

**“THE IMPACT OF NATIONAL DRUG POLICY STRATEGIES. A
COMPREHENSIVE ANALYSIS OF NDPS EFFECT ON
SUBSTANCE USE AND RELATED OUTCOME”**

**A DISSERTATION TO BE SUBMITTED IN PARTIAL FULFILMENT OF
THE REQUIREMENT FOR THE AWARD OF DEGREE OF MASTER OF
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CERTIFICATE

This is to certify that the research work entitled “**THE IMPACT OF NATIONAL DRUG POLICY STRATEGIES. A COMPREHENSIVE ANALYSIS OF NDPS EFFECT ON SUBSTANCE USE AND RELATED OUTCOME**” is the work done by a student of Babu Banarsi Das University, Lucknow , under my guidance and supervision for the partial fulfillment of the requirement for the Degree of (LLM) in Babu Banarsi Das University Lucknow, Uttar Pradesh. According to the best of my knowledge, he/she has fulfilled all the necessary requirements prescribed under the University Guideline with regard to the submission of this dissertation.

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ABBREVIATIONS

ADGP	:	Additional Director General of Police
ALR	:	Amity law Review
ART	:	Antiretroviral Therapy
ATS	:	Amphetamine Type
CBD	:	Central Bureau of Investigation
CBIV	:	Central Bureau of Narcotics
CCF	:	Chief Controller of Factories
CILI	:	The Central India Law Institute
CLJ	:	Chotanagpur Law Journal
CMLJ	:	Civil and Military Law Journal
CNS	:	Central Nervous System
CRLJ	:	Criminal Law Journal
CULR	:	Cochin University Law Review
DAMS	:	Drug Abuse Monitoring System
DD	:	Drug De-addiction
DDC	:	Drug De-addiction Centre
DDT	:	Dischlorodiphane Trichloroethane
DLR	:	Delhi Law Review
DPJ	:	Delhi Psychiatry Journal
DXM	:	Dextromethorphan
EPW	:	Economic and Political
WeeklyEXLM Policy	:	Export Import Policy
FERA	:	Foreign Exchange Regulation Act, 1973
GHB	:	Gamma Hydroxy System
GRT	:	Golden Research Thought
HC	:	High Court
HGH	:	Human Growth Hormone
HIV	:	Human Immunodeficiency Virus
ICJ	:	Indian Criminal Journal
IIMK	:	The Indian Institute of Management Kozhikode
IJM	:	Indian Journal of Medicine
IJP	:	Indian Journal of Psychiatry
IJSW	:	The Indian Journal of Social work

INN	:	International Non-Proprietary Name
IOC	:	International Olympic Committee
IPJ	:	The Indian Police Journal
JILI	:	Journal of the Indian Law Institute
JMB	:	Journal of Behavioral Medicine
KLT	:	Kerala Law Times
KULR	:	Kashmir Law Review
MLA	:	Member of Legislative Assembly
MOU	:	Memorandum of Understanding
NACB	:	National Aids Control Board
NACO	:	National Aids Control Organisation
NACR	:	National Aids Control Regions
NCB	:	The Narcotics Control Bureau
NGO	:	Non-Government Organisation
OST	:	Opioid Substitution Therapy
OTC	:	Over the Counter
PAEMT	:	Punjab Academy of Forensic
Med.Toxicology.PHC	:	Public Health Community
PITNDPS	:	Prevention of Illicit Traffic in
POTA	:	Prevention of Terrorist Activities
PPP	:	Punjab People Party
PULJ	:	Punjabi University Law Journal
PWID	:	People Who Inject Drugs
PYM	:	Promotion of Youth and Masses
SC	:	Supreme Court
SCJ	:	Supreme Court Journal
SD	:	Social Defence
SES	:	Socio Economic System
SHO	:	Station House Officer
SSP	:	Superintendent of Police
STF	:	Special Task Force
SUBERA	:	Sutlej, Beas & Ravi
TADA	:	Terrorist & Disruptive Activities Act

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1. Amarsingh Ramjibhai barot v. State of Gujarat, (2005)7 SCC 550
2. Amarsingh Ramyibhi Barot v. State of Gujarat, AIR 2005 SC 4248
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10. Aziz v. State of Kerala, 1993 (2) KLT 252
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12. Bachan Singh v. State of Punjab, (1980) 2 SCC 684
13. Balmukund Jaiswal v. Bharat Singh, 1993 (2) Crimes 899
14. Bandhua Mukti Morcha v. Union of India, AIR 1984 SC 802
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15. Bhola Bhagat v. State of Bihar, 1998 Cri LJ 290
17. Bhola Devi Alias Bhula v. State, 1999 Drugs cases 234 (Cal)
18. Bishnu Deoshow v. State of West Bengal, AIR 1979 SC 364
19. Chhunna v. State of Madhya Pradesh, (2002) 9 SCC 363
20. Collector of Customs v. Ahmadalieva Nodira, (2004) 3 SCC 549
21. Dadu v State of Maharashtra, (2000) 8 SCC 437
22. Dadu v. State of Maharashtra, 2000 SCC (Cri) 1528
23. Dharam Cahnd v. State of Rajasthan, 1996 Drugs Cases 199 (Raj)
24. Dilip Pandurang v. State of Maharashtra, 1992 Drugs cases 146 (Bom)
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25. Directorate of Revenue v. Mohammed Nizar Holia, (2008) 2 SCC 370
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43. Kamal Singh v. State of Haryana, (2009) 3 SCC (Cri) 887
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47. Kirtha Ram v. State of Rajasthan, 2008 Cri LJ 1438 (Raj)
48. Kishan Chand v. State of Haryana, AIR 2013 SC 357
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50. Lakshwar Rajakalanand Dhobi v. State of Gujarat, (2002) 7 SCC 704
51. M. Prabhulal v. Assistant Director, Directorate of Revenue Intelligence, AIR 2003 SC 4311
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53. Mahar v. Secretary to Government of Tamil Nadu, 1994 Cri LJ 1407 (Mad)
54. Maktool Singh v State of Punjab, AIR 1999 SC 1131
55. Manjee v. State of Rajasthan. 1996 Cri.LJ 3787 (Raj)
55. Miranda v. Arizona, 384 US 436
57. Michu v. State of Punjab, (1983) 2 SCC 277
58. Modaram / Purohit v. State of Maharashtra, 2000 Cri LJ 473
59. Mohinder Kumar v. State , AIR 1995 SC 1157
60. Munna v. State of Rajasthan, 1995 CriLR 734 (Raj)
61. Nandi Francis Nwazor v. Narcotics Control Bureau, 1995 Cri LJ 665
62. Narcotics Control Bureau v. Dilip Prahlad Namade, 2004 CriL 1815
63. Narcotics Control Bureau v. Kishan Lal, (1991) 1 KLT 547
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65. Noor Aga v. State of Punjab, (2008) 16 SCC 417
65. Ouseph alias Thankachan v. State of Kerala, (2004) 5 SCC 446
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70. Raj Mohammed v. State of Himachal Pradesh, 2002 Cri LJ 2091 (HP)
71. Rajammal v. Union of India, 1996 Cri LJ 3914 (Raj)
72. Rajan Worlikar v. State of Karnataka, 2001 SCC (Cri) 883
73. Rajinder Gupta v. State, 2006 Cri.LJ 674
74. Rajinder Singh v. State of Haryana, (2011) 8 SCC 130

75. Raju Nishan Rao v. State of Maharashtra, 2008 Cri.LJ 1131 (Bom)
75. Rakesh v. State of Gujarat, 1995 (2) Crimes 129
77. Ram Singh v Central Bureau of Narcoties, AIR 2011 SC 490
78. Ritesh Chakravarti v. State of Madhya Pradesh, (2007) I SCC (Cri) 744
79. Roy. V D v State of Kerala, (2000) 8 SCC 590
80. Ruben Joseph v. State of Kerala, 1993 (1) Ker.L 576
81. Saiyad Mohammed Saiyad Umar Saiyad v. State of Gujarat, 1995 CriLs 2662
82. Sajan Abraham v State of Kerala, (2001) 6 SCC 692
83. Sami Ullaha v Superintendent, Narcotics Control Bureau, AIR 2009 SC 1357
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85. Satish Kumar v. State, 1989 (2) Crimes 109
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CHAPTER 1

INTRODUCTION

A nation is not merely a piece of land on the mother earth. A nation's life is its population. She is always identified as civilized, advanced etc. with reference to the people of the country. A healthy nation could be brought out only by healthy citizens. Further, when we refer to population and its strength the reference naturally will be to the youth of the country.

It is hear that the nation states are fighting a never ending war, 'the war on drugs'

.There is hardly any other crime as drug crime which is so unique Apparently, it is a victimless crime. But the impact is unimaginable.The history of the human race has also been a history of drug use .Sincce'^earliest times herbs, roots, bark, leaves and plants have been used to relieve pain and help control diseases. In and of itself, the use of drugs does not constitute an evil. Drugs properly administered have been a medical blessing^

The three plants cannabis, coca and opium poppy are a double faced lot. On the one side they are having high medicinal value and mostly used as an analgesic. The use of opium for medicinal purposes in India can be traced back as far back as 1000 AD, where it finds mention in ancient texts such as Dhanwantri Nighandu as a remedy for variety of ailments. The opium poppy contains alkaloids such as morphine codeine, thebaine, narcotine, papavarine which have analgesic and anti-spasmodic properties.

Whenever the anti -narcotic law is made stringent on a necessary casualty is the medical field. This is more felt in palliative care for cancer patients.Opioids like oral morphine were considered absolutely essential to good pain control. Access to oral morphine is another boon to cancer patients'^ The other side of these plants is that it creates all havocs to the people .It is one of the most serious threats to society. Drugs have primarily two dimensions.

(1) Drug trafficking, and

(2) Drug abuse and addiction.

Originally, we were concerned with only narcotic drugs and psychotropic substances. Later other substances like controlled substances and pre-cursor drugs were also identified[^]. 'Narcotic' is a generic term of any drug which dulls the senses or induces sleep, and which commonly become addictive after prolonged use^{*}. It is also described as a substance having the power to produce narcosis ,as drug[^]. The drug menace has political; social ,criminal, economical and familial overtones.

The ubiquity of drug use is an established fact. Understating what constitutes use and abuse of drugs and the response of the society to drug taking behavior cannot be divorced from the socio-cultural milieu in which such behavior occurs .India is a unique example of culturally sanctioned, yet with inbuilt social controls that limited and prevented misuse. But in 1980's social, political and economical changes resulted in an upsurge of illicit drug trafficking, increase in drug abuse and drug related crimes in India[^]

India by the very nature of its location on the global map is surrounded on at least three sides by illegal drug production areas namely the 'Golden Crescent' on the West, and the 'Golden Triangle' on the East, and finally the extensive border that India shares with Nepal. By 1980, India had developed into a fairly big base for providing a domestic market for narcotics, especially heroin and morphine.

Drug abuse constitute a major threat to the socio-economic fibre of our society .It creates devastating effects to the social system .Drug trafficking comprises a horde of other criminal offences such as banking law violations, tax evasions and illegal money transfers .It is to be noted that India is the largest licit producer of opium in the world, which is both exported as well as used by the domestic pharmaceutical industry.

A large number of people lose their lives and many are seriously disabled physically and psychologically. It is slow but deadly and has assumed serious proportions .This problem in society can thus be termed as 'silent terrorism' which is a huge challenge before all of us

today .The proximity Qf India to internationally recognized drug producing regions of the world aggravates the problem of drug availability ,and concomitantly the evil of drug - abuse ,trafficking and spread of HIV-AIDS .The intoxicating effect of drugs has a deep and everlasting impact on the impressionable minds of the youth.

Communication/transportation and diabolical ingenuity available to drug-traffickers all over the world had steadily made the task of enforcement more complicated, challenging and hazardous. The mushrooming of trans- national syndicate calls for greater co - ordination among the drug law enforcement agencies.

SCOPE OF THE STUDY:

The evil of drug problem is sui generis in diverse dimensions . It affects the persons health, both mental and physical, ruins the family, society and nation. Women and children bear the brunt of the catastrophe .When it takes the shape of organized crime, it even threatens democratically elected governments .The other side of the thing is that majority of the narcotic substances are having high medical application. So a total prohibition is neither practicable nor desirable . State is in a position that it cannot spit as it is sweet and it cannot swallow as it is bitter. Any amount of national strategy would not work as it is having strong trans-national links. Thus the drug problem is so complex and diverse that it is the most serious problem to which the states are put to face .Even after several international several conventions and strict national laws, the drug demon is refusing to stoop down . So any amount of research in this area will contribute to the counter drug measures .The present study therefore aims at an analysis of the present anti-drug law, its loop holes and related matters.

OBJECTIVES OF THE STUDY:

- (1) To study and analyze the legislative measures available before the passing of the Narcotic drugs and Psychotropic Substances Act ,1985
- (2) To study and analyze the international dimensions of drug problem, the various international conventions, regional conventions different mechanisms available at international level, and the co-operation between different states.
- (3) To study and analyze the current anti-narcotic laws ,especially the NDPS Act, 1985 and the Prevention of Illicit Traffic in Narcotics Drugs and Psychotropic Substances Act, 1988, to locate the loop holes and suggest remedial measures
- (4) To study the marked deviations of NDPS Act, 1985 from the traditional principles of criminal jurisprudence.
- (5) To study acquittal judgments in the matter of arrest ,search and seizure and suggest remedial measures
- (6) To study and find out problems of implementation especially in the realms of prevention and rehabilitation

RESEARCH PROBLEM:

- (1) What is the international scenario in counter -drug measures?
- (2) What were the legislative measures before the passing of the NDPS Act, 1985?
- (3) What are the loop holes, if any in the NDPS Act, 1985 and the prevention of Illicit Traffic in Narcotics Drugs and Psychotropic Substances Act, 1988?
- (4) What .are the marked deviations of NDPS Act, 1985 from the traditional principles of criminal jurisprudence?
- (5) What are the reasons for most number of acquittals in the area of arrest, search and seizure?
- (6) What are the implementation hazards in the matter of prevention and rehabilitation.

METHODOLOGY

- The researcher is used Doctrinal Research Method and Non-doctrinal Research Method are used as per needs.
- The provisions, the procedure of investigation, search, seizure and arrest given in the Narcotic Drugs and Psychotropic Substances Act, 1985 are to be studied.
- Various trial cases decided by the trial courts in Maharashtra are to be studied. Various case laws and judgements of the Supreme Court and High Courts are to be studied
- People's awareness, attitude of society and attitude of witnesses are to be studied.
- To study the law of different countries, internet facilities are to be used.
- Various articles published by the experts are to be studied. • Expert Advocates' opinions are to be studied.
- Various reports, journals and newspapers are to be studied.
- Numerous acquittal cases relating to Narcotic Drugs and Psychotropic Substances decided by the Judiciary are to be studied.
- Reasons for the acquittal in the cases are to be studied

RESEARCH HYPOTHESIS

- 1) The problem of the drug abuse is more social than legal and drug abuses are increasing day by day due to lack of public awareness and successive failure of prosecution.
- 2) The mandatory provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 relating to investigation, search and seizure as well as the technical requirement of the law during trial, are responsible for failure of prosecution and resulting into miscarriage of justice.
- 3) Reforms are required in the existing Narcotic Drugs and Psychotropic Substances Act, 1985 so as to enable the State to control the menace of the problem.

CHAPTER 2

CONTROL AND REGULATION AT INTERNATIONAL LEVEL

Anti-drugs law at the domestic level, unlike other penal laws, is built on the framework set by International Conventions. Those conventions are the Single Convention on Narcotic Drugs, 1961, The Protocol amending the Single Convention on Narcotic Drugs, 1972, The Convention on Psychotropic Substances, 1971 and the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988. All these treaties are convened under the auspices of the U.N. The International initiative in this respect has begun from the beginning of the 20 century. This is on account of the revelation and awareness of the international community that the drug problem cannot be solved at the domestic level alone. This is because of the universality of the drug problem cutting across national frontiers. The operation of the international system rests on the concept of national control by individual states within limits of their jurisdiction in complete compliance with International treaties¹.

Till the beginning of the 20th century there was no drug problem in any global sense. Consequently there was no global framework of legal obligations to deal with drug problems and no network of states with domestic controls in place. There were some drug abuse in the early 1900. There was, particularly in East Asia Opium production had existed for millennia in the region comprising modern Turkey, Iran and Afghanistan, with later growth further east into China and north into the region around the Black Sea. Demand for Opium, especially in smokable form had been growing in East Asia since the 17 C. Demand in China grew rapidly in the 19 Century².

1. - Andrew Wells, "International Drug Control: Recent Development, Patterns and Trends, in D.C. Jayasuriya et. al (ed) Global Drugs Law,(1997, Har-Anand Publication Pvt Ltd) p.45
2. Ibid

Though the current legal and administrative framework for international drug control is laid out in the above said three international contentious and Protocol, the history of International drug control gives insight into the philosophical and practical underpinnings of the Convention. It all started in an era of morally tainted racism and colonial wars³. Prohibition-based drug control grew to international proportions at the instance of U.S.A. Because America and other colonial powers were confronted with the effects of drug addiction and abuse in their domestic sphere. They instead of addressing the demand and supply vide, focused only on the latter. Consequently their attempt was to stem the flow of drugs into their territories. In doing so they earned political capital back home and shifted the cost and burden of drug control to predominantly Asian and Latin American Countries with no cultural inclination or resource to take on such an intrusive task. They were also devoid of economic or military power to refuse what was imposed on them⁴.

The prohibition focus of the drug control stimulated the growth and development of the global illicit drug trade. Ironically, the system brought very little overall success in controlling the supply of drugs at the source. Nevertheless supply oriented activists largely achieved their goal of creating a prohibition based International Drug Control System. Throughout the 19 C, individuals at all levels of society in Canada, U.S.A, Europe and Australia, Used Opium and Coca in various forms and mixtures for primarily palliative and tranquilizing purposes. Then medical and legal control were minor and addiction and abuse limited. Drugs use was a question of personal choice. There was no social disapproval. There was widespread ignorance about medical effects of drugs.

3. Jay Sinha, " The History and Development of the Leading International Drug Control Convention", prepared for the senate of Special Committee on Illegal Drugs, Law and Govt, division 21-2-2001, Library of Parliament of Canada 15-3-2006, www.parl.gc.ca, accessed on 15-5-2011

4. Ibid

Waves of migration from Asia to Europe, North America and Australia contributed to a market shift in the apparent respectability of drug use. Chinese immigrant labourers in particular bore the brunt of such changing attitudes. The smoking of Opium was viewed as a Chinese scourge- an enormous threat linked to immorality, criminality and general social decay. It was largely this blatant racism that sparked the first serious domestic controls on the use of drugs, especially opium smoking by foreigners. Within this climate of racism and moral reform international activity to control opium began in the late 19th century⁵.

Opium trade in China and opium wars of 1839-1842 and 1856-1860 in which Britain defeated China led to the former imposing severe limitations upon Chinese Sovereignty. These restrictions prevented the Chinese from stopping the continental flow of opium imports from India, an important source of British colonial government in India. Meanwhile, in Britain and North America anti-opium movements led by Christian Church leaders and missionaries were growing and pressuring the British governments to end the India-China opium trade. The Government on the other hand took the stand that any stoppage would result in Persia (Iran) and Turkey taking advantage and China's increased production⁶.

When in 1906, a liberal British Government came to power, it opposed India - China opium trade. The Chinese government simultaneously began an extensive campaign against domestic opium smoking and production. In 1907, Britain agreed to decrease Indian Opium export to China by 10% annually as long as China would allow independent British verification of domestic Chinese production reductions. The agreement worked better than both countries expected until the fall of the Manchu dynasty in 1911, following which Chinese war loads began encouraging widespread opium production to build military revenue. Nevertheless, the 1907 ten year agreement was viewed by future prohibition

5. Ibid

6. Ibid

advocates as the first successful opium treaty, and it set the tone for the next sixty years of International negotiations. Before analyzing the current international drug control treaties, a brief history of the attempts of international community to contain drug menace in a global base is advantageous. In this respect the first one is the 1909 Shanghai Conference.

The 1909 Shanghai Conference ;-

The American interest in international drug control increased significantly following the Spanish-American War. It led to the capture of Philippines in 1898 by America. But America has to face the Government - run opium supply monopoly of Philippines. Under the guidance of the newly installed Episcopal Bishop of Philippines, Charles Henry Brent, the monopoly was suppressed. Even then smuggling continued and Brent convinced President. Theodore Roosevelt to support the organization of an international meeting in Shanghai to address what was clearly a regional problem⁷.

In February 1909, the International Opium Commission met at Shanghai with Brent as President of the Meeting. As many as thirteen world powers participated in the conference. As the participants were not having the necessary plenipotentiary powers to conclude a treaty, it resulted in formulation of a set of non-binding recommendations. The countries shared the view that the use of opium in any form otherwise than for medical purposes is a matter of prohibition or for careful regulation. Each country in the administration of its system or regulation purports to be aiming at progressively increasing stringency⁸.

The Commission was far from truly international. The focus was on Chinese opium problems. America and Britain dominated the discussion. While America was pushing for prohibition, Britain worked to protect its lucrative Indian Opium trade.

7. Belenko, Steven. R,ed, Drugs and Drug Policy in America: A Documentary History, West Port Connecticut: Greenwood Press, 2000 at p.31

8. Idat 33

Even though the Shanghai Conference was not binding, its contribution to the later developments in world drug control measures is tremendous.

The Hague International Opium Convention. 1912:-

At the Shanghai Meeting the Americans had proposed a future conference to draft an international drug control treaty that would include the Shanghai resolutions in an expanded and more stringent form. America lobbied continually for a new conference. Finally, twelve countries agreed to meet at Hague on 1 December, 1911 to draft a treaty. The U.S draft agenda focused on stringent control of opium production, manufacture and distribution in Asia.

Chapter I and II of the 1912 International Opium Commission dealt with raw and prepared opium. Art. I required parties to enact effective laws or regulation for the control of the production and distribution of raw opium unless such laws were already in place. The Convention also further recognized the U.S initiated principle of restricting opium use to medical and scientific purposes. Chapter IV was aimed at reducing drug trafficking in China.

Chapter II focused on licensing, manufacturing and distribution controls on synthetic drugs. Art. 10 allowed countries to simply use their best endeavours to implement these controls. Furthermore, Germany refused to sign the treaty until it was agreed that all countries would have to ratify the Convention before it came into force. This was an effective tactic for delaying control measures as it took almost a decade before all countries ratified. Germany did so only because the 1919, Versailles Treaty ending World War I required such ratification as a condition of peace⁹.

9. Idat 40

The creation of the League of Nations in 1919 following World War I presented the International community with a centralized body for the administration of drug control. In 1920, the League created the "Advisory Committee on the Traffic in Opium and other Dangerous Drug", commonly known as the Opium Advisory Committee (OAC), the precursor to the United Nations Commission on Narcotic Drugs. The League Health Committee, the fore-runner of the World Health Organization was also former. Administration of the 1912 Hague Convention had originally been the responsibility of Netherlands. It was subsequently transferred to the Opium Control Board (OCB) created by the OAC. Enforcement of the Convention was weak as the countries on the OCB profited most from the drug trade¹⁰.

The League began to consider demand-side, socio-medical issues, such as why individuals use drugs, what constitutes drug abuse, and what social factors affect abuse. But prohibition and supply-side issues soon took precedence once again as preparations began for new, again U.S initiated treaty talks in the mid 1920s. In general the international regime has tended to separate the study of drug-related medical and social problems from those of drug control.

The 1925 Geneva Opium Conventions :-

Though America chose not to join League of Nations, pressured then League to convene a new conference. The 1912 Hague Convention was having a limited effect on the smuggling of opium and increased manufacture of drugs in East Asia.

Between November 1924 and February 1925, two back-to back conferences were held and two separate treaties were concluded. The first Geneva Convention focused on Opium

10. Supran.3

producing nations. The signatories were permitted to sell only through government run monopolies and were required to end the trade completely within fifteen years"¹¹.

The 1925 second Geneva Convention was intended to impose global controls over a wider range of drugs. It included, for the first time cannabis, described as Indian hemp in Art. 11 of the Convention. Art.21 to 23 required parties to provide annual statistics on drug stocks and consumptions, the production of raw opium and coca and the manufacture and distribution of heroin, morphine and cocaine. Chapter VI replaced the OCB with an eight member Permanent Central Opium Board (PCOB). Chapter V of the second convention set up a POCB monitored import certification system to control the International drug trade by limiting the amount that each country could legally import.

While the 1912 Hague Convention had focused on domestic controls, the Geneva Conventions were an attempt to improve trans - national control. America had proposed strict adherence to the principle of only medical and scientific legitimate drug use and stringent controls over the production of drugs at the source. When these proposal were flatly refused at the second conference, the American delegation walked out of the Conference and never signed the treaties. Similarly the Chinese delegation withdrew as no agreement could be reached on the suppression of opium smoking. Both of them continued to focus on enforcement of the 1912 Hague Convention.

Despite the growing prohibition-based control regime, the drug problem only seemed to get worse. In China there was continued over Production of Opium and imports of manufactured drugs had skyrocketed. The European colonial powers adopted an attitude of tolerance to opium smoking. When Western European governments pressured pharmaceutical companies

11. Musto David, " International Drug Control: Historical Aspects and Future Challenges", in United Nations International Drug Control Programme, World Drug Report, Oxford University Press, 1997 at p. 165

to conform to more stringent control standards, unscrupulous operators moved to states that had not ratified the Geneva Opium Conventions. The traffickers became more sophisticated in their operations, colluding with political and military brokers to avoid prosecution. Drug abusers and their suppliers acted as inventively as the diplomats and beurocrats. wishing to circumvent the system. They often altered their routes of acquisition to fit the new pattern¹².

The 1931 Geneva Narcotics Manufacturing and Distribution Limitation Convention

The import Control System put in place by the 1925 Geneva Convention was only partially effective, because drugs were simply transshipped through nonsignatory countries. In 1931, the League of Nations convened a fiirther Conference in Geneva to place limits on the manufacture of cocaine, heroin and morphine and to control their distribution. The centerpiece of the 1931 Limitation Convention was the manufacturing limitation system set out in Chapters II and III. Parties were required to provide the PCOB with estimates of their national drug requirements for domestic, medical and scientific purposes. Based on the estimates the PCOB would calculate manufacturing limits for each state. A Drug Supervisory Body (DSB) was constituted to administer the Drug System. Art. 15 required states to set up a national drug control special administration. The effectiveness of the Convention was decreased significantly as the states did not assume any responsibilities under the Convention for. their colonies.

The 1931 Bangkok Conference:

On 2-11-1931 a Conference was held in Bangkok to address opium smoking in the Far East. The treaty was weak as America attended only as an observer and the European Colonial powers were unwilling to implement effective controls on opium use while there was significant opium overproduction and trafficking. The main effect of the conference was that

12. Id. at 185

it convinced America that a firm approach was needed, to combat raw material production and illicit drug trafficking.

The 1936 Geneva Trafficking Conventions:

Upon the initiatives of the International Police Commission, which is the predecessor of International Criminal Police Organization (INTERPOL), negotiations had begun in 1930 to develop a treaty to stem the illicit drug traffic and harshly punish traffickers through criminal sanctions.

In 1936, the Convention for the Suppression of Illicit Traffic in Dangerous Drugs was concluded in Geneva. Art.2 of the Convention called upon signatory countries to use their national criminal law systems to severely punish, particularly by imprisonment or other penalties of deprivations of liberty, acts directly related to drug trafficking.

America refused to sign the final version because it considered the Convention too weak, especially in relation to extradition, extra-territoriality and the confiscation of trafficking profits. America also worried that if it signed, it would weaken its domestic criminal control system already in place in order to comply with the Convention. The Convention never gained widespread acceptance as most countries interested in targeting traffickers concluded their own bilateral treaties. Despite its minimal overall effect, the 1936 Trafficking Convention represented a turning point. Whereas all the previous treaties had dealt primarily with the regulation of legitimate drug activities, the 1936 Trafficking Convention made such activities an international crime subject to penal sanctions¹³.

In the late 1930s, the OAC of the League of Nations began to question the emphasis of the international drug control regime on prohibition and law enforcement. Some countries

13. Id at200

proposed dealing with abuse through public health approaches, including psychological treatment, dispensary clinics and educational programmes. Ironically, in anticipation of the II World War many countries, especially America built up stockpiles of opium and opium products intended for medical purposes. The II World War put further development of the international drug control apparatus on hold.

The 1946 Lake Success Protocol

After the II World War the functions of the League of Nations and the drug control bodies were taken over by the United Nations. The UN Economic and Social Council took over primary responsibility through its Commission on Narcotic Drugs (CND), which replaced the OAC. Under the CND, the Division of Narcotic Drugs (DND) was charged with the preparatory work for conferences. The PCOB and the DSB continued under the CND in their respective roles of compiling statistics for national estimates and administering previous treaties. The amendments required to effect changes in responsibility and organization in the existing treaties were carried out through the protocol signed at Lake Success, New York on 11-12-1946.

The 1948 Paris Protocol;

It is this protocol through which authority was conferred on the World Health Organisation (WHO), in particular its Drug Dependence Expert Committee, to decide what substances should be placed under control. Art .1 stated that if the WHO found a drug to be capable of producing addiction or of conversion into a product capable of producing addiction, it would decide how to classify it within the international drug control structure. The protocol also brought under international control specific synthetic opiates not covered by previous treaties.

The 1953 New York Opium Protocol:-

By the late 1940s it became clear that the large number of International drug treaties with their differing types and levels of control, had become confusing and unwieldy. Throughout the 1950s the cold war tensions resulted in America stockpiling of opium and opium derivatives, often by making large purchases from Iran through American pharmaceutical companies. Many European countries were also doing the same.

The 1953 Protocol was finalised in New York in 1953. As per Art.2 parties were required to limit the use of opium exclusively to medical and scientific needs. Various provisions were included to control the cultivations of the poppy as well as the production and distribution of opium. Art. 6 restricted opium production to seven states, and provided that parties could only import or export opium produced in one of these countries. The 1953 Opium Protocol comprised the most stringent international" drug control provisions. However, it did not receive sufficient ratification to bring it into force until 1963. By then the entire field of drug control had been taken over by the Single Convention on Narcotic Drugs, 1961.

At present, the international drug control regime comprises three international conventions,

(1) Single Convention on Narcotic Drugs, 1961 as amended by protocol 1972.

(2) Convention on Psychotropic Substance, 1971 and

(3) The Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.

All these conventions were held under the auspices of U.N. The U.N. initiative is nothing but discharging of a solemn obligation contained in charter thereof The constituting document of

the organization enshrines the binding commitment of signatories to health, human rights and fundamental freedoms¹⁴.

Single Convention on Narcotic Drugs, 1961 as amended by 1972 Protocol:

The Single Convention has played a central formative role in the creation of the modern prohibitionist international drug control system. It is a continuation and expansion of the legal infrastructure developed between 1909 and 1953. Though the process of consolidation of the existing international drug control treaties into one instrument began in 1948, it was in 1961 that a workable third draft was ready to be presented for discussion at a plenipotentiary conference. The conference began on 24-1-1961 at New York and was attended by 73 Countries, each with an agenda based on its own domestic priorities¹⁵.

Harry J. Anslinger, the first commissioner of the American Federal Bureau of Narcotics had divided the states attending the conference into five distinct categories, according to their drug control stance and objectives. They are

- (1) The organic state group
- (2) Manufacturing states group (3) Strict control group
- (4) Weak control group and
- (5) Neutral group

The organic state group comprised producers of the organic raw materials for most of the global drug supply. These countries had been the traditional focus of international drug control efforts. They were open to socio-cultural organic drug use, having lived with it for

14. See the preamble of U.N. Charter

15. Commentary on the Single Convention on Narcotic Drugs, 1961, New York, United Nations, 1973 www. Incb.org, accessed on 15-4-2006.

centuries. While India, Turkey, Pakistan and Myanmar took the lead role, the group also included the coca-producing states of Indonesia and the cannabis-producing states in the Horn of Africa. They favoured weak controls because existing restrictions on production and export had directly affected large portions of their domestic population and industry. They supported national control efforts based on local conditions and were wary of strong international control bodies under the UN. Although essentially powerless to confront the prohibition philosophy, they effectively forced compromise in negotiations by working together to dilute the treaty language with exceptions, loopholes and deferrals. They also sought development aid to compensate for losses caused by strict controls.

The manufacturing states group included primarily Western industrialized nations, with the key players being the U.S, Britain, Canada, Switzerland, Netherlands, West Germany and Japan. Having no modern cultural affinity for organic drug use and being faced with the effects of drug abuse among their citizenry, they advocated very stringent controls on the production of organic raw materials and on illicit trafficking. As the principle manufacturers of synthetic psychotropics, and backed by a determined industry lobby, they forcefully opposed undue restrictions on medical research or the production and distribution of manufactured drugs. The group favoured supranational control bodies as long as they would continue to exercise de facto control over such bodies. Their strategy was essentially to shift as much of the regulatory burden as possible to the raw-material producing states while retaining as much of their own freedom as possible.

The strict control group states were essentially non-producing and nonmanufacturing states with no direct economic stake in the drug trade. They include France, Sweden, Brazil and Nationalist China. Most of the states in this group were culturally opposed to drug use and suffered from abuse problems. They favoured restricting drug use exclusively to medical and

scientific purposes and were willing to sacrifice a degree of national sovereignty to guarantee the effectiveness of supranational control bodies. They were forced to moderate their demands in order to assure the widest possible agreement.

The weak control group was led by the former Soviet Union and included its allies in Europe, Asia and Africa. They considered drug control a purely internal issue and were adamantly against any intrusion on national sovereignty, such as independent inspections. With little interest in the drug trade and minimal domestic abuse problems, they were opposed to giving any supranational organ excessive power, especially over internal decision making.

The neutral group was a diverse group including most of the African Countries, central America, Sub-Andean South America, Luxembourg and the Vatican. They had no strong interest in the issue apart from being guaranteed access to sufficient drug supplies. Some voted with political blocs, others were willing to trade votes, yet others were truly neutral and could go either way on the control issue depending on the persuasive power of the arguments presented. In general they supported compromise.

As the name implies the 1961 Convention sought to replace a number of international conventions against drugs¹⁶. The preamble sets out the objectives of the Convention. Primarily the state parties were concerned with the health and welfare of mankind. As the medical use of narcotic drugs continues to be indispensable for the relief of pain and suffering, adequate provision must be made to ensure availability of narcotic drugs for such purposes. The evils of abuse and addiction could not be effectively prevented unless there is universal and co-ordinated action. The state parties had recognized the competence of United Nations in this respect.

16. See preamble of the Single Convention on Narcotic Drugs, 1961.

The Convention classified substances within four schedules according to the levels of control. Schedule I and IV were the most stringent, and covered primarily raw organic materials (opium, coca, cannabis) and their derivatives such as heroin and cocaine. Schedule II & IE were comparatively lenient and contained primarily codeine-based manufactured drugs.

As per Art 2 (1) the drugs in schedule I are subject to all measures of control applicable to drug, and in particular to those prescribed in Articles 4 (c,) 19, to 21, 29 n to 34 and 37.¹⁷ under Art 2 (2) the drugs in schedule II are subject to the same measures of control as drugs in schedule I with the exception of the measures prescribed in Art.30 (2) and (5) in respect of retail trade¹⁸.

17. Art.4 (c) directs every state to take legislative and administrative measures to limit the production, manufacture, export, import distribution of drugs to medical and scientific purposes. Art. 19 directs the states to furnish the estimates of drug requirements for each year to the Narcotic Control Board, and Art. 20 mandates state to submit statistical returns to the Board. Art.21 prescribes limitation of manufacture and importation. Art. 29 to 34 deal with manufacture, trade and distribution, international trade, carriage of drugs in first aid kits of ships or aircraft engaged in international traffic, possession of drugs and measures of supervision and inspection respectively. Art. 37 deals with seizure and confiscation.

18. Art.30 (2) reads: The parties shall also:

- a) prevent the accumulation in the possession of traders, distributors, state enterprises or duly authorised persons referred to above, of quantities of drugs and poppy straw in excess of those required for the normal conduct of business, having regard to the prevailing market conditions; and
- b) require medical prescriptions for the supply of dispensation of drugs to individuals. This requirement need not apply to such drugs as individuals may lawfully obtain, use, dispense or administer in connection with their duly authorised therapeutic functions; and

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(ii) If the parties deem these measures necessary or desirable, require that prescriptions for drugs in schedule I should be written on official forms to be issued in form of counterfoil books by the competent government authorities or by authorised professional associations!"

Art .30 (5) reads : A party shall require that the label under which a drug is offered for sale show the exact drug content by weight or percentage. This requirement of label information need not apply to a drug dispensed to an individual on medical prescription"

Art 2 (3) provides that preparations other than those in schedule III are subject to the same measures of control as the drug, which they contain. But only difference is that the requirement of furnishing of yearly estimates under Art. 19 and statistical returns under Art.20 are not required in the case of such preparations. Similarly in respect of those preparations Art 29 (2) c and Art.30 (i) b (ii) would not apply¹⁹.

As per Art. 2 (4), preparations in schedule HI are subject to the same measures of control as preparations containing drugs in schedule n. But Art. 3 1 (1) b 1.0 need not apply²⁰.

As per Art. 2 (4) preparations in schedule III are subject to the same measures of control as preparations containing drugs in schedule II. But Art. 31 (1) b need not apply. Further, the 1972 Protocol exempted these preparations from Art. 31 (3) to (15) 2.1 and Art .34 (b)²¹.S4- Again, for the purpose of estimates and statistics the information required shall be restricted to the quantities of drugs used in the manufacture of such preparations²².

According to Art 2 (5) the drugs in schedule IV shall be subject to the same control applicable to those in schedule I. As per Art 2 (5) a and c state parties are given freedom to adopt any special measures to control or prohibit production, manufacture, export and import, trade and possession of drugs taking into account the special circumstances prevailing in each country. States are also free to apply control measures on any other substances which may be used in the illicit manufacture of O.Z drugs.

19. Art 29 (2) c reads: The parties shall require that licensed manufacturers of drugs obtain periodical permits specifying the icinds and amounts of drugs which they shall be entitled to manufacture. A periodical permit however need not be required for preparations."
Art.30 (1) b (ii) reads : The parties shall control under licence the establishments and premises in which such trade or distribution may take place. The requirement of licensing need not apply to preparations."

20. Art. 31 (1) obliges the states not to permit export of drugs except within the limits of the total of the estimates requirement of the importing country.

21. Art. 31(3) to (15) deal with special provisions relating to international trade and Art. 34 (b) and Art.

34 (b) mandates the state parties to require Government authorities, manufacturers traders, scientists, scientific institutions and hospitals to maintain records as to the details of drugs.

22. See Art. 2 (8) of 1961 Single Convention.

The procedure for amendment of schedule is provided in Art. 3 (1) to (9). The initiative in this respect is to come from a state party or W.H.O. The information required for amendment of any of the schedule shall be furnished to the Secretary General of U.N.O²³. The Secretary General in turn transmit such information to the parties, to the Commission on Narcotic Drugs and to the WHO, where initiative is from party.

Where a notification relates to a substance not already in schedule I or in schedule II, the parties shall examine in the light of the available information the possibility of the provisional application to the substance of measures of control applicable to drugs in schedule I. Pending decision the commission may decide that the parties apply provisionally to that substance all measures of control applicable to drugs in schedule I. If the WH.O. finds that the substance is liable to similar abuse and productive of similar ill - effects as the drugs in schedule I or II or is convertible into a drug, it shall communicate the finding to the Commission that the substance shall be added to schedule I or schedule II²⁴.

If the W.H.O finds that a preparation because of the substances which it contains is not liable to abuse and cannot produce ill effects, and that the drug therein is not readily recoverable, the commission may, in accordance with the •as recommendations of WHO add the preparations to schedule UI²⁵- As per Art.3 (5), if the W.H.O. finds that a drug in schedule I is particularly liable to abuse and to produce ill effects, and such liability is not offset by substantial thereapealic advantages not possessed by substances other than drugs in schedule IV the Commission may, in accordance with the records of the WHO place that drug in schedule IV.

23. /6WArt.3(1)

24. /6WArt.3(3)

25. /6WArt.3(4)

As per Art.3 (6) the Commission in accordance with the recommendation of the WHO may amend the schedule by transferring a drug from schedule I to II or II to I or deleting a drug preparation .as the case maybe from a schedule. Art 3 (7) provides that any decision of the Commission taken shall be communicated by the Secretary General to all State members of the U.N. to non-member state parties, to the WHO and to the Board. Such decision shall become effective with respect to each party on the date of its receipt of such communication and thereupon the parties shall take necessary action.

Art 3 (8) provides for the procedure for review of any decision to amend the schedule taken by the Commission. The authority competent to review is the ECOSOC. A party desirous of filing a review with the Council shall file it within ninety days fi-om receipt of notification of decision. The request for review shall be sent to the Secretary General together with all relevant information upon which the request for review is based. It is the duty of the Secretary General to transmit copies of the request for review and relevant information to the Commission, the WHO and to all the parties inviting them to submit comments within ninety days. Such comments received, if any shall be submitted to the Council for consideration.

The Council may confirm alter or reverse the decision of the Commission, and the decision of the council shall be final. Notification of the Councils decision shall be transmitted to all state members of the U.N., to non-member state parties, to the Commission, to the WHO and to the Board. During pendency of the review the original decision of the Commission shall remain in effect.

Art. 4 imposes a general obligation on the state parties to take necessary legislative and administrative measures to implement the provisions of the Convention in their own territories, to co-operate with other states in the execution of provisions of the Convention and to limit drugs exclusively to medical and scientific purposes. Apart from casting an

obligation on state parties to implement the provisions of the Convention on the respective domestic jurisdiction, it also provides for establishing two International Control Organization, the Commission on Narcotic Drugs of the ECOSOC and (2) The International Narcotic Control Board.

(1) Commission on Narcotic Drugs :-

The Commission is the main U.N. drug control policy making body. It is a thirteen member independent quasi-judicial body that monitor governments compliance with international drug control treaties and assist them in this effort. It was established by ECOSOC on 16-2-1946 as one of its functional commissions²⁶. Members are elected from among state members of the U.N. and members of the specialized agencies and the parties to 1961 Convention with due regard to adequate representation of countries that are important producers of opium or coca leaves²⁷.

Under Art.8 of the 1961 Convention the commission is authorized to consider all matters pertaining to the aims of the Convention and in particular to amend schedules in accordance with Art.3, to call the attention of the Narcotic Control Board to any matters which may be relevant to the functions of the Board, to make recommendations for the implementation of the aims and provision of the convention, including programmes of scientific research and the exchange of information of a scientific or technical nature and to draw the attention of non-parties to decision and recommendations which it adopts under the Convention, with a view to their considering taking action in accordance there with.

It is inter alia authorized to consider all matters pertaining to the aims of the Convention and to see its implementation. As a treaty organ it decides on the basis of recommendation by

26. Resolution No: 9 (1) of 1946.

27. Council Resolution 845 (XXXII) and 1147 (XLI)

WHO, to place Narcotic Drugs and Psychotropic Substances under international control. As per U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 it decides upon the recommendation of International Narcotic Control Board to place pre-cursor chemicals frequently used for the manufacture of illicit drugs under international control. It also decides to remove or modify, international control of such substances.

The Commission sends investigative mission and technical visits to drugs,, affected countries, and conduct training programme for drug control administration. The mandate of commission s further expanded in 1991. It functions as a governing body of UN Office on Drugs and Crime (UNODC). It approves the budget of the fund of UN International Drug Control Programmes which is administered by UNODC and finances measures to combat world drug problem²⁸.

It is firther mandated to monitor the outcome of the 1998 special session of the General Assembly on countering the world drug problem as well as renewed commitments enshrined in 2009 Declaration²⁹.

The Commission holds annual sessions for one week of the first half of the year as well as one day reconvened sessions at the end of each year to consider administrative and budgetary matters. Commission has a maximum number of eight working days for its session³⁰. In order

28. www.unodc.gov. accessed on 12-4-2008

29. Two important milestones in addressing the world drug problem are the political declaration adopted by the UN members in 1998 and 2009. Both aim at enhancing international co-operation in countering the world drug roblem, which is common and shared responsibility. Specific goals and targets to reduce the supply and demand for illicit drugs were also agreed by members. The 1998 declaration adopted by General Assembly at its 20 special session on the world drug problem, requested member states to report biennially to the Commission on their efforts to meet relevant goals and targets. The Commission was requested to analyse these reports in order to enhance the co-operative effort to combat the problem. At the high level segment of the 52" session of omission 11* and 12* March 2009, members evaluated the progress made since 1998 towards meeting goals and targets established at the 20th special session of General Assembly. They identified future priorities and areas requiring further action and established goals and targets for drug control beyond 2009. The member adopted a political declaration to that effect.

30. See Council Resolution 1991/39

to examine draft decisions, draft resolution and specific technical issues, a committee of the whole is convened concurrently with the annual session of the Commission.

The Commission holds international sessional meeting to finalise provisional agenda, to address organizational and substantive matters and to provide continuous and effective guidance. It also holds informal joint meetings of donor and recipient countries on the planning and formulation of projects³¹.

Specific themes are addressed by the Commission at each session under the agenda items thematic debate. Panelists selected for their expertise on the basis of geographical distribution are invited to participate in the debate on the theme under consideration.

In order to make the debate more efficient, focused and interactive the Commission has decided to replace the thematic debate in the plenary with a series of round table for a trial period of two years. The first three round table discussions were held at the 54th session of the Commission in 2011 and focused on regional and international co-operation in combating the world drug problem, the principle of joint and shared responsibility and public health and safety issues. The round tables at the 54th session in 2012 will focus on how to prevent diversion of precursor substances and other counter narcotic efforts³².

31. See Council Resolution 44/16

32. www.unodc.org. accessed on 12-3-20 12.

Bureau and Extended Bureau

In order to function effectively the Commission needs to organize and prepare its work carefully and in advance. Such tasks are carried out by the Bureau and Extended Bureau which play an active role in the preparation of the regular and inter sessional meetings with the assistance of the secretariat. The Bureau composed of a chairperson, three vice-chairperson and one rapporteur. At the end of its reconvened session, the Commission elects its Bureau for the next session. The Extended Bureau also includes the chairperson of the five regional groups, European Union and the Group of 77 and China.

Subsidiary Bodies of Commission:

To further co-operation at the regional level ECOSOC established subsidiary bodies in Europe, Latin America and the Caribbean, Asia and the Pacific and Africa. Meetings usually take place annually to identify salient policy and enforcement issues on their region, establish working group to analyze the issues and bring their reports and recommendations to the attention of Commission.

SUBCOMMITTEE ON ILLICIT DRUG AND RELATED MATTERS IN THE NEAR AND MIDDLE EAST :-

The Sub Committee was established in 1973 to serve as a consultative body that would provide the Commission with a regional perspective in dealing with in near and Middle East, to facilitate co-operation and co-ordination in regional activities, identify priority issues and formulate recommendation. It reports directly to the Commission. It meets annually for a period of four days.

(2) International Narcotic Control Board :

The International Narcotic Control Board is an independent and quasi-judicial control organ for implementation of the U.N. Convention. It monitors enforcement of restrictions on narcotics and psychotropic substances and in deciding which precursors should be regulated. It consists of thirteen members to be elected by the Council as follows:

(a) Three members with medical, pharmacological or pharmaceutical experience from a list of at least five persons nominated by the WHO, and

(b) Ten members from a list of persons nominated by the members of the U.N. ³³ and by parties which are not members of the U.N. ³³

Members of the Board shall be persons who by their competence, impartiality and disinterestedness will command general confidence. During their terms of office they shall not hold any position or engage in any activity which would be liable to impair their impartiality in the exercise of their functions. The Council, shall in consultation with the Board, make all arrangements necessary to ensure the full technical independence of the Board in carrying out its functions. The Council with due regard to the principle of equitable geographic representation, shall give consideration to the importance of including on the Board, in equitable proportion, persons possessing a knowledge of the drug situation in the producing, manufacturing and consuming countries, and connected with such countries³⁴.

Art. 9 (4) cast an obligation on the Board to endeavour to limit the cultivation, production, manufacture and use of drugs to an adequate amount required for medical and scientific purpose, to ensure their availability for such purposes and to prevent illicit cultivation, production and manufacture of, and illicit trafficking in and use of drugs.

33. See Art.9 of Single Convention, 1961

34. See id Art.9 Para 3

Art. 10(1) provides that the Board shall serve for a period of five years and may be re-elected. As per Art. 10 (4) the Council on the recommendation by an affirmative vote of nine members of the Board may dismiss a member of the Board who has ceased to fulfil the condition required for membership. Art. 11 provides for the procedure of the Board. The Board shall elect its own president and such other officers as it may consider necessary. The Board shall meet as often as, in its opinion, may be necessary for the proper discharge of its functions, but shall hold at least two sessions in each calendar year. The quorum is eight members. The administration of the estimate system and statistical returns system are the two effective tools by which the Board tries to discharge its obligation.

The Board has a secretariat distinct from the Division of Narcotic Drug that secretariat is an integral part of the Secretariat of U.N, while under the full administrative control of the Secretary General, it is bound to carry out the decisions of the Board. The members of the Secretariat are appointed or assigned by the Secretary General. The head of that Secretariat is appointed or assigned in consultation with the Board.

The Single Convention seek to allow medical and scientific use of psychoactive drugs while preventing recreational use. Art 14, 19 and 22 respectively of the three conventions give the Board authority to investigate the failure of any country or region to carry out the provisions of the Conventions. It can ask for explanation from state parties. If there is any failure call the attention of the parties, the Council and Commission. It publishes report. It can penalise a violator by reducing export quota of opium and recommend parties to stop export and import.

Art. 3 5 cast an obligation on the state parties to make arrangements at the national level for co-ordination of preventive and repressive nation against illicit traffic. They have to assist each other in the campaign against illicit traffic in narcotic drugs. They are to co-operate closely with each other and with the competent international organization of which they are

members with a view to maintaining a co-ordinated campaign against the illicit traffic. They are further to furnish to the Board and the Commission information relating to illicit drug activity within their borders including information on illicit cultivation, production, manufacture and use of illicit trafficking in drugs.

Art. 36 obliges the states, subject to their constitutional limitation, to provide for punishable offences in respect of activities such as cultivation, production, manufacture, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation and exportation of drugs contrary to the provisions of the 1961 Convention.

Art.38 provides for measures against the abuse of drugs such as prevention of abuse of drugs, early identification, treatment, education, aftercare, rehabilitation and social reintegration of the persons involved. To that effect, parties shall promote training of personnel in the above measures.

The salient features of the 1961 Convention as amended by the 1972 Protocol can be summarized as follows. It replaces all previous International drug control Convention enacted in the 20th century. The focus of the Convention is on plant-based drugs like opiates, cocaine and cannabis. The objective is to restrict the use of narcotic drugs to medical and scientific purposes. This objective involves twin elements: to ensure the suppression of illicit drug production, distribution and use, and to provide for and regulate the licit supply for medical and research purpose.

Restricted substances are classified according to a four-fold system of schedules, with the strictest provisions applying to those in schedule I and IV. Suppression is largely focused on supply rather than demand. The Convention obliges parties to criminalize the unauthorized production, distribution and possession of narcotic drugs. It explicitly recommends

imprisonment for serious offences, it also obliges parties to make prevention, treatment and aftercare services available, and to use these as either an alternative in less serious cases or supplement to penal measures. All penal measures are subject to the constitutional imperative of signatory states. Medical and scientific purposes are not defined.

It establishes a system of estimates of drug requirements, statistical returns, licences and import and export controls on licit drug trade. It enshrines the functions of two important drug control bodies, the CND and INCB. INCB is the organization responsible for overseeing compliance with the UN drug control system. CND is a functional Commission of ECOSOC, and is the central policy making authority for the UN drug control system, with power to amend convention. CND can add, delete or move drugs to any schedules on recommendations from WHO. The Single Convention has universal application.

The 1971 UN Convention on Psychotropic Substances :-

An International Conference was convened under the auspices of U.N. at Vienna from 1-1-1971 to 21-2-1971. The provisions of the Convention came into force on 16-8-1976. The focus of the conference was on manufactured drugs such as 35 amphetamines, barbiturates, hallucinogens and minor tranquilisers³⁵. It was drawn up using the Single Convention as a template, and it has many of the same structural features. However, it is less severe in its general tone and less restrict the production³⁶ distribution and use of psychotropic drugs to medical and scientific purposes³⁶.

The objective again comprises two thematic elements : the suppression of the illicit manufacture, distribution and possession of these substances and the regulation and control of their licit supply. The substances are subject to a fourfold system of classification. It obliges

35. See idArt.9 para.3

36. For example, with the exception of schedule I drug, it does not criminalise possession

parties to criminalize unauthorized production and distribution, subject to their own constitutional principles³⁷. It also extends system of licences and import and export controls to psychotropic substances listed in schedule I and II³⁸.

The Convention requires medical prescriptions for supply of drugs in ST schedule II, III and IV to individuals³⁹. The CND can add, delete or move drugs to any of the schedules on recommendations from WHO. The control System is overseen by TNCB. The Convention makes more attempt than does the Single Convention to balance controls and sanctions against harm and dependence producing effects of substances, taking into account their therapeutic utility.

The U.N. 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances

The Conference was held at Vienna under the auspices of UN from 25-11- 1988 to 20-12- 1988. The 1961 and 1971 Conventions were intended primarily to counter diversion from the licit drug producing and manufacturing sectors, as they were felt insufficient to counter the influence of the dynamic and flexible illicit trafficking networks that grew up in the 1970s and 1960s. The objective of the Convention is to harmonise the drug laws of member states and enforcement actions across the globe, and to restrict illicit drug trafficking by recourse to criminalization, punishment and, enhanced international cooperation⁴⁰.

The state parties were deeply concerned by the magnitude of and rising trend in illicit production of demand for and traffic in narcotic drugs and psychotropic substances which pose a serious threat to the health and welfare of human beings and adversely affect the

37. See Art. 22(1) to (5)

38. Although not required by the Convention, the system of estimates of drug requirements, statistical returns, licences, import, and export has been extended to all scheduled drugs through resolutions of CND.

39. See Art.9(1)to(3)

40. See preamble to the 1988 Trafficking Convention

economic, cultural and political foundation of society. They were also concerned by the steadily increasing inroads into various social groups made by illicit traffic in Narcotic Drugs and Psychotropic Substances and particularly by the fact that children are used in many parts of the world as the illicit drug consumers and for purposes of illicit production, distribution and trade in Narcotic Drugs and psychotropic Substances, which entails a danger of incalculable gravity.

The world community also recognized links between traffic and other related organized criminal activities which undermine the legitimate economies and threaten the stability, security and sovereignty of states. The illicit traffic is an international criminal activity, the suppression of which demands urgent attention and highest priority. The illicit traffic was generating large financial profits and wealth enabling trans-national criminal organization to penetrate, contaminate and corrupt the structures of government, legitimate commercial and financial business and society at all its levels.

Persons engaged in illicit traffic are to be deprived of the proceeds of their criminal activities and thereby eliminate their main incentive. The members of the international community desired to eliminate the root causes of the problem of abuse of narcotic drugs and Psychotropic Substances, including the illicit demand for such drugs and substances and the enormous profits derived from illicit traffic. To that objective measures are necessary to monitor certain substances, including precursors, chemicals and solvents, which are used in the manufacture of Narcotic Drugs and Psychotropic Substances, the ready availability of which has led to an increase in the clandestine manufacture of such drugs and substances. They further identified the necessity to improve international co-operation in the suppression of illicit traffic by sea. 1988 Convention was to reinforce and supplement the measures

provided in the 1961 Single Convention as amended by 1972 Protocol and the 1972 Convention on Psychotropic Substances.

As per Art. 3, parties are obliged to enact a specific body of legislation to prohibit illicit trafficking. It includes provisions related to money laundering, asset seizure, extradition, mutual legal assistance, intelligence sharing, law enforcement training and co-operation etc. It established a control regime for precessors, reagents and solvents frequently used in the illicit manufacture of Narcotics Drugs and Psychotropic Substances. The CND can add, delete or move chemicals to any of the Convention two tables, on recommendations of INCB.

The cornerstone of the Convention is Art. 3 dealing with offences and sanctions, which obliges parties to criminalize all supply related activities, to legislate to establish a modern code of criminal offences relating to the various aspects of illicit trafficking and to ensure that they are prosecuted and punished as serious criminal offences. Art. 3 (1) obliges parties to criminalize all forms of unauthorized production, manufacture, extraction and distribution, transport of narcotic and psychotropic drugs, the cultivation of opium poppy coca bush and cannabis plant for such purpose, the possession or purchase of narcotic or psychotropic drugs for such purposes; the manufacture, transport or distribution of equipment or substances to be used in the above and the organization management and financing of traffic-related activities, hi addition Art. 3 (2) obliges parties to criminalize when committed intentionally, the possession, purchase or cultivation of Narcotics Drugs or Psychotropic Substances for personal consumption contrary to the 1961 and 1971 Conventions. The provision is subject to the constitutional principles of parties.

Art.6 obliges states to treat the offences relating to Narcotics Drugs and Psychotropic substances subject to extradition. Art. 7 further obliges the parties to render mutual legal assistance in investigation, prosecutions and judicial proceedings of offences. Further, Art. 8

provides for transfer of proceedings and Art. 9 details other forms of co-operation and training including establishing and maintaining channels of communication between the competent agencies and services to facilitate rapid change of information concerning all aspects of offences.

Parties are obliged to respect fundamental human rights when taking measures in line with Art. 14, which deals with the illicit cultivation and eradication of narcotic plants. This is the sole mention of human rights in the tree treaties.

Apart from the International Convention having universal application there are regional conventions. In this respect special mention is to be made in respect of the SAARC Convention, 1990.

The SAARC Convention for Narcotic Drugs and Psychotropic Substances, 1990

At the Islamabad Summit of SAARC on December 29 to 31, 1988 the heads of state expressed grave concern over the growing magnitude and the serious effect of drug abuse and drug trafficking, and recognized the need for urgent and effective measures to eradicate the problem including the possibility of concluding a regional convention on drug control. The states recognised the need to reinforce and supplement, at the regional level, the measures provided in the 1961 Convention as amended by the Protocol of 1972, the Convention on Psychotropic Substances 1971, the U.N. Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, taking into account concerns which are specific to the SAARC region⁴¹.

41. See preamble to the SAARC Convention on Narcotic Drugs and Psychotropic Substances, 1990

The states desired to eliminate the root causes of the drug problem by breaking the link between illicit drug trafficking and other related organized criminal activities which undermine the economies and threaten the stability, security and sovereignty of states⁴².

As per Art 3, the member states are to take measures to criminalize production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery, brokerage, dispatch, dispatch in transit, transport, importation or exportation, cultivation of opium poppy, possession or purchase, manufacture, transport or distribution of equipments or materials which may be used for illicit cultivation, production or manufacture. Further, the organization management or financing of any offence, the conversion or transfer of property, acquisition, possession or use of properties and personal consumption are to be penalised.

Art. 4 emphasises the importance of providing treatment, education, after care, rehabilitation or social - reintegration for drug offenders. With a view to strengthen regional co-operation Art. 8 provides for extradition of offenders and Art. 11 provides for rendering mutual legal assistance in investigation, prosecution and judicial proceedings. The member state shall designate an authority responsible to execute requests of others states in this respect.

Art .12 obliges member states to adopt measures to eradicate illicit cultivation of Narcotic plants and to eliminate illicit demand for Narcotic drugs and Psychotropic Substances To that end states are to exchange scientific and technical information and conduct of research concerning eradication. Art. 13 direct states to establish channels of communication between states. Among the other international initiatives the following are worth mentioning.

42. Ibid

The Cartagena Declaration, 15TH February 1990:-

This was a conference concluded at Cartagena in Colombia wherein America, Bolivia, Colombia and Peru agreeing to co-operate to stem the flow of drugs. They decided to wage war on three fronts, (i) demand reduction, (2) consumption reduction and (3) supply reduction. Among the nations Peru and Bolivia are coca growing economies. It was extended at San Antonio in Texas by including Mexico also.

1990 World Ministerial Summit:-

The United Kingdom in association with U.N. organised a three day World Mini Summit to reduce the demand for drugs, and to combat the cocaine threat. It was convened at London from 9 to 11 of April, 1990 wherein 65 delegates from 124 countries attended. The London Declaration drawn committed to give priority to prevent and reduce illicit drug demanded at national and international level. Some of the guiding principles were:

- (1) Drug abuse prevention and treatment should be part of national health, social education, legal and criminal strategies.
- (2) Drug education should be developed at all school stages.
- (3) Prevention programme in the workplace should be developed and implemented.
- (4) Mass Media campaigns against drugs should be used.
- (5) The U.N. Fund for Drug abuse Control (later the UN International Drug Control Programme) should be provided the funds to devise a strategy for the Andean sub-region where most of world's coca is grown illicitly processed into cocaine.

The 1993 Conference:-

In this conference China, Laos and Myanmar signed a memorandum of understanding expanding existing co-operation in co-operation with UNDCP. The main thrust was to eliminate opium poppy cultivation through economic and social development programme.

The U.N. International Drug Control Programme :-

In 1990 the General Assembly requested that the Secretary General merge the various units of the organization of drug control into a single integrated programme. In 1991 the UNDCP integrated the functions of the Division of Narcotic Drugs, UNFDAC and the secretariat of INCB. The headquarters is at Vienna. The UNDCP is charged with the responsibility of co-ordinating and heading UN drug control activities. It is headed by an executive directors⁴³.

he programme publishes a quarterly, bulletin on Narcotics as well as information letters, scientific notes and publications on drug abuse control activities. Its budget comes from both UN regular budget and from the voluntary fund of UNDCP.

UNDCPs Global Programme against money laundering assists governments to confront criminals who launder dirty drug money through the international financial system. The programme provides training in financial investigation to business, law enforcement and judicial professionals⁴⁴.

UNDCPs Global Assessment programme supplies current statistics on illicit drug consumption worldwide and its legal assistance programme works with states to implement drug control treaties by helping to draft legislation and train judicial officials. More than 1400

43. www.acronvmfinder.com. accessed on 15-12-2008.

44. *ibid*

key personnel have received legal training and over 130 countries worldwide have received legal assistance⁴⁵.

Apart from the CND and INCB there are certain other international bodies having a stake in international drug control. Some of them are the following:

45. Ibid

The United Nations Office on Drugs and Crime {UNOD}

The UNODC was established in 1997 as the office for drug control and crime prevention by combining the UNCP and the crime prevention and criminal justice division in UN Office at Vienna. It is a member of UN Development Group and AC renamed as UN Office on Drugs and Crime In 2002⁴⁶.

The agency is employing about 500 staff members world wide and its headquarters is located at Vienna with twenty one field offices and two liaison offices in Brussels and New York City. The agency is led by an executive director appointed by the U.N. Secretary General. Its objective is to better equip governments to handle drugs, crime, terrorism, corruption related issues among government institutions and agency, and also to maximize awareness of said matters in public opinion, globally, nationally and at community level. 90% of fund comes from voluntary contribution, mainly from Government. UNODC also incorporates the Secretariat of INCB.

It was established to assist UN in better addressing a co-ordinated, comprehensive response to the interrelated issues of illicit trafficking in and abuse of drugs, crime, drug terrorism and corruption related conventions, treaties and protocols as well as technical/financial assistance to said Governments to face their respective situations and challenges in these fields. The main UNODC deals with are alternative development, corruption, criminal justice, prison reform and crime prevention, drug prevention, treatment and case, HIV and AIDS, human trafficking and migrant AT smuggling, money laundering, organized crime, piracy and terrorism prevention⁴⁷.

46. www.unodc.org. accessed on 15-5-2008

47. Ibid

It publishes yearly World Drug Reports that present a comprehensive assessment of the international drug problem, with detailed information on the illicit drug situation. It provides estimates and information on trends in the production, trafficking and use of opium/heroin, coca/cocaine, cannabis and amphetamine like stimulants. The report is based on data and estimates collected and prepared by Governments, UNODC and other international institutions. It attempts to identify trends in the evolution of global illicit drug market.

Through the world drug report UNODC aims to enhance member states understanding of global drug trends and increase their awareness of the need for the more systematic collection and reporting of data relating to illicit drugs.

The UN Convention and their related protocols underpin all the operational work of UNODC.

It undertook a campaign "Do drugs control your life", to raise awareness about the major challenge that illicit drugs represent to society as a whole, and especially to the young. The goal is to mobilize support and to inspire people to act against drug abuse and trafficking. The campaign encourages young people to put their health first and not to take drugs. The UNODC is a global leader in the fight against illicit drugs and International Crime and the U.N. lead programme on terrorism.

However, the UNODC has been criticized by human rights organization like Amnesty for not promoting inclusion of adherence to international human rights standards within its project in Iran. The UNODC is also criticised for not promoting harm reduction policies like needle exchange and Heroin assisted treatment⁴⁸.

48. Ibid

The U.N. Inter-regional Crime and Justice Research Institute (UNICRI); -

It is formerly known as U.N. Social Defence Research Institute. It carried out a four year research funded by UNDCP on the interaction between criminal behaviour and drug abuse. It conducts research, surveys and workshops.

The International Labour Organisation (ILO)

It carries out activities on drug related problems in the work place and on the vocational rehabilitation of recovering drug addicts

WORLD HEALTH ORGANIZATION (WHO)

The WHO carries out activities related to drug dependence. It plays an integral role in determining which substances should be placed under international control. WHO's Global Programme on Drug Dependence cooperates with member states in the prevention, treatment and management of drug addiction. It develops guidelines and manuals for teachers and health professionals.

UNESCO:-

It focuses on the prevention of drug abuse through public education and awareness. It works with media organizations in producing radio and TV programmes. With the support of UNDCP, UNESCO is carrying out research projects on drug use and prevention in Africa, Asia and the Pacific, Latin America and the Caribbean.

INTERNATIONAL MARITIME ORGANIZATION (IMO)

IMO is concerned with transportation of illicit drugs by ship. It compiled guidelines on the prevention of drug smuggling on ships engaged in international traffic. The guidelines set out

security precautions, methods of concealments, actions to be taken when drugs are discovered, identification of addicts and co-operation with customs.

INTERNATIONAL CIVIL AVIATION ORGANISATION (ICAO)

ICAO seeks to counteract the shipment of illicit drugs by air. It develops technical specifications and guidance material for civil flights, and suggests measures to ensure that commercial carriers are not used to transport illicit drugs.

UNIVERSAL POSTAL UNION; (UPU):-

The UPU carries out studies to establish international measures covering the shipment of illicit drugs through the mails.

FOOD AND AGRICULTURAL ORGANISATION (FAO)

The FAO manages several multi-disciplinary programmes financed by UNDCP. FAO covers the agricultural aspects of drug crisis. Its programmes are aimed at raising the income level of farmers, and thereby reducing the incentive to cultivate narcotic crops. It has participated in UNDCP and financed projects in Bolivia, Myanmar and Pakistan. FAO and UNDCP are studying the potential of remote sensing techniques and satellite imagery in the detection of illicit crops.

CONCLUSION:

A visible split in approach to combat drug menace has risen among the nations. True, every nation could devise its counter drug measure suiting to their domestic conditions. But taking into account the unique trans national character of drug offences, dilution of counter measures, in any part of the world will lead only to make the effort of the international community to combat drug menace more miserable. Opening of injecting rooms, decriminalisation policies, paying of undue respect to human rights etc will only result in drug tourism. Coupled with the general weakness of International Law the international initiative is lagging behind. In 1961, a single convention was drawn for the purpose of ensuring a single comprehensive international measure doing away with the then existing multiplicity of conventions. But, what transpired after 1961 is going back to the pre - 1961 scenario resulting in two international conventions in 1971 and 1988. Further a protocol was drawn out in 1972. As the golden jubilee has crossed of the 1961 Convention and to make one comprehensive anti-drug law, the need of the hour is to make an international law on narcotic drug clubbing the three international conventions. It is also necessary, as some of the nations are proceeding with decriminalisation policies. A divided world could not effectively combat the drug menace and an ineffective international antidrugs law would retard the effectiveness of domestic efforts by nation states.

CHAPTER 3

CONTROL AND REGULATION: PRESENT SCENARIO

The legal control of narcotic drugs and psychotropic substances after 1985 has generally been taken over by two comprehensive legislations, The Narcotic Drugs and Psychotropic Substances Act, 1985 and the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988. The former is largely punitive in nature. It is stated so since it also contains preventive measures in the form of licensing, issuance of permit, authorization forfeiture, confiscation, security proceedings etc within its fold The latter is preventive in nature.

Further, the Central Government and the different state governments had made Rules. Again, a number of Notification and Orders have been issued by the Governments from time to time. The Central Government has passed the Narcotic Drugs and Psychotropic Substances Rules, 1985

Realizing the fact that the drug problem is unique one, the legislators had rightly saved existing laws and validated application of two major Act. The only Acts repealed by the Act are The Opium Act, 1857, The Opium Act, 1878 and the Dangerous Drugs Act, 1930. The two major Acts still made applicable are The Customs Act, 1962 and the Drugs and Cosmetics Act, 1940

S.79 provides that all prohibitions and restrictions imposed by or under this Act on the import into India, the export from India and transshipment of narcotic drugs and psychotropic substances shall be deemed to be prohibitions and restrictions imposed by or under the Customs Act, 1962, and that provisions of the Act shall apply accordingly. The proviso

thereof makes it clear that where any violation is an offence under both the Acts punishment is under the NDPS Act, 1985.

Similarly, S.80 provides that the provisions of the 1985 Act or the Rules made thereunder shall be in addition to, and not in derogation of the Drugs and Cosmetics Act, 1940. Another relevant section in this respect is S.81 which saves various state and special laws. It provides that various provincial and state law, and Rules made thereunder, in so far they deal with restrictions not provided in the 1985 Act or providing for a greater punishment are valid. Nothing in the 1985 Act shall affect the validity of such laws.

Along with the above said Acts, a number of other Acts are also contributing their part though in a smaller proportion to combat the drug problem. The prevention of Illicit Traffic In Narcotic Drugs and Psychotropic Substances Act, 1988 is discussed in Chapter VIII. Thus, discussion in the present chapter narrows down to 1985 Act and the Rules made thereunder.

THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985;-

The statement of objects and reasons attached to the Act shows that there are a number of reasons for making a comprehensive law to deal with the drug problem. Earlier the statutory control over narcotic drugs was exercised in India through a number of Central and State enactments. The Principal Central Acts, namely the Opium Act, 1857 , The Opium Act, 1878 and the Dangerous Drugs Act, 1930 were enacted a long time ago. Many deficiencies were noted in the existing legal control with the passage of time and the developments in the field of illicit drug traffic and drug abuse at national and international level.

The most important factor was the inadequacy of sentence in the earlier Acts. The maximum punishment under the earlier Acts extended to only upto four years. As a result traffickers

more often escaped with minimum punishment. In the alternative drug problem was assuming dangerous proportions. Further, a number of important Central Enforcement Agencies like Narcotics, Customs, Central Excise etc were earlier not invested with powers of investigation.

One important aspect in drug control is the trans-national nature of the problem. As a result, a number of International Conventions were drawn up.. India being a signatory to all those conventions was under international obligations to take appropriate measures within her domestic sphere.

Another important development was the emergence of new drugs of addiction known as psychotropic substances. There was no comprehensive law to enable exercise of control over psychotropic substances in India in the manner as envisaged in the Convention on Psychotropic Substances, 1971. All the above facts necessitated the enactment of a comprehensive law.

The twin strategy to combat drug problem is to ensure demand reduction and supply reduction. The Act on a whole has attended the above two aspects in an earnest way. True, there are many remains to be done.

In its whole history the Act has undergone amendments on two occasions, in 1989 and 2001. Originally the Act was having six chapters comprising eighty three sections. Chapter I is dealing with preliminary aspects. Chapter -II dealing with authorities and officers, Chapter II with prohibition, control and Regulation, Chapter IV with Offences and Penalties, Chapter V with procedure and Chapter -VI Miscellaneous. Chapter II-A and V-A were added by the

1989 Amendment Act respectively dealing with National Fund for Control of Drug Abuse and Forfeiture of Property Derived from or used in illicit Traffic. Some of the important features of the Act are the following:-

EXTRA-TERRITORIAL OPERATION OF THE ACT:

Drug menace is a unique problem for which domestic measures would not suffice to contain it. Taking into account this important factor the Act has provided for extra territorial operation. The important sections in this respect are S.2 (b), S.12 r/w24, S.31-A(2), S.31 (3), S.66(ii) and S. 68-A(2) (b).

As the Act originally stood, there were only two provisions having extra-territorial application. They are S.12 read with S.24 and S.66 (ii). S. 12 is included in chapter III dealing with Prohibition, Control and Regulation. Accordingly no person shall engage in or control any trade whereby a narcotic drug or psychotropic substance is obtained outside India save with the previous authorization of the Central Government and subject to such conditions as may be imposed by that Government in this behalf.

Contravention of S.12 is punishable under S.24 . Accordingly any person engaging in or controls any trade whereby a narcotic drug or psychotropic substance is obtained outside India and supplied to any person outside India without previous authorization of the Central Government or otherwise than in accordance with the conditions (if any) of such authorization granted u/s 12 shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall not be less than one lakh rupees . The proviso thereof empowers the court to impose a fine exceeding two lakh rupees , for reasons to be recorded.

Another provision is S.66 (ii) which deals with presumption as to documents in certain cases. Through this section the court is enjoined to draw a presumption that the signature and every other part of any document which has been received from any place outside India which purports the handwriting of any particular person or which the court may reasonably assumed to have been signed, by or to be in the handwriting of, any particular person, is in that persons handwriting. Further, in the case of a document executed or attested, it was executed or attested by the person by whom it purports to have been so executed or attested.

By the 1989 Amendment two-provisions were added viz, S.31- A(2) and S.68 -A(2) b. The former deals with death penalty for certain offences after previous conviction. Where a person is convicted by a competent foreign court in respect of similar offences defined u/s 19,24 or 27- A involving commercial quantity, such foreign conviction will be taken as previous conviction within India so as to apply S.31-A for a subsequent conviction. S. 68-A (2) enumerates persons whose property are liable to forfeiture under Chapter V-A. S.68 -A(2) provides that a person who has been convicted of a similar offence by a foreign criminal court of competent jurisdiction is a person whose property is liable to be forfeited.

Extra-territorial operation was given in the most explicit manner by the 2001 Amendment. Earlier there were some doubts among the legal circles regarding the extra-territorial application of the Act. In *Jitendra Panchal V. Intelligence Officer, NCB and Another* wild arguments were raised relying on Art.20 (2) of Constitution of India".

The facts of the case were that on 17/10/2002 officers of U.S Drug Enforcement Agency, along with officers of Narcotic Bureau, India seized a consignment of 565.2 Kg of hashish.in Wewark in U.S.A. During investigation it transpired that one Niranjana Shah and appellant Niranjana were engaged in trafficking hashish out of India into U.S.A and Europe. It was also

revealed that the seized contraband has been smuggled out of India by appellant and Niranjana Shah along with one Kishore.

The appellant was prosecuted in America and the co-accused were prosecuted in India. The appellant pleaded guilty to conspiracy to possess with intention to distribute controlled substances in U.S.A. He was sentenced to undergo imprisonment for fifty four months. After completion of the sentence he was deported to India . When he arrived in New Delhi, he was arrested and prosecuted before a Special Court at Mumbai. Thereupon he approached the Bombay High Court to quash the proceedings, as the second prosecution in India is violative of his fundamental right under Art.20 of the Constitution. The Honble Bombay High Court rejected the contention of the appellant " .

The Honble Supreme Court upheld the judgment of the Bombay High Court. It was held that foreign prosecution was in respect of different and distinct offence and hence Art. 20 (2) is not attracted. Though question of extra-territoriality did not arise directly in the case, the judicial approach in respect of extra-territorial linkage in the matter of drugs was revealed through this case.

All the dilemmas in this respect were set at rest by the 2001 Amendment Act. Through this amendment S.2(a) and S.2(b) were added and S.31 was substituted. S. 2 (a) makes it clear that the Act applies to all citizens of India outside India. Thus, Indian citizens wherever they might be, and who commits any of the offences enumerated under the Act shall be liable to be prosecuted under the Act. Similarly, S.2 (b) provides that the Act applies to all persons on ships and aircrafts registered in India wherever they may be.

S.31 provides for enhanced punishment for offences after previous conviction. S.31 (3) is the relevant section in this respect, which provides that where any person is convicted by a competent court of criminal jurisdiction outside India under any corresponding law, such

person in respect of such conviction shall be dealt with for the purposes of enhanced punishment for previous conviction as if he had been convicted by a court in India.

All the above provisions as originally stood and subsequently inserted by 1989 and 2001 Amendment show the extent of extra-territorial application of the Act.

DRUGS: NATURE AND QUANTITY

One of the significant aspect as far as the Act is concerned is the nature and quantity of the drug. The quantity of the drug became a major factor after the 2001 Amendment Act. The two types of substances in respect of which different offences are created are narcotic drug and Psychotropic Substance. Narcotic Drug is defined in S.2 (xiv) of the Act as meaning coca leaf, cannabis (hemp), opium, poppy straw and including all manufactured drugs.

Manufactured drug in turn is defined as including all coca derivatives, medicinal cannabis , opium derivatives, poppy straw concentrate and any other substance or preparation which the Central Government may, having regard to the available information as to its nature or to a decision, if any, under any international convention, by notification in the Official Gazette , 1 " declare to be manufactured drug . Preparation is defined as any one or more such drugs or substances in dosage form or solution or mixture , in whatever physical state , containing one or more such drugs or substances.

Coca leaf is defined as the leaf of the coca plant except of a leaf from which all ecognine, cocaine and any other ecgonine alkaloids have been removed. Similarly, cannabis (hemp), is defined as charas, that is the separated resin, in whatever form, whether crude or purified, obtained from the cannabis plant and also includes concentrated preparation and resin known as hashish oil or liquid hashish. Ganja, is the flowering or fruiting tops of the cannabis plant excluding the seeds and leaves when not accompanied by the tops, by whatever name they

may be known or designated. It also includes any mixture, with or without any neutral material, of any of the forms of cannabis or any drink prepared therefrom .

S. 2 (V) defines opium as meaning the coagulated juice of the opium poppy and any mixture, with or without any neutral material, of the coagulated juice of the opium poppy, but does not include any preparation containing not more than 0.2% of morphine. So also Poppy straw means all parts (except the seeds) of the opium poppy after harvesting whether in their original form or cut, crushed or powdered and whether or not juice has been extracted there from.

In this respect, before going to discussion on psychotropic substances some decisions on narcotic drugs may be adverted to.

In *Raju Mohan Rao v. State of Maharashtra*, 2008, where the seized stocks of cannabis plant had leaves and seeds accompanied by fruiting tops, it was held that the seized stock would be Ganja. In *Dharam Chand v. State of Rajasthan* it was held that cannabis (Hemp) means the leaves of the small stalks and flowering and fruiting tops of the cannabis or any drink prepared there from but excludes the seeds and leaves when not accompanied by the tops

In *Aziz V. State of Kerala* it was held by the Honble High Court that cannabis is regarded in the Act as the genus of which cannabis (hemp) is one of the species. But in *Sevaram v. State of Rajasthan*, it was held that cultivation of cannabis plant in itself is an offence irrespective of its height or not the fact that the same has or has no flowering or fruiting tops .

In *Munna v. State of Rajasthan* it was held that Ganja connotes the leaves and young buds of the hemp plant which are bruised when they are ripe and are smoked for intoxication . Again in *State of Gujarat v. Abdul Rashid Ibrahim Mansuri* it was held that narcotic drugs include cannabis (hemp) and cannabis (hemp) includes chara. But bhang (hemp) does not fall under

the definition of cannabis (hemp) as defined under s.2(iii) of the Act, and hence its possession does not constitute an offence punishable under the Act".

It has been recognized that cannabis (Hemp) and cannabis plant are two different contrabands under NDPS Act. Bhang, Siddhi or Cannabis Sativa consists of dried leaves and fruiting shoots, whereas ganja has rusty green colour and a characteristic odour and consists of flowering or fruiting tops of the female plant coated with resin. Although bhang does not fall within the definition of cannabis (Hemp) under the NDPS Act, it does fall within the definition of cannabis plant and as such its cultivation is punishable under S.20 (a)/wS.20(b) of the Act

In this respect the judicial exposition regarding opium may also be adverted to. In *Hath @ Mangalsingh Ramdayalji v. State of Gujarat* it was observed that there are three members of the family of papaveraceae, one of which in turn has four species including *Papaver Somniferum* Linn, and it is *Papaver Somniferum* Linn which contains alkaloid and yields opium. Other species of papaver do not contain alkaloid or morphine which may fall within the ambit of the term opium as defined in the Act. Therefore it has been held that the recovered substance has not been proved to be poppy straw.

In *Ruben Joseph v. State of Kerala* the question was regarding whether baine, which is phenanthrene alkaloid is an opium derivative or not. Opium derivative would take in phenanthrene alkaloid namely the baine also. The baine being phenanthrene alkaloid is an opium derivative, and opium derivative as per S.2 (xvi) of the Act is a manufactured drug.

In *Dilip Pandurang v. State of Maharashtra* the seized material involved brown sugar. Brown Sugar is unrefined and a possibly adulterated mixture containing heroin. In this case charge was framed under S.20. Clause (xvi) of section 2 includes heroin vide sub clause (d). Hence the proper section to punish those in unauthorized possession of brown sugar is S.21 of the

Act. The expression of manufactured drugs appearing in S.21 of the Act would not exclude the applicability of the said section to persons in unauthorized possession of brown sugar. This is because the expression manufacture in relation to narcotic drug includes all processes other than production by which such drug or substances may be obtained.

Again, in *T. Paul Kuki v. State of West Bengal*, the question was regarding the unauthorized possession of heroin. It was held that heroin is nothing but diacetyl morphine which is an opium derivative according to the definition given in S.2(xvi) of the Act. Thus, the court came to a conclusion that the accused has committed an offence punishable under S.21 of the Act for unauthorized possession of manufactured drug.

In *Satish Kumar v. State* it was held that as morphine is the main and principal alkaloid of opium and if morphine is found in the product above 0.2 % , the product has to be treated as opium. In *Hamza v. State of Kerala*, where the percentage of morphine was below 2% conviction was set aside . Thus, it turns out that the percentage of morphine in the contraband is the important factor which makes the possession of the contraband culpable under the Act.

One important case in this respect is *Amarsingh Ramjibhai Barot v. State of Gujarat*. In this case the prosecution case is that the appellant and others were found in possession of black liquor, which on analysis by Forensic Science Laboratory, was found to contain 2.8 % anhydride morphine and the trial court convicted and sentenced the accused under S.21 to ten years rigorous imprisonment and fine of Rupees One Lakh. Upholding the judgment of the Honble High Court the Supreme Court held that, as the sample contained 2.8% anhydride morphine amounting to opium derivative within the meaning of S.2 (xvi) e, and that all opium derivative falls within the expression manufactured drug as defined in S.2 (xi).

In *Union of India v. Santrohan*, a strange contention was taken that opium and poppy straw are same and interchangeable and hence licence for opium tantamount to licence to poppy straw. The contention was negated by the Honble Supreme Court. It was categorically held that the expressions opium and poppy straw are not interchangeable.

In *Ajaib Singh v. State of Punjab* the question was whether poppy husk falls within the definition of poppy straw. The Honble Supreme Court held that poppy husk falls within the definition of poppy straw. It was pointed out that poppy husk contains certain percentage of morphine and are often used as addiction producing intoxicants. So also while seed has been specifically excluded, husk is not. Therefore, the producing, possessing, transporting, importing, exporting, inter-state selling, purchasing, using or omitting to warehouse poppy husk would be an offence under S.15 in as much as poppy husk would fall within the term poppy straw.

In *Madanlal v. State* it was held that capsules of the poppy would be opium when they are in their original form or are cut, crushed or powdered and whether juice has been extracted or not. *Gurdeep Singh v. State of Rajasthan* -30 posts would fall within the definition of poppy straw.

The other objectionable drug psychotropic substance is defined as any substance, natural or synthetic or any natural material or any salt or preparation of such substances or material included in the list of psychotropic substances specified in the schedule. In this respect one important provision is S.3. It enables the Central Government, if satisfied that it is necessary or expedient so to do on the basis of the information and evidence which has become available to it with respect to the nature and effects of, and the abuse or the scope for abuse of, any substance, natural or synthetic or natural material or any salt or preparation of such substance or material, and modifications or provisions if any, which have been made to, or in

any international convention with respect to such substance, natural material or salt or preparation of such substance or material. In the above circumstance the Central Government may by notification in the official gazette, add to, or as the case be, omit from.

The schedule attached to the Act lists out about one hundred and ten drugs as psychotropic substances. Unlike narcotic drugs, psychotropic substances does not create much confusion in identification of the material. Some of the judicial decisions in this respect may be adverted to.

In *State of Punjab v. Vinod Kumar*, the question was whether tablets containing barbiturate is a psychotropic substance. The term barbiturates termed as psychotropic substance. In *Balmukund Jaiswal v. Bharat Saugh* it was held that gardenal tablets having its name phenobanbitone in internal fields comes within the definition of psychotropic substance. In *State v. Naresh Kumar* it was held that diazepam is not a prohibited drug"

Another important factor regarding the material is the determination of the quantity of the objectionable drug. This was brought about by the 2001- Amendment Act. Accordingly, graded punishment was introduced, depending upon whether the quantity seized is small quantity, quantity lesser than commercial quantity but greater than small quantity and commercial quantity. The said change was necessitated on account of widespread criticism regarding inflicting mandatory imprisonment regardless of the quantity involved. This was considered as irrational. Accordingly, the amendment was introduced.

Small Quantity is defined in S.xxiii as meaning any quantity lesser than the quantity specified by the Central Government by notification in the official Gazette. As the term small quantity was not defined in the Original Act of 1985 or by the subsequent Amendment Act of 1989, for want of specific definition of small quantity the courts experienced difficulty in dealing with the cases of personal consumption as provided in S.27 of the Act."

S. 2 (vii) a defines the term commercial quantity in relation to narcotic drugs and psychotropic substances, as any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette. Accordingly, the Central Government has issued a Notification within which a table is attached. In the said table two hundred and thirty nine objectionable substances are enlisted. Against each substance the quantity of substance which constitute small and commercial quantity are separately shown in gms and kgs in column No: 5 and 6.

Thus, by the rationalized sentencing structure in the Amendment Act, 2001 punishment varies depending upon whether the quantity of contraband article is small quantity , commercial quantity or the quantity in between. But the question of determination of quantity of drug seem to be not as simple as it appear to be.

In *Sami Ullaha v. Superintendent, Narcotics Control Bureau*, where the sample contained only 2.6 % of heroin, the Honble Supreme Court held that it could be said to be intermediate quantity^o.

In *Shiv Kumar Mishra v. State of Goa* , an interesting question arose. The question was whether the moisture content in the ganja can be excluded. In the given case when ganja was seized it consisted of greenish brown coloured leafy and flowery parts of the plant in moist condition. It was held that the weight of the contraband would be the weight taken at the time of seizure not excluding any moisture content, and that the seized ganja would include seeds and leaves of cannabis plant in terms of definition of ganja. It was further held that there is nothing in the Act suggesting that at the time of seizure, weight of the ganja and the moisture content are to be ascertained separately so that the moisture content can be excluded for determining the actual weight of ganja .

In this respect two decisions which appear to be contradictory may be considered. In Ouseph alias Thankachan v. State of Kerala, the question was whether the contraband seized is small quantity or not. There the court found that each ampule contained only 2 ml and each ml contains only 3 mg. Thus, the total quantity found in the possession of the accused was only 66 mg. That being less than 1/10 " of the limit of small quantity, specified under the Notification the court held that the seized contraband is small quantity".

In Amarsingh Ramjbhai Barot v. State of Gujarat , the two accused were arrested with 920 gms and 4.250 kgs of contraband items. The Forensic Science Laboratory report indicated that the sample from the first accused was opium as described in the NDPS Act, containing 2.8% anhydride morphine apart from pieces of poppy flowers, and the sample relating to the second accused was reported to be opium as described in NDPS Act having 1.2% anhydride morphine and also containing pieces of poppy flowers.

Both the accused were charged and tried under S.15, 17 and 18 r/w S.29 of the Act. But the Honble High Court found the quantity to be commercial quantity and convicted the accused under S.21 (c) r/w S.29 of the Act. The Honble Supreme Court upheld the decision of the High Court. The Court held that what is recovered from the appellant is manufactured drug, and conviction under S.21 is right.

In both the above cases a specific issue was not raised as to whether in determining the quantity of the contraband the actual content of the material or the whole substance should be taken into account. But in E Micheal Raj v. Intelligence Officer, Narcotic Control Bureau, such a question was specifically raised by the Honble Supreme Court. In that case the Intelligence Officer, as per information at about 9 am has arrested; the appellant and another from Thiruvananthapuram bus stand. They were carrying 4 kgs of heroin in a bag. The accused was charged u/s 8 (c) r/w S.21 and 29. The Trial Court found the substance as an

opium derivative and as the quantity amounted to 4.07 kg the accused was convicted under S.21 (C), being a commercial quantity. The Honble High Court also held that it is not the actual content which is material but the whole substance.

But the Honble Supreme Court referred to the objects set out for the passing of the 2001 Amendment Act. Through the Amendment it is proposed to rationalise the sentence structure so as to ensure that while drug traffickers who traffic in significant quantities of drugs are punished with deterrent sentences, the addicts and those who commit less serious offences are sentenced to less severe punishment. The court relied on Ouseph s case and distinguished Amarsingh Ramhibhai Barots Case. It was categorically held hat when any narcotic drug or psychotropic substance is found mixed with one or more neutral substances, for the purpose of imposition of punishment it is the content of the narcotic drug or psythotropic substance which shall be taken into considertaion.

Thus, after MichaUs Rajs Case a proposition was emerged that it is only the actual content by weight of the narcotic drug which is relevant for the purposes of determining whether it would constitute small quantity ovi commercial quantity. Despite the above decision, the confusWrn. in determination of drug quantity did not cease. Some courts sought to limit the application of the above decision only to heroin or opium derivatives. Opium/Cannabis cases were distinguished from the rest and held to be inclusive of neutral materials.

In 2009, the Central Government brought in a new Notification wherein the quantities shown as small and commercial , apply to the entire mixture or solution of the narcotic drug or Psychotropic Substance and not just its pure drug content. It must be noted that the 2009 Notification makes the entire quantity of narcotic drugs or psychotropic substances liable, irrespective of pure drug content.

To clear the confusion and to overcome the decision of the Honble Supreme Court in E. Micheal Rajs Case an amendment is proposed through The Narcotics, Drugs and Psychotropic Substances (Amendment) Bill, 2011 to amend the definition of small quantity and commercial quantity. The two changes introduced in the definition are adding of the words or any preparation of such drug or such substance and in terms of the pure drug content or otherwise. Thus, any preparation of narcotic drugs and psychotropic substances are sought to be included expressly in the definition. Also by using the terminology in terms of the pure drug content or otherwise it is made clear that the whole substance irrespective of its actual contents may also be taken into consideration.

The 2011 Amendment Bill was referred to the Parliamentary Standing Committee on Finance on 13/09/2011 for further consideration. The stringent penal structure and rigid implementation of NDPS Act created many problems including non-availability of opioid medication and lack of access to drug dependence treatment .

Another aspect in this respect is the regulation of controlled substances . It is defined in S.2 (vii d) as any substance which the Central Government may having regard to the available information as to its possible use in the production or manufacture of narcotic drugs or psychotropic substances or to the provisions of any International Convention, by notification in the Official Gazette, declare to be controlled substance. Accordingly, the Central Government passed the The Narcotic Drugs and Psychotropic Substances (Regulation of Controlled Substances) Order, 1993. Later, it was repealed through the Narcotic Drugs and Psychotropic Substances (Regulation of Controlled Substances) Order, 2013.

ILLICIT TRAFFIC

The term illicit traffic has been defined in S.2 (vii a) in the broadest possible manner, so as to include almost every activity connected with narcotic drugs and psychotropic substances. The following activities will come under the hold of illicit traffic.

- 1) Cultivating any coca plant or gathering any portion of coca plant
- 2) Cultivating the opium poppy or any cannabis plant.
- 3) Engaging in the production, manufacture, possession, sale purchase, transportation, warehousing, concealment, use or consumption, import inter-state, export inter- state, import into India, export from India or transshipment.
- 4) Dealing in any activities in narcotic drugs or psychotropic substances other than those mentioned above.
- 5) Handling or letting out any premises for the carrying on of any of the above activities
- 6) Financing, directly or indirectly any of the above mentioned activities.
- 7) Abetting or conspiring in the furtherance of or in support of doing any of the above activities.
- 8) Harboring persons engaged in any of the above mentioned activities.

Thus, the word traffic used in the Act is not in the ordinary parlance as meaning movement of vehicles but almost all activities in relation to narcotic drugs and psychotropic substances.

AUTHORITIES AND OFFICERS

Chapter II sections 4 to 7 deal with authorities and officers. Unlike any other crime, considering the monstrous nature of the drug menace, a number of officers and authorities are created and invested with the control and regulation in multi-dimensional manners. It is taken as a national crime having international dimensions in many instances.

NATIONAL FUND FOR CONTROL OF DRUG ABUSE

Chapter IIA was inserted by the 1989 Amendment Act. It provides for constitution of a fund called National Fund for Control of Drug Abuse. There is hardly any other crime for combating which a separate fund is created. The various aspects are dealt with in S. 7A and 7B.

PROHIBITION , CONTROL AND REGULATION

Chapter III, through SS. 8 to 14 deal with Prohibition, Control and Regulation of narcotic drugs and psychotropic substances. S. 8 prohibits cultivation of any coca plant or gathering of any portion of coca plant or cultivation of the opium poppy or any cannabis plant. Activities like production, manufacture, possession, sale, purchase, transport, warehousing, use consumption, import inter-state, export interstate, import into India, export from India or transshipment of any narcotic drug or psychotropic substance.

However, the above prohibition is not absolute. All the above said activities can be for medicinal or scientific purposes. Further, if there is proper licence, permit or authorization issued in accordance with the Act and Rules persons could engage in those activities. S.9 thereof empowers the Central Government by Rules to permit, control and regulate the said activities °. There are two provisos attached to the section. The first proviso empowers the Central Government to decide as to from which date the restriction as to cannabis plant to

take effect. The second proviso make it clear that nothing in S.8 apply to the export of poppy straw for decorative purposes.

Two other importance provisions in this respect are S.13 and 14. Where S.13 refers to coca plant, S.14 refers to cannabis plant. S.13 empowers the Central Government to permit, with or without conditions , and on behalf of Government, the cultivation of any coca plant or gathering of any portion thereof, or the production, possession, sale, purchase, transport, import interstate, export inter-state or import into India of coca leaves for use in the preparation of any flavouring agent which shall not contain any alkaloid and to the extent necessary for such use. Similarly, S.14 empowers the Central Government, by general or special orders and subject to such conditions as may be specified in such order, allow cultivation of any cannabis plant for industrial purposes only for obtaining fibre or seed or for horticultural purposes.

S. 9A was inserted by the 1989 Amendment Act. It empowers the Central Government to control and regulate controlled substances. Accordingly, if the Central Government is of the opinion that, having regard to the use of any controlled substance in the production or manufacture of any narcotic drug or psychotropic substance, it is necessary or expedient so to do in public interest, it may by order provide for regulating or prohibiting the production, manufacture, supply and distribution thereof, and trade and commerce therein. As per S.19 A (2), it may be done through licences, permits or otherwise.

Chapter III brings out the difficult situation to which Governments all over the world are put to. The three plants viz. cannabis, coca and opium poppy are a double faced lot combining within them good use and abuse. Hence, when naturally a total prohibition is impracticable on many accounts, the other alternative is to control and regulate them, which bring along with it all the other necessary evils.

OFFENCES:-

offences may be broadly classified into as including in the following categories :

- 1) Offences in connection with cultivation, licence, permit and authorization
- 2) Offences connected with controlled substance
- 3) Offence with extra territorial touch.
- 4) Offence relating to personal consumption
- 5) Offences of vicarious nature
- 6) General penal provision
- 7) Preparatory offences
- 8) Case of enhanced penalty
- 9) Case of mandatory death penalty,
- 10) Offence by company, and
- 11) Offences by officials.

**ANTI-DRUGS LAW: PERSPECTIVES OF
DEVIATIONS FROM TRADITIONAL CRIMINAL LAW**

Traditional criminal law, especially the adversarial system is founded on the bed-rock of certain basic principles. Majority of those principles are in the form of safeguards to an accused person. But in the case of anti-drugs law there are certain marked deviations from these principles. This paradigm shift in the approach to anti-drugs law is necessitated on account of the overall public interest involved in the matter of combating drug traffic. With the advancement of science and technology, industrial revolution, and recently the transformation of the world into a global village the drug menace has also grown in alarming proportions. The ill-effects of the menace is not confined to an individual, a society, or a state. It is even transcending national frontiers. It destroys the man, his family and his society, and at times threatens the very existence of governments. Growing liberalization of economy and lessening of trade barriers have added a new dimension to the problem and there is ever increasing danger of exploitation of normal trade channels for narcotics.

The anti-drugs law in India mainly comprise two statutes. The first one is The Narcotic Drugs and Psychotropic Substances Act, 1985 and the other one is The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988. The former is the principal Act. The latter one provides for preventive detention and connected matters. Both laws together, to a large extent comprehensively cover almost all aspects of the problem from prevention to cure, from substantive to procedural aspects and so on and so forth. Even then the 1985 Act saves existing provincial and other state Acts either providing for greater punishment or any restriction or punishment not provided under it. Application of The Drugs and Cosmetics Act, 1940 is also not barred through this Act. It is true that one or two of the deviations in the

approach could also be seen in certain other statutes as well, such as in counter-terrorism legislations. But anti-drugs law is sui generis in the sense that in no other legislations could we see the assemblage of deviations in such a proportion as seen in it. These deviations could be dealt with under the following headings.

1. Preventive measures
2. Enforcement agencies and investigation parameters
3. Trial scenario 4. Sentencing policy and other allied matters
5. Constitution of National Fund for Control of Drug Abuse
6. Miscellaneous

Each of the above aspects could be explained in detail.

PREVENTIVE MEASURES .-A two-fold approach is adopted as a preventive measure against drug abuse. On the one hand attempt is made through the 1988 Act to make an order of preventive detention against any person to prevent him from engaging in illicit traffic in narcotics drug and psychotropic substances . On the other hand the 1985 Act prohibits cultivation, production, manufacture and all other activities of objectionable substances except for medical or scientific purposes, and that too as per licence, permit or authorization.

It is well accepted that to annihilate the drug menace, a two-prong strategy of supply reduction and demand reduction is to be adopted. The preventive measures under the 1988 Act and the licensing regime under the 1985 Act contribute to a large extent in the matter of supply reduction.

ENFORCEMENT AGENCIES AND INVESTIGATION PARAMETERS:-

There is hardly any law in the past, present or probably will be in the future with such number of enforcement agencies as in the anti-drugs law. This shows nothing but the monstrous nature of the problem. It is unique further in the sense that those authorities comprise both at

the centre and state level. It starts from the Department of Revenue, Govt, of India to an ordinary police officer of a state.

The statutory obligation of the central government as per S.4 of the 1985 Act is being discharged by the Department of Revenue. The department in turn performs this function through the Narcotics Control Bureau. Among the varied responsibilities of this body include administrative coordination with different union ministries, state government departments and the various central and state law enforcement agencies for effective implementation of various regulatory, prohibitory, penal and administrative provisions of the Act. It is the chief law enforcement and intelligence agency of India responsible to fight drug trafficking and the abuse of illegal substances. It basically functions as the national coordinator, international liaison and as the nodal point for the collection and dissemination of intelligence. The Director General, Narcotics Control Bureau under the overall supervision of the revenue secretary will be responsible for the devising and undertaking programmes for strengthening and modernizing the narcotics intelligence agencies in the country. The Director General is assisted by such officers as may be appointed by the Central Government from time to time.

The Director General, Narcotics Control Bureau has also been declared by the President as the head of the department for the purpose of exercising financial powers in respect of the Bureau. In *State v. Kulwant Singh* a question was raised regarding the status of the Narcotics Control Bureau. The Honble Supreme Court held that it is merely a wing or branch of the Department of Revenue of the Govt, of India. It is not constituted as a distinct legal entity, and therefore has no independent existence, except as a branch or wing of the Department of Revenue dealing with matters entrusted to it by the notified order constituting it. It was also held that the Bureau is not a statutory authority, but an authority created by the Central Government under the authority of the statute.

One another important agency is the Central Bureau of Narcotics, headed by Narcotics Commissioner". It is primarily vested with the power of superintendence of the cultivation of the opium poppy and production of opium. The other agencies at the central level include the Department of Customs and Central Excise, Department of Narcotics, The Directorate of Revenue Intelligence, Central Bureau of Investigation and any other department of the central government including para-military forces or armed forces as empowered by general or special order by the central government.

At the state level the agencies include the officers of the Department of Revenue, Drugs Control, Excise, Police or any other department empowered in this respect.

Further, 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 de-addiction, rehabilitation and social reintegration of addicts.

As per S.53 (1) the central government after consultation with the state government, may by notification invest any officer of the Department of the Central Excise, Narcotics, Customs, Revenue Intelligence or BSF or any class of such officers with the powers of an officer in charge of a police station for the purpose of investigation. Similarly, as per S.53(2) the state government may by notification invests any officer of the Department of Drugs Control, Revenue or Excise or any class of such officers with like powers of investigation.

As in the number of enforcement agencies there are varying parameters in investigation as well. It is to be noted that provisions of CrPC are made applicable to warrant, arrest, search and seizure under the 1985 Act as per S.51. Further, through s.50 an accused is given, if he so requires a right to be searched in the presence of a nearest gazetted officer of any of the departments mentioned in s.42 or a nearest magistrate.

The 1985 Act with a view to strengthen the arm of the enforcement agencies has made every offence under it to be cognizable. This is notwithstanding the quantum of punishment provided for the offence. So the authorities do not require either a formal warrant for arresting the accused or an order from the magistrate to start investigation.

So also in the matter of bail, stringent conditions are provided for releasing an accused on bail. As per S.37 (2), the said conditions are in addition to those in CrPC. It is to be taken into account that this restriction is made applicable in respect of every offence involving commercial quantity and for offences under S.19, 24 and 27-A. In these cases court can not release an accused on bail unless the public prosecutor has been given an opportunity to oppose the bail application, that the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

In *Narcotics Control Bureau v. Kishan Lal* the question was whether the High Court while exercising power under S.439 CrP C is subject to the limitations provided in S.37 of the Act. The Honble Supreme Court held that in view of S.4 CrPC the High Court is bound by the restrictions contained in S.37 of the Act. Reiterating the same point, the Apex Court in *Union of India V. Rattan Mallik* held that the High Court while exercising power under S.439 CrPC is bound by the twin tests set out in S.37 (1) b (ii). It was also made clear that the said conditions are cumulative and not alternative. Recording of satisfaction on both the conditions is sine qua non for granting bail.

In *Union of India v. Thamisharasi* the Honble Supreme Court pointed out the difference between S.437 CrPC and S.37 of NDPS Act, 1985 in the matter of the burden to show the existence of grounds. Accordingly, under S.437 CrPC it is for the prosecution to show the existence of reasonable grounds to support the belief in the guilt of the accused to attract the

restriction on the power to grant bail, but under S.37 it is the accused who must show the existence of grounds for the belief that he is not guilty.

One peculiar feature of the 1985 Act is the enhanced period of remand. As per S.36-A (4) the maximum remand period for offences punishable under S. 19,24,27-A or that involving commercial quantity is 180 days instead of the ninety days provided in CrPC. Necessarily this implies that an investigating officer under the anti-drugs law is getting double the period for completing investigation than the usual period of ninety days. Further, the proviso thereof empowers a special court to extend this period upto one year !

Yet another exclusive feature of the Act is the provision for controlled delivery under s.50 - A. It is a technique by which the commission of offence even after detection is allowed to continue under surveillance so as to trap big guns, to seize huge quantity and to detect the mooring places. But this procedure can be employed only by the Director General of Narcotics Control Bureau or any other officer authorized by him.

TRIAL SECENARIO :-

For speedy disposal of cases S. 36-A (1) a, provides for constitution of special courts having the status of a sessions judge to try all offences which are punishable with imprisonment for a term of more than three years. As per S.36-A (1) d, a special court may take cognizance of an offence without the necessity of committal proceedings. S.36-A (5) empowers the court to conduct summary trial in respect of offences punishable with imprisonment for a term of not more than three years.

Further, statements of persons recorded under S. 67 are made relevant for the purpose of proving any prosecution under the Act. In *Kanhaiyalal v. Union of India* " it was held by the Honble Supreme Court that statements made under S.67 may be relied upon as a confessional statement, and that a conviction can be maintained solely on such confession. It was also held that officers of Revenue Intelligence who are vested with powers of an officer in charge of a

police station under S.53 are not police officers within the meaning of S.25 of Indian Evidence Act, 1872. Further, it was also clarified that S.67 statements are excluded from operations of S.24 to 27 of Evidence Act.

Another feature is S. 64 which provides for tendering of immunity to accused from prosecution. This is for the purpose of facilitating proper conviction when evidence is bleak. There is a marked difference between S. 306 CrPC providing for tender of pardon and tendering of immunity from prosecution. The former is done by the court on specific conditions in specific offences. In the case of the latter it is done by either the central government or state government. It can be exercised in respect of all offences under the Act irrespective of the quantum of punishment provided for.

In *Jasbir Singh v. Vipin Kumar Jaggi* it was held by the Honble Supreme Court that power under S.64 can be invoked at any time during the course of the trial before judgment and it is not confined to the stage prior to the trial. There is no conflict between S.307 CrPC and S.64 , and in case of conflict, if any the latter will prevail. Even if an application under S.307 CrPC is rejected S.64 can be invoked.

Again, S. 35, 54 and 66 provide for certain presumptions which is going against accused. S.35 provides that in any prosecution under this Act the culpable mental state of the accused is presumed. S.54 provides that if an accused fails to account satisfactorily for the possession of any objectionable substance or apparatus or material it is presumed that he has committed the offence.

In *NoorAga v. State of Punjab* the constitutional validity of S.35 and 54 was challenged as being violative of Art. 14, 20 and 21 . Upholding the constitutional validity, the Honble Supreme Court observed that though the provisions are draconian in nature, the Act was enacted having regard to the mandates contained in the International Conventions on

Narcotics Drugs and Psychotropic Substances. Merely because the reverse burden is placed on the accused the provisions could not be held unconstitutional.

S. 66 enables the court to presume the contents, handwriting, signature etc of a document seized or produced under this Act. It is also to be noted that though the Act allows the accused to rebut the above presumptions by adducing evidence, it is not by preponderance of probability as in a usual case but by proof beyond shadow of reasonable doubt.

Further, in the matter of forfeiture of illegally acquired property, the burden of proof is on the person affected to prove that the property is not illegally acquired". In Abdul Rashid Ibrahim Mansuri v. State of Gujarat it was held that standard of proof for defence plea of absence of culpable mental state is proof beyond reasonable doubt.

Another salutary provision is S.63 which empowers court to confiscate any material connected with commission of an offence . An order as to confiscation shall be made whether the accused is convicted, acquitted or discharged.

SENTENCING POLICY AND OTHER ALLIED MATTERS:-

A brute majority of the offences under the Act are punishable with rigorous imprisonment. Similarly, for offences involving commercial quantity a mandatory minimum punishment in terms of both imprisonment and fine is provided. Thus the general discretion which is available for a criminal court in the matter of imposing sentence in other offences is not available for a court convicting an accused under the Act.

The general provision for probation under S. 360 CrPC and under the Probation of Offenders Act, 1958 are made inapplicable for convicts under the Act. However, convicts under eighteen years and those convicted for offences punishable under s. 26 and 27 are spared. Similarly, no sentence awarded under the Act shall be suspended, remitted or commuted. Here also the above said three cases are spared.

In this respect, the decision of the Honble Supreme Court in Maktool Singh V. State of Punjab that even an appellate court has no power to suspend the sentence was later overruled in Dadu v. State of Maharashtra. In Dadu s case it was held that S. 32-A is partly unconstitutional to the extent it takes away the right of the court to suspend the sentence of a person convicted under the Act. It intermeddles with the right of appeal in such a way as to actually take away the power of judicial review which is the heart and soul of the constitutional scheme.

The Act also takes a reformative approach by providing for treatment and rehabilitation of accused. To motivate accused to undergo medical treatment for de-addiction immunity from prosecution is offered \ But it is available only to an addict charged under S.27 or with offences involving small quantity. S.71 enables the Government to establish centers for identification, treatment, education, after- care rehabilitation, social re-integration of addicts and for supply of drugs to the addicts registered with the Government and to others where such supply is a medical necessity

CONSTITUION OF NATIONAL FUND FOR CONTROL OF DRUG

ABUSE:-

Chapter II- A S.7- A and S. 7-B enables the central government to constitute by notification in the official gazette a fund to be called National Fund for Control of Drug Abuse. This is a supporting strategy adopted to combat trafficking in drugs so that the lack of general resources at any point of time should not create an obstacle in combating drug menace. The fund comprises amount duly provided by central government through appropriation, sale proceeds of any property forfeited under chapter V-A, grants made by any person or institution and any income from investment of the amounts credited to the fund.

The Central Government may apply the fund to meet the expenditure incurred in combating illicit traffic, preventing and controlling abuse, identifying, treating and rehabilitating addicts,

educating public against drug abuse and supplying drugs to addicts where such supply is a medical necessity. There is hardly any other crime for the combating of which such a special fund is constituted.

MISCELLANEOUS :-

The 1985 Act adopts a totally different attitude towards attempt, abetment, criminal conspiracy and preparation to commit an offence. As per S.28 attempt to commit any offence punishable under the Act is punishable with the same punishment provided for the offence. Similarly, an abetment or criminal conspiracy to commit an offence is punishable with the same punishment provided for the offence. Ordinarily, under the general criminal law attempt, abetment and conspiracy are punishable with only punishment which may extend to half the punishment provided for the offence.

Generally, the second stage of crime, namely preparation is not punishable as per any criminal legal system. But under S.30, any preparation to commit any of the offences involving commercial quantity or under S.19, 24 and 27-A is punishable with half the punishment provided for the offence. Another provision is S.31 providing for enhanced punishment extending to one half of the maximum term for previous conviction. Yet another provision in this respect is S.31- A providing for mandatory death penalty for certain offences after previous conviction.

Last but not the least, the provision which marks a marked deviation from traditional criminal law is the provision for forfeiture of property derived from or used in illicit traffic. Chapter V- A comprising sections 68- A to 68-Z deals with various aspects of forfeiture of property. The net is spread very wide both in terms of person in respect of whom and property in respect of which forfeiture can be made. The chapter itself is in the nature of a comprehensive code on forfeiture of illegally acquired property. Generally, forfeiture in the first instance is effected by a competent authority as provided in S.68-D. The order of the competent authority is

subject to appeal to an Appellate Tribunal constituted under S. 68-N. In this matter the jurisdiction of other courts are barred under S.68-Q.

In *Heena Kausar v. Competent Authority* the Honble Supreme Court held that there is no prescribed period of limitation for initiating proceedings for forfeiture. But the Court pointed out that Right to Property being a constitutional right and human right, when some persons are to be deprived of their property scrupulous compliance with the requirements is imperative for initiating forfeiture.

Thus, the Act is not only punishing a drug offender but also depriving him from enjoying the fruits of his depravity. A drug criminal is shown in letter and spirit that a criminal action under the Act is a bad bargain.

It is to be noted that even in this era of human rights jurisprudence, no serious adverse comments are seen raised in respect of the above deviations found in anti-drugs law. It only shows the common notion of the drastic effect of the drug menace and the compelling need to combat it at any cost so as to save the present and future generations from the scourge of drugs.

REFORMATIVE MEASURES

Law is not a panacea for entire evil in the society. So is the case with drug law. Even though every nation state has generally a harsh and stringent antic-narcotic law, the drug menace continue to alarm the world community. This is the point at which, along with deterrent laws, the needs for reformative measures are felt. Deterrent legislation and reformative measures should go hand in hand to achieve the desired result.

Before adverting to the reform measures in the 1985 Act, it would be relevant to locate the reasons for drug offences. There are different theories of drug use such as Nature Theory, Genetic or Biological Theory, Disease Theory, Psychological theory, Sociological Theory, Social Learning and Subcultural Theory, Social Control or Bonding Theory, Strain Theory and Social Conflict Theory. All these theories are self-explanatory. Each one of the theories explain the cause of drug abuse. One cannot explain the reasons for drug abuse by sticking on to any one theory alone. Each of the Theories become applicable to different persons in different set of circumstances. It varies across a variety of different circumstances and social conditions. So the reform measures to be applied in a given case must be after a thorough study. The Legislators while making the 1985 Act has realised this fact. There is an express provision in the Act viz S.71 and also other measures, remission of sentences, probation and granting of immunity from prosecution.

IDENTIFICATION AND TREATMENT:-

S. 4 (2) imposes an obligation on the Central Government, interalia to take measures for identification, treatment, education, after care, rehabilitation and social re-integration of addicts. Similarly S.7 A (2), among other things stipulates that the National Fund for Control of Drug Abuse shall be applied by the Central Government for identifying, treating,

rehabilitating addicts, educating public against drug abuse and supplying drugs to addicts where such supply is a medical necessity.

S.71 confers a discretion on the Central Government to establish as many centres as it thinks fit for identification, .treatment, education, after-care, rehabilitation and social re-integration of addicts. The Central Government is given further discretion to supply, subject to conditions narcotic drugs or psychotropic substances to the addicts registered with the Government and to others where such supply is a medical necessity.

The Central Government is given powers to make rules for providing the above measures, and also for the appointment, training, powers , duties and persons employed in such centres. It is widely accepted that many substances are having addictive properties even at the time of first use. That being the case, no law, however it might be deterrent, will be able to control the drug abuse. Hence along with drug law, treatment also has equal importance.

One of the reasons printed out for drug addiction is inability of a family to meet even the basic needs of the members of the family and burden of various kinds of liabilities may lead a family members to drug addiction". The other factors printed out are poverty , liabilities, richness of the family ,drug use by family members, lack of control, illiteracy, mal adjustment, lack of apathy, customs and traditions, lack of rehabilitation measures, fashion and ethos and other reasons.

Though as per S.71, obligation is cast on the Government to establish centres for identification, treatment, education, after-care, rehabilitation, and social reintegration of addicts, so far no exclusive institutions are seem to have been established neither by the Central Government nor by the State Government. In all medical colleges and district hospitals there are departments of psychiatry, which are also meant for treatment for de-addiction.

In Kerala, there is de-addiction treatment centres at Thiruvananthapuram, Kollam and Palakkad District Hospitals. There are four more in Malappuram, Alappuzha, Pathanamthitta and Kannoor Districts. It is proposed to construct a ten bed room blocks in all district hospitals in Kerala for the treatment of drug addicts

Apart from the above there are treatment centres in the private sector. There are a total of five hundred and ninety one such centres in two hundred and fifty one cities across different states and union territories in India. In Kerala there are twenty seven de-addiction centres.

For any treatment, motivation of the patient is very essential. To this end, the Parliament has through the 2001 Amendment Act introduced S.64-A. It provides for immunity from prosecution to addicts volunteering for treatment. This immunity is available to two types of offenders. Either the accused must have been charged under S.27 or under any offence involving small quantity.

The other conditions are the following:-

1. The accused must voluntarily seek to undergo medical treatments for de -addiction.
2. The treatment must be in a hospital or an institution maintained or recognized by the Government or a local authority.
3. The accused must actually undergo the treatment.

If the above conditions are satisfied the accused will be granted immunity from prosecution.

It is made clear that if the accused on any event does not undergo the complete treatment for de-addiction, then the immunity can be withdrawn. Thus, the immunity is not absolute but is conditional.

In *Pratap Singh v. State of Jharkhand* , it was made clear by the Honble Supreme Court that the accused must fulfill all the conditions as provided in S.64 -A for the purpose of getting immunity from prosecution. Again in *Fardeen Frozkhan v. Union of India* the question was

whether the rejection of prayer for immunity is justified or not. Apart from the bald statement of the accused there was nothing on record to show that the accused was an addict or that he was involved in the offence relating to small quantity. In the circumstances the Honble High Court held that rejection of the prayer for immunity is justified.

The relationship between drug misuse and crime are well known and can take different forms. For example, there is a small group, who as a result of drug taking, have changed their behaviour from non-delinquent to delinquent. Another group consists of those who commit crime, out of economic necessity, to pay for their expensive habit, and there is also a group for whom drug-taking is just an extension of their criminal way of life".

The above models may be helpful in considering the relationship between treatment and the criminal justice system. Treatment, of course, is important, because of its effect in reducing demand for drugs, and in addition will not introduce others to drugs.

Obviously, if drug misusers are to be treated, they have to be attracted into treatment programmes, preferably at an early stage of their drug taking career. Initiation into treatment will not suffice, unless care is taken to sustain and complete the treatment. The post treatment period is also important. Like a beginner there is every chance for a de-addict to again transform into an addict. Much is depended upon the supportive systems, at the family level, societal level and governmental level.

There are five broad categories of drug treatment v/z.(1) pharmacological drug treatment, which involves the use of drugs or medications to treat substance abuse, (2) residential drug treatment programme in which patients live in a treatment facility for periods or from one month to two years, (3) compulsory drug treatment, which is treatment that is mandated in some way by the criminal justice system, (4) alcoholics anonymous and related pre-support and (5) outpatient drug treatment, which involves a diverge range of treatment options that individuals can receive while they reside in the community

The above programmes cannot be mutually exclusive. There is considerable overlap among these programmes. For example, treatment mandated by the criminal justice system can involve elements of pharmacological treatment and residential drug treatment. For some individuals, it may be that drug abuse is only one, and perhaps not even the most significant of a number of problems like mental illness, homelessness, unemployment and poverty. In order to address their substance abuse, attention must be directed to these other problems as well.

Another central issue in drug treatment is that the motivation of the individual to change is likely the most important factor in predicting successful treatment outcomes. This fact is important to keep in mind when assessing the effectiveness of drug treatment programmes because, addicts who are motivated to quit using alcohol and other drugs are also more likely than other substance abusers to enter drug treatment in the first place.

As with other aspects of addiction, controversy also surrounds treatment. There is no single solution, and as yet there is no cure. Worldwide there are many different modalities of treatment, each catering for the different specific needs of the dependant. Regarding treatment the following observation merit consideration.

Each individual has different needs which one single modality of treatment cannot possibly provide for. However, it is agreed that treatment, in whatever capacity needs to be carried out in a controlled environment, it cannot be forced, it means a change in life style for the dependants, requires time and patients from programme staff, the dependant and the dependants family, and psychological and physiological 10 change need to be brought about .(Emphasis added) .

Dependency affects the whole person, that is physically, mentally, socially, and psychologically. Treatment should therefore aim at addressing the problem on all planes and

focus on one single aspect. Many programmes also believe that spirituality is a vital component in the process of recovery.

One important thing to be noted is that, as with the variety of reasons for starting using narcotics, there are many different and varied reasons why people want to stop. Some of the reasons are as follows:-

1. For many, the sheer hassle of drug use is too much to bear. The negative aspects outweigh the few positivities of drug use.
2. Illness is one of the common reasons for wanting to stop. Through addiction, the individual is likely to neglect his personal health and hygiene, dental care and nutrition. There is also a high risk of hepatitis and other diseases through malnutrition. AIDS, if needles are being shared and various respiratory diseases like pulmonary tuberculosis, bronchitis, bronchopneumonia, if joints are being shared. The realization that one's health is rapidly deteriorating can be a strong incentive to give up.
3. The fear of legal proceedings or involvement with the police may be enough to make someone want to give up. A drug treatment programme may also be an alternative to a prison or a detention center.
4. For some people, a change in circumstances possibly instills a realization that there is no need for continuation of their intake of drugs.
5. The break up or lack of relationships, whether they be sexual, platonic or familial is another common reason for wanting to give up".

The incentive may come from the dependant himself, because of this poor social bonding, or other parties involved in a relationship may exert pressure on the individual to give up. Whatever the reason for giving up, one thing is certain that in order to successfully abstain after treatment, an addict has to have a strong motivation

to do so. If he is forced, the likelihood of relapse is five times increased, then when it is personal decision.

DIFFERENT MODALITIES OF TREATMENT:

Despite there being a large variation in the type of treatments offered at different centres, most have the two basic principles.

1. Harm Minimization
2. Solving of problems related to individual drug use, so that a drug-free life is eventually realized.

The process of treatment can only begin once the individual is motivated to stop. Forced treatment will normally have a counter-instinctive effect. Motivation can include one or more of the reasons depending on the programme, the type of treatment offered and the level of motivation. Lack of motivation or seeking treatment for the wrong reasons has several implications.

Firstly, if any other chemical is a part of the treatment eg: methadone the programme staff need to ensure that the individual is dependent on heroin, and it is motivated to give up heroin. Unless there are thorough drug tests carried out at the onset of treatment, people will come to a methadone clinic, be prescribed methadone, and become dependent when they have not been dependant on heroin. Also, once on a regular methadone prescription of heroin is also being used, there are serious health hazards and a higher risk of overdose.

Therefore, whatever be the treatment that is being offered, some kind of a motivation assessment needs to be made. This can be based on the following:

- i. Accepting that there is a problem with heroin
- ii. Asking for treatment voluntarily
- iii. Attending appointments without coercion
- iv. Compliance with the terms stated by the treatment centre

V. Internal locus of control, i.e the desire to recover for ones own sake

, vi. Willingness to correct/modify character traits

vii. Accepting to take an active part in the treatment programme

De-toxification will normally take place following a period of Motivation. De-toxification is the major part of physical treatment , but a relatively small stage of the overall process of recovery. Although de-toxification can be carried out by the dependant on his own, its long term effectiveness is better ensured through a controlled environment. The most effective treatment seems to be residential treatment. The underlying philosophy of most residential centres is that the addict is emotionally immature, has a number of character defects, and is required to be occupied in activities structured to modify destructive behaviour patterns. The aim of residential care is to develop individual identity , coping mechanisms , social and communication skills and to eliminate deviant, criminal and antisocial behavior,

The programme of a residential center will normally consists of a structured routine including individual counselling, group therapy, family interactions, vocational therapy, relaxation, meditation and creative activities. Group therapy enables a homogenous group such as heroin addicts, to share and discuss their experiences. Positive feed back and reassurance will be given by other group members, and confrontations will take place over certain issues.

Group therapy aims to enhance motivation of the addict, break down denial, improve inter-personal relationships, and identify and accept feelings. There is also attempt to change character and personality defects by sharing the experience of the whole group.

As far as India is concerned drug law enforcement is concentrated on deterrence. Identification , treatment, education, rehabilitation and social reintegration aspects are not given due importance.

REMISSION

In any system of reformation in criminal justice system, one important thing is suspension, remission and commutation of sentences. These aspects go to the root of administration of criminal justice system. The world has almost discarded the eye for eye, tooth for tooth type punishments. Now the thrust is on reformation. This is on the fundamental basis that a criminal is not born, but made and that a criminal is also a worthy citizen of our country. He should be treated like a patient is treated in the hospital. A reformed criminal is once again a worthy asset to the nation.

The above aspects are pointed out only to show the restricted application of remission provided in the 1985 Act. As the Act originally stood nothing was said expressly about remission and commutation. Naturally, provisions of CrPC regarding suspension, remission and commutation of sentences applied to drug offences also.

But by the 1989 Amendment Act, a new section 32A was added limiting the power of remission and commutation as applicable only to offence of personal consumption as provided in S.27. This provision is given overriding effect over other Acts, but made subject to S.33. The latter provision deals with probation. It says that S.360 CrPC and Probation of Offenders Act, 1958 could be applied only in the case of convicts, who are either under eighteen years of age or who has been convicted under S.26 or S.27

Judicial response in this respect is in accordance with the legislative intent. In *Bhola Devi alias Bhula v, State*, the Honble Calcutta High court held that as S.32-A itself starts with the non-obstante clause, even in case of a conviction under S.26 and awarding of sentence there under, the trial court cannot take recourse to S.389 (3) CrPC for granting bail to the convict thereby suspending the sentence in contravention of S.32-A of the Act.

In *Jshwar Singh v. State* the constitutional validity of S.32-A was challenged, contending that it violates Art. 14 of the Constitution. The contention taken was that S.32 A makes an

unreasonable distinction between a prisoner convicted under the NDPS Act and a prisoner convicted of any other offence. The contention was upheld.

The question of unconstitutionality was finally considered by the Honble Supreme Court in *Dadu v. State of Maharashtra*. The court held that S.32 -A is unconstitutional to the extent it takes away the right of the court to suspend the sentence of a person convicted under the Act, and thus intermeddles with the right of appeal in such a way as to actually take away the power of judicial review, the heart and soul of the constitutional scheme. Taking away the right of the executive to suspend, remit and commute sentences under the Act, however, held valid. But it was clarified that S.32-A does not affect in any way the powers of authorities to grant parole. It was further clarified that only appellate court can suspend a sentence imposed under the Act and that too, strictly subject to the conditions set out in S.37. The contention taken by the petitioners that S.32 A was enacted in discharge of international obligations was rejected. It was made clear that the petitioners may apply for parole and suspension of sentence, but cannot claim as a matter of right.

It was further observed :

Awarding sentence, upon conviction, is concededly a judicial function to be discharged by the courts of law established in the country. It is always a matter of judicial discretion, however, subject to any mandatory minimum sentence prescribed by the law. The award of sentence by a criminal court wherever made subject to the right of appeal cannot be inferred or intermeddled within any way which amounts to not only interfere (sic) but actually taking away the power of judicial review. Awarding the sentence and consideration of its legality or adequacy in appeal is essentially a judicial function embracing within its ambit the power to suspend the sentence under the peculiar circumstances of each case, pending the disposal of the appeal.

The whole controversy was set at rest by the Honble Supreme Court by holding that,

1. S32-A does not in any way affect the powers of the authorities to grant parole.
2. It is unconstitutional to the extent it takes away the right of the court to suspend the sentence of a convict under the Act.
3. Nevertheless, a sentence awarded under the Act can be suspended by the appellate court only, and strictly subject to the conditions spelt out in S.37 of the Act.

The decision in Dadu's case is the correct exposition of law.

In *Maktool Singh v. State of Punjab*, the Honble Supreme Court held that when a person is convicted under S.26 of the Act, his sentence cannot be suspended by the trial court by resorting to S.389 (3) Cr.P.C. Another question which arose in this case is the likely conflict between S.32-A and S.36-B. It was held that when S.36-B of the Act is juxtaposed with S.32-A, the latter must dominate over the former mainly for two reasons. First is that, S.32-A overrides all the provisions of the Code, by specific terms, through the non-obstante limb incorporated therein. Second is that in view of the words so far as may be used in S.36-B, the High Court can exercise powers under Chapter XXIX of CrPC only to the extent such powers are applicable.

In the above said case the Honble Supreme Court rightly pointed out that notwithstanding the non-obstante clause in S.32-A, nothing prevents the executive head of the Union and state to exercise powers of remission, commutation etc under Art. 72 and Art. 161 respectively.

In *Noor Aga v. State of Punjab* it was held that restrictions on the power of the court to suspend the sentence as envisaged in S.32-A is unconstitutional subject to the restriction for grant of bail as contained in S. 37 of the Act

In *Union of India v. Mahaboob Alam*, the respondent was convicted by the Special Judge, NDPS Court, Lucknow under S.21 of the Act. Since he was a previous offender, the court awarded him the enhanced punishment provided under S.31 of the Act. The other accused

who was a first offender was sentenced under S.21 of the Act. It was held that a repeat offender not entitled to bail merely because his co-accused was released on bail.

As far as suspension of sentence is concerned Dadus case has settled the matter. But regarding the remission and commutation there is still a legal vacuum. Suspension, remission and commutation of sentences are reformatory measures to be applied for reforming criminals. Thereby it is not suggested that the stringent provisions be liberalized. What is needed is the application of reformatory measures in deserving cases. Of course, it need not be applied to both criminals and repeat offenders. But there may be juveniles, women, aged persons, infirm persons etc. In those cases the authority must be in a position to apply the reformatory measures. Nothing will stand to loose by adopting such a course.

PROBATION:-

Through S.33 the reformatory relief of probation has been restricted to three types of convict.

1. Every convict who is under eighteen years of age.
2. A person convicted for an offence punishable under S.26
3. A person convicted for an offence punishable under S.27

In all other cases S.360 CrPC and probation of Offenders Act are made inapplicable. S.360 CrPC empower the court to release convicts on probation of good conduct or after admonition. Similarly, probation of Offenders Act, 1958 is a comprehensive legislation for releasing convicts after admonition or on probation of good conduct.

In Rakesh v. State of Gujarat, the question was with respect to the effective date with reference to which the age of a convict is to be determined for the purpose of applying S.33. It was held by the Honble Gujarat High Court that the relevant date for the purpose under S.33 is the date of commission of the offence. Where the offender was minor, he could not be denied probation merely because on the date of judgment in the case, he has attained majority.

In *Raj Mohammed v. State of Himachal Pradesh*, where the accused was convicted under S.15 of NDPS Act, and he was under eighteen years of age at the time of commission of offence, he was held to be entitled to the benefit of probation. In *Modaram J. Purohit v. State of Maharashtra*, it was held that where the appellant is assumed to be below eighteen years of age, he has no mandatory right under S.33 of the Act, and S.6 of the Probation of Offenders Act, 1958, for grant of probation. It was also held that the provisions of the section are not mandatory.

In *Sarju v. State of Uttar Pradesh*, the Honble Supreme Court held that where more than one accused are similarly situated, releasing only one among them on probation is improper. In *Vajju Srinivasu v. State of Andhra Pradesh*, the appellant was convicted under NDPS Act and was not entitled to the benefit under the Probation of Offenders Act. His age at the time of framing the charge was twenty one years. Taking these factors into consideration, the sentence was reduced from two years to one year rigorous imprisonment.

In *Ibrahim Mohit Damanwala v. State of Gujarat*, the court held that before releasing a convict on probation, the court should take into consideration all relevant factors. In *Bishnu Deoshaw v. State of West Bengal*, the Honble Supreme Court has expressed an opinion that the special reasons contained in S.361 CrPC must be such as to compel the court to hold that it is impossible to reform and rehabilitate the offender after examining the matter with due regard to the age, character and antecedents of the offender, and the circumstances in which the offence was committed.

In *Bhola Bhagat v. State of Bihar* it was held by the Honble Supreme Court that the age disclosed by the accused during trial should not be disturbed in the absence of definite evidence to the contrary. In *Sushilkumar v. State of Haryana*, it was held by the Honble High Court that large recovery of opium from the convicted accused persons would be a

special reason within the meaning of S.361 CrPC for declining the benefit of probation to him under S.360 CrPC or under probation of Offenders Act.

Thus, it can be seen that the discretion of the court to release convict under NDPS Act is very much restricted. Yet another provision in the Act is S.39. This section enables the court to release a convict for treatment, for deaddiction or de-toxification in a hospital or institution maintained or recognized by Government if the following conditions are satisfied:

1. The convict must be an addict
2. He must be either a convict in respect of offence under S.27 or for offences involving small quantity.
3. Court convicting the accused must be of opinion, regard being had to the age, character, antecedents or physical or mental condition of the offender that it is expedient so to do.

If all the above conditions are satisfied the court may, instead of sentencing him at once to any imprisonment, direct that he be released for undergoing medical treatment for de-toxification or de-addiction. He must execute a bond, with or without sureties to appear and furnish before the court within a period not exceeding one year, a report regarding the result of his medical treatment. In the meantime to abstain from the commission of any offence under Chapter IV. For this course of action the convict must consent.

S.39(2) empowers the court, if it appears so to the court from the medical report that it is expedient to release the convict after due admonition, that can be done. Here also the convict has to execute a bond with or without sureties for abstaining from the commission of any offence under Chapter IV during such period not exceeding three years.

For effective utilization of S.39, there should be an effective monitoring mechanism. As of now there is no such monitoring mechanism . The only mechanism available is the general mechanism of superintendence by Probation Officers under The Probation of Offenders Act, 1958. This is far from satisfactory.

PRISON LIFE AND PAROLE

It is realized world over that prisons are no more quarters of oppression, harassment and torture, but correctional centres. As far as narcotic convicts are concerned they require a separate treatment. It is a fact that, whatever may be the nature of drug crime, majority of them are themselves substance abusers.

In America, during 1980s diversion to drug treatment as an alternative to incarceration became more widespread. Drug treatment programmes were established in jail and prison , and for those in the post-incarceration phase of corrections, treatment alternatives became available as supplements to parole on and work-release supervision .

As far as India is concerned neither there are separate prisons for drug offenders nor separate blocks within the same prisons. Drug offenders are suffering sentences along with other offenders risking the latter to the world of drugs. There are no separate treatment centres within prisons or any programmes of de-addiction or de-toxification within prison administration. This is a sad plight of affairs existing in India. Reformation through correctional measures is not given the due attention. It is high time that everybody should realize that law alone could not retard the upward movement of drug offences.

Another aspect is parole. It is not suspension of sentence. The convict continues to be serving the sentence despite granting of parole under the statute. Rules, Jail Manual or the Government Orders deal with aspects of parole. It is the release of a person temporarily for a special purpose before the expiry of a sentence, on the promise of good behaviour and return to jail. It is a release from jail, prison or other internment after actually been in jail serving part of sentence.

In Poonam Lata v. M.L. Wadhawan °, the Honble Supreme Court held that grant of parole is essentially an executive function to be exercised within the limits prescribed in that behalf It would not be open to the court to reduce the period of detention by admitting a detenu or

convict on parole. Court cannot substitute the period of detention either by abridging or enlarging it.

The above position was reiterated in *Mohinder Singh v. State of Haryana* .

Interestingly, it is to be noted that many jail manuals does not provide for parole to drug offenders as a matter of policy. This kind of an attitude should be changed. It is true that drug offence is not like any other offence, and that it requires deterrent penal law. But it is to be remembered that the normal measures adopted to counter other offences must also be made applicable to drug offences as well.

To counter any offence multi-faceted measures become necessary. As far as India is concerned the reformatory measures are in an infant stage. The required attention is not seem to have been given to correctional measures. It is to be noted that the Union Ministry of Social Justice, Empowerment and Health is responsible for the demand reduction aspects of drug law enforcement which broadly covers health care, de-addiction, rehabilitation and social re-integration of addicts. But much to be done in this respect by the ministry.

CONCLUSION:

As pointed out by Meena.H.Rao, with the increasing involvement of adolescents with the criminal justice system on account of drug related offences, particularly for possession for personal use, it is necessary to review sentencing policies and procedures for their integration into society. It is not in the interest of society that they be kept in regular jails along with other major criminals.

CONCLUSION AND SUGGESTIONS

CONCLUSION

Every year 26 June is observed as World Anti-narcotic day. The U.N.O has observed 1991 to 2000 as a Decade Against Drug Abuse. The world super-power America has declared a war on drugs. In India responsibility is given to both Central Government and State Governments to set counter measures against drug problem. Also, unlike any other offence a number of agencies both at the Centre and State are entrusted with the task of combating drug problem. All this show that the drug abuse has assumed frightening proportions and has become a global menace.

It has a deleterious effect on society and contributes to depravity on a large scale. On the one hand, there is growing awareness of human dignity and the need to improving human stock, while on the other, drug abuse poses a serious threat to its very existence. It constitutes major challenge of the times. Drug addiction adversely affects all round development. Drug trafficking promotes criminalization.

It is to be noted that vitality any countrys socio-economic fabric is particularly depended on all citizens ,especially, the younger generation. The evil of drug abuse however cripples the youth and prevents them from realizing their aspirations and dreams. They are the worst victims of this menace. Drug abuse is a complex and multifaceted problem, touching on the economic, social, cultural and educational environment and damaging the society by targeting youth, the most vulnerable section of the society.

The proximity of India to internationally recognized drug producing regions of the world aggravates the problem of drug availability and concomitantly the evil of drug abuse, trafficking and spread of the HIV-AIDS. Advanced technology, improved means of communication, transportation and diabolical ingenuity available to drug traffickers all over

the world has steadily made the task of enforcement more complicated, challenging and hazardous. With men falling prey to drugs, women and children bear the brunt of living in a toxic atmosphere of crime and violence fuelled by addiction.

According to the United Nations Drug Report, 2013 India is the biggest consumer of heroin. According to the report, the distinction between traditional consumer countries and producer countries is likely to soon fade with galloping increasing of consumption in developing countries such as India.

Globally, UNODC estimates that, between one hundred and forty nine and two hundred and seventy two million people , or 3.3% to 6.1 % of the population aged 15->64 uses illicit substances at least once in the previous year. Cannabis is by far the most widely used illicit drug type consumed by people. Moreover, in recent years, several new synthetic compounds have emerged in established illicit drug market. Many of these substances are marketed as substitutes for illicit stimulant drugs such as cocaine. Till recent times, main centres of trafficking were developed nations, now it is changing to developing nations like India. Anti-narcotic movement faces new challenges in the wake of new drugs and methods of trafficking.

On the other side, drugs still remain an enigma. They have been hailed as being of enormous social, medical and religious value and also as the most destructive, pathogenic and misleading discovery of all times. Over centuries men have sought and drugs have offered health, relief of pain, security, mystical revelation, eternal life , the approval of the Gods, relaxation , joy, sexuality, restraint, blunting of the senses, escape, ecstasy, stimulation, freedom from fatigue, sleep, fertility, the approval of others, clarity of thought, emotional intensity, self-understanding etc. Drugs have been employed as tools for achieving perhaps an endless catalogue of motives.

The habitual use of stimulants, sedative and euphoric drugs were prevalent in India long before any other country. Consumption of cannabis and opium were often practised along with religious ceremonies. Moreover, psychoactive substances especially, cannabis and opium have been in the pharmacopeia of Indian medicine for a very long period.

Thus, majority of the narcotic drugs and psychotropic substances are having two sides of virtue and vice. So a total prohibition could never be imagined. The other alternative is control and regulation. This is most complex and challenging task for any government. The drug control regime is very vast and does not confine to any particular research study. The present study has focused on some of the areas in anti-narcotic measures. The emerging propositions out of the study are mentioned below:-

Internationally, a number of conventions, right from 1909 Shanghai Conference to 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances were convened to counter the global drug problem. There are international mechanisms entrusted with the task of charting out programmes of action to combat drug menace. There are institutions like Commission on Narcotic Drugs, International Narcotic Control Board, United Nations Office on Drugs and Crime, the U.N. Inter-regional Crime and Justice. Research Institute, the International Labour Organisation, UNESCO, International Maritime Organisation, International Civil Aviation Organisation, Universal Postal Union, Food and Agricultural Organisation, United Nations Development Programme, the UNICEF, and the INTERPOL. These organizations are directly or indirectly contributing their part in war against drugs.

SUGGESTIONS

A : NDPS ACT, 1985

1. Taking into account the multidimensional aspects of the drug problem, the 1985 Act rightly saves other existing and state laws regulating and controlling drugs. It also makes applicable the Drugs and Cosmetics Act, 1940 and the Customs Act, 1962. Other relevant Acts discussed in Chapter III of the present study are , The Prisons Act, 1894, The Pharmacy Act, 1948, The Drugs Control Act, 1950 , The Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954, Drugs Price Control Orders, Medicinal and Toilet Preparations (Excise Duties) Act, 1955 and CrPC, 1973. All these Acts have its own bearing in some form or other in the matter of drug control. Many of these Acts are remaining a dead letter. Hence it is suggested that the above Acts be strictly implemented.
2. Taking into account the transnational nature of drug problem, it is suggested that the enforcement agencies be sensitized about the S.166A, S.166 B, and Chapter VII-A sections 105 A to 105 L of CrPC. Employment of these provisions will facilitate smooth conduct of investigation in respect of a drug offence having trans-national touch.
3. S.27 penalising personal consumption of narcotic drug or psychotropic substances provides for two types of punishments. As per S. 27 (a), if the substances consumed is cocaine, morphine, diacetyl-morphine or any other substances as may be specified by Central Government, the punishment provided is imprisonment for a term which may extend to one year or with fine which may extend to twenty thousand rupees or with both. Under S. 27(b) where the narcotic drug or psychotropic substance consumed is other than those specified in S.27 (a), the punishment provided is imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees or with both. It is suggested that the double standard in awarding punishment be avoided.

Anyway the act which is criminalized is personal consumption of drugs. If that be the case how the nature of drug alter the gravity of the crime ? 276 Further, there is a lot of hue and cry is raised to decriminalize personal consumption in its totality. That kind of argument could not be accepted. Let the provision be there at least for the purpose of educating the public that personal consumption is something objectionable and be avoided. It is suggested that, irrespective of the nature of substance consumed punishment be made uniform to the effect of imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees or with both. There is nothing cruel or inhuman about the punishment. For, an offender under S.27 of the Act may be released on probation under S.33. Moreover, under S.39 such a person may be released to undergo medical treatment for deaddiction. Again, fine is provided as an alternative sentence in S.27. So the only thing required is an amendment of S.27 to effect uniform sentence.

4. In S.31 for awarding enhanced penalty, it is sufficient that previous conviction may be in respect of actual commission, attempt, abetment and criminal conspiracy. In this respect it is suggested that first conviction for preparation should also be made sufficient for enhanced penalty. There is no reason whatsoever for leaving preparation from the group
5. S.31-A provides for mandatory death penalty if a person previously convicted of the Commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit any of the offences punishable under S.19, 277 24, 27A and for offences involving commercial quantity of narcotic drugs or psychotropic substances is subsequently convicted of the commission of or attempt to commit, or abetment of or criminal conspiracy to commit an offence relating to engaging in the production , manufacture, possession, transportation, import into India , export from India or transshipment of substances and quantity mentioned in the table attached or financing directly or

indirectly, any of the above said activities. After Mithuss Case imposing mandatory death penalty is unconstitutional. Hence the punishment may be altered as imprisonment for life or with death. Moreover, it is further suggested that in S.31-A first conviction for preparation should also be made sufficient for the higher penalty.

6. S.32A provides that no sentence awarded under the Act shall be suspended or remitted or commuted. This provision is against fundamental notions of criminal jurisprudence. It is suggested that a discretion should be conferred on the authorities concerned to suspend, remit or commute sentences. For, there may be accused of tender age, women, aged and infirm person. In those cases the authorities must be in a position to exercise the power of suspension, remission and commutation. It is true that in Dadus Case S.32 A was partly held to be unconstitutional. But that is not enough. 278
7. As per S.64 the power to tender immunity from prosecution is conferred on Central Government or State Government as the case may be. This is nothing but tendering of pardon to an approver. Such a power should be given to the court not the government. For, it is the court trying the offence which is having first-hand information as to the need and necessity to tender immunity. If it is given to government there is every chance of abuse is involved. Analogous provision is S.306 CrPC.
8. S.64 A provides that an addict who volunteer for treatment be given immunity from prosecution. Here a basic fact is to be understood is that generally no addict will volunteer for treatment. Moreover, there is a lacuna in the section, in as much as it is not mentioned as to which is the authority empowered to tender immunity. The lacuna may be filled, and the authority be the court. Hence immunity from prosecution may also be given if the court trying the offence feels that such treatment will be in the interest of the addict.

9. S.71 enables the government to establish centres for identification, treatment, education, after-care, rehabilitation, social re-integration of addicts and for supply of narcotic drugs and psychotropic substances to the addicts registered with the government and to others where such supply is a medical necessity. As already discussed in Chapter IX the reformatory measures, which is having equal importance with deterrent measures has not been given due attention. Hence in S.71 instead of may the word shall be used to make it mandatory for the Government to establish such centres.
10. Excepting S.26, 27(b), 32, 58(1), 58(2) and 59(1) the nature of sentence provided for is a mandatory rigorous imprisonment. Thus, the court has absolutely no discretion but to impose rigorous imprisonment in all cases. There is no judicial discretion in the matter. There may be cases where simple imprisonment has to be imposed in the interest of justice and on the basis of humanitarian considerations as in the case of accused who are of tender age, women, infirm and aged. Hence word rigorous appearing in S.15 (a) to (c), S.16, S.17 (a) to (c) S.18 (a) to (c), S.19, S.20 (b) (i), S.20 (b) (ii) A to (C), S.21 (a) to (c), S.22 (a) to (c), S.23 (a) to (c), S.24, S.25 A, S.27 A, S.31 (1) and S.59 (2), may be deleted. This is necessary to enable the court to impose simple imprisonment in deserving cases.

B. THE PREVENTION OF ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT. 1988 °

1. As per S.9 (e) a detenu is not entitled to be represented by a legal practitioner of his choice in the matter connected with reference to Advisory Board. It is suggested that legal practitioners be allowed if they require. The State will lose nothing by permitting legal practitioners. A detenu may not be in a position to make an effective representation to the Advisory Board without the assistance of a legal practitioner.

2. In S. 12 (1) the concurrent power of revocation of detention order is conferred on both the Central Government and the State Governments. This will lead to friction between the governments. It is suggested that power of revocation must rest with the authority who issued the detention order.

MISCELLANEOUS

1. It is to be noted that nobody is born as a drug addict. In majority of cases an addict starts with tobacco smoking and drinking habits. These two are the sisters of the habit of drug addiction. Hence along with strong antinarcotic measures, emphasis should also be given to counter tobacco and liquor habits

2. Catch them young is the present day strategy in every respect. Hence it is suggested that the education department be initiated to integrate the awareness on drug abuse as a subject in school curriculum

3. Simultaneously, strengthening family, the smallest, basic and most important part of society, has to take precedence over everything else. The parents and teachers should play a vital role in the formative years of a child.

It is true that the problem of drug abuse and trafficking cannot be solved overnight. Sustained and unrelentless efforts have to be taken by all stake holders to ensure that our coming generation is not devoured by the scourge of drug demon.

BIBLIOGRAPHY AND REFERENCES

- A.K. Radhakrishnan, Apex Court on Section 50 of the NDPS Act, 1985, 2005(1) KLT (Jnl.)749.
- CSJ Fazey, The Commission on Narcotic Drugs and the UN International Drug Control Programme: Politics, Policies and Prospects for Change, 14 Z/DP 157 (2003).
- .David .R.Bewley, Challenging the UN Drug Control Conventions : Problems and Possibilities , 14 IJDP 172 (2003).
- Hary.G.Levince, Global Drug Prohibition: Issues and Crises, 14 IJDP 149 (2005). • K.P. Singh, Drug Law Enforcement in India, 47 ZPJ73 (2000).
- K. Krajewski, How Flexible are the United Nations Drug Conventions, 10Z/Z)i330(1999).
- Martin Jelsma, INCB Report: Mixed Thoughts, TNI, 2 March 201-1.
- Musto David, International Drug Control : Historical Aspects and Future Challenges in United Nations Inter-national Drug Control Programme, World Drug Report, 165 Oxford University Press (1997).
- NMJ Wright, Supervised Injecting Centres, 15 BMJ28 (2004).
- Tom Blickman, Argentina and Mexico Clash with INCB, Italy with Europe, TTV/, 5 May 2010.
- Andrew Wells, International Drug Control : Recent Development , Patterns and Trends, in D.C.Jayasuriya et.al (ed.) Global Drugs Law, Har Anand Publication Private Ltd (1997).
- Belenko Steven.R(ed.), Drugs and Drug Policy in America: A Documentary History, West Port, Connecticut, Greenwood Press (2000).
- Clayton.J.Mosher and Scot Akin, Drugs and Drug Policy, Sage Publication, Thousand Oaks, California (2007).

- Demand Reduction : A Glossary of Terms, UN Publications (2000). • Dibyajyoti De, Guide to The Narcotic Drugs and Psychotropic Substances Act, Lexis Nexis, Butterworths, Wadhwa, Nagpura, (2 ed. 2009).
- Dr.D.R. Saxena, Law and Changing Society, Manju Saxena (ed.) ,Deep & Deep Publications, Private Ltd (1999).
- Dr. Yusuf A.Merchant and Philippa D.Dorkings, Narcotics: An independent study. Commission of the European Committees, (Rev.ed.1994).
- Ishwar Modi, Shalini Modi, Drugs: Addiction and Prevention, Rawat Publications, Jaipur and New Delhi (1997).
- Modis Medical Jurisprudence and Toxicology, (21 ed 1988).
- P.K.Jain, Commendaries on NDPS Act, 1985, Prashant Publications, Law Publishers , 1 Floor, Ruimandi, Delhi, (2 rev.ed.1995).
- Robert R.Perkinson, Chemical Dependency Counselling:A Practical Guide, Sage Publications, Los Angeles 0 ed.2008).
- R.P. Kataria, Law Relating to Narcotic Drugs and Psychotropic Substances in India, Orient Publishing Company (3 ed.2010).
- Surendra Prakash Thyagi, NDPS Act, 1985, Vinod Publishing House, Church Road, Delhi (1st ed.1994).
- Tanya Mechado, Culture and Drug Abuse in Asian Settings: Research for Action, Department of Psychiatry, St. Johns M.C, Bangalore, (1994)
- The United Nations and Drug Abuse Control, UN Department of Public Information, New York (1987).
- V.N. Shuklas Constitution of India, Mahendra P.Singh (ed.) Eastern Book Company, Lucknow (11 ed.2008).
- Vishnu Swaroop, The NDPS Act, 1985, Butterworths, New Delhi (1ed.2000).