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## AN ASSESSMENT OF ENFORCEMENT AGENCIES FOR DRUG ABUSE UNDER NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT 1985

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### ABSTRACT

Drug abuse is a long-standing issue, with substances like alcohol, opium, and cannabis used throughout history for leisure or as an escape from emotional distress. While drug use initially affected only small segments of society, the emergence of more harmful substances, such as heroin, LSD, and amphetamines, has brought global attention to the problem. This escalating issue affects not only the physical and mental health of users but also contributes to organised crime, corruption, and the spread of violence. The growth of urbanization, migration, and changing social attitudes have fuelled the spread of drug abuse, which now impacts a wide demographic, including children, adolescents, and the economically disadvantaged. The illicit drug trade is the second-largest global industry, fostering crime, terrorism, and violence. Drug abuse has led to a range of societal issues, from family disruption and workplace accidents to public health crises like the spread of HIV/AIDS through intravenous drug use. The international community, through the United Nations, has committed to combating drug trafficking and abuse, recognizing the grave threat it poses to global security and development. India's history of drug regulation, influenced by colonial policies, continues to shape its legal framework, notably through the Narcotic Drugs and Psychotropic Substances Act of 1985, aimed at curbing drug misuse and enhancing law enforcement efforts. In this backdrop the role of drug abuse enforcement agencies and their usefulness has become critical in recent times.

**Keywords:** Drug Abuse, NDPS Act 1985, Law Enforcement Agencies,

## INTRODUCTION

Drug abuse is not a phenomenon of recent origin. Alcohol, opium and cannabis have, been used by human since time immemorial to induce a feeling of euphoria, or to find imaginary escape from the feeling of despair, dejection and anxiety<sup>1</sup>. The problem of drug abuse had not received any serious attention in the past as it was limited only to a few section of the society. Secondly, the substances in use were not as dangerous as seen in the recent times. The advent of far more hazardous drugs like heroin, LSD, amphetamines and methaqualone on the scene, and also the growing incidence of drug abuse even amongst the school-going children and adolescents, have brought the problem to focus throughout the world. Apart from the physical and mental damage that drugs have done to millions of users, illicit trafficking in drugs has also resulted globally in the escalation of other anti-social activities such as organized crime, corruption, intimidation of public officials, illegal banking operations, and criminal violations of import and export laws. The increased availability of drugs, expansion of communication systems, migration and urbanization, changes, attitudes, and values, are some of the major factors which have caused the spread of drug abuse since the beginning of the twentieth century. Particularly during the last two decades, there has been an unprecedented spurt in the use of illegal drugs throughout the world, and almost every nation has been affected by this scourge. The illicit drug business is the second largest international trade in the world at present, the first being armaments, the abuse of drugs is spreading from urban to rural areas, from adults to the children and adolescents, and from the affluent to the poorest sections of society. No country, race, religion, caste, creed or sex appears to be immune, from the deadly grip of illicit drugs. Drugs have not only affected every walk of human life in the present day world but are also likely to endanger future, generations of mankind. Intravenous drug abuse is proving to be one of the major causes for spread of AIDS due to the shared use of unsterilized needles by the addicts. Drug abuse has brought in its trail violence at home, neglect of children, divorces, and general disruption of smooth family life<sup>2</sup>. Many addicts have been driven to the point of selling their household belongings to support their addiction, and their children have to live without food and the basic amenities of life. Drugs have brought crimes like theft, prostitution and illicit trafficking right into the education and institutions too. The drug abuse in industry has resulted in lower productivity, absenteeism, sickness and accidents at workplace. Similarly, it has endangered

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<sup>1</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3202501/>

<sup>2</sup> <https://www.ncbi.nlm.nih.gov/books/NBK64269/>

safety on the public roads<sup>3</sup>. Drug abuse and trafficking have accelerated the general crime rate as illegal drugs and crimes thrive on each other. Terrorist activities and illicit, arms trade many parts of the world have been depending on drug trafficking, and pose a serious threat to the security and stability of many nations. It has also been observed by the United Nations that vast profits derived from drug trafficking are being used in many countries for bribery to prevent the enactment of important anti-drug legislation, to weaken strong drug control measures, to get the penalties for drug traffickers reduced and undermine the community's determination to rid itself of drug traffickers. In a message to mark the '*International Day Against Drug Abuse and Illicit Trafficking*<sup>4</sup>' on the 26<sup>th</sup> June, 1993, the United Nations Secretary -General observed "*In the post-cold war era, the international community faces a number of new and difficult challenges to peace and security. None is more insidious or more far-reaching than illicit drug production, trafficking and consumption*<sup>5</sup>". While-adopting the Declaration on the Control of Drug Trafficking and Drug Abuse on the 14<sup>th</sup> December, 1984, the General Assembly of the United Nations had described drug trafficking and abuse as an international criminal activity, and declared that the "*illegal production of, illicit demand for, abuse of and illicit trafficking in drugs impede economic and social progress, constitute a grave threat to the security and development of many countries and people, and should be combated by all moral, legal and Institutional means at the national, regional and international levels*". On 24<sup>th</sup> February, 1991, while expressing deep concern over the increase in drug abuse across the globe, 150 Member States of the United Nations gave a firm political commitment to pool in all possible resources, financial and human, into the war against the production, use and smuggling of drugs. They also declared 1991-2000 A.D. as a decade against drug abuse during which they plan to intensify and sustain international, regional and national efforts<sup>6</sup>. In order to understand the present-day drug dilemma, it is necessary to have a glance at the history of intoxicating substances. Cannabis has been consumed for spiritual, medicinal and recreational purposes in India since the classical era, with earliest documented references to cannabis use dating back to 2000 B.C. Post-colonization, the British attempted to regulate it through excise laws that licensed cultivation and imposed taxes on the sale of hemp<sup>7</sup>. Cannabis was classified as an

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<sup>3</sup> Treating Drug Problems: Volume 2: Commissioned Papers on Historical, Institutional, and Economic Contexts of Drug Treatment.

<sup>4</sup> <https://www.un.org/en/observances/end-drug-abuse-day>

<sup>5</sup> UNODC World Drug Report 2020: Global drug use rising; while COVID-19 has far reaching impact on global drug markets

<sup>6</sup> Substance use and addiction research in India, Pratima Murthy, N. Manjunatha, B. N. Subodh, Prabhat Kumar Chand, and Vivek Benegal, Indian J Psychiatry. 2010 Jan; 52(Suppl1)

<sup>7</sup> [http://fileserv.idpc.net/library/IDPC-briefing-paper\\_Drug-policy-in-India.pdf](http://fileserv.idpc.net/library/IDPC-briefing-paper_Drug-policy-in-India.pdf)

intoxicating drug and continued to be regulated through provincial excise Acts. The cultivation and use of opium is believed to date as far back as the 10th Century. During the colonial period, the British organized opium into a large-scale commercial enterprise, consolidating and bringing cultivation of poppy and manufacture of opium (but not consumption) under greater control through the Opium Acts of 1857 and 1878. Many provincial governments passed laws to restrict the consumption of opium. By the 1920's, the growing nationalist movement became critical of the colonial government's commercially driven drug policy. Indian leaders distanced themselves from traditional use and the eradication of drugs became an avowed policy goal. In 1930, the Dangerous Drugs Act was enacted and sought to extend and strengthen control over drugs derived from coca, hemp (cannabis) and poppy plants by regulating the cultivation, possession, manufacture, sale, domestic trade and external transactions through licenses and penalizing unlicensed activities<sup>8</sup>. There were no offences attached to cannabis or to drug consumption. The framework of the Dangerous Drugs Act continues to prevail in the current legislation, especially the statutory definitions for coca, opium, hemp and their derivatives, the category of 'manufactured drugs' and the division of rulemaking powers between the central and state governments. The Drugs and Cosmetics Act, 1908 was adopted for the regulation of medicinal drugs including cannabis and opium. The Dangerous Drugs Act, however, continued to apply. At the time of independence, gained in 1947, narcotics were a heavily regulated commodity as 'dangerous' substances, medicinal products, as well as goods subject to excise tax. This position continued post-independence. With the adoption of the Indian Constitution in 1950, all laws became subordinate to constitutional provisions, in particular, fundamental rights. There were some challenges to drug laws on the grounds that they were discriminatory and contravened farmer's freedom of trade and occupation. The cases, however, were unsuccessful. Courts relied, among other things, on India's international drug control commitments to justify the restrictions on cultivation, use and trade. The prohibitionist sentiment became further entrenched by way of Article 47 of the Constitution which states: "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". Although, these Directive Principles of State Policy are non-enforceable. This provision is frequently invoked to justify punitive drug policies. It is expected that laws such as Narcotic Drugs and Psychotropic Substances Act 1985 can control the misuse of Drugs in India. It can also provide tools which make law enforcement safer for all agencies working to control drug abuse. The

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<sup>8</sup> [http://files.server.idpc.net/library/IDPC-briefing-paper\\_Drug-policy-in-India.pdf](http://files.server.idpc.net/library/IDPC-briefing-paper_Drug-policy-in-India.pdf)

study examined the usefulness and role of various agencies under Narcotic Drugs and Psychotropic Substances Act 1985 to control the drug abuse in India and provide justice.

### **Research Methodology**

The study has been a desk based research and thus based on secondary data. The secondary data was compiled from books, academic journals, case studies, and newspapers. Official documents and publications of the concerned authorities and Internet sources were also of valuable help. The role of drug abuse enforcement agencies and their usefulness has been analysed in the light of decided cases by the Supreme Courts and High Courts.

### **ENFORCEMENT AGENCIES**

The problem of drug abuse is handled by three different Ministries of the Central Government. The Ministry of Welfare deals with the assessment of the nature and extent of drug abuse, action necessary to control it, dissemination of information and knowledge, and the publicity campaigns. The Ministry of Health takes care of the medical treatment of addicts. The enforcement of narcotics law is the responsibility of the Ministry of Finance. Till the coming into force of the Narcotic Drugs and Psychotropic Substances Act, 1985<sup>9</sup> on the 14<sup>th</sup> November, 1985, only the State Police or the State Excise could investigate drug offences and prosecute the offenders. The officials of some of the other government departments, namely, Customs, Central Excise, Narcotics, Drug Control and Revenue, had the limited powers of search, seizure and arrest. The seized contraband drugs and the arrested persons had to be handed over by such officials to the State Police or the State Excise for further proceedings; State Police overburdened with the investigation of more serious crimes, law and order duties, and security arrangements etc., the police could hardly devote much attention to drug offences. Therefore, the Act, 1985 sought to confer equal powers under the Act on a number of agencies of the Central Government as well as the State Governments. The officers of the specified rank in the Central Government agencies, namely, Customs, Central Excise Narcotics, Revenue Intelligence, central Economic intelligence Bureau, and Narcotics Control Bureau, have been authorized to exercise powers of search, seizure, arrest and investigation under the provisions of the NDPS Act, 1985<sup>10</sup>. The State Governments are also authorized by the Act to confer these powers on the officers in the departments of police, excise, revenue, drug control or any other

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<sup>9</sup> <https://legislative.gov.in/sites/default/files/A1985-61.pdf>

<sup>10</sup> <https://legislative.gov.in/sites/default/files/A1985-61.pdf>

department under their control. The agency wise seizure data for the whole of India for the year 1991 for illustrating the effective striking power of each agency engaged in the drug law enforcement was studied and it was concluded that while the Narcotics Control Bureau has made big seizures, the police has been more effective in detecting larger number of cases involving comparatively smaller quantities of drugs. The following agencies were part of the study conducted:

- a) Narcotics Control Bureau.
- b) Revenue Intelligence.
- c) Customs & Central Excise.
- d) Central Bureau of Narcotics.
- e) Other Central agencies.

Each agency has apparently its own sphere of influence, and involving all these agencies equally in the drug control effort from 1985 onwards has been a step in the right direction<sup>11</sup>. As the Narcotics Control Bureau was constituted in 1986 for co-ordination between these agencies, its role and functions are critically examined hereunder.

#### **NARCOTICS CONTROL BUREAU:**

The Narcotics Control Bureau, NCB<sup>12</sup> for short, was constituted on the 17<sup>th</sup> March, 1986 by the Central Government in exercise of the powers conferred on it under sub-section (3) 6 of Sec. 4 of the NDPS Act, 1985. It was assigned the function of (i) Co-ordination of actions by various officers. State Governments and other authorities under the NDPS Act, 1985, the Customs Act, 1962, the Drugs and Cosmetics Act, 1940 and any other law having connection with the enforcement of the provisions of the NDPS Act<sup>13</sup>; (ii) Implementation of the obligations under international treaties and conventions relating to drug trafficking; (iii) Assistance to the concerned authorities in foreign 224 countries and concerned international organizations;<sup>14</sup> (iv) Co-ordination of action taken by the Ministry of Health and Family

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11 The Hindustan Times, New Delhi, 10 March 1990

12 <http://narcoticsindia.nic.in/>

13 The Statesman, New Delhi, 26 April 1990

14 The Times of India, New Delhi, 13 June 1991. 241

Welfare, the Ministry of Welfare and other concerned Ministries, Departments or organizations in respect of matters relating to drug abuse.

The NCB has its headquarters in New Delhi, and is headed by a Director General, who is assisted by Deputy Director Generals, Deputy Directors and Assistant Directors. The organization has zonal offices at Bombay, Calcutta, Jodhpur, Delhi, Madras and Varanasi, and a regional office at Imphal<sup>15</sup>. Its jurisdiction extends throughout India but it has staff strength of less than 300 officials of all ranks drawn from the departments of Customs, Central Excise, Police and Income-tax, on deputation for a period of 2 to 3 years. The shortage of staff is the biggest disadvantage with this organization. A handful of officers can hardly be expected to control drug trafficking which is rampant throughout the country. Its counterpart agencies in USA, the Drug Enforcement Administration and the FBI had about 3,000 and 1,200 drug enforcement agents respectively in 1988<sup>16</sup>. In 1989, the Narcotics Control Board in Pakistan, one-fifth in size as compared to India, had as many as 4,000 officers while the NCB in India was manned by only 164 personnel<sup>17</sup>. In March, 1991, commenting about the shortage of adequate staff and resources in the NCB, the Bureau of International Narcotics Matters, US Department of State, observed "The Government of India has not provided the NCB with adequate 9225 personnel and resources to monitor and to interdict the growing trafficking network"<sup>18</sup>. Pointing out the unsatisfactory performance of the NCB due to the acute shortage of staff, the Hindustan Times, an English daily, in its editorial dated 1st August, 1989 had asked: "How the NCB with just 106 officials is going to combat such a grave situation. The state of its preparedness and strength could be seen from the fact that only a batch of 10 officials has to look after 11 regions comprising seven north-eastern states, West Bengal, Sikkim and Andaman and Nicobar Islands". At present also, the position is more or less the same. The working of NCB is greatly affected by the inter services rivalry amongst its own ranks as the officers belong to the different services. The police officers, in particular, resent the manning of the NCB by officers from Customs or Income-tax departments. It is desirable that the NCB should have its own regular cadre as the officers on deputation for 2 to 3 years may not be fully prepared and accustomed to the challenging demands of the organization. The NCB is ill-equipped to co-ordinate between the Ministry of Health and Family Welfare, the Ministry of Welfare and other concerned Ministries, a role assigned to it, due to the reason that the head of

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15 The Indian Express, New Delhi, 1st July 1991

16 The Pioneer, Lucknow, 15 July 1992; The Times of India, New Delhi, 14 July 1992

17 The Hindustan Times, New Delhi, 14 February 1992

18 The Sentinel, Guwahati, 29 April 1992

the agency is himself of a rank junior to the Secretary to the Government of India, and reports to the Revenue Secretary or to the Finance Secretary, in the institutional and structural terms of hierarchy, he will not be in a position to pull enough weight with the Secretaries in the Ministry of Health and Family Welfare or the Ministry of Welfare. Unless the Director General of the narcotics Control Bureau is at least of the rank of a Secretary, there is little chance of effective co-ordination between different Ministries<sup>19</sup>. Therefore, the NCB's role needs to be restricted to co-ordination amongst various law enforcement agencies only. Inter -ministerial co-ordination can be entrusted to the Cabinet Secretary who may head a committee of Secretaries of the concerned Ministries which may be constituted for the purpose<sup>20</sup>. Regarding co-ordination between various enforcement agencies, there is a lack of any structured system<sup>21</sup> for such co-ordination or sharing of vital information. The NCB has not been effective as a coordinating agency as it also acts as a field enforcement agency which makes it a competitor amongst other enforcement agencies. Most of such enforcement agencies are reluctant to share any intelligence or information with the MCB due to the apprehension that the latter may also jump into the field and take unwarranted credit for any seizures made pursuant to such intelligence or information. Thus, the dual role of acting as a coordinating agency as well as a strike force adversely affects the NCB's performance.

#### **EFFECTIVENESS OF LAW ENFORCEMENT MACHINERY:**

A recent study sponsored by the Ministry of Welfare of the Central Government, concluded that the *"effectiveness of law enforcement is generally rated as very low"*. The increasing number of addicts and drug traffickers is by itself an indicator of the poor law enforcement. The effectiveness of the enforcement agencies has been analysed with reference to the State of Manipur in the north eastern region of India. The number of heroin addicts in Manipur in 1991, according to the official sources, was about 30,000. The private sources put this number at 40,000<sup>22</sup>. Assuming that each addict consumes an average of one-fourth of a gram or 250 mg. of heroin daily, the annual consumption comes to 2737.5 Kg. for 30,000 addicts<sup>23</sup>. Apart from the quantities consumed within Manipur, large quantities of heroin from Myanmar transit through this state on their way to other states in the north-eastern region as well as to the eastern

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19 The Pioneer, Lucknow, 12 August 1992

20 The Times of India, New Delhi, 6 December 1992

21 The Times of India . New Delhi, 6 August 1993

22 News report, "Nigerian drug smugglers at it". The Statesman, New Delhi, 8 August 1991; news report, "Smuggling deadly drug via their bellies". The Indian Express , Bombay, 10 April 1992; and news report

23 "The ingenious ways of drug traffickers". The Times of India, New Delhi, 24 December 1992. 46 JLD.



region. Out of tonnes of heroin so consumed within and passing through Manipur, all the agencies of the Central Government as well as the State Government were able to seize a meagre quantity of 18 only 2.7 Kg, throughout the year 1991. The reasons behind the poor performance of enforcement agencies are indicated below Drug Law enforcement - Secondary responsibility. All the enforcement agencies, other than the NCB, accord low priority to the drug offences as the enforcement of the NDPS Act, 1985 is only an additional responsibility for them. The Police are engaged mainly in investigation of the IPC offences, law and order, security and miscellaneous duties. The department of Customs and Central Excise is more concerned with the collection of revenue. The main responsibility of the State Excise and Taxation also is to collect revenue for the State Government. For the Drug Control department, the enforcement of the Drugs and Cosmetics Act, 1940 is the principal function. The Directorate of Revenue Intelligence, and the Central Economic Intelligence Bureau are entrusted primarily with the responsibility of detection of economic offences. Lack of training

The Project Director of a recent government-sponsored study on drug abuse in Puri and Bhubaneswar recommended that the drug laws “*may be communicated properly in the local language first to the Police and then to the public*”. The Project Director of a similar study in Calicut reported: “*It is seen that the enforcement officials are not fully aware of the contents of the Act*”. A study of the judgements of various High Courts and the Supreme Court in cases relating to the NDPS Act, 1985 also reveals that the enforcement officials are generally ignorant of the basic provisions of the Act, and commit numerous procedural irregularities during the investigation. Such ignorance accounts for the failure of prosecutions in a very high percentage of cases. The training programmes on narcotics are generally of the duration of three days to fifteen days. Obviously, the trainees can hardly grasp much about the technicalities of the drug law in such short periods. They get even a poorer idea about the other aspects, for example, the nature of drug abuse, factors responsible for drug abuse and illicit trafficking the role of treatment and rehabilitation of addicts, and their own role in creating public awareness against drug abuse. Consequently, the enforcement officials may perceive drug abuse to be merely a criminal conduct for which punishment is the only solution. A vast majority of the enforcement officials have received no training in the narcotics law due to the lack of facilities and necessary infrastructure. Immediate remedial action is warranted in this direction. Under the provisions of the NDPS Act, 1985, the enforcement officials have also been assigned the task of tracing and identification of illegally acquired property held either by the trafficker himself or by his relatives or associates. It is well-known that such property is held, transferred and earned through intricate banking or commercial transactions. A common

enforcement official can hardly be expected to be conversant with such intricacies. It is, therefore, desirable that the officials having relevant educational qualifications and experience may be specifically trained for discharging such functions, and a special task force, manned by these trained personnel, may be raised for effective implementation of the provisions relating to forfeiture of drug-related property. Rivalry the enforcement agencies do not share, due to mutual rivalry, their intelligence with each other even when they are working in the same field and same geographical area. At times, many agencies work simultaneously, without informing each other, on the same case, resulting in frustration of the efforts of all the agencies involved. Corruption organized crime cannot survive for long without the connivance of some of the enforcement officials. Illicit drug trade, in particular, generates so much profit that the traffickers can conveniently buy off a few officials in the enforcement and the judiciary. There is, of course, no dearth of honest and conscientious enforcement officials too. However, they may rarely get strategically placed. Even if they happen to occupy sensitive positions and are able to book a few offenders, they may have no occasion to see such offenders finally convicted and punished as the trials take too long while such officials get transferred frequently. Their successors may not have the same level of zeal to pursue the fight to the end. Regarding corruption amongst enforcement officials in India, the Bureau of International Narcotics Matters, US Department of State<sup>24</sup>, observed in a recent report: *“The United States Government receives reports of public corruption from both media and other sources. We cannot verify these reports fully or independently, however, there is reason to believe that corruption significantly diminishes Government of India counter-narcotics effectiveness. The Government of India maintains its willingness to prosecute corrupt officials, but has seldom done so”*. The instances where some of the low-level enforcement officials or officials in similar positions have themselves indulged in illicit trafficking, are not very uncommon. Their knowledge about the underworld as well as the detection techniques and procedures, gives them an added advantage. Following are some of the cases detected and reported in the express:

(i) November 21, 1989

(ii) January 3, 1990

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<sup>24</sup>[https://www.state.gov/about-us-bureau-of-international-narcotics-and-law-enforcement-affairs/#:~:text=The%20Bureau%20of%20International%20Narcotics,United%20States%20from%20Latin%20America.&text=To%20reflect%20its%20expanded%20mission,Affairs%20\(INL\)%20in%201995.](https://www.state.gov/about-us-bureau-of-international-narcotics-and-law-enforcement-affairs/#:~:text=The%20Bureau%20of%20International%20Narcotics,United%20States%20from%20Latin%20America.&text=To%20reflect%20its%20expanded%20mission,Affairs%20(INL)%20in%201995.)

- (iii) March 8, 1990
- (iv) April 25, 1990
- (v) June 11, 1991
- (vi) June 30, 1991

Heroin worth Rs. Five lakh seized at Madras from three constables of the City Crime Branch. Heroin worth Rs.1.5 Crore seized from a Delhi police Constable by: Seema Puri Police Station Officials. Delhi Armed Police Constable arrested with 8 Kgs. of opium in his possession. A havildar of the National Security Guards arrested at Delhi while trying to sell about 4.530 Kgs. of Hashish. A dismissed Inspector of Delhi Police arrested by Bhopal Police on the charges of peddling narcotic drugs. Narcotics Control Bureau arrested a police constable and his friend at Madras with 2 Kgs. of Heroin worth Rs. 2 Crore in the international market. February, 1992, Three senior Kerala police officers including a Deputy Superintendent of Police suspended on the ground of having sold 88 Kgs. of seized Cannabis for Rs.15 lakh. An SRP jawan arrested while selling 200 gms. of opium and 200 gms. of charas near Central Jail area in Rajkot. Two police officers arrested at Guwahati while finalising the deal for sale of 1 Kg. of Heroin seized on the spot. An Assistant Sub-Inspector of Police (CID), Aizawl caught by Mizoram Excise authorities while he was trying to sell 1225 Kgs. of raw opium. A police officer arrested by the Excise department in Cuttack for alleged possession of 23 gms. of brown sugar. December 4, 1992: A warder of Tihar Jail, Delhi caught with 50 gms. of narcotics on him while on duty. August 5, 1993: A constable of the Jammu and Kashmir Armed Police arrested with charas worth Rs. 1 crore. Indirect involvement or connivance of the enforcement officials, at least in a small percentage of cases of drug trafficking, cannot thus be ruled out, although direct evidence cannot be easily established at this stage. Faulty system of rewards The Government has a system of payment of cash rewards to the enforcement officials seizing contraband drugs. The amount of reward is based on the type and quantity of drug seized. As the reward is linked only to the seizure of the drug, and not to the success of prosecution launched against the offender in the court of law, the enforcement officials have little interest in properly investigating the case or seeing it vigorously pursued in the court

#### **ENFORCEMENT BOTTLENECKS:**

The enforcement officials do encounter impediments in the effective discharge of their duties.

These impediments are briefly outlined below. Lack of public support. There is no co-operation from the public in them after detection or investigation of the offences under the NDPS Act, 1985. Unlike in the case of other crimes, the actual victim of a drug offence i.e. the addict is least interested in getting the perpetrator of crime convicted or punished. The people at large are disinclined to involve themselves in matters connected with the persons dealing in drugs<sup>25</sup>. The lack of willingness on the part of the members of general public, to associate themselves as witnesses to the search and seizure, often frustrates the efforts of the enforcement agencies to secure conviction of an offender. The law does provide a remedy for this situation, but it lacks practicability, as pointed out earlier in this work. Legal restraints. A statement by any person before an authorised officer of Customs, Central Excise, Revenue Intelligence, Border Security Force and a number of other departments, during investigation of an offence under the NDPS Act, 1985, is admissible in evidence by virtue of Sec.53A of the Act. However, if such a statement has been made before a police officer, it will be inadmissible in evidence by virtue of Sec.25 of the Indian Evidence Act, 1872 except under circumstances mentioned in Sec.27 of the said Act. This puts the police officers in highly disadvantageous position when compared to the officials from other departments in the matter of investigation of cases under the NDPS Act, 1985. Therefore, there is a need for amending Sec.53A of the NDPS Act so as to give it overriding effect over Sec.25 of the said Evidence Act. There is no specific provision in the NDPS Act, 1985 or any other law for permitting use of the 'controlled delivery' technique by the enforcement agencies. The 'controlled delivery' of drugs involves transportation of illicit drugs from one country to another under controlled conditions with the knowledge and consent of the law enforcement machinery of each country through which the consignment passes. The aim of 'controlled delivery' is to allow the consignment of illicit drugs to move up to the destination under the continued surveillance of the law enforcement officials so that the actual consignor and consignee may be identified, instead of merely seizing the contraband drug and apprehending the couriers who may not know the master-minds behind the transaction. Article 11 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988<sup>26</sup> stipulates that if permitted by the basic principles of their domestic legal systems, the Parties to the Convention shall take the necessary steps to allow for the appropriate use of 'controlled delivery' at the international level with a view to identifying persons involved in drug trafficking offences. India is a party to this Convention, and hence, a law sanctioning

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<sup>25</sup> <https://www.unodc.org/e4j/en/organized-crime/module-8/exercises/case-studies.html>

<sup>26</sup> [https://www.unodc.org/pdf/convention\\_1988\\_en.pdf](https://www.unodc.org/pdf/convention_1988_en.pdf)

the use of 'controlled delivery technique should have been enacted to make it convenient for the law enforcement machinery to apprehend the persons engaged in the international drug trafficking activities. Lack of technological support the drug traffickers deploy latest modes of communication, fastest modes of transport and the most sophisticated weaponry. The enforcement agencies, on the other hand, are ill-equipped to match the resources utilized by the drug mafia. The modes of concealment of drugs also defy the traditional systems of detection. For example, the couriers put the drug in the condoms or the finger -parts of the surgical gloves and swallow these after sealing the open ends by a thread. The drug remains in their stomach during transit, and is ejected through bowel movement on reaching the destination. This technique is adopted world-wide for smuggling of heroin and cocaine. The enforcement agencies still rely on the manual methods for maintenance of records or analysis of the intelligence reports. The use of computers or the modern gadgets for crime detection remains a distant dream for such agencies at the field and operational level. Lack of legal assistance, there is no system of associating legal experts with the investigation of a case by any enforcement agency. Therefore, the enforcement officials, having no formal or informal training in law, tend to overweigh the evidence without bothering about the admissibility or otherwise of any piece of such evidence. They also fail to appreciate the relative importance of the statutory provisions. Resultantly, the investigation suffers from numerous chronic legal flaws and leads to the acquittal of the accused by the courts, as analysed in the preceding Chapters. The enforcement agencies do not have any regular cadre of public prosecutors in the courts also. The public prosecutors, who conduct the cases on behalf of the government, are private advocates on the government panel. They are paid a fixed fee for each hearing. As the delays in conclusion of a trial or the frequent adjournments will only earn a larger fee for them, they show little interest in expeditious decision of the case. The panel advocates are not accountable directly to the enforcement agencies, and the latter have no option but to see a case handled or mishandled by a panel advocate. On the other hand, the drug traffickers have the financial resources to engage the best legal brains in the country. In this unequal legal battle, it is generally the drug trafficker who having emerged victorious expands his illegal regime. Unless each enforcement agency has its own cadre of regular and salaried public prosecutors and legal advisors, the conviction rate for drug offences may continue to be as low as it is at present. Frequent transfers, it is a fixed norm in the government set-up that an officer is transferred to another post after every two to three years. Whatever may be the intention behind following such a practice, it has definitely caused a set back to the drug control efforts. The success of any enforcement official depends primarily on the engagement of reliable informers

by him. The recruitment of informers takes a fairly long time for the obvious reason that winning the faith of an Informer, who runs considerable risk to his life particularly if he has been passing on the information regarding drug trade, is by no means an easy task. On transfer of the officer, the informers recruited by him are lost as the transferred officer may not introduce his informers to his successor, unless the former has unfailing faith in the integrity of the latter, and the informers are also willing to work with the new officer. The frequent transfers adversely affect the pending prosecution cases also. The officer who detects a case pursues the prosecution of the accused with utmost zeal but his successor may show lukewarm response to the old cases as the success of such cases will not bring any credit to him personally. To sum up, the performance of enforcement agencies is adversely affected by the shortage of staff, lack of training, corruption, absence of public co-operation, statutory shortcomings, and insufficiency of necessary technological support, lack of legal assistance, and faulty policies as regards rewards and transfer of the enforcement officials.

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