LAW COMMISSION OF INDIA

ONE HUNDRED FIFTY-FIFTH REPORT

ON

NARCOTIC DRUGS AND PSYCHOTROPIC

SUBSTANCES ACT, 1985

(ACT NO. 61 OF 1985)

JULY, 1997

JUSTICE
K. JAYACHANDRA REDDY

CHAIRMAN
LAW COMMISSION
GOVERNMENT OF INDIA
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D.O.No.6(3)(35)/96-LC(LS)

July , 1996.

Dear Hon'ble Minister,

I have great pleasure in forwarding herewith the 154th Report on the Narcotic Drugs and Psychotropic Substances Act, 1985.

Drug abuse has become one of the curses of the society. It is a menace which threatens public life and leads to destructions not only of the family but also of the society. There is a need to control this malady. It has been felt that the Narcotic Drugs and Psychotropic Substances Act, 1985, despite amendment therein in 1988, has not yielded the desired results. The Law Commission has, therefore, considered it necessary to undertake a review of the Narcotic Drugs and Psychotropic Substances Act, 1985.

In order to elicit public opinion on the subject, the Commission circulated a questionnaire setting out various aspects of the subject under study. The Commission also organised a workshop at Goa and a National Seminar on Criminal Justice in India at New Delhi wherein the various aspects of law relating to control of drugs have been discussed.

The recommendations have been made with a view to plug the loopholes and make the provisions more effective. We hope that the recommendations, if implemented, will control the malady to a considerable extent.

With regards,

Yours sincerely,

(K.JAYACHANDRA REDDY)

Hon'ble Shri Ramakant D.Khalap,
Minister of State for Law & Justice,
Shastri Bhavan,
New Delhi.

C O N T E N T S

ANNEXURES

CHAPTER I

INTRODUCTION

1.1 Administration of Criminal Justice System.

With the evolution of mankind from primitive stage to the stage of social welfare state, the administration of criminal law has assumed great importance. As long as the human beings were "God-fearing" and had faith that their actions were being watched by the "ALMIGHTY" the need for the administration of criminal justice was not felt. However, with the passage of time and the people becoming more materialistic, a section of the society consisting of misguided and disgruntled human beings lost faith in the "ALMIGHTY" and started thinking that their actions could not be seen by anybody. These misguided persons indulged in criminal activities which led to the necessity for administration of criminal justice. In addition, the activities to be termed as "criminal activities" have also undergone change with the passage of time. What was regarded not harmful fifty years ago has become the greatest evil of the day in view of changed circumstances, new researches, new thinking and modern way of life.

1.2 Emergence of white collar crimes.

The crimes are generally of two kinds:

(a) Traditional crimes affecting individual persons, like murder, theft, assault, etc.;

(b) White Collar Crimes or Socio Economic Crimes affecting the public at large like smuggling, hoardings, adulteration, illicit trafficking and sale of narcotic drugs and psychotropic substances etc. White collar crimes are of recent origin and may be defined as all illegal acts committed by unlawful means -the purpose being to obtain money or property or business or personal gain or profit. Such crimes are committed by the organised gangs having influence. Some of the salient features of the white collar crimes are as under:-

(a) there is no social sanction against such white collar crimes;

(b) these crimes are committed by organised gangs equipped with most modern technology;

(c) there is generally a nexus between the politicians, law enforcing agencies and the offenders indulging directly in such crimes;[1]

(d) there is no organised public opinion against such crimes; and

(e) the traditional crimes are isolated crimes, while the white collar crimes are part and parcel of the society.[2]

1.3 Drug Trafficking and illicit use of Narcotic Drugs and Psychotropic Substances.

The genesis and development of the Indian drug trafficking scenario are closely connected with the strategic and geographical location of India which has massive inflow of heroin and hashish from across the Indo-Pak border originating from "Golden Crescent" comprising of Iran, Afganistan and Pakistan which is one of the major illicit drug supplying areas of the world.[3] On the North Eastern side of the country is the "Gold Triangle" comprising of Burma, Loas and Thailand which is again one of the largest sources of illicit opium in the world.[4] Nepal also is a traditional source of cannabis, both herbal and resinous.[5] Cannabis is also of wide growth in some states of India. As far as illicit drug trafficking from and through India is concerned, these three sources of supply have been instrumental in drug trafficking. Prior to the enactment of the Narcotic Drugs and Psychotropic Substances Act, 1985, the statutory control over narcotic drugs was exercised in India through a number of Central and State enactments. The principal Central Acts were (a) the Opium Act, 1857, (b) the Opium Act, 1878 and (c) the Dangerous Drugs Act, 1930.

The preamble to the Narcotic Drugs and Psychotropic Substances Act, 1985 provides as under:

> "An Act to consolidate and amend the law relating to narcotic drugs, to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances, to provide for the forfeiture of property derived from, or used in, illicit traffic in narcotic drugs and psychotropic substances, to implement the provisions of the International Conventions on Narcotic Drugs and Psychotropic Substances and for matters connected therewith."

The Statement of Objects and Reasons for the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) laid down as under:

> "The statutory control over narcotic drugs is 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. With the passage of time and the developments in the field of illicit drug traffic and drug abuse at national and international level many deficiencies in the existing laws have come to notice, some of which are indicated below:

(i) The scheme of penalties under the present Acts is not sufficiently deterrent to meet the challenge of well organised gangs of smugglers. The Dangerous Drugs Act, 1930 provides for a maximum term of imprisonment of three years with or without fine and four years imprisonment with or without fine with repeat offences. Further, no minimum punishment is prescribed in the present laws, as a result of which drug traffickers have been sometimes let off by the courts with nominal punishment. The country has for the last few years been increasingly facing the problem of transit traffic of drugs coming mainly from some of our neighbouring countries and destined mainly to western countries.

(ii) The existing central laws do not provide for investing the officers of a number of important central enforcement agencies like narcotics, customs, central excise etc., with the power of investigation of offences under the said laws.

(iii) Since the enactment of the aforesaid three Central Acts a vast body of international law in the field of narcotics control has evolved through various international treaties and protocols. The Government of India has been a party to these

treaties and conventions which entail several obligations which are not covered or are only partly covered by the present Acts.

(iv) During the recent years new drugs of addiction which have come to be known as psychotropic substances have appeared on the scene and posed serious problems to national governments. There is 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 to which also India has acceded."

In view of what has been stated above, an urgent need was felt for the enactment of a comprehensive legislation on narcotic drugs and psychotropic substances, which, inter-alia, should consolidate and amend the existing laws relating to narcotic drugs, strengthen the existing controls over drug abuses, considerably enhance the penalties particularly for trafficking offences, make provisions for exercising effective control over psychotropic substances and make provisions for the implementation of international conventions relating to narcotic drugs and psychotropic substances, to which India is a party.

1.4 The effect of illicit trafficking and use of Narcotic Drugs and Psychotropic Substances.

The illicit trafficking in Narcotic Drugs and Psychotropic Substances has led to drug addiction. The anguish of the Supreme Court of India was expressed in case "Durand Didier v. Chief Secretary, Union Territory of Goa[8]" in the following words:-

> "With deep concern, we may point out that the organised activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, in order to effectively control and eradicate the proliferating and booming devastating menace, causing deleterious effects and deadly impact on the society as a whole, the Parliament in its wisdom, has made effective provision by introducing this Act 61 of 1985 specifying mandatory minimum imprisonment and fine. The sentence of ten years rigorous imprisonment and the fine of Rs.1,00,000/ with the default clause, as modified by the High Court, does not call for interference."

1.5 However, inspite of enactment of the NDPS Act as amended in 1989, the menace of drug trafficking and drug abuse is on the increase and the conviction rate in cases under this Act is extremely low. From this it appears that either the innocent persons are being sent to the courts or there is some procedural defect or deficiency which benefits the accused to get acquittal from the courts. In view of the deep concern at the growing incidence of drug abuse occurring in different parts of the country to plug the loopholes in the law and procedure for combating illicit trafficking and, among others, to effectively deal with drug offenders the Law Commission has suo motu taken up the study of the following:-

(a) to study the menace of the drug abuse and drug trafficking and its effect on youth in India;

(b) to scrutinise the Directive Principles of State Policy enshrined in the Constitution of India and the provisions of International Conventions on Narcotic Drugs and Psychotropic substances;

(c) to understand the magnitude of the problem of illicit trafficking and use of narcotic drugs and psychotropic substances vis-a-vis the infirmities in the NDPS Act;

(d) to examine the relevant provisions of the NDPS

Act and their interpretation by the Courts and

(e) to identify the amendments required for more effective implementation of the NDPS Act.

1.6 In order to elicit public opinion on the subject, the Commission circulated a questionnaire on NDPS Act to the Registrars of High Courts, Presidents of High Court Bar Associations and District Courts Bar Associations, Home Secretaries of all States and Union Territories, Police officials and Chairmen of State Law Commissions, setting out various aspects of the subject under study. Comments received on the questionnaire are summarised in Annexure II. The Commission had also organised Seminar on "Criminal law and Narcotic Drugs Psychotropic Substances" in collaboration with the Government of Goa on 18th January, 1997 at Panaji, Goa and "National Seminar on Criminal Justice in India" at Vigyan Bhavan, New Delhi on 22nd & 23rd February, 1997. In the seminar, judges, jurists, advocates, law professors, magistrates, public prosecutors and police officers expressed their views on various aspects of the subject. The Commission while formulating this report has taken into consideration the views expressed at the seminars.

FOOT NOTES

CHAPTER-I

1. Barowalia J.N., commentary on the Narcotic Drugs and Psychotropic Substances Act, 1985 (1992) pp. 614-615.

2. Ibid.

3. S.V.Joga Rao, "Law and Policy on Drug Trafficking: A Phenomenological study with special reference to Bangalore City", 35 JILI (1993) p.56.

4. Ibid.

5. Ibid.

6. A.I..R. 1989 S.C. 1966 at 1971.

CHAPTER II

MENACE OF DRUG ABUSE AND DRUG TRAFFICKING

2.1 The use of narcotic drugs for scientific and medicinal purpose.

The use of narcotic drugs and psychotropic substances for scientific and medicinal purpose is indispensable. For the preparation of a number of life saving drugs like morphine, pethadine and tranquilisers, these drugs and substances are required. India is one of the leading producers of opium in the world for medicinal and scientific purposes. Due to the use of narcotic drugs and psychotropic substances for scientific and medicinal purposes, the production of the same cannot be banned altogether, but the production can be controlled and regulated by the government to prevent illicit trafficking and illicit use of the same.

2.2 The menace of drug abuse.

Drug addiction has become one of the curses of our times a menace which threatens public health and results in the dissolution of human personality, promoting conditions for various forms of human degradation, whose consequences spread to crime and lawlessness. One of its tragedies lies in its morbid assault on youth resulting more often than not

in mental disorientation and emotional derangement, pushing the victim towards a fate from which there is seldom any hope of recovery. The evil is insidious and operates secretly and it often comes to be known to others only after the addict has crossed the point of no return. The consequences are far-reaching, because in attacking the younger generation of a country, it destroys the flower of a nation's future. History provides many examples of the wilful subversion of a nation's culture- its social values and its integrity by the systematic corruption of its youth through smuggled drugs. The dangers following illicit traffic in narcotic drugs have been recognised worldwide, and so agitated is the conscience of the world community that they are now the subject of International Convention.[1]

For the effective implementation of legal and social measures to tackle the problem of drug addiction, it is necessary to ascertain the causes of drug addiction which can be detailed as under:

(a) Drug War.

The drug war is being fought by some other countries on our land with our men, money and our materials. The drug addicted boy is more prone to be a criminal and the examples are there that the Indian youths are being made drug addicts and then given drugs and weapons while sending them back to Indian territory to use the same to make more addicts and to create terrorist activities. Therefore, strict action is required to check these activities.

(b) Organised gangs of the smugglers.

Drug addication is the result of the work of gangs of smugglers who want to create demand for the supply of their narcotic drugs and psychotropic substances and if the demand is more the prices for the narcotic drugs would be higher and in this way the smugglers are responsible for drug addiction. This type of activities of smugglers also requires strict action.

(c) Personal or family reasons.

There are some personal or family reasons leading to drug addiction which can be detailed as new experiment, curiosity, bad environment, lack of family care, lack of discipline, hippy or peer cult, to escaping from their realities of life and having some pleasure and thrilling experience. This type of drug addiction requires reformative approach to bring addicts back into the main stream of life.[2]

2.3 The menace of drug trafficking.

The trafficking in illegal drugs means to amass illegal wealth in a short time, which is an act of perfidy which no society can condone. Traffickers in illicit drugs have been described as "merchants of death and destruction". A murderer may kill one or two persons, but a drug trafficker destroys the lives of thousands of boys and girls at the same time, to whom he supplies the drugs, by puching

them to a stage from where there is no return and thereby not only ruining them and their families but also the nation.

2.4 Drug abuse and AIDS.

The menace of drug abuse has become more serious in recent times due to spread of HIV virus in India. 80% of victims of AIDS can be linked with drug abuse. HIV can be acquired in three ways - (a) through sex, (b) through blood and (c) by birth from parents suffering from HIV. As far as acquiring of HIV through sex is concerned, the drug addicts are more exposed to the same because a drug addicted boy or girl can pay any price and unmindfully can go to the extent of even in indulging in sex abuse. HIV can also be acquired by the drug addicts through blood while sharing of the needles. A stage comes when drug addicts require intravenous injections of drug to get kick and quick effect and such an addict is not mentally sound at that stage and can use any needle timely available and thereby prone to acquire HIV if the needle was previously used by any person infected with HIV.

2.5 An Appraisal.

For dealing with the menace of drug abuse and illicit trafficking therein due to geographical location of India between "GOLDEN TRIANGLE" and "GOLDEN CRESCENT", the major

sources for illicit opium and its derivatives, their markets being in western countries, the danger of India being a transit rout is always there which has its own impact and effect locally particularly on the youth because the supply for them becomes easier. Therefore, it is imperative to take stringent measures by bringing about suitable amendments in the NDPS Act by making it more effective to combat this menace.

FOOT NOTES

CHAPTER - II

1. See foreward of Mr. Justice R.S. Pathak, former Chief Justice of India and former Judge, International Court of Justice, to Barowalia's Commentary on the Narcotic Drugs and Psychotropic Substances Act, 1985 (1992)

2. Barowalia J.N.'s lecture in National Seminar on Drug Abuse held in Sardar Vallabh Bhai Patel National Police Academy, Hyderabad (3rd May, 1974).(Unpublished)

CHAPTER III

CONSTITUTIONAL GOALS AND THE INTERNATIONAL CONVENTION ON DRUGS

3.1. The Directive Principles of State Policy.

The Directive Principles of State Policy enshrined in part IV of the Constitution of India are fundamental in the governance of the country as laid down in Article 37 of the Constitution, which is reproduced below:

> "The provisions contained in this Part shall not be enforceable by any Court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws."

The Directive Principles can be described as sacared and inalienable as they represent the policies and the programmes which the State should achieve. While the Fundamental Rights impose a duty on the State not to violate them, the Directive Principles of Statae Policy impose corresponding duty on the State to apply them in making the laws for the welfare of the people. The objectives underlying both in the Fundamental Rights and in the

Directive Principles of State Policy are equally important and go together and represent the kind of the society which we wish to create in India. One of the Directive Principles of the State Policy enshrined in Article 47 of the Constitution of India lays down as under:

> "The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the state shall endeavour to bring about prohibition of the consumption, except for medicinal purposes, of intoxicating drinks and of drugs which are injurious to health."

3.2. International Conventions on Narcotic Drugs 1912-1953.

To control and regulate the supply of opium and other narcotic drugs, the following International Conventions were entered into between 1912-1953:-

1912. International Opium Convention (the Hague, 2-3,1912).

1925 Agreement Re manufacature, international trade and use of prepared opium (Geneva, 13.7.1925).

1931 Concention manufactaurae and distribution of narcotic drugs (Geneva 13.7.1931) Agreement Re Opium smoking in the Far-East (Bangkok 27.11.1931).

1936 Convention for the supression of illicit traffic in dangerous drugs (Geneva 26.6.1936)

1946 Protocol Amending the 1912, 1925, 1931 and 1936 instruments (Lake Success, 11.12.1946)

1948 Protocol extending the 1931 Convention to synthetic narcotic drugs (Paris, 19.11.1948)

1953 Protocol Re cultivation of the opium Poppy and production Trade and Use of Opium (New York, 23.6.1953).

3.3. Single Convention on Narcotic Drugs 1961.

In the second half of 20th century, the white collar crimes assumed alarming proportions. Under white collar crimes also the 'drug addiction' and the 'illicit traffic in narcotic drugs and psychotropic substances' became such a menace that the dangers following illicit traffic in naracotic drugs affected the world community and the same became the subject of International Conventions. India is a party to the "Single Convention on Narcotic Drugs, 1961",

the preamble of which briefly out-lined the importance of effective measures against abuse of narcotic drugs in the following words:

"The parties,

concerned with the health and welfare of mankind,

Recognizing that the medical use of narcotic drugs continues to be indispensable for the relief of pain and suffering and that adequate provision must be made to ensure the availability of narcotic drugs for such purposes,

Recognizing that addiction to narcotic drugs constitutes a serious evil for the individual and is fraught with social and economic danger to mankind,

Conscious of their duty to prevent and combat this evil,

Considering that effective measures against abuse of narcotic drugs require co-ordinated and universal actaion,

Understanding that such universal action calls for international co-operation guided by the same principles and aimed at common objectives,

Acknowledging the competence of the United Nations in the field of narcotics control and desirous that the international organs concerned should be within the framework of that organisation.

Desiring to conclude a generally acceptable

international convention replacing existing treaties on narcotic drugs, limiting such drugs to medical and scientific use, and providing for continuous international co-operation and control for the achievement of such aims and objectives."

The Convention after laying down in Article 33 that the party was not permitted the possession of drugs except under legal authority provided for action against the illicit traffic in Article 35 and for penal provision in Article 36 of the convention which provide as under:

"Article 35

Action against the illicit traffic.

Having due regard to their constitutional, legal and administrative systems, the parties shall:

(a) Make arrangements at the national level for co-ordination of preventive and repressive action against the illicit traffic; to this end they may usefully designate an appropriate agency responsible for such co-ordination;

(b) Assist each other in the compaign against the illicit traffic in narcotic drugs;

(c) Co-operate closely with each other and with the competent international organizations of which they are members with a view to maintaining a co-ordinated

compaign against the illicit traffic;

(d) Ensure that international co-operation between the appropriate agencies be conducted in an expeditious manner; and

(e) Ensure that where legal papers are transmitted internationally for the purposes of a prosecution, the transmittal be effected in an expeditious manner to the bodies designated by the Parties; this requirement shall be without prejudice to the right of a party to require that legal papers be sent to it through the diplomatic channel;

Article 36

PENAL PROVISIONS

1. (a) Subject to its constitutional limitations, each party shall adopt such measures as will ensure that cultivation, production, manufacture, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch, despatch in transmit, transport, importation and exportation of drugs contrary to the provisions of this convention, and any other action which in the opinion of such party may be contrary to the provisions of this Convention, shall be punishable offences

when committed intentionally, and that serious offences shall be liable to adequate punishment particularly by imprisonment or other penalities of deprivation of liberty.

(b) Nothwithstanding the preceding subparagraph, when abusers of drugs have committed such offence, the Parties may provide, either as an alternative to conviction or punishment or in addition to conviction or punishment, that such abusers shall undergo measures of treatment, education, after-care, rehabilitation and social reintegration in conformity with paragraph 1 of article 38.

2. Subject to the constitutional limitations of a Party, its legal system and domestic law,

(a) (i) Each of the offences enumerated in paragraph 1, if committed in different countries, shall be considered as a distinct offence;

(ii) Intentional participation, in conspiracy to commit and attempts to commit, any of such offences, and preparatory acts and financial operations in connection with the offences referred to in this article, shall be punishable offences as provided in paragraph 1;

(iii) Foreign convictions for such offences snall be taken into account for the purpose of establishing recidivism; and

(iv) Serious offences heretofore referred to committed either by nationals or by foreigners shall be

prosecuted by the Party in whose territory the offence was committed, or by the Party in whose territory the offender is found if extradition is not acceptable in conformity with the law of the party to which application is made, and if such offender has not already been prosecuted and judgment given.

(b) (i) Each of the offences enumerated in paragraphs 1 and 2 (a) (ii) of this article shall be deemed to be included as an extraditable offence in any extradition treaty existing between Parties. Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them;

(ii) If a party which makes extradition conditional on the existence of a treaty receives a request for extradition from another party with which it has not extradition treaty, it may at its option consider this convention as the legal basis for extradition in respect of the offences enumerated in paragraphs 1 and 2(a) (ii) of this article. Extradition shall be subject to the other conditions provided by the law of the requested party;

(iii) Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences enumerated in paragraphs 1 and 2(a) (ii) of this article as extraditable offences between themselves, subject to the conditions provided by the law of the requested party; and

(iv) Extradition shall be granted in conformity with the law of the party to which application is made, and, notwithstanding subparagraphs (b) (i), (ii) and (iii) of

this paragraph, the party shall have the right to refuse to grant the extradition in cases where the competent authorities consider that the offence is not sufficiently serious.

3. The provisions of this article shall be subject to the provisions of the criminal law of the party concerned on questions of jurisdiction.

4. Nothing contained in this article shall affect the principle that the offences to which it refers shall be defined prosecuted and punished in conformity with the domestic law of a party.

3.4 The Convention on Psychotropic Substances 1971.

Thereafter the Convention of Psychotropic Substances 1971 was adopted to which India is a party and the preamble to said convention provide as under:-

"The parties,

Being concerned with the health and welfare of mankind.

Noting with concern the public health and social problems resulting from the abuse of certain psychotropic substances;

Determined to prevent and combat ,abuse of

such substances and the illicit traffic to which it gives rise;

Considering that rigorous measures are necessary to restrict the use of such substances to legitimate purposes;

Recognising that the use of psychotropic substances for medical and scientific purposes is indispensable and that their availability for such purposes should not be unduly restricted;

Believing that effective measures against abuse of such substances require co-ordination and universal action;

Acknowledging the competence of the United Nations in the field of control of psychotropic substances and desirous that the international organs concerned should be within the framework of that organization;

Recognising that an international convention is necessary to achieve these purposes;

After providing for special provision regarding the control of preparations psychotropic substances, the convention provide for measures against the abuse of psychotropic substances in article 20, action against the illicit traffic in article 21 and the penal provision in article 22 in the following words:-

Article 20

MEASURES AGAINST THE ABUSE OF PSYCHOTROPIC SUBSTANCES

1. The parties shall take all practicable measures for the prevention of abuse of psychotropic substances and for the early identification, treatment, education, after-care, the rehabilitation and social reintegration of the persons involved, and shall co-ordinate their efforts to these ends.

2. The parties shall as far as possible promote the training of personnel in the treatment, after-care, rehabilitation and social reintegration of abusers of psychotropic substances.

3. The parties shall assist persons whose work so requires to gain an understanding of the problems of abuse of psychotropic substances and of its prevention, and shall also promote such understanding among the general public if there is a risk that abuse of such substances will become widespread.

Article 21

ACTION AGAINST THE ILLICIT TRAFFIC

Having due regard to their constitutional, legal and administrative systems, the parties shall:

(a) Make arrangements at the national level

for the co-ordination of preventive and repressive action against the illicit traffic; to this end they may usefully designate an appropriate agency responsible for such co-ordination;

(b) Assist each other in the campaign against the illicit traffic in psychotropic substances, and in particular immediately transmit, through the diplomatic channel or the competent authorities designated by the parties for this purpose, to the other parties directly concerned, a copy of any report addressed to the Secretary-General under article 16 in connection with the discovery of a case of illicit traffic or a seizure;

(c) Co-operate closely with each other and with the competent international organizations of which they are members with a view to maintaining a co-ordinated campaign against the illicit traffic;

(d) Ensure that international co-operation between the appropriate agencies be conducted in an expeditious manner; and

(e) Ensure that, where legal papers are transmitted internationally for the purpose of judicial proceedings, the transmittal be effected in an expeditious manner to the bodies designated by the parties; this requirement shall be without prejudice to the right of a party to require that legal papers be sent to it through the diplomatic channel.

Article 22

PENAL PROVISIONS

1. (a) Subject to its constitutional limitations, each Party shall treat as a punishable offence, when committed intentionally, any action contrary to a law or regulation adopted in pursuance of its obligations under this Convention, and shall ensure that serious offences shall be liable to adequate punishment, particularly by imprisonment or other penalty of deprivation of liberty;

(b) Not-withstanding the preceding sub-paragraph, when abusers of psychotropic substances have committed such offences, the parties may provide either as an alternative to conviction or punishment or in addition to punishment that such abusers undergo measures of treatment, education, after care, rehabilitation and social reintegration in conformity with paragraph 1 of article 20.

2. Subject to the constitutional limitations of a party, its legal system and domestic law:-

(a)(i) If a series of related actions constituting offences under paragraph 1 has been committed in different countries, each of them shall be treated as a distinct offence;

(ii) Intentional participation in, conspiracy to commit and attempts to commit, any of such offences,

and preparatory acts and financial operations in connection with the offences referred to in this article, shall be punishable offences as provided in paragraph 1;

(iii) Foreign convictions for such offences shall be taken into account for the purpose of establishing recidivism; and

(iv) Serious offences heretofore referred to committed, either by nationals or by foreigners shall be prosecuted by the party in whose territory the offence was committed, or by the party in whose territory the offender is found if extradition is not acceptable in conformity with the law of the party to which application is made, and if such offender has not already been prosecuted and judgment given.

(b) It is desirable that the offences referred to in paragraph 1 and paragraph 2(a)(ii) be included as extradition crimes in any extradition treaty which has been or may hereafter be concluded between any of the parties, and, as between any of the parties, which do not make extradition conditional on the existence of a treaty or on reciprocity, be recognized as extradition crimes; provided that extradition shall be granted in conformity with the law of the party to which application is made, and that the party shall have the right to refuse to effect the arrest or grant the extradition in case where the competent authorities consider that the

offence is not sufficiently serious.

3. Any psychotropic substance or other substance, as well as any equipment, used in or intended for the commission of any of the offences referred to in paragraphs 1 and 2 shall be liable to seizure and confiscation.

4. The provisions of this article shall be subject to the provisions of the domestic law of the party concerned on questions of jurisdiction.

5. Nothing contained in this article shall affect the principle that the offences to which it refers shall be defined, prosecuted and punished in conformity with the domestic law of a party.

3.5. The Protocol of 1972 amending the single Convention on narcotic drugs (Geneva, 25.3.1972).

With the passage of time, it was found that the illicit trafficking and illicit use of narcotic drugs is on the increase at the international level and, therefore, resolutions were adopted by United International Conference to consider the amendment of Single Convention on narcotic drugs, 1961, had passed the following resolutions II and III:-

Resolution II

Assistance in Narcotics Control.

The Conference

Recalling that assistance to developing countries is a concrete manifestation of the will of the international community to honour the commitment contained in the United Nations Charter to promote the social and economic progress of all people;

Recalling the special arrangements made by the United Nations General Assembly under its resolution 1295 (XIV) with a view to the provision of technical assistance for drug abuse control;

Welcoming the establishment pursuant to United Nations General Assembly resolution 2719(XXV), of a United Nations Fund for Drug Abuse Control;

Noting that the Conference has adopted a new article 14 viz. concerning technical and financial assistance to promote more effective execution of the provisions of the Single Convention on Narcotic Drugs, 1961;

1. Declares that, to be more effective, the measures taken against drug abuse must be co-ordinated and universal;

2. Declares further that the fulfilment by the developing countries of their obligations under the Convention will be facilitated by adequate technical and financial assistance from the international community.

Resolution III

Social Conditions and protection against drug addiction

The Conference;

Recalling that the preamble to the Single convention on Narcotic Drugs, 1961, states that the parties to the Convention are "concerned with the health and welfare of mankind" and are "conscious of their duty to prevent and combat" the evil of drug addiction,

Considering that the discussions at the Conference have given evidence of the desire to take effective steps to prevent drug addiction;

Considering that, while drug addiction leads to personal degradation and social disruption, it happens very often that the deplorable social and economic conditions in which certain individuals and certain groups are living predispose them to drug addiction;

Recognizing that social factors have a certain and sometimes preponderant influence on the behaviour of individuals and groups;

Recommends that the parties:

1. Should bear in mind that drug addiction is often the result of an unwholesome social atmosphere in which those who are most exposed to the danger of drug abuse live;

2. Should do everything in their power to combat the

spread of the illicit use of drugs; and

3. Should develop leisure and other activities conducive to the sound physical and psychological health of young people.

Apprehension about the sharp increase in drug problems during the late seventies led to formulation by the General Assembly in 1981 of an International Drug Abuse Control Strategy and a five year action programme (1982-86). It provided for a series of policy measures dealing with various aspects of drug control, traffic and treatement of addicts. The six-point strategy called for, (i) improving the international drug control system through wider adherence to existing treaties; (ii) co-ordinating efforts to ensure balance between supply and demand of drugs for legitimate use; (iii) steps for eradication of illicit drug traffic including finding income producing alternatives for illicit drug producers; (iv) intensifying efforts to detect and dismantle clandestine laboratories and trafficking organisations; and (v) measures to prevent drug abuse and promote treatment, rehabilitation and social integration of drug abusers. The programme of action set out specific activities for UN and member governments to achieve these objectives. The Commission on Narcotic Drugs was asked to monitor and co-ordinate their implementation.[1]

The 1984 Declaration on the Control of Drug Trafficking and Drug Abuse viewed drug trafficking and drug abuse as "an international criminal activity" a grave threat to the security and development of many countries and peoples which should be combated by all moral, legal and institutional means, at the national, regional and international levels. It identified the eradication of this evil as the collective responsibility of all States and affirmed the willingness of member States to intensify efforts and co-ordinate their strategies in that area.[2]

Further the Commission on Narcotics was called upon in 1984 to begin preparing a new International Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances to address areas that seemed to be inadequately covered by existing instrumonts.[3]

3.6. The Convention Against illicit traffic in Narcotic Drugs and Psychotropic Substances 1988 (Vienna, 20.12.1988).

Finally, the convention against illicit traffic in narcotic drugs and psychotropic substances was held by United Nations in 1988 and preamble to the said convention recalls deep concern on illicit traffic in narcotic drugs and psychotropic substances in the following words:-

"The parties to this Convention,

Deeply concerned by the magnitude of and rising trend in the 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 economic, cultural and political foundations of society;

Deeply concerned also by the steadily increasing in-roads 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 market and for purposes of illicit production, distribution and trade in narcotic drugs and psychotropic substances, which entails a danger of incalculable gravity;

Recognizing the links between illicit traffic and other related organized criminal activities which undermine the legitimate economies and threaten the stability, security and sovereignty of States;

Recognizing also that illicit traffic is an international criminal activity, the suppression of which demands urgent attention and the highest priority;

Aware that illicit traffic generates large financial profits and wealth enabling transnational criminal organizations to penetrate, contaminate and corrupt the structures of government, legitimate commercial

and financial business, and society at all its levels;

Determined to deprive persons engaged in illicit traffic of the proceeds of their criminal activities and thereby eliminate their main incentive for doing;

Desiring to eliminate the root causes of the problem of absue of narcotic drugs and psychotropic substances, including the illilcit demand for such drugs and substances and the enormous profits derived from illicit traffic;

Considering that 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;

Determined to improve international co-operation in the suppression of illicit traffic by sea;

Recognizing that eradication of illicit traffic is a collective responsibility of all States and that, to that end, coordinated action within the framework of international co-operation is necessary;

Acknowledging the competence of the United Nations in the field of control of narcotic drugs and psychotropic substances and desirous that the international organs concerned with such control

should be within the framework of that organization;

Re-affirming the guiding principles of existing treaties in the field of narcotic drugs and psychotropic substances and the system of control which they embody;

Recognizing the need to reinforce and supplement the measures provided in the Single Convention on Narcotic Drugs, 1961, the 1972 protocol Amending the Single Convention on Narcotic Drugs, 1961, and the 1971 Convention on Psychotropic Substances, in order to counter the magnitude and extent of illicit traffic and its grave consequences;

Recognizing also the importance of strengthening and enhancing effective legal means for international co-operation in criminal matters for suppressing the international criminal activities of illicit traffic;

Desiring to conclude a comprehensive, effective and operative international convention that is directed specifically against illicit traffic and that considers the various aspects of the problems as a whole, in particular those aspects not envisaged in the existing treaties in the field of narcotic drugs and psychotropic substances;"

In article 3, the Convention provide for offences and sanctions as under:-

Article 3

OFFENCES AND SANCTIONS.

1. Each Party shall adopt such measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally:

(a) (i) The production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or any psychotropic substance contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention;

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

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

(iv) The manufacture, transport or distribution of equipment, materials or of substances listed

in Table I and Table II knowing that they are to be used in or for the illilcit cultivation production or manufacture of narcotic drugs or psychotropic substances;

(v) The organization, management or financing of any of the offences enumerated in (i), (ii), (iii) or (iv) above;

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

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

(c) Subject to its constitutional principles and the basic concepts of its legal system-

(i) The acquistion, possession or use of property, knowing at the time of receipt, that such property was derived from an offence or offences, established in accordance with subparagraph (a) of this paragraph or from an act of participation in such offence or offences;

(ii) The possession of equipment or materials or substances listed in Table I and Table II, knowing that they are being or are to be used in or for the illicit cultivation production or manufacture of narcotic drugs or psychotropic substances;

(iii) Publicly inciting or inducing others, by any means, to commit any of the offences established in accordance with this article or to use narcotic drugs or psychotrpic substances illicitly;

(iv) Participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

2. Subject to its constitutional principles and the basic concepts of its legal system, each party shall adopt such measures as may be necessary to establish as a criminal offence under its domestic law, when committed intentionally, the possession, purchase or cultivation of narcotic drug or psychotropic substances for personal consumption contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention.

3. Knowledge, intent or purpose required as an element of an offence set forth in paragraph I of this article may be inferred from objective factual circumstances.

4 (a) Each party shall make the commission of the offences establishd in accordance with paragraph I of this article liable to sanctions and take into account the grave nature of these offences, such as imprisonment or other forms of deprivation of liberty, pecuniary sanctions and confiscation.

(b) The parties may provide, in addition to

conviction or punishment, for an offence established in accordance with paragraph I of this article, that the offender shall undergo measures such as treatment, education, aftercare, rehabilitation or social reintegration.

(c) Notwithstanding the preceding subparagraph, in appropriate cases of a minor nature, the Parties may provide, as alternatives to conviction or punishment measures such as education, rehabilitation or social reintegration, as well as, when the offender is a drug abuser, treatment and aftercare.

(d) The parties may provide, either as an alternative to conviction or punishment, of an offence established in accordance with paragraph 2 of this article, measures for the treatment, education, after care, rehabilitation or social reintegration of the offender.

5. The parties shall ensure that their courts and other competent authorities having jurisdiction can take into account factual circumstances which make the commission of the offences, established in accordance with paragraph I of this article particularly serious, such as;

(a) The involvement of the offence of an organized criminal group to which the offender belongs;

(b) The involvement of the offender in other international organised criminal activities;

(c) The involvement of the offenders in other illegal activities facilitated by commission of the offence;

(d) The use of violence or arms by the offender;

(e) The fact that the offender holds a public office and that the offence is connected with the office in question;

(f) The Victimization or use of minors;

(g) The fact that the offence is committed in a penal institution or in an educational institution or social service facility or in their immediate vicinity or in other places to which school children and students resort for educational, sports and social activities;

(h) Prior conviction, particularly for similar offences, whether foreign or domestic, to the extent permitted under the domestic law of a party.

6. The Parties shall endeavour to ensure

that any discretionary legal powers under their domestic law relating to the prosecution of persons for offences established in accordance with this article are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

7. The Parties shall ensure that their courts or other competent authorities bear in mind the serious nature of the offences enumerated in paragraph I of this article and the circumstances enumerated in paragraph 5 of this article when considering the eventuality of early release or parole of persons convicted of such offences.

8. Each Party shall, where appropriate, establish under its domestic law long statute of limitations period in which to commence proceedings for any offence established in accordance with paragraph I of this article, and a longer period where the alleged offendor has evaded the administration of justice.

9. Each Party shall take appropriate measures, consistent with its legal system, to ensure that a person charged with or

convicted of an offence established in accordance with paragraph I of this article, who is found within its territory, is present at the necessary criminal proceedings.

10. For the purpose of co-operation among the Parties under this Convention, including, in particular co-operation under articles 5, 6, 7 and 9, offences established in accordance with this article shall not be considered as fiscal offences or as political offences or regarded as politically motivated, without prejudice to the constitutional limitations and the fundamental domestic law of the Parties.

11. Nothing contained in this article shall affect the principle that the description of the offences to which it refers and of legal defences thereto is received to the domestic law of a Party and that such offences shall be prosecuted and punished in conformity with that law.

3.7 Controlled delivery.

Article 11 of the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 provides for use of 'Controlled delivery', if permitted by domestic legal system. Article 11 is reproduced below for the sake of convenience:-

"1. If permitted by the basic principles of their respective domestic legal systems, the Parties shall

take the necessary measures, within their possibilities, to allow for the appropriate use of controlled delivery at the international level, on the basis of agreements or arrangements mutually consented to, with a view to identifying persons involved in offences established in accordance with article 3, paragraph 1, and to takaing legal action against them.

2. Decisions to use controlled delivery shall be made on a case-by-case basis and man, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the Parties concerned.

3. Illicit consignments whose controlled delivery is agreed to may, with the consent of the Parties concerned, be intercepted and allowed to continue with the narcotic drugs or psychotropic substances intact or removed or replaced in whole or in part."

Therefore, it is imperative to give effect to this provision of the Convention, to which India is a party, by bringing out suitable amendment by incorporating a new section 50A in the Act to trace the onward movement of the consignment and to apprehend, arrest and prosecute the persons including the ultimate persons taking delivery of the consignment.

Since 1990 when this Convention came into effect a

large number of countries have ratified the Convention. Many States have legislated new laws or have amended the existing ones and introduced regulations to implement money laundering counter-measures. Some countries have gone a step further and adopted the recommendations made by the Financial Action Task Force (FATF) which was established by the heads of state or government of the 'Group of Seven' major industrialised countries and the President of CEC.[4]

Notwithstanding the foregoing efforts and measurres, money laundering continues unabated in most parts of the world, though the cost of money laundering has considerably gone up in some parts of the world on account of effective counter-measures by some states.[5]

3.8 **Suitable legislative amendments.**

The study of the Directive Principles of State policy enshrined in the Constitution of India and the International Conventions has been done with the object to incorporate necessary amendment in the law dealing with control and regulations of Narcotic Drugs and 'Psychotropic Substances in India because the directive principles of State Policy enshrined in the Constitution of India must guide the Government to frame suitable law in consonance with Article 47 of the Constitution of India and International Conventions, to which India is a Party, and its provisions should duly find place at the time of amendment of the domestic law especially in view of the provisions of section 4(2)(b) of the Narcotic Drugs and Psychotropic Substances

Act, 1985, which provides as under:-

4. Central Government to take measures for preventing and combating abuse of and illicit traffic in narcotic drugs, etc.

(1) Subject to the provisions of this Act, the Central Government shall take all such measures as it deems necessary or expedient for the purpose of preventing and combating abuse of narcotic drugs and psychotropic substances and the illicit traffic therein.

(2) In particular and without prejudice to the generality of the provisions of sub-section (1), the measures which the Central Government may take under that sub-section include measures with respect to all or any of the following matters, namely:-

(a) Co-ordination of actions by various officers, State Governments and other authorities -

(i) Under this Act, or

(ii) Under any other law for the time being in force in connection with the enforcement of the provisions of this Act;

(b) Obligations under the International Conventions

(c) .....

(d) .....

(e) .....

FOOT NOTES

CHAPTER-III

1. S.V.Joga Rao, "Drug Addiction Penal Policy" 34 JILI (1992) P.277-278.
2. Ibid
3. Ibid
4. D.I.G. Saleem Tariq Lone, "Assets Forefeitures as an effetive strategy against Drug Trafficking", Paper presented in the Third Asia Money Laundering Symposium, 12-14, December, 1995.
5. Ibid

CHAPTER IV

NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT: A REVIEW

4.1 The Context. The law relating to narcotic drugs was being administered in India by three Central Acts, namely; (a) Opium Act, 1857, (b) Opium Act, 1878 and (c) Dangerous Drugs Act, 1930, besides the State Legislation, which provided for punishment for the offences but not commensurating with the increasing menace of drug addiction. It was felt that drug addiction and illicit trafficking in drugs have taken such an alarming proportion that it had not only affected the health of the individual citizen but had shaken the entire Nation. Noticing this menace the Indian Parliament realised the gravity of the situation and the need for stringent provisions for the control and regulation operations relating to narcotic drugs and psychotropic substances. Accordingly, the NDPS Act was enacted by repealing the earlier Acts thereby prescribing punishment of rigorous imprisonment for a term which shall not be less than ten years and a fine which shall not be less than one lakh rupees in respect of most of the offences. As per the preamble of the NDPS Act the aim of the Act is (a) to consolidate and amend the law relating to narcotic drugs; (b) to make stringent provisions for the control and

regulation of operations relating to narcotic drugs and psychotropic substances; and for matters connected therewith.

The NDPS Act was enacted as the penalties under the previous Acts were not sufficiently deterrent to meet the challenge of well organised gangs of smugglers. For example, Dangerous Drugs Act, 1930 provided for maximum term of imprisonment of three years with or without fine and four years imprisonment with or without fine with respect to the subsequent offences and no minimum punishment was prescribed as a result of which drug traffickers have been very often let off by the courts with nominal punishment. With the passage of time, a vast body of international law on narcotic drugs and psychotropic substances has emerged through various international treaties and protocol to which India was a party which entailed several obligations, which were not either fully or partly covered by the NDPS Act. Therefore, it was felt that the Act of 1985 required further amendment to make it more stringent to curb the menace of drug abuse and drug trafficking. Accordingly, the NDPS (Amendment) Act (No.2 of 1989) was passed and the salient features thereof are as under:

(a) Insertion of new section 31A providing for death penalty on second conviction in respect of specified offences involving specified quantities of certain drugs.

(b) No sentence awarded under this Act, (other than section 27) should be suspended remitted or commuted.

(c) Offences punishable under the Act shall be tried by a Court of Sessions until a Special Court is constituted under the new section 36A.

(d) Insertion of new section 36A providing for constitution of special courts.

(e) Insertion of new section 37 which replaced the old section 37 of the principal Act providing that every offence punishable under the Act shall be cognizable and non-bailable.

(f) Empowering officers authorised under section 42 of the Principal Act to order attachment/ destruction of illicit crop.

(g) Insertion of new section 52A to provide for disposal of seized Narcotic Drugs and Psychotropic Substances.

(h) Insertion of new section 53A to provide that a statement made and signed by a person before any officer authorised under section 53 for the investigation of offences shall be relevant for the purpose of providing an offence under the Act.

(i) An officer on whom any duty has been imposed under the Act or any person who has been given the custody of any addict or any other person charged with an offence under the Act, and who wilfully aids in or connives at the contravention of any provision of the Act shall be punishable with the same punishment as that awardable to drug trafficking offenders.

(j) Immunity from prosecution to an addict volunteering for treatment for de-addiction or de-toxification once in his life time. The immunity may be withdrawn if the addict does not undergo the complete treatment for the purpose.

(k) Addition of new chapter to cover all aspects relating to forfeiture of property derived from, or used in, illicit traffic. This Chapter inter alia, prohibits holding of

illegally acquired property which has been defined as property acquired from illicit traffic in Narcotic Drugs or Psychotropic Substances. It also provides for identifying, seizure or freezing of illegally acquired property. It further provides for setting up of Offices of Competent Authority to deal with all aspects relating to forfeiture; to appoint officers as Administrators for the management of properties seized or forfeited and an Appellate Tribunal for such properties.

(l) Insertion of new section 74A to empower the Central Government to give directions to State Governments for implementing the provisions of the Act.

4.2 **Punishments for offences under the Act.**

The NDPS Act provides stringent punishment for the offences. The punishments for the offences under the NDPS Act as amended by Act No.2 of 1989 are detailed in Annexure III.

4.3 **The Magnitude of the problems of illicit trafficking.**

In spite of the provisions for deterrent punishment including death penalty provided under section 31A of the NDPS Act, the menace of illicit trafficking and use of

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narcotic drugs and psychotropic substances is on the increase. Every day we learn from the media that huge quantities of heroine, charas, opium or some other narcotic drug or psychotropic substances have been caught in one or the other part of India. Drug addiction has become one of the curses of our times, a menace which threatens public health and results in the dissolution of human personality, promoting conditions for various forms of human degradation whose consequences spread to crime and lawlessness. The explosive escalation of the illicit use of narcotic drugs and psychotropic substances, which account for more deaths than the most deadly diseases, has become a lethal phenomenon everywhere today, and India is not an exception. The impact of this tragic development has not been fully met by the existing law with the result that the rich and the poor alike, including students of both sexes, are falling a prey in the hands of the powerful organised smugglers of these drugs and substances who amass wealth in no time. This is mainly due to the fact that there are still some inherent infirmities in the procedural law which require immediate amendments for making the Act more effective to tackle the problems of drug addiction and drug trafficking in India.

4.4 The latest trends in narcotic cases detected.

A summary of seizure of Narcotic Drugs, Psychotropic Substances and Controlled Substances (Acetic Anhydride) reported during the month of August, 1996 (Provisional), the preceding month and that of the corresponding period of the previous year is as under:

QUANTITY IN KG/LTRS.

DESCRIPTION	AUGUST,96	DURING THE PRECEDING MONTH (JULY,96)	DURING CORRESPONDING PERIOD LAST YEAR (AUGUST, 95)
HEROIN	113.181	54.026	84.946
OPIUM	23.915	65.610	55.173
CHARAS/HASHISH	236.207	40.463	638.495
COCAINE	--	--	--
MORPHINE	--	--	--
GANJA	431.525	831.550	5240.105

METHAQUALONE/ MANDRAX	--	--	--
ACETIC ANHYDRIDE 140 LTRS		--	140 LTS

Source: Govt. of India, Narcotics Control Bureau, Drug Situation Report, August, 1996.

The table at Annexure IV shows the quantity of various drugs seized in kilograms with number of cases during the years 1992, 1993, 1994, 1995 and 1996.

4.5 Infirmities in the Narcotic Drugs and Psychotropic Substances Act.

From the above discussion it is clear that the enactment of the NDPS Act has not yielded the desired results to curb the menace of drug trafficking and drug addiction in India. The reasons are the inherent weaknesses in the enforcement of NDPS Act which required to be tackled by proper amendment to the Act. The weaknesses and the remedies therefor are detailed as under:-

(a) Lack of social sanction against such offences.

There is lack of public opinion and public

awareness qua the impact of such offences on the society and nobody bothers to bring the matter to light unless somebody in the family is affected by the problem of drug addiction. Therefore, the need is to create social awareness through education and publicity qua the dangers of drug abuse and conducting of training programme and seminars more frequently by publishing the reports in newspapers and even the dangers of drug abuse may be incorporated in education curricula of Senior Secondary School and colleges to create awareness amongst the students. Further, in order to meet the situation, it is desirable that sub-section (2)(d) of section 4 of the NDPS Act may be substituted as under:-

> "(d) identification, treatment, education, aftercare, rehabilitation, social re-integration of addicts, creation of social awareness qua dangers of drug abuse through education, publicity, training programmes and seminars with wide publicity to the deliberations and the reports thereof in the media."

(b) **Wild growth of coca plant, opium poppy and cannabis plants.**

While the unnoticed wild growth of cannabis or coca plant or opium poppy is not the offence under

the Act, unlicensed cultivation thereof is an offence. This leads to cultivation of these plants on the government land/forest land on the pretext of wild growth by unscrupulous drug traffickers. Therefore, it is required that wild growth of such plants should be reported by the forest department regarding growth on forest land and by revenue officers regarding growth on the government land, on information, and take stern steps regarding systematic destruction of growth in a phased manner. Accordingly, a new section 47A be inserted in the NDPS Act on the following lines:-

> "47A. **Duty of the Forest officer and Revenue officer to take action** - Every Forest officer and Revenue officer shall give immediate information of the wild growth of coca plant, opium poppy or cannabis plant on the forest land or government land within his jurisdiction, as the case may be, when it may come or brought to his knowledge at any stage, to the Metropolitan Magistrate, Judicial Magistrate of the First Class or any Magistrate specially empowered in this behalf by the State Government or any officer of a gazetted rank empowered under section 42 who, upon receipt of such information, may pass such appropriate order including order to destroy the plants as he thinks fit, and

every such forest officer or revenue officer who knowingly neglects to give such information, shall be liable to punishment".

(c) The inherent infirmities in procedural laws.

Chapter V of the NDPS Act provides for procedure to conduct search and seizure. As a deterrent punishment is provided, the Legislature has made the procedure more strict. Some of the High Courts have held that the procedure laid down in Chapter V is mandatory, while others have held the same to be directory. However, the controversy has finally been resolved by the Supreme Court in State of Punjab V Balbir Singh[1] by holding some provisions to be mandatory and others to be directory. Thus, the amendment is required to be made in the procedural law incorporated in Chapter V keeping in view the land mark judgment of the Apex Court in Balbir Singh's case to make the law more effective.

(d) Change of Investigating Officers during the investigation of case.

It has been seen that many times the investigation of narcotic cases is carried out by more than one Investigating Officers with the result

that the proper investigation is not there and some lacunae creeps in the investigation benefiting the accused on technical grounds thereby making the stringent provision of the Act redundant. Therefore, it is required that investigation of the case under the Act should be conducted and completed by one Investigating Officer, as far as possible, and a new section 67A be inserted in the NDPS Act on the following lines:-

> "67A. **Completion of the investigation by an empowered officer-** Every empowered officer who is making investigation of a case under the provisions of this Act or who takes any step under Chapter V thereof shall be incharge of the investigation till it is completed, unless there are compelling reasons to be recorded requiring a change and it shall be his duty to take such step under the law for speedy investigation and submit the case to the competent court without any unnecessary delay."

(e) Non establishment of Special Courts for speedy trial under Narcotic Drugs and Psychotropic Substances Act.

Section 36 of the NDPS Act provides for establishment of Special Courts for the trial of the cases under the Act. Under this Act, the Government may, for the purpose of providing speedy trial of the offences under this Act, by notification in the official gazette, constitute as many Special Courts as may be necessary for such areas as may be specified in the notification. A Special Court shall consist of a single judge who shall be appointed by the Government with the concurrence of the Chief Justice of the High Court.

Although the aforesaid section inserted by the Amendment Act No.2 of 1989 came into force with effect from 29th May, 1989 vide notification No.2/89 dated 29.5.1989, issued by the Government of India, yet even after the lapse of about eight years, most of the State Governments have not consituted the Special Courts thereby making the provision redundant. The Central Government should, therefore, take up the matter with the State Governments so that these Special Courts under the Act are constituted for the speedy trial of the offences under the NDPS Act in each and every State without any delay. It

must be remembered by every State Government that the administration of criminal justice is the primary duty of every State Government and the constitution of the Special Courts envisaged in the Acts passed by the Parliament should not be held up due to financial constraints. The State Government cannot avoid its constitutional obligation to provide speedy trial to the accused by pleading financial or administrative inability. The State is under a constitutional mandate to ensure speedy trial and whatever is necessary for this purpose has to be done by the State. Therefore, mandatory provisions should be incorporated for the creation of appropriate number of special courts in every State of the country without any delay. Accordingly, after sub-section (1) of Section 36 of the NDPS Act, the following proviso shall be inserted, namely-

> "Provided that at least one special court shall be constituted by the Government as soon as the number of pending cases under the Act exceeds one hundred and fifty."

(f) **The sentencing structure in the Act.**

In the NDPS Act, the minimum punishment of 10 years rigorous imprisonment and fine of rupees one lakh is prescribed for most of the offenders without taking into consideration whether the recovered

contraband is of less quantity or commercial quantity; except in case of recovery of small quantity from any person for personal consumption under section 27 of the NDPS Act. The Department of Revenue in its recommendations on the amendment of the Act has suggested rationalization of the sentencing for offences committed under the Act and for effective implementation of the Act, particularly in cases of possession of small quantities. It is a well recognised principle that punishing is an art which involves the balancing of several factors like gravity of the offence and other circumstances. It is also accepted by the jurists that the provisions of the Indian Penal Code, 1860 have fairly stood the test of the time in the matter of awarding punishment. The Law Commission is of the view that on the same lines the provisions in the NDPS Act prescribing sentences require a fresh look on the basis of sentencing methods reflected in the Indian Penal Code and other amendments. It is needless to mention that a lenient sentence does not always meet the needs of justice, but at the same time the courts also are generally reluctant to award always a severe sentence irrespective of the gravity. Likewise section 27 providing punishment in respect of the persons found in possession of small quantities under

the circumstances stated therein need to be amended by inserting a new sub-section (3) therein on the following lines:

"(3) Where a person who is shown to have been in possession of a small quantity of narcotic drug or psychotropic substance fails to prove that it was intended for the personal consumption of such person and not for sale or distribution, such person shall, notwithstanding anything contained in this Chapter, be punishable-

(a) Where the narcotic drug or psychotropic substance possessed or consumed is cocaine, morphine, diacetyl-morphine or any other narcotic drug or any psychotropic substance as may be specified in this behalf by the Central Government, by notification in the official gazsette, with imprisonment for a term which may extend to two years or with fine or with both; and

(b) Where the narcotic drug or psychotropic substance possessed or consumed is other than those specified in or under clause (a), with imprisonment for a term which may extend to one year or with fine or with both."

(g) Establishment of centres as provided under section 71 of the Act.

Although provision has been inserted in the Act for the establishment of centres for identification, treatment and rehabilitation of addicts, but it has been observed that some of the State Governments have not established adequate number of such centres with the result that the addicts are running after drug traffickers for getting the drugs require and the purpose of this provision for de-addiction and rehabilitation has been frustrated. Thus there is need for the Government to see that the object underlying the section is achieved by utilising the services of Non-governmental organisations and if necessary by establishing a wing in Government hospitals.

Conclusion.

In view of the above discussion, it is imperative that the changes suggested by the Commission be implemented by carrying out suitable amendments in the NDPS Act to make it more effective to check the evil of drug trafficking and drug addiction.

FOOTNOTES

CHAPTER IV

(1) AIR 1991 SC 558.

CHAPTER V

MANDATORY AND DIRECTORY PROVISIONS : DUTIES OF EMPOWERED OFFICERS

5.1 There are generally five stages in the investigation and trial of a case, under the NDPS Act.

(a) information

(b) Investigation

(c) search, seizure and arrest

(d) submission of final report to the court and

(e) trial of the case in the Court.

In these the possession and search are of vital importance. As stringent punishments have been provided for the offences under the Narcotic Drugs and Psychotropic Substances Act, 1985 with minimum punishment of rigorous imprisonment for ten years and fine of rupees one lakh for most of the offences, the Parliament, in its wisdom, has imposed corresponding strict special procedure to be adopted at the time of search, seizure and arrest of the culprits in Chapter V of the Act. It is not out of place to mention here that the experience has shown that the Act has not yielded the desired results and a large number of cases instituted for various offences under the Act have ended in acquittal not on merits but on technical grounds of non-compliance of mandatory provisions of sections 42 and 50 of the Act and in some cases on the prejudice caused to the accused for non-compliance of the directory provisions of

sections 52, 55 and 57 of the Act and the like.

The investigating officer must understand before starting the investigation of a case under the Act that the investigation is not an end but means to find out the truth. A good investigating officer must know right steps to be taken for conducting the search and seizure in strict conformity of the relevant provision. To avoid acquittal on technical grounds of non-compliance of mandatory or directory provisions, he should not only strictly comply with mandatory provisions of sections 42 and 50 of the Act but also the directory provisions incorporated in sections 52,55,57 and the like in the Code of Criminal Procedure as far as applicable. Moreover, he must ensure that the link evidence of the sample, being analysed by the chemical examiner, should be complete including taking of the sample and property to the S.H.O. and sealing by S.H.O. with his seal, deposit of the same intact in the malkhana and sending of the sample to chemical examiner etc. It is necessary to examine some of the judgments of the courts on various provisions of the Act.

In the first case (Durand Didier v. Chief Secretary, Union Territory of Goa[1] which came up in the Supreme Court, the accused Durand Didier, a French national was apprehended by the police at Colva (Goa) and was found in possession of 51 grams of brown sugar (heroine), 45 grams of ganja oil and 55 grams of opium. The counsel for the accused took up the plea that the investigating officer did not deliberately

join with him respectable inhabitants of the locality. The Supreme Court rejected this plea by holding that where the witnesses to search and seizure of contraband drugs from the accused at midnight were inhabitants of the locality in which police outpost was situate and nothing brought out in the cross-examination of these panch witnesses so as to discredit their testimony, the fact that the witnesses were not residing in the vicinity of place of seizure is immaterial and the plea that there was violation of statutory safeguards relating to search and seizure was untenable. On the other plea of the counsel for the accused that the accused was found in possession of small quantity for personal consumption, it was held by the Apex Court that the substances seized from the possession of the accused cannot be held to be in small quantity so as to bring him only within the mischief of section 27(a) of the Act in view of explanation I to the section and the notification thereunder.

5.3 Interpretation qua the bail provisions under the NDPS Act

On the question of grant of bail to the persons accused of the commission of the offences under the Act, in Narcotic Control Bureau v. Kishan Lal and others,[2] the Supreme Court laid down the following propositions of law:-

"Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (as amended) starts with a non-obstante clause stating that notwithstanding anything contained in the Code of Criminal Procedure, 1973, no person accused of an offence prescribed therein shall be released on bail unless the conditions contained therein are satisfied. The NDPS Act is a special enactment and was enacted with a view to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances. That being the underlying object and particularly when the provisions of section 37 of NDPS Act are in negative terms limiting the scope of the applicability of the provisions of Cr.P.C regarding bail, it can not be said that High Court's powers to grant bail under section 439 Cr.P.C. are not subject to the limitations mentioned under Section 37 of the NDPS Act".

In Rajnikant Jivanlal Patel and another v. Intelligence Officer, Narcotic Control Bureau, New Delhi,[3], the accused, arrested for offences punishable under sections 21,23 and 29 of the Narcotic Drugs and Psychotropic

Substances Act, 1985 were enlarged on bail by the magistrate on failure of the prosecution to present the challan within 90 days under proviso to section 167(2) Cr.P.C. The High Court cancelled the bail order. While upholding the order of the High Court, the Supreme Court observed: "An order for release on bail under proviso (a) to S. 167(2) may appropriately be termed as an order-on-default. Indeed, it is a release on bail on the default of the prosecution in filing charge-sheet within the prescribed period. The right to bail, under S.167(2) proviso (a) thereto, is absolute. It is legislative command and not court's discretion. If the investigating agency fails to file charge-sheet before the expiry of 90/60 days, as the case may be, the accused in custody should be released on bail. But at that stage, merits of the case are not to be examined. Not at all. In fact, the magistrate has no power to remand a person beyond the stipulated period of 90/60 days. He must pass an order of bail and communicate the same to the accused to furnish the requisite bail bonds.

The accused cannot, therefore, claim any special right to remain on bail. If the investigation reveals that the accused has committed a serious offence and charge-sheet is filed, the bail granted under proviso (a) to S.167(2) could be cancelled."

5.4 On the question of discharge of the accused, the Supreme Court in State of Himachal Pradesh v. Pirthi Chand and another[4] has laid down the following principles:

> "The evidence collected in a search in violation of law does not become inadmissible in evidence under the Evidence Act. The consequence would be that evidence discovered would be to prove unlawful possession of the contraband under the Act. It is founded in Panchnama to seize the contraband from the possession of the suspect/accused. Though the search may be illegal but the evidence collected i.e. Panchnama etc. nonetheless would be admissible at the trial. At the stage of filing charge-sheet it cannot be said that there is no evidence and the Magistrate or the Sessions Judge would be committing illegality to discharge the accused on the ground that Section 50 or other provisions have not been complied with. At the trial an opportunity would be available to the prosecution to prove that the search was conducted in accordance with law. Even if search is found to be in violation of law, what weight should be given to the evidence collected is yet another question to be gone into. Under these circumstances, the learned Sessions Judge was not justified in discharging the accused, after filing of the charge-sheet holding that mandatory requirements of Section 50 had not been complied with".

In some of the responses received and also during discussions in the workshops it was pointed out that a plain reading of the above judgment, particularly para 3 regarding the applicability of section 50 would create a doubt whether the Supreme Court laid down that the provisions of section 50 would also apply to search of a place. It may be mentioned that it was a case of search of a place and not of a person. Therefore, the provisions of section 50 do not apply. The section itself makes it clear that the provisions contained therein would apply only to search of a person. The reference to section 50 here and there in the judgment was in the context of the discharge of the accused by the sessions court at a preliminary stage. We, however, feel that the Supreme Court may clarify the position by demarcating the parameters between "search of a place" and "search of a person" in the context of applicability of section 50 to the effect that it applies only to "search of a person" and not to the "search of a place", so as to make the law clear, particularly for the guidance of the lower courts.

5.5 In State of Punjab v. Balbir Singh[5] , the Supreme Court while examining the steps to be taken by the investigating officer went into the question as to which provisions are mandatory and which are directory and concluded thus -

> "(1) If a police officer without any prior information as contemplated under the provisions of

the NDPS Act makes a search or arrests a person in the normal course of investigation into an offence or suspected offences as provided under the provisions of Cr.P.C. and when such search is completed at that stage Section 50 of the NDPS Act would not be attracted and the question of complying with the requirements thereunder would not arise. If during such search or arrest there is a chance recovery of any narcotic drug or psychotropic substance then the police officer, who is not empowered, should inform the empowered officer who should thereafter proceed in accordance with the provisions of the NDPS Act. If he happens to be an empowered officer also, then from that stage onwards, he should carry out the investigation in accordance with the other provisions of the NDPS Act.

(2-A) Under Section 41(1) only an empowered Magistrate can issue warrant for the arrest or for the search in respect of offences punishable under Chapter IV of the Act etc. when he has reason to believe that such offences have been committed or such substances are kept or concealed in any building, conveyance or place. When such warrant for arrest or for search is issued by a Magistrate who is not empowered, then such search or arrest if carried out would be illegal.

Likewise only empowered officer or duly authorised officers as enumarated in Sections 41(2) and 42(1) can act under the provisions of the NDPS Act. If such arrest or search is made under the provisions of the NDPS Act by anyone other than such officers, the same would be illegal.

(2-B) Under Section 41(2) only the empowered officer can give the authorisation to his subordinate officer to carry out the arrest of a person or search as mentioned therein. If there is a contravention, that would affect the prosecution case and vitiate the conviction.

(2-C) Under Section 42(1) the empowered officer if has a prior information given by any person, that should necessarily be taken down in writing. But if he has reason to believe from personal knowledge that offences under Chapter IV have been committed or materials which may furnish evidence of commission of such offences are concealed in any building etc. he may carry out the arrest or search without a warrant between sunrise and sunset and this provision does not mandate that he should record his reasons of belief. But under the proviso to Section 42(1) if such officer has to carry out such search between sunset and sunrise, he must record the grounds of his belief.

To this extent these provisions are mandatory and contravention of the same would affect the prosecution case and vitiate the trial.

(3) Under Section 42(2) such empowered officer who takes down any information in writing or records the grounds under proviso to Section 42(1) should forthwith send a copy thereof to his immediate official superior. if there is total non-compliance of this provision the same affects the prosecution case. To that extent it is mandatory. But if there is delay whether it was undue or whether the same has been explained or not, will be a question of fact in each case.

(4-A) If a police officer, even if he happens to be an "empowered" officer while effecting an arrest or search during normal investigation into offences purely under the provisions of CR.P.C. fails to strictly comply with the provisions of Sections 100 and 165 CR.P.C. including the requirement to record reasons, such failure would only amount to an irregularity.

(4-B) If an empowered officer or an authorised officer under Section 41(2) of the Act carries out a search, he would be doing so under the

provisions of CR.P.C. namely Sections 100 and 165 CR.P.C. and if there is no strict compliance with the provisions of CR.P.C. then such search would not per se be illegal and would not vitiate the trial.

The effect of such failure has to be borne in mind by the courts while appreciating the evidence in the facts and circumstances of each case.

(5) On prior information the empowered officer or authorised officer while acting under Sections 41(2) or 42 should comply with the provisions of Section 50 before the search of the person is made and such person should be informed that if he so requires, he shall be produced before a Gazetted Officer or a Magistrate as provided thereunder. It is obligatory on the part of such officer to inform the person to be searched. Failure to inform the person to be searched and if such person so requires, failure to take him to the Gazetted Officer or the Magistrate, would amount to non-compliance of Section 50 which is mandatory and thus it would affect the prosecution case and vitiate the trial. After being so informed whether such person opted for such a course or not would be a question of fact.

(5) The provisions of Sections 52 and 57 which deal with the steps to be taken by the officers after making arrest or seizure under Sections 41 to 44 are by themselves not mandatory. If there is non-compliance or if there are lapses like delay etc. then the same has to be examined to see whether any prejudice has been caused to the accused and such failure will have a bearing on the appreciation of evidence regarding arrest or seizure as well as on merits of the case."

It may be pointed out at this stage that Kerala High Court in V.Mohd. Bashir v. State[6] has misread the judgment of the Supreme Court in holding that the search made under Section 43 in respect of Section 50 is not attracted.

5.6 We have considered the proposal of the Department of Revenue that if the empowered officer, while searching a person is of the view that taking the person to the nearest gazetted officer/magistrate would result in the delay in search or would give opportunity to the person to disassociate him from the contraband, the search can be conducted before two or more independent and respectful persons of the locality or of the adjoining locality. We are, however, of the view that to safeguard the interest of the innocent persons, particularly when there is a minimum mandatory punishment under the Act, such amendment is not desirable.

The above discussion makes it clear that the empowered officers have important duties to perform under the provisions of the Act, particularly when section 42 and section 50 are held mandatory. Even in respect of the provisions held directory they cannot slacken, although mandatory provisions of section 42 and section 50 are most important and must be complied with by the empowered officers. The responses to the questionnaire, and the views expressed in workshops also suggest that for carrying out search effectively in a practical and meaningful manner some changes in section 50 are necessary. We are of the view that the amendment of section 50 is necessary.

The nature of non-compliance of section 50 leading to many acquittals has to be examined carefully from the point of view of bringing about suitable amendments. Section 50 lays down that any duly authorised officer who is about to search any person, if he so requires, take him without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in section 42 or to the nearest magistrate and if such requisition is made by the person to be searched, the authorised officer concerned can detain him until he can produce him before such Gazetted Officer or the Magistrate and thereafter the search should be conducted. It is held that it is a valuable right given to such a person and that though the section does not say so in clear terms, yet the person must be told about his right and failure to do so results in non-compliance of section 50.

Whether such person was informed or not would always be a question of fact depending upon the oral assertions and counter assertions made by the accused and the searching officer and the non-compliance has led to many acquittals.

The other types of non-compliance resulting in acquittals as noticed by the courts are of highly technical nature. In some cases, the accused were acquitted on the grounds that the notice given by the investigating officer only mentioned the word "magistrate" and in some cases only the word "gazetted officer" yet in other cases words "magistrate or gazetted police officer". In such cases, the accused were acquitted by holding that the notice was not complete and in consonance with the provisions of Section 50 of the Act. Although taking of such technical view by the courts may be a debatable issue but to check such lapses, on the part of the empowered officers, resulting in such acquittal, the Commission feels it necessary to suggest suitable amendments in Section 50 of the Act to clear all the misgivings of the scope of Section 50. Also keeping in view the difficulties expressed in the replies to the questionnaire and the discussions held in the workshops regarding the possibilities of throwing of the contraband by the person or the planting of the same while in transit to the nearest Magistrate or Gazetted Officer, We are of the view that amendments in section 50 of the NDPS Act may be on the following lines:-

(a) in sub-section (1), after the words 'he shall' and before the words 'if such person', the following words shall be inserted, namely-

"inform such person that he has a right to be searched in the presence of a gazetted officer or the magistrate referred to in section 41; and"

(b) in sub-section (1), for the words "or to the nearest magistrate", the following words shall be substituted, namely-

"or to the nearest magistrate referred to in section 41 of the Act, as the empowered officer may deem fit."

This would amount to substantial compliance.

FOOT NOTES

CHAPTER V

1. AIR 1989 SC 1966.
2. AIR 1991 SC 558.
3. AIR 1990 SC 71.
4. 1996(1) Scale 48.
5. 1994(1) Crimes 753.
6. 1991(2) Crimes 686.

CHAPTER - VI

CONCLUSIONS AND RECOMMENDATIONS

6.1 INFIRMITIES IN NDPS ACT.

The drug traffickers are fighting guerilla war against humanity and, therefore, deterrent punishment has been provided under the NDPS Act (as amended by Amendment Act No.2 of 1989). The Act has provided for death penalty for specified offences by the previous convict and for forfeiture of property derived from, or use in illicit trafficking. However, even these provisions have not yielded fruitful results in curbing and controlling illicit trafficking and use of narcotic drugs. Some of the infirmities found in the implementation of NDPS Act may be summarised below:-

(a) Lack of social awareness against offences of illicit trafficking and illicit use of narcotic drugs and psychotropic substances;

(b) The severe punishment for small quantity under section 27 of the Act if it is not for personal consumption;

(c) Non establishment of Special Courts for trial of the offences under the NDPS Act by some States in spite of specific directions in section 36 thereof;

(d) Wild growth of cannabis plant, coca plant or

opium poppy and chances of cultivation of such plants in the guise of wild growth by unscrupulous smugglers;

(e) The inherent problems in the implementation of section 50 of the NDPS Act to make the search effective and meaningful;

(f) Frequent changes in officers investigating the offences; and

(g) Non establishment of the centres for identification, treatment, education and after care of the addicts by the Government.

6.2 RECOMMENDATIONS.

After discussing the concern of the world community against illicit trafficking and use of narcotic drugs and psychotropic substances as borne out from the proceedings of the International conventions, the procedural and other weaknesses of the present law on the subject to deal effectively to overcome the menace of drug abuse and trafficking therein and after taking into consideration the landmark judgments of the Supreme Court of India, especially in State of Punjab v Balbir Singh and after considering the valuable suggestion, we feel that the NDPS Act requires further amendments to make it more effective.

We hereby recommend the following amendments in the Narcotic Drugs and Psychotropic Substances Act, 1985 namely:-

6.2.1 AMENDMENT IN SECTION 4 OF THE ACT

In clause (2) of section 4 of the NDPS Act, sub-clause (d) be substituted as follows:-

"(c) identification, treatment, education, aftercare, rehabilitation, social re-integration of addicts, creation of social awareness qua dangers of drug abuse through education, publicity, training programmes and seminars with wide publicity to the deliberations and the reports thereof in the media."

[Chp.IV, Para 4.5(a)]

6.2.2 AMENDMENT IN SECTION 27 OF THE ACT

In Section 27, the following new sub-section 3 be inserted to provide for a lesser punishment for small quantities if not proved to be for personal consumption:-

"(3) Where a person who is shown to have been in possession of a small quantity of narcotic drug or psychotropic substance fails to prove that it was intended for the personal consumption of such person and not for sale or distribution, such person shall,

notwithstanding anything contained in this Chapter, be punishable-

(a) Where the narcotic drug or psychotropic substance possessed or consumed is cocaine, morphine, diacetyl-morphine or any other narcotic drug or any psychotropic substance as may be specified in this behalf by the Central Government, by notification in the official gazsette, with imprisonment for a term which may extend to two years or with fine or with both; and

(b) Where the narcotic drug or psychotropic substance possessed or consumed is other than those specified in or under clause (a), with imprisonment for a term which may extend to one year or with fine or with both."

[Chp.IV, Para 4.5(f)]

6.2.3 AMENDMENT IN SECTION 36 OF THE ACT

After Clause (1) of Section 36 of the Principal Act, the following proviso shall be inserted, namely-

"Provided that at least one special court shall be constituted by the Government as soon as the number of pending cases under the Act exceeds one hundred and fifty."

[Chp.IV, Para 4.5(e)]

6.2.4 INSERTION OF NEW SECTION 47-A IN THE ACT

After Section 47 of the NDPS Act, the following section shall be inserted, namely-

"47A. Duty of the Forest officer and Revenue officer to take action - Every Forest officer and Revenue officer shall give immediate information of the wild growth of coca plant, opium poppy or cannabis plant on the forest land or government land within his jurisdiction, as the case may be, when it may come or brought to his knowledge at any stage, to the Metropolitan Magistrate, Judicial Magistrate of the First Class or any Magistrate specially empowered in this behalf by the State Government or any officer of a gazetted rank empowered under section 42 who, upon receipt of such information, may pass such appropriate order including order to destroy the plants as he thinks fit, and every such forest officer or revenue officer who knowingly neglects to give such information, shall be liable to punishment".

(Chp.IV, Para 4.5(b))

6.2.5 AMENDMENT IN SECTION 50 OF THE ACT

In section 50 of the NDPS Act,

(a) in sub-section (1), after the words 'he shall' and before the words 'if such person', the following words shall be inserted, namely-

"inform such person that he has a right to be searched in the presence of a gazetted officer or the magistrate referred to in section 41; and"

(b) in sub-section (1), for the words "or to the nearest magistrate", the following words shall be substituted, namely-

"or to the nearest magistrate referred to in section 41 of the Act, as the empowered officer may deem fit."

(Chp.V, Para 5.6)

6.25 INSERTION OF NEW SECTION TO GIVE EFFECT TO ARTICLE 11 OF THE CONVENTION AGAINST ILLICIT TRAFFICKING IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES, 1988 REGARDING "CONTROLLED DELIVERY".

In order to give effect to the aforesaid provisions contained in Article 11 of the aforesaid Convention, the NDPS Act be suitably amended by incorporating a new section thereunder to trace the onward movement of the consignment and to apprehend, arrest, prosecute the persons including the ultimate persons taking delivery of the consignment.

(Chp.III, Para 3.7)

6.2.7 <u>INSERTION OF NEW SECTION 67 A IN THE ACT</u>

After Section 67 of the NDPS Act, the following new section shall be inserted, namely-

"67A. **Completion of the investigation by an empowered officer-** Every empowered officer who is making investigation of a case under the provisions of this Act or who takes any step under Chapter V thereof shall be incharge of the investigation till it is completed, unless there are compelling circumstances requiring a change and it shall be his duty to take such step under the law for speedy investigation and submit the case to the competent court without any unnecessary delay."

(Chp.IV, Para 4.5(d))

6.2.8 EFFECTIVE IMPLEMENTATION OF SECTION 71 OF THE NDPS ACT.

We feel that there is a need for the Government to see that the object underlying the section be achieved by utilising the services of Non-governmental organisations and if necessary by establishing a wing in Government hospitals.

[Chp.IV, Para 4.5(g)]

We recommend accordingly.

(JUSTICE K.JAYACHANDRA REDDY)
CHAIRMAN

(JUS. R.L.GUPTA)
MEMBER

(CH.G.KRISHNAMURTHY)
MEMBER

(PROF. ALICE JACOB)
MEMBER

(R.L. MEENA)
MEMBER-SECRETARY

ANNEXURES

ANNEXURE-I

D.O.No.6(3)(35)/96-LC(LS)

DR.S.C.SRIVASTAVA
JOINT SECRETARY &
LAW OFFICER

GOVERNMENT OF INDIA
MINISTRY OF LAW & JUSTICE
DEPARTMENT OF LEGAL AFFAIRS
LAW COMMISSION
SHASTRI BHAVAN
NEW DELHI-110 001.

Dated 5.7.1996

Sir,

This is to encroach upon your valuable time for the cause of national importance.

The Law Commission has undertaken a study on the examination of the provisions of the Narcotics Drugs and Psychotropic Substances Act, 1985 (Act No.61 of 1985) in the light of the judgment of the High Court and particularly the landmark judgment of the Supreme Court in the State of Punjab vs. Balbir Singh AIR 1994 SC 1872 with the emphasis on the changes brought about in section 50 of the Act. It is felt there is a need to review the relevant provisions of the Act. Accordingly the

Commission seeks to elicit your considered opinion on the questionnaire prepared by the Commission relating to certain proposed amendment to the said Act.

I would, therefore, request you to kindly spare some of your precious time in giving your valued opinion on the issues at your earliest convenience preferably by 14th August, 1996.

Looking forward to your co-operation.

With regards,

Yours sincerely,

Sd/

(S.C.Srivastava)

Encl: As above.

LAW COMMISSION OF INDIA

Shastri Bhavan, New Delhi-110 001.

Questionnaire

on

amendment to the

Narcotic Drugs and Psychotropic Substances

Act, 1985

(Act No.61 of 1985)

CHAPTER-II

Section 4 of the Act.

Q.1 Do you agree that there is need to make specific provision for creation of social awareness qua dangers of drug abuse through education and publicity and conducting of training programmes and seminars?

CHAPTER-IV

Section 15 of 25 of the Act.

Q.2 Whether the existing penal provisions providing minimum punishment require any amendment? If so, to what extent?

Q.3 Whether the sentence to be awarded under the Act, should be according to quantum of seizure of the contraband?

Q.4 Whether there is need to delete the provision of minimum sentence provided in sections 15 to 25 of the Act?

Section 27 of the Act.

Q.5 Do you suggest that the benefit of section 27 shall given to all the persons found in possession of small quantity irrespective of the fact whether the same was intended for personal consumption or not?

Section 36 of the Act.

Q.6 Whether the State Government has not created separate courts of Special Judges for trial of cases under section 36 of the Act in your State?

Q.7 Do you agree that for speedy disposal of cases under the Act, the provision should be inserted in the section, for setting up of adequate number of independent courts of Special Judges for the trial of cases under the Act in every State?

CHAPTER-V

Section 47-A

Q.8 Whether you think it necessary that the duty should be cast upon the forest and revenue officers to report the wild growth of cannobis and opium plants on forest and other government land and to take steps for its destruction, as the State Government may direct?

Section 50

Q.9 Do you subscribe to the view that section 50 of the Act requires amendment?

Q.10 Do you agree that in view of the landmark judgment in State of Punjab Vs. Balbir Singh, AIR 1994 SC 1872 section 50 of the Act should be redrafted as under by incorporating suitable amendment:-

"50- Conditions under which search of persons shall be conducted:-

(1) When any officer duly authorised under Section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall (inform such person that he has a right to

be searched in the presence of a gazetted officer or the magistrate referred to in section 41, and) if such person so requires, take such person without unnecessary delay to the nearest Gazetted officer of any of the departments (or the nearest magistrate referred to in section 41 of the Act, as the empowered officer may deem fit).

Provided that the Central Government may specify the form of notice to be given to such person, informing him that he has a right to be searched in the presence of a gazetted officer or magistrate, for the purpose of this sub-section.

(2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in sub-section (1); (or if the empowered officer, for reasons to be recorded in writing, deems it necessary to summon the gazetted officer or the magistrate referred above to the spot, he may requisition the services of such gazetted officer or the magistrate, and it shall be the duty of such gazetted officer or the magistrate, as the case may be to the spot without delay).

(3) The Gazetted officer or the Magistrate before whom any such person is brought (or whose services have been requisitioned) shall, if he sees no reasonable ground for search, forthwith discharge the person, but otherwise shall direct that search be made.

(3A) The search shall then be made in the

presence of the gazetted officer or the magistrate, as the case may be, who may associate two independent witnesses, if available, and shall take two samples and after sealing the samples and the recovered articles, keep the seal intact with him; and hand over the samples, recovered articles and the sample of the seal used to the empowered officer.

(4) No female shall be searched by anyone excepting a female."

Q.11 Whether the empowered officer should be given discretion that in case he is of the opinion, for reasons to be recorded in writing, that it is not practicable to take the person to be searched to the nearest magistrate or the gazetted officer; or the services of such magistrate or the gazetted officer cannot be requisitioned, the empowered officer may conduct search himself in the presence of two independent witnesses?

Section 50-A

Q.12 Do you suggest that new section should be inserted for the use of controlled delivery system by certain officers, to trace the onward movement of the consignment under supervision and to apprehend, arrest and prosecute all the offenders, including the persons taking delivery of the consignment of illicit drugs or substances at the destination?

Section 67-A

Q.13 Do you agree with the suggestion that the empowered officer, who commences the investigation of a case under the provisions of this Act, shall be incharge of the case till investigation is completed as far as possible?

CHAPTER-VI

Section 71

Q.14 Whether the state government has not established adequate centres for the identification and treatment of addicts in your state?

Q.15 Do you agree that it should be made mandatory by suitable amendment in the Act that atleast one centre for the identification and treatment of addict should be established in every district in the country?

GENERAL

Any other suggestion

Q.16 Do you suggest any other amendment in the Act? If so, give your valuable suggestions.

Annexure-II

Comments received on the Questionnaire issued by the Law Commission

The Law Commission had circulated a questionnaire (Annexure I) regarding certain amendments to the Narcotics Drugs and Psychotropic Substances Act, 1985 to elicit opinion from various quarters. In the said questionnaire the Law Commission formulated sixteen Questions on various aspects of the subject.

The Questionnaire was sent to the Registrars of sixteen High Courts, Bar Associations, Home Secretaries of twenty five States and Union Territories, twenty eight Police Officers and the Chairmen of five State Law Commissions. Responses were received only from seven Judges/ Registrar of High Court, three Advocates/ Prosecutors and twenty seven Police Officers and other expert officers as under -

Q.No.1 Six Judges, Registrars of various High Courts, two advocates, 21 Police Officers and one Acacdemician have responded in the affirmative. However, the Deputy Legal Adviser, Ministry of Finance, Govt. of India is of the view that sub-clause(e) of Section 4 of the N.D.P.S.Act serves the purpose. The Addl.Director General of Police, (Crime), Punjab is in favour of retaining the existing provisions under clause (d) of

sub-section (2) of Section 4 of the Act. Zonal Director, NCB, Bombay, is of the view that Section 4 takes care of the issue involved in Question 1. However, he feel that there is a need to have a specific provision making it obligatory on the part of the State Government to take necessary steps for creating awareness in regard to the dangers of drug abuse among the targetted groups and also stressed the need for involving the Non-Government voluntary organisations. The Deputy Commissioner of Police Narcotics & Crime Prevention, Delhi is of the view that section 4 of the Act does not require any amendment.

Q.No.2 About the suggestion for the amendment in the existing penal provisions providing minimum punishment, four Judges, two advocates and ten Police Officers have agreed with the suggestion. They have also suggested that the rigorous imprisonment for a term which shall not be less than five years but may extend up to ten years and fine not less than rupess fifty thousand may be provided. It is also suggested that the minimum sentence may be reduced to seven years and thereafter the sentence should run in proportion to the quantity seized up to twenty years. However, D.G.P. Tripura has suggested that minimum punishment should vary having regard to the quantity of drug seized, the nature of offences and offenders etc. However, others have replied either in the negative or are satisfied with the existing penal provisions. Addl. D.G.P. (Narcotics Wing), Bhopal is of the view that sections 15 to 20 do not need any amendment but section 21 to 25 should be amended to enhance the

punishment to life imprisonment and confiscation of property for subsequent offences. However, Addl.D.G.P., Crime, Punjab has suggested to reduce the amount of fine from rupees one lack to fifty thousand. One judge of the High Court, Bombay has suggested that discretion be given to court to award lesser punishment for special reasons to be recorded depending upon antecedents of accused, quantity of contraband etc..... Two police officers have responded in the negative. According to an academician maximum punishment should be life imprisonment, but minimum sentence should be left to the court's discretion.

Q.No.3 A High Court Judge, Registrar of High Courts, an Advocate, Thirteen Police Officers and one academician have answered the question in negative whereas rest of the persons have agreed with the suggestion of imposing punishment proportionate to the quantum of seizure of the contraband.

Q.No.4 Most of the responses are in the negataive. But a Judge of the High Court, two Police Officers and one academician have responded in the affirmative. Further the Hon'ble Judge has observed that there are number of cases in which big bosses dealing in narcotic trading traffic have started using old men and women, widows, women having small children, crippled persons and children by exploiting their poverty and other weaknesses. Such people do not get arrested or indicted. However, due to such practice being adopted by big bosses, handicaps are required to undergo severe sentences. The Court does not

have the discretion to deal with such handicapped persons at the time of sentencing them. According to them this causes miscarriage of justice. They, therefore, suggested that the words "extending to" should be used so far as sentence is concerned.

Q.No.5 Twenty police officers and one Academicians have responded the question in negative. According to the Registrar High Court of Madras, the benefit has to be given to all because it is difficult to prove that the drug was not intended for personal consumption. As per the Director General of Police, Jammu & Kashimr the provisions of the section 27 of the Act is only applicable to those persons who are in illegal possession of small quantity of the drugs i.e. personal consumption and small quantity of the drugs have been notified by the Govt.of India from time to time. However, according to one Advocate, this Section is meaningless and liable to be struck down because for personal consumption licence is being issued. A Judge of the High Court has responded in the affirmative. Further the Addl. Special Public Prosecutor, High Court, Madras, is of the view that let section 27 remain as it stands now. It is for the person who claims the benefit thereof to prove that he was having it for his personal consumption. This is indeed a very generous provision to take care of addicts sympathetically. According to the Inspector General of Police, Chandigarh and the Addl.D.G. Crime, Punjab, the benefit of Section 27 should be given only for personal consumption and not otherwise. However, a Judge of the

High Court Bench, Indore is of the view that the section 27(2) needs to be deleted. One Police Officer has opined that no benefit should be given to all persons found in possession of small quantity irrespective of the fact whether the same was intended for personal consumption. Two Judges and one Police Officer have replied in affirmative.

Q.No.6 Special Courts under Section.36 of the NDPS Act have not yet been created in Orisa, Sri B.Pande feels that there is no need for such courts at present in view of the small number of cases.

The Registry of Madras High Court and two Advocates, have responded saying that under the said Act, no special courts have been set up in Tamil Nadu. However, additional powers have been conferred on the essential commodities special courts.

In J&K every Session Judge is invested with the power to try cases under the NDPS Act, 1985. However, no separate courts of Special Judges have been created.

Likewise the Principal Sessions Judge of each District is invested with the power of court of Special Judge in Kerala.

In Madhya Pradesh, in an order dated 14.11.94 passed in Misc.Cri. case No.2901/94 by High Court Bench, Indore, the proposed attention of State Government was drawn and now to constitute nine special courts has been finalised.

The State Government of Goa and Tripura has created NDPS court and has appointed special judge for the same.

The Chandigarh Administration has taken up the matter with High Court for creation of separate courts but the High Court of Punjab and Haryana has refused to create special court on the ground that number of cases are less.

In the State of Nagaland, separate courts of special judges have not been created. However, the Sessions Courts have been declared as Special Courts for the purpose.

In Sikkim D.G.P. has responded in the affirmative to the Question asked by the Law Commission.

Special Judges have been appointed for conducting trials of cases under section 36 of NDPS Act in the Union Territory of Pondicherry.

In Karnataka, the State Government has not yet created separate courts under the Act.

In Manipur, the State Government has established one court of Special Judge for trial of cases under the NDPS Act. However, D.G.P. is of the view that atleast one Addl. Spl.Court should be established for speedy disposal of existing number of pending cases under the Act.

In the State of Maharashtra, special courts have been constituted.

The State of Rajasthan has created separate courts for trial in Rajasthan.

In Uttar Pradesh and Bihar, no special courts under sectin 36 of the Act have been constituted.

Courts of the Addl.Sessions Judge have been designated as special courts for trial of such cases in the State of Gujarat.

The State Government of Assam has not yet created separate courts of special judges for trial of cases under section 36 of the Act.

Special courts have already been establisned in Delhi.

Q.No.7 Most of the responses are in affirmative. One advocate is of the view that the Special Courts are failure attempt to dispose of the cases. Superintendent, CE Panaji, Superintendent, CE, North Goa have responded in the negative.

Q.No.8 Most of the Judges, Police officers and Advocates have responded in affirmative. Additional Special Public Prosecutor, High Court Madras and Addl.D.G.P. (Crime) Punjab are of the view that section

47 of NDPS Act starts with every officer of the Government." which naturally includes even the Forest and Revenue officials. Hence, there is no need to have a separate Section 47 A.

Q.No.9 Most of the Judges/Officers/Advocates have agreed with the proposal of the Law Commission. However, the proposal did not find the approval of two judges of the High Court. They are of the view that the said provisions take care of the interest of the accused. A Public Prosecutor, High Court, Madras,Shri P.N.Prakash has referred to a number of judgements of the Supreme Court and High Courts viz. AIR 1956 SC 411, 1994 6 SCC 569 All Mustafa v. State of Kerala, 1995 (1) Crimes 77. Amarjit Singh v. Delhi Admn, Punjab v. Jasbir Singh (1996 (1) SCC 288), State of Punjab v. Balbir Singh (1995, 3 SCC 610), Saiyad Mohd v. State of Gujarat (1995 Crl.J. 2662, Raghubir Singh v. State of Haryana (1996(1) crimes page 55 SC) etc. He is of the view that Section 50 should read "when any officer, other than such officer of gazetted rank mentioned in Sec.41(2) on prior information is about to...." The Addl.D.G.P. (Crime) Punjab has suggested that the words "Non-Gazetted" should be inserted in Sub-section (1) of Section 50 because if the officer making search of a person is himself a Gazetted Officer, then he is not required to take the person to be searched before some other Gazetted Officer/Magistrate. The Director General of Police, Bangalore and Commissioner, CE&C, Rajkot have responded in negative. A Judge of the High Court, Bombay, has suggested an amendment in the following lines -

"Notwithstanding that the procedure laid down in chapter V of NDPS Act (Section 41 to 68) is not followed it is hereby declared and clarified that the trial is not vitiated. Such non-compliance of procedure shall be taken into consideration while appreciating the evidence of Investigating Officer. The said procedure is declared to be directory in nature for the guidance of Investigating Officer."

Q.No.10 Twenty-six Judges, officers and advocates have agreed with the proposal by the Law Commission for re-drafting Section 50 of the Act by incorporating suitable amendment. Further, a lawyer feels that if a privilege is given why should it be waived by writing. He observes that if the accused is apprehended, he may immediately be taken before the Magistrate and seizure should be before him only or at the time of remand. The Magistrate should satisfy whether the privilege was either complied with or duly waived. A Judge of M.P. High Court, Indore Bench has suggested that if at all the amendment is to be brought in existence it should be provided in Section 50 that the Gazetted Officer should not be the member of the raiding party. Another Judge after referring to Misc.Cri.case No. 2768/50 decided on 28.4.96 of Indore Bench, M.P.High Court finds no justification for making a special provision about Gazetted Officer or Magistrate. He is of the view that if section 50 is retained in whatever form, it should be made directory instead of being mandatory and plea should be permissible on prejudice or on failure of justice in

accordance with Section 465 of the Code of Criminal Procedure. The Commissioner, CE&C, Rajkot has responded in the negative. Superintendent, CE, Paraji has suggested that the Gazetted Officer/the Magistrate only be a witness to the search on the same point.

Q.No.11 Most of the responses are affirmative. But some of them have expressed it in negative because according to them the discretionary power may be misused.

Q.No.12 All persons except the Registry of Madras High Court have agreed with the proposal for the insertion of new section.

Q.No.13 Twenty nine persons have replied in the affirmative. A Judge of the M.P. High Court has suggested that the incharge should be liable to action in case of default in submission of charge-sheet within the statutory period. Four of them feels that the suggetions are not practicable and if implemented, may lead to administrative difficulties. The Additional Special Public Prosecutor, High court Madras however added that it would affect the working of agencies like N.C.B./Customs/DRI because they are not police officers and they collect materials from all sources and submit it with a complaint. They do not file charge sheet. Therefore, there is no need for statutory amendments. Addl.D.G. (Crime) Punjab, has not agreed to the suggestions contained in this question because the same

according could be done by an executive/administrative order. The Superintendent, CE, North Goa, has responded in the negative.

Q.No.14 The Registry and Addl. Spl. Public Prosecutor of Madras High Court and One Police Officer have replied in the affirmative. The State Government has created centres for the identifiction and treatment of addicts at the State capital and more would be created at other places depending upon the need and availability of finance.

The Director-General of Police, J & K, has also replied in the affirmative.

The State of Kerala and Madhya Pradesh have also responded in the affirmative to the question.

The Supdt. of Police, ANC, Panjai, Goa has pointed out that the State Government has established centers for identification and treatment of addicts in the State of Goa.

The Inspector-General of Police, Union Territory, Chandigarh has informed that the State Government has not established adequate centres for the identification and treatment of addicts.

A Senior Supdt. of Police (Narcotics)Kohima, is of the view that there are very few centres in Nagaland which are not adequate at all.

No centre for identification and treatment of addicts has been established by the Union Territories of Pondicherry, Manipur and Sikkim.

The State of Maharashtra has established centre for detoxication and rehabilitation of addicts. N.G.O.'s are also doing commendable service in this field in Mumbai and in other parts of Maharashtra.

The State Government has established rehabilitation centre in Rajasthan. However, according to Commissioner, C&CE, Jaipur, number of such centres should be increased.

The number of centres for identification/dediction of addicts instituted by the State Governments (U.P. and Bihar) is negligible as per Zonal Director, NCD, Varanasi,

In Vadodara, there is a centre for identification and treatment of addicts in S.S.G. Hospital run by the Government of Gujarat.

Q.No.15 Most of the persons who responded to our questionnaire have agreed with the suggestion of the La Commission. However, a few of them are of the view that there is no need to establish such centre in some districts/States. They, therefore, feel that it should

accordingly be left to the discretion of the State Government to establish centres according to the need.

Q.No.16 The following suggestions were made by various Judges, Advocates, Police Officials and Academicians:

(1) The application of Section 167 of the Code of Criminal Procedure be excluded.

(2) Express provision be made for taking second sample.

(3) Section 32A be amended in the light of Gyan Chand v. State of Rajasthan, 1993 Cr.L.J. 442.

(4) The Assistant Commissioner should be the Authorising Officer so far State is concerned. The Deputy Commissionerof Police should be the immediate superior officer.

(5)'Gazetted Officer' of the other Government department viz. School Head Master etc. may also be brought within the purview of section 41 of the NDPS Act.

(6) By making necessary amendment in the Act a duty should be cast on the State Government/Central Government for the purpose of giving training the

officers of C.B.N., Central Excise Department and Police for detection of crimes and investigation in accordance with the provisions of NDPS Act.

(7) A duty should be cast on State Government/Central Government to open rehabilitation centres in each district of the State by appointing medical officers, psychiatrists and social welfare officers.

(8) Section 37 of the Act be amended on the lines of the proviso to section 437 of the Code of Criminal Procedure for releasing an infirm or sick person or a child,juvenile and a woman.

(9) The word " conveyance" may be deleted from section 42 since section 43 and section 49 will take care of it.

(10) The words"Government offices" may be included in the explanation to section 43 of the Act.

(11) Section 36A (1) (b) and (c) of the Act requires to be redrafted so as to clearly State as to who should exercise the power of remand if detention is considered necessary.

(12) Section 29 (2) limits the operations of section 29 (1). If the explanation in section 29 (2) is made an inclusive one then it will take care of not only conspiracy/abetment in India but also bring operators who are abroad within its told.

(13) Chapter V A dealing with forfeiture of property should be amended so as to prevent drug traffickers from transferring away the wealth amassed due to illicit trafficking in Narcotic Drug and Psychotropic substances.

(14) Section 37 be amended to contain sufficient guidelines on which the public prosecutor may not oppose the application for release on bail.

(15) Section 36D (2) be amended to permit and provide transfer of pending cases to special courts despite taking of cognizance also in view of the decision in (1993) 2 SCC 16 and and misc. Cri. Case No.2901/94 decided by M.P. High Court, Indore Bench.

(16) Section 32 A be deleted or amended/conferring discretion to court in appropriate cases in the face of judicial pronouncements for suspension of sentence.

(17) Policy of award merits to be mortalised so as to avoid possible registration of fake cases and introduce element of more fairness.

(18) Proper procedure be followed for sealing, sampling, deposit and despatch be provided for.

(19) Subsection (b) of section 36 A(1) may be deleted.

(20) There should be Uniformity in cash awarad to all the departments concerned with N.D.P.S.Act.

(21) Special training centres be opened to train Police personnels with regard to all the provisions of NDPS Act.

(22) More sniffer - Dogs be employed and more training centres for them be opened.

(23) Cash award be given not only in the name of Sniffer - dog on seizure of Narcotics but also to the police personnel accompanying the dog.

(24) More incentives be given to informers.

(25) The definition of "illegally acquired property" [Sec.68-B(g)] be widened so as to include the provisions of 'illegally acquired property' defined under Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976.

(26) Proviso of sub-section (2) of section 68(c) should be deleted.

(27) The words "has been charged with any offence punishable under this Act, whether committed in India or outside after the words "chapter applies" in sub-section (1) of section 68-E should be deleted.

(28) Selling of opium/poppy ganja etc. through authorised shops by the State Governments should be stopped.

(29) The amount of reward should be increased.

(30) The provisions of Sections 9, 41 & 42 of the Act be reviewed.

(31) Sections 68A vis-a-vis 68E, of the NDPS Act be reviewed doubt/ambiguity about the word "charged" be removed.

(32) Licencing of "Bhang Thekas" by the State Excise Department requires to be looked into.

(33) More harsh punishment for drug syndicates be awarded.

(34) Provisions related to forfeiture of proverty (ch.V.A) need immediate amendment as section 68-A and section 68-F are contradictory.

(35) New provisions be added to depute state officials to be utilised as witnesses in the NDPS Act cases by State enforcement agencies.

(36) Section 50(3) of proposed amendment (of the Questionnaire) should be deleted.

(37) Classification between soft drugs and hard drugs must be made and punishment should vary between them.

(38) No rewards for seizing drugs be given to the officers. It may be only in case of private parties who gave information that such reward be given.

(39) Simple possession of drugs should not be punishable unless he knowingly possesses the same.

LIST OF THE PERSONS WHO RESPONDED THE QUESTIONNAIRE/ CONTRIBUTED ARTICLES FOR THE NATIONAL SEMINAR.

Judges/Registrars etc.

1. Justice J.G.Chitre,
   Judge, High Court, Madhya Pradesh, Bench, Indore.
2. Justice A.R.Tiwari,
   Judge, High Court Bench, Indore.
3. Registrar, High Court of Madras.
4. Shri M.N.Krishnan, Registrar, High Court of Kerala.
5. Justice (Smt.) P.D.Upasani, High Court of Bombay.

6. Justice (Smt.) R.G.Vaidyanatha, High Court of Bombay.
7. Shri J.N.Barowalia, Senior Sessions Judge-cum-Chief Judicial Magistrate, Mandi District, Mandi (H.P).
8. Shri Syed Basir Ud Din, Registrar, High Court of Jammu & Kashmir.

Advocate/Prosecutors

1. Dr.G.Krishnamurthy, Advocate, High Court, Madras.
2. Shri Binu Kumar, Advocate, the President Bar Association, Trivandrum (Kerala).
3. Shri P.N.Prakash - Addl.Special Public Prosecutor, Narcotics, Govt.of India, High Court, Madras.
4. Shri K.T.S.Tulsi, Senior Advocate, Supreme Court, New Delhi.

Police Officers/other officers

1. Shri B.Pande - Addl.D.G. of Police, C.I.D.Crime, Orissa, Cuttack.
2. Director General of Police, J&K Srinagar.
3. Shri M.C.Mehanathan - D.L.A., Ministry of Finance, Department of Revenue, N.C.B., New Delhi.
4. Shri A.K.Singh - Superintendent of Police, ANC Panaji-Goa.
5. Shri S.K.Chaterjee - IPS, DGP Tripura
6. Inspector General of Police, U.T. Chandigarh.
7. Shri C.P.Giri, IPS - Sr.Supdt. of Police (Narcotics), Nagaland, Kohima.
8. Shri Yatish Chandra - Addl.D.G.P. (Narcotics Wing) Police Headquarters, Bhopal.
9. Shri Ashok Joshi, IAS - Secretary to Govt.of Madras.
10. Shri P.S.Bawa, IPS, - D.G.P., Sikkim.
11. Addl. D.G.P., Crime, Punjab.
12. Director, Crime Records Bureau, Pondichorry.
13. Director General of Police, Bangalore, Karnataka.
14. The Director General of Police, Manipur, Imphal.
15. Zonal Director, NCB, Bombay.
16. Commissioner, CE&C, Pune.

17. Commissioner, CE&C, Vadodara

18. Commissioner, C&CE, Jaipur.

19. Zonal Director, NCB, Varanasi.

20. commissioner, CE&C, Rajkot.

21. Spl.Superintendent of Police, CID, Assam, Gauhati.

22. Deputy Commissioner of Police, Narcotics & Crime Prevention, Delhi.

23. Superintendent of Customs (Legal) Goa.

24. Superintendent,CE, Panaji.

25. Superintendent, CE, North Goa, Champara, Goa.

26. Commissioner, Customs & Central Excise, Chandigarh.

Acadmecians

1. Prof.Joga Rao, National Law School of India University, Bangalore.

2. Prof. M.R.K.Pragad, Mahadevrao College of Law, Panaji, Goa.

ANNEXURE-III

THE PUNISHMENTS PROVIDED FOR OFFENCES UNDER NDPS ACT, 1985 (AS AMENDED BY ACT NO.2 OF 1989)

S.Nos.	Description of Offences	Minimum		Maximum	
		Imprisonment	Fine	Imprisonment	Fine
(1)	(2)	(3)	(4)	(5)	(6)
1.	Cultivation, production, manufacture, possession, sale, purchase, transportation, concealment, use or consumption, import/export inter-state				
a)	Poppy straw (Sec.15)	10 Years' R.I.	Rs.1 lakh	20 Years' R.I.	Rs.2 lakhs
b)	Coca plants and coca leaves(Sec.16)	10 Years' R.I.	Rs.1 lakh	20 Years' R.I.	Rs.2 lakhs
c)	Opium poppy, opium and prepared opium (Secs.17, 18, 19)	10 Years' R.I.	Rs.1 lakh	20 Years' R.I.	Rs.2 lakhs
d)	Cannabis other than ganja(Sec.20)	10 Years' R.I.	Rs.1 lakh	20 Years' R.I.	Rs.2 lakhs
e)	Ganja (Sec.20)			Upto 5 Years' R.I.	Upto Rs.50,000.
f)	Manufactured drugs and preparations (Section 21)	10 Years' R.I.	Rs.1 lakh	20 Years' R.I.	Rs.2 lakhs
g)	All psychotropic substances (Sec.22)	10 Years' R.I.	Rs.1 lakh	20 Years' R.I.	Rs.2 lakhs
2.	Punishment for illegal import into India, export from India, or transhipment of narcotic drugs and psychotropic substances (Sec.23).	10 Years' R.I.	Rs.1 lakh	20 Years' R.I.	Rs.2 lakhs
3.	Punishment for external dealings in narcotic drugs and psychotropic substances in contravention of section 12 (Sec.24)	10 Years' R.I.	Rs.1 lakh	20 Years' R.I.	Rs.2 lakhs
4.	Punishment for allowing premises, enclosure, space, place, animal or conveyance, knowingly for commission of offence (Sec.25)	10 Years' R.I.	Rs.1 lakh	20 Years' R.I.	Rs.2 lakhs
5.	Punishment for production, manufacture, possession, import/export inter state, sale, purchase , consumption, use, storage distribution, disposal or acquisition of any controlled substance(Sec.25A)			Upto 10 Years' R.I.	Upto Rs.1 lakh
6.	Punishment for certain acts by licensee or his servants(Sec.26)			Upto 3 Years' imprisonment	or with fine or with both

7. (a)	Punishment for illegal possession in small quantity for personal consumption of cocaine, morphine, diacetyl-morphine or any other narcotic drug or psychotropic substance as may be notified by Central Government (Sec.27)			Upto 1 year imprisonment	or with fine or with both
(b)	Punishment for illegal possession in small quantity for personal consumption of narcotic drugs or psychotropic substances other than those specified in 7(a)(Sec.27)			Upto 6 months' imprisonment	or with fine or with both
8.	Punishment for financing, directly or indirectly, abetting or conspiring in the furtherance of an offence or harbouring persons engaged in the aforementioned activities (Sec.27A)	10 Years' R.I.	Rs.1 lakh	20 Years' R.I.	Rs.2 lakhs
9.	Punishment for attempts to commit any offence punishable under Chapter IV of the Act or cause such offence to be committed and in such attempt does any act towards the commission of the offence(Sec.28)	As provided for that particular offence.			
10.	Punishment for abetment and criminal conspiracy to commit, an offence punishable under Chapter IV of the Act, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy (Sec.29)	As provided for that particular offence.			
11.	Punishment for preparation to do anything or commission to do anything which constitutes an offence punishable under any of the provisions of sec.15 to 25 (both inclusive) (Sec.30)	Half the normal punishment		Half the normal punishment	
12.	Repeat offences (Sec.31)	Double the normal punishment		Double the normal punishment	
13.	Punishment for subsequent conviction in respect of commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, an offence relating to, production, manufacture, possession, transportation, import into India, or transhipment of narcotic drugs or psychotropic substances for specified quantities of certain narcotic drugs or psychotropic substances as mentioned in Sec.31A(Sec.31A).			Death Penalty	

Death penalty has been provided under the NDPS (Amendment) Act, 1988 for the first time in the history of India. Under section 31A cited, where a person has been convicted by a competent court of criminal jurisdiction outside India, he shall be dealt with as if he had been convicted by a court in India.

2. Besides, as per the provisions of Section 32A, notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any other law for the time being in force(but subject to the provisions of section 33), no sentence awarded under this Act (other than section 27) shall be suspended or remitted or commuted.

3. Section 36 provides for constitution of Special Courts for the speedy trial and punishment of offenders.

4. Section 37 stipulates that offences shall be cognizable and non bailable.

5. Under Section 59, dereliction of duty cast on an officer under this Act or wilful abetment/connivance shall be punishable with 10 Years'' R.I./fine Rs.1 lakh extensible to 20 Years'' R.I./fine of Rs.2 lakhs. (The term 'officer' includes for the purpose any person employed in a hospital/institution maintained/recognised by the Government/local authority).

6. Section 64A provides for immunity from prosecution to addicts volunteering for treatment.

ANNEXURE- IV

NATIONAL DRUG ENFORCEMENT STATISTICS AS ON 31/08/96 (PROVISIONAL)

Year		1992	1993	1994	1995	1996
1. SEIZURES OF VARIOUS DRUGS IN KG WITH NO. OF CASES						
OPIUM	SEIZURES	1918	3011	2256	1339	1338
	CASES	1286	1679	1171	871	349
MORPHINE	SEIZURES	35	36	51	4	1
	CASES	158	105	145	35	20
HEROIN	SEIZURES	1153	1088	1011	1678	877
	CASES	2779	3383	3331	3236	1245
GANJA	SEIZURES	64341	98867	187896	121873	26531
	CASES	5839	5214	6827	5737	2309
HASHISH	SEIZURES	6621	8238	6992	3629	4825
	CASES	2516	2827	2672	2691	986
COCAINE	SEIZURES	0.420	2	1.58	40	0
	CASES	4	4	6	6	2
METHAQUALONE	SEIZURES	7475	15004	45319	20485	9
	CASES	167	283	457	196	4
PHENOBARBITAL	SEIZURES	118020 TABS.	-	-	0	0
	CASES	2	-	-	0	0
L.S.D	SEIZURES	50	164	256	113	1285
(Sq. Papers)	CASES	-	1	-	1	7
ACETIC ANHYDRIDE	SEIZURES	-	19758	47740	9282	2892
(in ltrs.)	CASES	-	22	40	26	6
2. PERSONS ARRESTED						
a) No. of Persons Arrested including Foreigners		12650	13723	15452	14673	5203
b) No. of Foreigners arrested		116	114	136	148	110
3. ACTION TAKEN AGAINST PERSONS INVOLVED IN DRUG TRAFFICKING						
a) No. of Persons prosecuted		7172	9964	9154	12918	5505
b) No. of Persons convicted		761	1488	1245	2456	1472
c) No. of Persons acquitted		1762	1633	3165	3914	2285
4. ACTION TAKEN UNDER PITNDPS(NDPS) ACT, 1988						
No. of detention orders issued under PITNDPS Act,1988		97	116	156	111	45
No. detained		80	92	123	69	38

NCB, NEW DELHI

Year	1992	1993	1994	1995	1996
5. DESTRUCTION OF NARCOTICS DRUG YIELDING PLANTS					
a) Poppy Plant					
Area (in Acres)	19	67	0.5	5	0
Potential Yield (in Kgs.)	135	754	9	10	0
b) Cannabis Plant					
Area (in Acres)	1219	2587	858	638	16
Potential Yield (Kgs.)	1230209	3270661	1073334	694617	9850
6. DESTRUCTION OF MANUFACTURING FACILITIES					
a) Facilities detected and quantity of finished drug seized in Kg.					
HEROIN	1.010	1	27	6	0
Facilities detected	5	4	3	8	0
HASHISH	-	-	-	0	0
Facilities detected	-	-	-	0	0
METHAQUALONE	3651.000	1710	6091	7336	0
Facilities detected	3	2	8	4	1
MORPHINE	0.760	-	-	0	0
Facilities detected	1	-	-	0	0
b) No. of persons arrested	7	3	25	17	1
c) Incriminating materials seized in Kg.					
ACETIC ANHYDRIDE	-	21040	-	0	0
ACETYL ANTHRANILLIC ACID (ltr.)	-	-	-	561	0
ACETYL ANTHRANILLIC POWDER	-	-	-	100	0
ACETYL CHLORIDE	-	-	-	0	0
AMMONIUM CHLORIDE	-	-	18.5	7	0
DIETHYAL ETHER	-	-	-	0	0
METHENOL	-	-	-	0	0
OPIUM	37.950	2.750	32	10	0
OPIUM SOLUTION (ltrs.)	-	-	-	0	0
SODIUM CARBONATE	-	-	-	0	0
7. DISPOSAL OF SEIZED NARCOTICS DRUGS AND PSYCHOTROPIC SUBSTANCES					
OPIUM	254	449	33.3	5	15
MORPHINE	1	-	-	0	0
HEROIN	807	240	463	404	22
GANJA	5962	10699	12850	1809	46
HASHISH	1117	1115	2234	8709	99
COCAINE	2	-	0.95	0	0
METHAQUALONE	714	17345	9449	10852	416
PHENOBARBITAL	-	-	-	-	0
L.S.D (Sq.Paper)	-	-	-	-	0
ACETIC ANHYDRIDE (ltrs.)	-	-	-	-	0

Yea.	1992	1993	1994	1995	1996
8. FORFEITURE OF PROPERTY					
a) Value of property Forfeited (Rs.)	888337	-	1024400	309479	274479
No. of Cases	5	-	1	3	1
b) Value of property Frozen (Rs.)	37026070	904044	85067571	210428345	456000
No. of Cases	4	7	17	17	2
9. AGENCY-WISE NUMBER OF SEIZURES					
ALL INDIA	12751	13518	14657	12799	4928
NARCOTICS CONTROL BUREAU	88	116	90	38	35
DIRECTORATE OF REVENUE INTELLIGENCE	5	18	29	28	5
CUSTOM & CENTRAL EXCISE	518	474	417	272	76
CENTRAL BUREAU OF NARCOTICS	114	79	70	65	16
ORGANISATIONS					
B.S.F	42	125	180	276	112
C.B.I	-	12	6	1	0
STATE AGENCIES (TOTAL)	11984	12694	13865	12119	4671
POLICE	-	12497	13526	11833	4649
EXCISE	-	197	339	286	22
JOINT OPERATION	-	-	-	-	13
10. AGENCY-WISE BREAK-UP OF QUANTITY SEIZED (IN KGS.)					
A. NARCOTICS CONTROL BUREAU					
OPIUM	50	166	1.4	40	11
MORPHINE	-	-	-	0	0
HEROIN	85	69	101	75	78
GANJA	359	3349	3228	462	52
HASHISH	2	347	261	27	29
COCAINE	-	0.06	-	0	0
METHAQUALONE	1491	5776	676	1064	0
PHENOBARBITAL	63590 Tabs.	-	-	-	0
LSD	-	-	-	-	0
ACETIC ANHYDRIDE (ltrs.)	-	-	-	880	0
B. DIRECTORATE OF REVENUE INTELLIGENCE					
OPIUM	243	393	0.04	29	0
MORPHINE	0.190	-	-	-	0
HEROIN	0.035	140	15	243	103
GANJA	-	703	1170	1633	13
HASHISH	74	-	1340	130	3508
COCAINE	-	-	-	-	0
METHAQUALONE	-	372	12620	14099	0
PHENOBARBITAL	-	-	-	-	0

Year	1992	1993	1994	1995	1996
LSD	-	-	-	-	0
ACETIC ANHYDRIDE (ltrs.)	-	2000	-	-	0
C. CUSTOM AND CENTRAL EXCISE					
OPIUM	68	111	26	61	76
MORPHINE	2	-	30	2	0
HEROIN	83	114	152	207	112
GANJA	12221	22146	22621	6754	789
HASHISH	115	1369	1294	850	576
COCAINE	0.310	1	-	3	0
METHAQUALONE	1638	4140	11361	205	4
PHENOBARBITAL	54430 Tabs		-	-	0
LSD	-	-	-	-	0
ACETIC ANHYDRIDE (ltrs.)	-	8000	25275	78	2117
D. CENTRAL BUREAU OF NARCOTICS (C.B.N)					
OPIUM	533	127	468	165	116
MORPHINE	2	2	-	-	0
HEROIN	10	25	22	60	2
GANJA	53	152	168	52	0
HASHISH	-	19	1	-	0
COCAINE	-	-	-	-	0
METHAQUALONE	-	-	-	-	0
PHENOBARBITAL	-	-	-	-	0
LSD	-	-	-	-	0
ACETIC ANHYDRIDE (ltrs.)	-	-	-	-	0
E. BORDER SECURITY FORCE (B.S.F.)					
OPIUM	-	12	8	-	0
MORPHINE	-	0.295	0.5	-	0
HEROIN	29	77	177	653	124
GANJA	281	1156	1466	2073	1578
HASHISH	373	813	513	491	116
COCAINE	-	-	-	-	0
METHAQUALONE	-	-	-	-	0
PHENOBARBITAL	-	-	-	-	0
LSD	-	-	-	-	0
ACETIC ANHYDRIDE (ltrs.)	-	-	-	4715	140
F. CENTRAL BUREAU OF INVESTIGATION (C.B.I)					
OPIUM	-	3	2	-	0
MORPHINE	-	-	-	-	0
HEROIN	-	13	6	-	0
GANJA	-	2	-	-	0
HASHISH	-	7	6	13	0
COCAINE	-	-	-	-	0
METHAQUALONE	-	-	-	-	0

Year	1992	1993	1994	1995	1996
PHENOBARBITAL	-	-	-	-	0
LSD	-	-	-	-	0
ACETIC ANHYDRIDE (ltrs.)	-	-	-	-	0
G. STATE POLICE					
OPIUM	1017	2196	1751	1044	1135
MORPHINE	30	34	20	2	1
HEROIN	938	638	530	430	336
GANJA	49374	68310	144754	108963	24079
HASHISH	2057	5680	3571	2039	530
COCAINE	0.110	1	1.2	37	0
METHAQUALONE	4346	4736	20462	5117	5
PHENOBARBITAL	-	-	-	-	0
LSD (Sq.Paper)	50	164	256	-	648
ACETIC ANHYDRIDE (ltrs.)	-	2257	18815	3609	110
H. STATE EXCISE					
OPIUM	7	3	-	-	0
MORPHINE	1	69 amps	-	-	0
HEROIN	8	12	8	9	0
GANJA	2053	3049	14489	1937	20
HASHISH	-	3	7	79	1
COCAINE	-	-	-	-	0
METHAQUALONE	-	-	-	-	0
PHENOBARBITAL	-	-	-	-	0
LSD	-	-	-	113	637
ACETIC ANHYDRIDE (ltrs.)	-	-	-	-	0
I. JOINT OPERATION					
OPIUM	-	-	-	-	0
MORPHINE	-	-	-	-	0
HEROIN	-		-		122
GANJA	-	-	-	-	0
HASHISH	-	-	-	-	65
COCAINE	-	-	-	-	0
METHAQUALONE	-	-	-	-	0
PHENOBARBITAL	-	-	-	-	0
LSD	-	-	-	-	0
ACETIC ANHYDRIDE (ltrs.)	-	-	-	-	525

ANNEXURE V

SUMMARY OF PROCEEDINGS OF WORKSHOP AT GOA

A workshop on 'Criminal Law & Narcotics Drug Psychotropic substances' was held under the auspices of the Government of Goa and Law Commission of India on 18 January, 1997 at Hotel Mandovi, Panji, Goa.

The following were present:

1. Shri P. Sundararajan, Addl. District Judge, Margao.
2. Shri A.D.Salkar, Addl. Distric Judge & SJM N.D.P.S., Mapusa.
3. Shri A.P. Cardoso, Advocate.
4. Shri S.S. Faria, Public Prosecutor, Margao.
5. Smt. Shobha Dhumaskar, Public Prosecutor, Mapusa.
6. Shri A.K.Singh, Supdt., of Police (H.Q.), Panaji, Goa.
7. Shri Gopal M. Jadhav, Police Inspector.
8. Shri N.V. Mhamal, P.S.I.
9. Shri Zeller C.De Souza., Adovcate, Goa.
10. Shri Narendra S.A.Sawaikar, Advocate, (High Court Bar Association).
11. Shri M.P. Carvalho, Supdt. of Excise.
12. Prof. Dr. Carmo D'Souza, M.S. College, Panaji.
13. Prof. M.R.K. Prasad, Collage of Law, Panaji.
14. Shri , Suresh Narulkar, Advocate, North Goa District.

15. Shri Devanand Shetkar, Advocates Association.

16. Prof. J.G. Prabhudessai. G.R.KARE College.

17. Prof. K.V.Kuncolienkar of Law, Margao.

18. Shri I.D.Shukla, Dy. Supdt. of Police, Panaji, Goa.

19. Shri Rajendra Raut Dessai, P.S.I.

20, Shri Pandurang S.Kalangutkar,P.SI.

21. Shri D.S. Sawant, P.S.I.

22. Shri G.V.Dhume, Public Prosecutor.

23. Shri Bhanudas Gaunkar, A.P.P.

24. Smt Edna Rodrigues, Public Prosecutor.

25. Shri Pramod S. Hede, Public Prosecutor.

26. Shri V.N.S. Malkarnekar, Public Prosecutor.

27. Smt. Asha Arsekar, A.P.P., Margao.

28. Shri J.C. da Costa,Asstt., Public Prosecutor.

29. Shri Shekhar S. Parab, A.P.P., Panaji.

30. Smt. Teodolinda S.Sardinha, Asstt. Public Prosecutor.

31. Shri Subhas P.Dessai, A.P.P. Quepem.

32. Shri Devidas Kerkar, Asstt. Public Prosecutor.

33. Shri Shailesh Kalangutkar, A.P.P., Panaji.

34. Shri Ladislau M. Fernandes, A.P.P. Vasco.

The Chairman, Law Commission of India, Hon'ble Sri Justice K. Jayachandra Reddy, presided over the workshop. He emphasised the need for amending various provisions of the Narcotics Drug and Psychotropic

Substances Act, 1985 in the context of the questionnaire issued by the Law Commission. He invited the participants to project their views.

Some participants were of the view that more drugs should be brought under NDPS Act. According to them punishment alone will not be sufficient. There should also be social awareness against the ill effects of drug abuse. For the purpose social activist should be involved. The Press and media can also play an effective role in this regard.

Some other participants pointed out that the provision for small quantities of various Narcotics drugs prescribed under the NDPS Act and punishment prescribed therefor are not satisfactory. To overcome this anomaly, the relevant provisions of the NDPS Act need to be amended.

A few of them expressed the view that section 27 of the NDPS Act dealing with the possession of small quantity of drugs for personal consumption should be deleted.

It was also suggested that special courts should be set up to deal exclusive with the cases under this Act.

It was further suggested that there is a need to bring users of soft drugs, both regular and occasional, within the purview of the NDPS Act.

ANNEXURE- VI

SUMMARY OF THE PROCEEDINGS OF THE NATIONAL SEMINAR ON CRIMINAL JUSTICE HELD AT VIGYAN BHAVAN, NEW DELHI, ON 22-23 FEBRUARY, 1997

The following persons attended the seminar.

Agarwal Anita - High Court, Bombay
Agarwala E.C. - Advocate, Supreme Court.
Agarwal Mahesh-Advocate, Supreme Court.
Agarwal S.K. - Advocate
Agarwal Sharda Ms. Addl. Dt.S.J, Delhi.
Anand A.S.Dr.Justice, Judge, Supreme Court.
Anand Pinki Ms. Advocate Delhi High Court.
Anand S.D. Joint Secretary,(Law) Haryana.
Arunachalam T.S. Sr. Advocate, Supreme Court.
Arya Aditya Dr. Dy. Commissioner of Police, Delhi.
Bagga Reena, Advocate.
Balaji V., Advocate.
Bakshi P.M. Former Member,Law Commission.
Balchandran M., DIG, CBI.
Banarjee D., Addl. DC, Intelligence, Calcutta.
Bhagat Achal, Sr. Consultant, Appollo Hospital.
Bhatnagar A.P. Addl. D.G.P. Punjab.
Bharadwaj Omendra, DIG, Rajasthan.
Biswas A.M. Member, National Commission for SC &ST.
Chandra Bharat, Addl. DGP,Andhra Pradesh.
Chandra Satish Dr. Addl. LO. Law Commission.
Chaudhary musharraf Ms. Advocate.
Chawla S.C. Advocate.
Chopra R.C. Addl. Dist. & Session Judge, Delhi.
Das B.S. Advocate, Cuttack.
Das Manoj K. Advocate.
Dave V.S. Justice, Retd. Chairman, State Law Commission, Rajasthan.
Dhania R.P., Chief Prosecutor, Directorate of Prosecution, Delhi.
Dhawale Sujatna, Confederation of Doctors Assn.
Dikshit R.C., Addl. D.G.P., Uttar Pradesh.
Dubre N., D.I.G., Gwalior.
Gambhir S.K., Advocate, Delhi.
Gambhir Vivek, Advocate, Delhi.

Ganguly A.K. Justice.
Garg Manish, Advocate, Delhi.
Gautam D.N., D.I.G., I.T.B.P.
Ghildiyal Subodh, Journalist.
Gulati B.L., Secretary (Law), Haryana.
Gupta Aruneshwar, Advocate.
Gupta Arvind, Advocate.
Gupta A.K., Advocate.
Gupta Dipankar, Sr.Advocate.
Gupta K.L., A.D.G. Police (Crime), Uttar Pradesh.
Gupta R.L. Justice, Member, Law Commission.
Gupta Naresh Kumar, Advocate.
Gupta Shekhar, Editor, Indian Express.
Jacob Alice Mrs., Member, Law Commission.
Jain R.C., New Delhi.
Jain R.K., Sr.Advocate, New Delhi.
Jha S.N. Justice., Judge, Patna High Court.
Kak Purnima Bhat Ms., Advocate, Supreme Court.
Kapoor Suman, Advocate.
Katara Parmanand Pt., Advocate.
Kaw Sanjay, Journalist.
Khalap Ramakant, Union Minister of State for Law & Justice.
Khurana Ruchi Ms., Trainee Advocate.
Krishnamurthy Ch.G., Member, Law Commission.
Kumar Mukesh, Trainee Advocate.
Kumar Sushil, Sr.Advocate.
Kumar Swatanter Justice, Judge, P&H High Court.
Kumaraswamy K., Addl.D.G.P.(Crimes), Tamil Nadu.
Lalit Uday, Advocate.
Manchardi Ramesh, Chief Prosecutor, Directorate of Prosecution, Delhi.
Manohar Sujatha V.Justice, Judge, Supreme Court.
Mansharamani G.G. Dr., Delhi.
Mathur S.P., B.P.R & D.
Mathew Anne, Advocate.
Meena M.D., I.G., Police, Surat.
Meena R.L., Member-Secretary, Law Commission of India.
Nair Vipin, Advocate.
Narayan Nand Indra, Advocate.
Narayan Ranjana Mrs, Advocate.
Nariman F.S., Sr.Advocate.
Niklesh R., Advocate.
Pahwa Vikas, Advocate.
Pali Anand, Advocate.
Palli Rekha Ms, Advocate.
Pandher G.S., D.G., B.P.R.& D.
Pandian S.R. Justice.
Parthasarathy K., Law Secretary, Pondicherry.
Parekh P.H., Advocate.
Perreria Maxwell, Addl.Commissioner of Police.
Pradhan B.R., Law Department, Govt. of Sikkim.

Prasad P.S.V., Jt.Director, S.N.P.A.
Punchhi M.M. Justice, Judge, Supreme Court.
Puri S.S., Director of Public Prosecutions, Mumbai.
Rachhdya P.N., I.P.S.
Raina S.C. Dr, Project Director, B.P.R. & D.
Raheja Devinder, Chairperson, Law Dept, Kurukshetra University.
Ram Mani, I.P.S.
Ramalingam P.N., Advocate.
Rao A.T.,Advocate.
Rao D.K. Prahlada, President, Institute of Company Secretaries of India.
Rao M. Jagannadha Justice, Chief Justice, Delhi High Court.
Rao M.V.Krishna, Director, A.P.Police Academy.
Rao P.P., Sr.Advocate.
Rao Sulaxan J.T., A.L.O., Law Commission.
Rangam A.V., Advocate.
Ranganathan Buddy, Trainee Advocate.
Rath Srilok N., Trainee Advocate.
Rathore S.P.S., D.G.P. (Crimes), Rajasthan.
Reddy C.S.R., SSP., Chandigarh.
Reddy K.Jayachandra Justice, Chairman, Law Commission of India.
Reddy Sadashiva, Advocate.
Reddy Usha Ms., Advocate.
Sainghar N.K., I.P.S.(Retd)
Salve Harish, Sr.Advocate.
Sampath A.T.M., Advocate.
Sandhu H.S., S.P., C.B.I.
Sankrityayana K Dr., Member, National Commission for Minorities.
Satish R., Advocate.
Seth Padma Ms., Member, National Commission for Women.
Sharma Atul, Advocate.
Sharma M.K. Justice, Judge, Delhi High Court.
Sharma Pawan Mrs, A.L.O., Law Commission.
Sharma T.C., Advocate.
Sharma Vibhakar, D.I.G., Tirunelveli, Tamil Nadu.
Sharma Vishnu, ADvocate.
Shroff M.N., Advocate.
Shinghal N.K. Retd. I.P.S.
Sibal Kapil, Sr.Advocate.
Singh J.P. Addl.Dist. Judge, Delhi.
Singh Bhawani Justice.
Singh Sultan, Advocate.
Srivastava G.P., Advocate.
Srivastava S.C., Jt.Secretary, Law Commission.
Subashini A., Advocate.
Suri A.K., Addl.D.G., J&K, Jammu.
Suri R.S., Advocate.
Syed S.J., Legal Consultant, National Commission for Woemn.

Thakker Chnilal Justice, Judge, Gujarat High Court.
Thomas K.T. Justice, Judge, Supreme Court.
Sanjay Tripathi, D.L.O., Law Commission.
Trivedi B.V Dr., Asst. Director, B.P.R.&D.
Tulsi K.T.S., Sr.Advocate.
Upadhaya A.K., A.L.O., Law Commission.
Varshy Anup Kumar Dr.
Venkatachalliah M.N. Justice, Chairman, National Human Rights Commission.
Wadhwa D.P. Justice, Chief Justice, Patna High Court.
Yadav R.K., Addl.Dt.Judge.
Yadhav Ranbir, Advocate.

On 23rd February, 1997, one session was devoted to Narcotic Drugs & Psychotropic Substances Act. Mr.Justice K.T.Thomas, Judge, Supreme Court of India chaired the session. He observed that provisions of sections 43 to 52 were sufficient.

He pointed out the qualities which the public prosecutor should possess and emphasised the need for appointing competent persons as public prosecutors. He also referred to the UN Conventions on Drugs. According to him the provisions of the NDPS Act are ceterrent and stringent. He, however, emphasised the need to plug the loopholes in regard to several other provisions of the Act. He said that many people are not even aware that their statements are to be recorded in the presence of a Gazetted Officer while the law provices that the statement must be recorded either before the Magistrate or before the Gazetted Officer.

Mr. K.T.S. Tulsi, Senior Advocate referred to the problems leading to the collapse of the criminal justice system . He said that the search must be conducted before the Gazetted Officer or the Magistrate, as it is an important safeguard of the rights of the accused. However, he emphasised that the police agency has to be trusted. He further pointed out that legislation has to balance the various situations. Mr.Tulsi gave various statistical data to show the effect of non-compliance of the provisions of the Act.

Mr.H.S.Sandhu, a senior police officer, highlighted the factors leading to failure of investigation and prosecution. He also referred to the law prevailing in USA.

Mr.R.C.Dixit, a senior police officer also pointed out the various loopholes in the NDPS Act.

Mr.Kapil Sibbal, Senior Advocate pointed out that under the provisions of NDPS Act, carrier of drugs is convicted. He questioned, whether it was fair? He further emphasised the various issues related to burden of proof and evidentiary value. In this connection, he referred to laws in the United States of America.