this research are covered as under:

(i) Primary Sources:

Primary sources used in the present research include Constitution of India, different statutes and judicial precedents. The main legislation to control drug abuse in India are N.D.P.S. Act, 1985 which came into effect on 14th November, 1985 replacing the Opium Act, 1857, the Opium Act, 1878 and Dangerous Drugs Act, 1930 have been analyzed in detail and data related to functioning of various enforcement agencies has also examined.

In addition to the above mentioned statutes, reference to various judicial pronouncements of Indian Courts has also been examined because vide such judicial pronouncements the scope of the abovementioned provisions and their implementation has been explained by the judicial pronouncements.

(ii) Secondary Sources:

As far as secondary sources are concerned the data has been collected through internet, AIR, newspapers, magazines, survey reports of Narcotic Control Bureau and various books available on the subject matter. Views of luminaries including administrators, academicians, lawyers, scholars, eminent jurists of India and other countries have been incorporated. The wide arena of books and generals has been
referred to make the whole study more successful. Beside this, reports of various Commissions/Committees constituted by Government of India from time to time in respect of this issue have also been discussed in the present work.

References have also been made to various lectures delivered by the Judges and eminent scholars in different seminars have also been taken in to consideration while analyzing the state of drug abuse and its prevention mechanism in India.

1.6 HYPOTHESIS OF THE STUDY:

As per the topic of research following hypothesis was drawn in the beginning of this research and the same has been tested through the findings of the various chapters of the research. The various points of the hypothesis are as under:

1. The menace of drug abuse has grown manifold and is continuously growing. The major contributing factor in this problem are:

(a) The fear of punishment among the drug mafias is non-existence because their conviction rate is very low and punishment awarded are minor.

(b) There is huge money involved in this illegal trade.

(c) Even though there are many legislations and huge enforcement mechanism to regulate the drug use and prevent the drug abuse but they all seem ineffective and insufficient to tackle modern day drug trafficking and abuse.

(d) The inefficiency, poor knowledge of law and its application and corruption amongst the staff of various enforcement agencies is also contributing in this problem.

2. Judiciary at all levels in India has contributed a lot in interpretation of various statutory provisions and have issued numerous guidelines on this subject from time to time but their non-adherence or poor implementation is making them non-effective in certain areas where the accused are being acquitted on some technical grounds and on liberal interpretation of the provisions of the laws particularly heinous crime under NDPS Act. The delay on the part of judiciary in disposing these cases has also worsened the situation.
3. There is need to overall the legislative framework and enforcement mechanism so as to keep pace with changing global scenario on this issue to effectively counter this monster of drug trafficking and abuse.

1.7 SIGNIFICANCE OF THE STUDY:

The significance of the study is to contribute in determining the judicial interpretations of various provisions of different statutes related to drug abuse laws in India by in depth analysis of judicial pronouncements. The study would also contribute in determining the attitude, efficiency and efficacy level of functioning of enforcement agencies in preventing drug abuse in India. For enforcement agencies, the findings of research would also contribute in providing a comprehensive and meaningful set of guidelines acting as a framework prepared on the basis of judicial pronouncements for implementation of various statutory provisions for prevention of drug abuse in India.

At last as per the significance of this study, it has been highlighted that the courts especially the Apex Court of our nation is very active and active to the present day need of our society and have issued numerous guidelines on the subject with the aim of curbing the menace of drug abuse. In spite of availability of number of statutory provisions, comprehensive guidelines and a vast network of enforcement agencies there is lack of coordination between various agencies and a very poor functioning of individual agencies due to various reasons including inefficiency and corruption and this situation/trend has weakened the overall enforcement mechanism. This pathetic situation has further given impetus to drug mafia and strengthen them thereby contributing in increasing the menace of drug abuse manifold.

The significance of the study is to highlight the efforts of the judiciary in prevention of drug abuse in India and also to highlight the shortcoming on the part of judiciary so that corrective steps can be taken at appropriate level by appropriate agency for effective implementation of statutory provisions. The study is also aimed at making the administration aware about the apathy of the drug users and to give them their basic rights. The study is also aimed towards enhancing the efficacy of criminal justice administration system. The study might be useful not only for the judiciary, executive (enforcement agencies) and legislature but will be of immense
use for the future researchers for further researches related to various aspects of drug laws and their implementation.

1.8 SCOPE OF THE STUDY:

The scope of this research covered the critical examination of current state of enforcement mechanism for regulating drugs uses and abuses in India. An in depth analysis of various measures taken for prevention of drug abuse and various guidelines issued by judiciary aimed at prevention of drug abuse. It also includes the analysis of efficacy of these guidelines and making suggestions as to the steps need to be taken for effective implementation of these guidelines and for improving overall functioning of enforcement mechanism so as to ensure effective prevention of drug abuse in India.

1.9 OBJECT OF THE STUDY:

The object of this study are as follows:

(i) Analysis of the nature, origin and present state of implementation of drug laws in India.

(ii) The study of the scope and efficacy of statutory, constitutional provisions and various guidelines relating to uses and abuses of drug laws in India.

(iii) The present thesis examined the role of enforcement agencies in prevention of drug abuse.

(iv) The present thesis also examined the role of judiciary in interpretation of various statutory provisions in regulating drug uses and abuses.

(v) The researcher has also examined as to how far the recommendations and guidelines issued by Judiciary has been implemented.

(vi) After in depth study, the researcher has made suggestions for further reforms in enforcement mechanism for better implementation of the provisions, earlier suggestions and guidelines.

1.10 SCHEME OF THE STUDY:
The whole research is divided in to six chapters. The Chapter - I deals with Introduction. Approximately 25000 cases are reported every year under the NDPS act, 1985 throughout the country. Ten and Five years trend indicated 12.5% increased from 1992 level and 18.1% from the average of last five years (1997-2001). The study in the chapter would commence with the statement of the problem of drug menace in India. The general policy of combating proliferation and misuse of drugs shall be central theme of the chapter. Introduction to the various national and international tools of drug laws is also discussed in the chapter.

The Chapter - II deals with to identify ‘Use and Misuse of Drugs in India- Causes and Effects’. The classification and identification of the drugs most commonly found and misused in India shall be central theme of the chapter. The origin, production chain, chemical composition and effects of these drugs shall be discussed in detail in the chapter. Drug addiction and its causes and effects as well as prevention and control thereof have been discussed in this chapter.

The Chapter - III gives brief details of ‘Drugs Laws In India - A Brief Introduction’ The discussion of important aspects of these laws is the soul of the chapter. The adequacy of the law in tackling the drug menace has been analyzed in the existing socio-cultural milieu.

The Chapter - IV titled 'Role of Enforcement Agencies in the Enforcement of Drug Laws in India' would give the constitution, policies, working details and objectives of different enforcement agencies responsible to implement the drugs laws in India. The main purpose is to understand the mechanism designed for fighting with the drug menace in the country. The outlines of national and international cooperation and coordination in the campaign against misuse of drugs have been discussed.

The Chapter - V is devoted to analyze 'Drug Laws Enforcement: Judicial Response'. The central theme of the chapter would be to trace the judicial response which helped the drugs laws to evolve and develop over a period of time. The importance of judicial scrutiny and its effects on improving upon the existing laws have been discussed in detail in the chapter.

The Chapter - VI covers the 'Conclusions and Suggestions’ in the most precise manner, as per findings of the study.