



A critical appraisal of law & policy on prevention and control of narcotic drugs and psychotropic substances in India

Yasir Latif Handoo¹, AB Latif Wani², Fared Ahmad Rafiqi³

¹ Ph.D. Scholar, School of Law, University of Kashmir, Jammu & Kashmir, India

² Former Dean & Head, School of Law, University of Kashmir, Jammu & Kashmir, India

³ Associate Professor, School of Law, University of Kashmir, Jammu & Kashmir, India

Abstract

The drug abuse is no longer considered a 'victimless' crime. It is a crime that imposes a staggering burden on the people and the nations of the world. It is a burden no society can afford to carry. The illicit production, distribution and consumption of drugs have depraved and corrupted public servants, and have even destabilized governments. The erratic ebb and flow coupled with an enormous volume of drug money have adversely affected the money supply and exchange market. The paper has tried to assess the manner and magnitude of the National framework of law to control drug menace along with the nuances of International commitments. It also highlights the need to relook the legislative intent of sentencing scheme for NDPS cases keeping in view the current alarming rate of socio economic offences by referring to case laws. Thus, the present article is an objective attempt to elucidate the present system of Law and Policy framework for prevention and control of offences committed under NDPS Act, 1985, PITNDPS and appropriate suggestions to improvise the situation.

Keywords: sentencing, drug offences, sentencing guidelines, drug report, NDPS, PITNDPS etc.

1. Introduction

The menace of drug abuse is quite horrific and challenging in the contemporary society. Krishna Iyer, J. while quoting Karl Marx, observed ^[1]:

Religion is opium of the people, but today opium is the religion of the people, and like God, is omnipresent, omnipotent and omniscient. Alas! Opium makes you slowly ill and eventually kills, makes you a new criminal to rob and buy the stuff, tempts you to smuggle at risk to become rich quick, makes you invisible trafficker of psychotropic substances and operator of a parallel international illicit currency and sub rosa evangelist mafia culture. Drug business makes you if not killed betimes, the possessor of pleasure, power and empire what noxious menace is this most unescapable evil that benumbs the soul of student, teacher, doctor, politician, artists and professional, and corrupts innocent millions of youth and promising intellectuals everywhere.

The drug menace is multidimensional which involve not only production, distribution, supply of drugs across the globe coupled with huge network of money laundering, on an international scale with a criminal facility offered by drug trafficking. To quote the succinct words of drug abuse by the legendary, Krishna Iyer, J reproduced as under ^[2].

The global scenario, in its *somber macabre* (in gloomy and gruesome way), devouring delinquency, is dominated by drug

abuse and narcotic trade. These secret operations are now so ubiquitous that we all are unsuspecting victim through process so subtle, techniques so seductive and prospective so alluring that the world community is now confronted by a cosmic enemy - this insidious narcotic and psychotropic drug problem. Our planetary patriotism or commitment to human survival compel us, wherever we are, whatever be our other difference, to line up for the campaign against NDPS and all powerful drug imperialism. No single country, ruler, party or power can conquer the pathological fascination for psychotropic substance under various disguise; and so, worldwide movement, militant, compassionate, multipronged and soulfully committed to the salvation of our generation from the dreadful addition to drug - is the desperate desideration. Therefore, we must re-deem our trust with the mankind's drug-free destiny. We are constitutionally bound to this massive undertaking. Whatever your party to be, humanist takes priority over politics. The war against narcotics is a world war and anti-drug justice is a critical dimension of social justice.

2. Constitutional Perspective

The constitution of India mandates the State, to protect public health and to endeavor to prohibit the consumption of drugs which are injurious to health ^[3]. It is because of this

¹ Krishna Iyer.V.R., "Narcotic Aggression and Operation Counter Attack", March 7, 1992, Mainstream

² Ibid at p.11

³ Article 47 of the Constitution reads: Duty of the State to raise the level of nutrition and the standard of living and to improve public health 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

constitutional pledge that NDPS Act, 1985 has been passed^[4]. India is a party to International instruments calculated to wipe out drug abuse^[5]. She is also a party to United Nation Single Convention on Narcotic Drugs, 1961^[6], the 1972 UN Protocol amending the Single Convention and the 1971 UN Convention on Psychotropic Substances^[7]. According to the latest report the drug abuse is increasing and calling for more coordinated attempt across the board^[8]. It is a fact that 'Law Is What Law Does', it seems drug abuse is on increase globally despite the general awareness about its disastrous effects^[9]. According to the International Narcotic Control Strategy Report (March 1991) published by United States Bureau, the status of enforcement in India is poor... The courts are overburdened with dockets and so unless Special Narcotic Courts are started no progress can occur to control it.

3. Need for Sentencing Guidance

Under NDPS Act, 1985, narcotic offender carries the maximum punishment of death sentence or life imprisonment, as the case may be. Under this law the sentencing strategy is mandatory and same is true with those laws that are enacted for most of socio-economic offences. There are large factors which could increase or decrease the sentence. It is noted that law on narcotic offences was changed many times; facing mandatory minimum punishment for the offenders but our experience says that it again proved to be an exercise in futility as the crime rate in socio-economic offences is on alarming stage. It is seen that Courts take into account the circumstances of the offender.

consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health. Constituent Assembly of India - Volume VII

⁴ See the objects and reasons of NDPS Act: ... To consolidate and to amend the existing laws relating to narcotic drugs a comprehensive legislation was considered to be necessary. Accordingly the Narcotic Drugs and Psychotropic Substances Bill, 1985 was introduced in the Lok Sabha on 23rd August, 1985.

⁵ The government of India has ratified the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. India further signed a US-India bilateral agreement on anti-narcotic cooperation.

⁶ This Convention aims to combat drug abuse by coordinated international action. There are two forms of intervention and control that work together. First, it seeks to limit the possession, use, and trade in, distribution, import, export, manufacture and production of drugs exclusively to medical and scientific purposes. Second, it combats drug trafficking through international cooperation to deter and discourage drug traffickers.

⁷ UN Protocol amending the Single Convention and the UN Convention on Psychotropic Substances

⁸ Report of the International Narcotics Control Board for 2014

⁹ The crusade against drug problem and thinking process for stringent punishment was started early in 1909, internationally, Various international drug treaties were concluded between 1912-1972 that provides basis for drug control system to which India stands a signatory. Such International instruments for this purpose are as follows:

Opium Commission and Hague Convention (1912- Shanghai); 1925 Convention (Geneva). 1931 ; Convention (Geneva); 1936 Convention (Geneva); 1925 Agreement (Geneva) ;1931 Agreement (Bangkok); United Nations Protocol, 1946; United Nations Protocol, 1948; United Nation Protocol, 1953; United Nations Single Convention on Narcotic Drugs 1961; United Nations Protocol, 1972- amending the Single Convention 1961; United Nations Convention on Psychotropic Substance, 1971; 1981 International Drug Abuse Control Strategy; 1984 Declaration on the Control of Drug Abuse; 1987 International Conference on Drug Abuse and Illicit Trafficking; United Convention, 1988 against Illicit Traffic in Narcotic Drugs & Psychotropic Substances; 1990 Global Programme of Action; UNGASS-2010; World Drug Report-2018.

In case of *State of M.P. v/s Basodi*^[10], the Supreme Court while laying down the general contours of sentencing policy succinctly observed:

...in India we need sentencing system which can be based on facts and circumstances of each and every case, nature of crime, the manner in it was planned and committed, then motive for commission of the crime, the conduct of accused, nature of weapons, all other attending circumstances are relevant facts for consideration for making sentencing policy...

In case of *State of M.P. v/s Sheikh Shahed*^[11] the apex court advocated for the need for a proportionate sentencing guideline.

In case of *State of U.P. v/s Sanjay Kumar*,^[12] the court remarked:

Sentencing policy is a way to guide discretion in accomplishing particular sentencing. Generally, two criteria's are seen: the seriousness of the crime and the criminal history of the offender, which can be used to prescribe punishment.

From the foregoing trend set by the apex court, it becomes evident that Indian sentencing policy is yet to bloom a full turn. However, the pioneering attempt to arrest drug abuse through NDPS Law, has set an example for the whole world by giving mandatory punishment scheme, though the other countries have developed a far sighted sentencing strategy. Problem lies in its proper implementation and enforcement of these special and local laws^[13].

4. Menace of Drug Abuse: A General Profile

A cursory study of drug abuse pertaining to socio-economic offences, like narcotic crimes, it has increased manifold since past decade as per the figures of 2016 NCRB data,^[14] which depict the incidence of socio-economic offence under IPC and SLL including of narcotic drug offence in India and the overall rate of incidence of IPC and SLL Crimes as 581.8 (Rate of Crime); 90.3 (Charge Sheet rate); and 80.0 (Conviction rate). The research suggests that still conviction rate in SLL crimes is overall very low. The table 1 top five states in 2015 where maximum of seizures of drugs have been made including from our State of J & K. Further to add here, recently during 2016-17 year, it was reported that State Police has seized 17000 kgs. Of drugs from drug peddlers across the State and cases have been registered by State Crime Records Bureau (J & K)^[15]: Recently, on 1st July, 2018 the J & K police have seized 45 Kg of Heroin worth crore of rupees in Jammu city which means this high end drugs are now being trafficked frequently.

¹⁰ (2009) 12 SCC 318.

¹¹ AIR (2009) SC 2951. Per Justice Arijit Pasayat

¹² 2012 (8) SCALE 3 para 15. Per Justice Swatantar Kumar

¹³ This can be gathered by the survey conducted by the author discussed in later part of the write-up.

¹⁴ See Table 1 for NCRB – Crime in India – Compendium (2016)

¹⁵ News published in Greater Kashmir, dated 04-01-2018.

Table 1

SL	Opium (in KGs)	Heroin (in KGs)	Ganja (in KGs)	L.S.D. (Sq. Paper) (in KGs)	Charas (in KGs)
1	Tripura (1,46,400)	Assam (739.3)	Assam (1,12,818)	Rajasthan (67,212)	Uttarakhand (12,373.3)
2	Manipur (3,064.8)	Punjab (428.9)	Karnataka (38,094.6)	Uttar Pradesh (5,765.2)	Uttar Pradesh (901.3)
3	Rajasthan (660.8)	Jammu & Kashmir (419.7)	Uttar Pradesh (31,184.8)	Karnataka (128.0)	Haryana (525.1)
4	Punjab (120.9)	Haryana (274)	Nagaland (23,191)	Kerala (12.0)	Himachal Pradesh (283.3)
5	Haryana (143.2)	Maharashtra (235.8)	West Bengal (17,990.4)	Goa (0.1)	Punjab (77.4)
	All India Total (1,51,059.7)	All India Total (2,505.5)	All India Total (3,08,939.6)	All India Total (73,117.3)	All India Total (14,554.0)

Note: Seizures of drugs may also include in other unit of measurements.

5. World Drug Report-2018

Non-Medical Use of Prescription Drugs is becoming a Major Threat ^[16]. On the eve of International Day against Drug Abuse (26th June, 2018), United Nations Office on Drugs and Crime (UNODC) released its report on “The non-medical use of prescription drugs” ^[17] and reveals that it is becoming a major threat to public health and law enforcement worldwide with opioids causing the most harm and accounting for 76 per cent of deaths where drug use disorders were implicated. Fentanyl and its analogues remain a problem in North America, while tramadol - an opioid used to treat moderate and moderate-to-severe pain - has become a growing concern in parts of Africa and Asia including mainly India.

Since the concept of drug offences under NDPS Act, 1985 has been elaborately explained after 32 years of enactment of NDPS Act. The present penologists and criminologists need to upgrade better or effective sentencing policy because when we look at the high prevalence of drug offences, its illicit trade and trafficking happening rampantly in our society. As per the present work, the attitude of judiciary towards the drug offender has changed since last decade, but still such crimes are happening at alarming rate and therefore courts also need to upgrade changing sentencing attitude continuously. It is also seen that if the guilt is established mostly, in high profile or influential cases, they get easily acquitted or being released on bail, which is a real fallacy on part of those courts, because by one or other way judiciary is also influenced to some extent. Basically money factor lures everyone and judiciary and police rather using their so called *Iron fist*, surprisingly they manipulate their acquittal.

6. National Drug Dependence Treatment Centre (NDDTC).

The National estimates reveal that the Social Justice and Empowerment Ministry has constituted a committee to undertake a survey on the use and abuse of drugs in the country; the last survey (2001) is over 15 years old. The panel comprises of senior ministry officials as well as members of AIIMS- National Drug Dependence Treatment Centre

(NDDTC). Professor Rakesh Kumar Chadha, NDDTC chair, said the survey should be started by 2018 end. The department is aiming to finish an exhaustive survey by 2018. Earlier, the committee met on May 9, 2015 to plan the survey which was also taken up at a meeting of Council of Ministers with PM Narendra Modi on May 15, 2015. The proposal came in 2015, but the ministry has failed to finalize an agency for it till now. The Narcotic Drugs and Psychotropic Substances Act, 1985 provides for conducting surveys on drug use and abuse every five years. However, no such study has been conducted even after that. Last August, the number of people estimated to be affected by drugs stood at 7.21cr ^[18]. Unfortunately, the law enforcement agencies like Narcotic Control Bureau, a nodal agency including police struggling the problem of drug abuse has a responsibility to educate the public about the drugs and to prevent drug abuse in addition to this the high entrance standards, thorough background checks, a professional code of ethics, and the nature of the job all appear to be factors that will help Law enforcement minimize its own drug abuse problems ^[19]. A need for departmental policy on drug testing should be established and what the best procedure would be for carrying out the policy must be established.

7. The Narcotic and Psychotropic Act, 1985: A Relook

We know that NDPS Act got enacted in year 1985 with a view to consolidate and amend the law relating to narcotics drugs. Secondly to made stringent provisions for control and regulation of operations relating NDPS and also to implement the international regulations on drug policy ^[20].

In order to understand the ambit and force of the Act, the Hon'ble Supreme Court in the case of *State of Punjab v.*

¹⁶ Report on World Drug Scenario presented by United Nations Office on Drug Crime-2018.

¹⁷ Quoted from Executive Summary of the World Drug Report, (UNODC), 2018.

¹⁸ Gogona Saikia, “National Survey on Drug Abuse in India after 15 years, 09 May 2017.

¹⁹ Harvey, J. Harvey. “Drug Abuse and Testing Law Enforcement – No Easy Answers” CBI condensation CBI Bulletin, Sept. Oct. 1991. P. 15.

²⁰ The Act prescribes definitions besides dealing with powers of the Central Government to take measures for effectively combating abuse of and illicit traffic in Narcotics drugs and to appoint officers to exercise powers under the Act, prohibition, control, regulation of the cultivation of Narcotic plants, e.g. Opium, Poppy etc. and to regulate possession, transport, purchase, and consumption thereof. It also Deal with various offences, penalties for violation and prescribe deterrent sentences; procedures regarding entry search, seizure and arrest. It deals with forfeiture of property derived from or used in illicit traffic of narcotic drugs.

Balbir Singh^[21] held:

The provisions of sections 52 and 57 which deal with steps to be taken by the officers after making arrest or seizure under section 41 to 44 are by themselves not mandatory. Similarly, Sections 42 and 50 though mandatory yet they are to be interpreted in a pragmatic way so that its compliance is possible for execution while dealing with persons involved in drug trafficking. For in the present case, the SHO of a police station in motion in a jeep car on patrolling duty his job is first to apprehend the accused instead of getting busy in informing his superior officer and give chance to the accused to escape. For Section 50 oral compliance about right of accused is valid compliance. Section 57 requires a report of superior officers within 48 hours is not superior officers with 48 hours is not mandatory.

It is necessary to ponder upon strategy pertaining to Narcotic drugs in India. To implement the NDPS abuse, we need a separate enactment because at pre-trial stage the implementation of NDPS Act is less forthcoming as the accused by that time is sent out on bail^[22].

8. Philosophical approach of sentencing: An argument

Punishments should be proportionate as per Supreme Court or commensurate to the gravity of offence. Religion, race, caste, economic or social status of the accused or victim are not relevant factors for determining the quantum of punishment. The court has to consider and decide the punishment after considering all aggravating and mitigating factors and the circumstances in which the crime has been committed and age of the victim assaulted or a victim of narcotic drug or brunt if socio economic on individual or society concerned. And therefore the gravity of the criminal activity (in clandestinely manner in narco cases) is factors of paramount importance. The court has to exercise its discretion in imposing the punishment objectively considering the facts and circumstances of the case. The power under the proviso is not be used indiscriminately in a routine, casual and cavalier manner for the reason that an exceptional clause requires strict interpretation^[23], which ought to be seen in NDPS cases.

9. Sentencing Scheme laid under NDPS Act 1985: An appraisal.

Section 31 A of NDPS Act, 1985 states that:

- (1) Notwithstanding anything contained in section 31, if any person who has been convicted of the commission of, or attempt to commit, or abetment of or criminal conspiracy to commit, any of the offences punishable under section 15 to section 25 (both inclusive) or section 27 A, is subsequently convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, an offence relating to:
- Financing, directly or indirectly, any of the activities specified in clause (a), shall be punishable with death.

- Where any person is convicted by a competent court of criminal jurisdiction outside India under any law corresponding to the provisions of section 15 to 25 (both inclusive), section 27 A, section 28 or section 29, such persons, in respect of such conviction, shall be dealt with for the purpose of sub section (1) as if he had been convicted by a court in India^[24].
- Engaging in production, manufacture, possession, transportation, import into India, export from India, or transshipment of narcotic drug or psychotropic substance specified under the column (1) of the Table below and involving the quantity which is equal to or more than the quantity which is equal or more than the quantity indicated against each drug or substance, as specified in column (2) of the said table;

Table 1: Particulars of the Narcotic Drugs Quantity & Psychotropic Substance

S. No.	Name	Quantity
I	Opium	10 kgs.
ii.	Morphine	1 kg.
iii.	Heroin	1 kg.
iv.	Codeine	1 kg.
v.	Thebaine	1 kg.
vi.	Cocaine	500 grams.
vii.	Hashish	20 kgs.
viii.	Any mixture with or without any neutral material of above drugs.	1500 grams.
xi.	LSD, LSD -25, N, N-Diethyl-Lysergic amide (d- Lysergic acid diethyl amide)	500 grams.
x.	THC (Tetrahydrocannabinols) the following Isomers: 6a (10a), 6 a (7), 7, 8, 9, 10, 9 and their stereo chemicals variants.	500 grams.
xi.	Methamphetamine- 2 amino -1- phenyl propane	1500 grams.
xii.	Methaqualone 2- Methyl -3-0- tolyl -4- (3H)- quinazalinon	1500 grams.
xiii.	Amphetamines-2- amino- phenyl propane.	1500 grams.
xiv.	Salts and preparations of the psychotropic substances mentioned in (ix) to (xiii).	1500 grams

10. Courts Approach towards Search and Seizure under Narcotic Law

Many countries around the globe have come forward with multiple International instruments to tackle and fight back the evil of drugs with togetherness. The politicians in Indian context do not ponder upon rather take note of the growing menace of NDPS case. The sentencing scheme under NDPS is distorted or manipulated in such a way that they are easily released on bail or acquitted on technical grounds; despite we don't have bail provision enacted in NDPS Law. Those who use these drugs become their slaves and slowly but almost irretrievably push themselves into graves of their own making. This has resulted into enacting of various legislations from Dangerous Drugs Act, 1930 to the present Prevention of Illicit Trafficking of Drug and Psychotropic Substances Act, 1988 by the British parliament as well as by parliament of India. The chapter V of Act provided for procedure to be followed by the officers in making search seizure and arrest. One

²¹ 1994 (7) E.L.T. 481 (S.C).

²² The author submits here that it should be made mandatory that a copy of FIR and other document is treated as a valid compliance.

²³ State of Rajasthan v. Vinod Kumar (2012) 6 SCR 1.

²⁴ NDPS Act, 1985. (Bare Act)

essential element of the elaborate procedure is that, when an officer proposes to search any person on suspicion the later should be informed of his right to be searched before a gazetted officer or a magistrate.

Section 50 states the conditions under which search (seizure of persons) shall be conducted

1. When any officer duly authorized under Sec. 42 is about to search any person under the provisions of Section 41, Section 42 or Section 43, he shall if such person so requires take such person without unnecessary delay to nearest gazetted officer of any of them departments mentioned in Sec. 42 or to the nearest magistrate.
2. The Himachal Pradesh High Court while elucidating the objective behind this provision in the case of *State of H.P. v/s Sudarshan Kumar, 1989* ^[25], observed:

This is an extremely valuable right which the legislature has clothed him with and has been incorporated in NDPS Act keeping in view the severity of the sentencing scheme. The rationale behind this provision is manifest. A search before a gazetted officer or a magistrate would impart much more authentic and credit – worthiness to the proceedings, it would, verily, strengthen the prosecution ^[26].

The view applied by Hon’ble High Court of Himachal Pradesh is quite laudable but may not be appropriate on the ground ^[27]. On the other hand, some hold the view that in case of innocent person accused wrongly or cases in which police or prosecution wrongly make a person accused as drug peddler, this power is being misused. Furthermore, the Investigating Officers are of view that they face hindrances or unjust pressures during investigation of narcotic cases by unruly superiors with the result prosecution fails, and also lure of easy money making, vitiate the prosecution role under these provisions.

Keeping in view the Narcotic Law being a stringent law, in view of its punitive policy this conflicting decision of various high courts resulted in different approaches to the life and liberty of the subjects. This approach can be summarized as under:

1. When a person is apprehended by the authority, he need be informed that he has right to be searched before a gazetted officer or a Magistrate under Section 50(1) of the Act;
2. When a person is apprehended by the competent authority, he should be informed that he has a right to be searched under Section 50(1) of the Act, and it is a mandatory provision; and
3. When a person is apprehended by the competent authority, he should be taken straightway to the gazetted officer, to a Magistrate and then conduct search under Section 50(1) of the Act.

It is true that the need of hour is an activist approach and

²⁵ Cri. L. J. 1412 at p. 1419.

²⁶ A.K.V. Jogi Naidu, “Judicial Trends in Search and Seizure in Narcotic Law” – A Need for Activist Approach”. P. 55, Cri. L.J. (1992).

²⁷ The author while interacting with many police officers including investigating officers observed that these officers ‘view regarding the supervision of search and seizure by a magistrate or superior officer.

words should be given liberal meaning and objects of constitution being kept in mind. In the given situation – a desire to amend Section 50 (1) of NDPS Act to the effect that whenever a person is apprehended he should not only be informed of his right to be searched before a Gazetted officer or a Magistrate, but also in the event of his rejecting such offer, it should be taken in writing and endorsed by Panchs present at scene,…” can be taken up ^[28].

11. Constitutional validity of Death Penalty under NDPS Act

Some 32 countries currently impose capital punishment for drug offences ^[29]. Presently 12 countries including India prescribe mandatory death sentences for drug crimes. In Iran and China drug offenders constitute majority of those executed. Drug trafficking is worse than murder because drug abuse leads to long term harmful but physical and psychological effects, the pro- death advocates hold ^[30]. But the activists point out that drug abuse does not warrant that the death penalty should be upheld in the rarest of rare cases. In 1997, the United Nations Human Rights Commission (now Council) asked India to limit the number of offences carrying the death penalty to the most serious crimes, with a view to its ultimate abolition. The United Nations Office on Drugs & Crime, the agency that oversees drug control measures globally, has denounced the capital punishment as means to contain illicit trafficking ^[31]. From the plain reading of section 31-A of the Act, it is attracted only in cases where a person who has been convicted of the commission of or criminal conspiracy to commit any of the offences punishable involving embezzlement of Opium by a licensed cultivator (section 19) ; unauthorized trade and external dealing in narcotic drugs and psychotropic substances (section 24); financing illicit trafficking and harboring offenders (Section 27-A) and for the offences involving commercial quantity of any NDPS. If that person is subsequently convicted of the commission of or attempt to commit an offence relating to engaging in production, manufacture, possession, transportation, import into India, export from India, or transshipment of NDPS specified in column (1) of the table or is subsequently convicted for offence of financing, directly, or indirectly with regard to activities specified in clause (a), such person is liable to be sentenced with death It is pertinent to mention here that the Law Commission of India is approaching towards abolitionist view of capital punishment in all cases of death to person (manslaughter), which in my

²⁸ Ibid at p. 69., practicality this power or privilege is measured often by authorities at hand like police or prosecution or investigating agencies, by way of asking or demanding accused or in many cases the culprit or drug lord or courier offers a handsome money to the authorities operating under the scheme of section 50(1) of NDPS Act, 1985.

²⁹ Avadhani. V.S.R. and Soubhagya. Valli. V.,” Sentencing and Victim Compensation” 9 Principles & Practices), Asia Law House, (Hyd.) p.207.

³⁰ Section 31-A of Act prescribes a mandatory sentence of death under NDPS.

³¹ According to section 31-A death sentence is awarded to a drug trafficker who has been convicted once under the NDPS Act for engaging in the production, manufacturing, possession, transportation, import to India, export from India, or transshipment, of narcotic drugs and psychotropic substances.

personal opinion is absurd^[32]. Therefore, the death sentence in such cases will be pragmatic one at least to NDPS cases, where the drug mafia clandestinely kills all of us. Therefore, need have mandatory death sentence strategy should be upheld by executive, judiciary and legislature of the government of time^[33].

Section 361 and 354 (3) have both entered the statute book at the same time and they are part of the emerging picture of acceptance by the legislature of new trends of criminology. It would not therefore be wrong to assume that the personality of offender as revealed by his age, character, antecedents and other circumstances and the tractability of the offender to reform must necessarily play the most prominent role in determining the sentence to be awarded. Special reasons must have some relation to these factors^[34]. But today criminal justice system deals with complex human problems and diverse human beings who are mostly apprehended in socio economic crimes (the white collar crime and ally) and therefore the above contention don't fit the situations and crimes which are dreadfully dangerous than ordinary crimes. Thus a judge has to balance the personality of offender (between traditional criminal and a socio-economic offender e.g. drug offender). With the circumstances, situations and the reaction of public and to choose the appropriate sentence guideline, the sentencer must keep all these situations in mind.

12. NDPS Act: Its Legislative intent

Despite the NDPS Act, 1985 is most stringent socio economic law providing mandatory sentencing scheme, there has not been any significant decline in the drug offences and related socio-economic crimes i.e. trafficking activities. Rather it has increased manifold. Therefore, a reading of the Act is need of hour, so that sentencing strategies can be reframed, therefore we can control frequency of drug offences. At first instance, let's examine the following legal provisions:

- a. Due to minimum mandatory punishment of 10 years imprisonment the course have generally shown disinclination to apply such harsh laws and a large number of drug traffickers are acquired by courts on technical grounds. In other words, it was easy to get conviction in cases under the Opium Act and Dangerous Drugs Act where the punishment was much less.
- b. Cannabis and Opium have been used in this country since earlier times during religious and social sections of the society that cannabis and opium shouldn't be treated at par with drugs like Heroin and Cocaine.
- c. The procedural provisions contained in NDPS Act are too cumbersome for the law enforcement officials mostly at lower levels to fully appreciate the technicalities of such provisions. As a result, many drug offenders escape on the

ground that procedural provisions were not meticulously followed.

- d. The legal framework with regard to addicts also needs reconsideration. Truly speaking this Act doesn't discriminate between a trafficker and an addict except in two circumstances namely Section 27 (possession of small quantity for personal consumption) and 64 -A (immunity from prosecution to addict volunteering for treatment, which is not charged with any offence punishable under Section 15 to 25 or 27-A). This means that if the addict possesses more than the specified minimum quantity of drug then he can not to be de addicted and in fact will have to go to jail and spend his time with other hardened criminals.
- e. When we look at ambit of Section 68-A to 68-Y of NDPS Act, we have failed to yield significant results due to faulty drafting of section 68-A as it stands at present. We have criminal forfeiture provision i.e. the property of a drug offender cannot be touched unless he had been convicted with at-least 5 years of imprisonment or is detained under the Prevention of Illicit Traffic in in Narcotic Drugs and Psychotropic Substances Act. There is an immediate need of this on the basis of civil forfeiture laws relating to narcotic offender as in USA and Canada.
- f. 'Controlled Delivery' is a very effective drug law enforcement technique. Article 11 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 has also stressed the use of controlled delivery, but such provisions haven't been so far provided in NDPS Act.
- g. The sentencing strategy in NDPS offences as well as other socio economic offences needs to be reviewed in consonance with International standards, so that judiciary become well equipped to bring offender even in petty socio economic offences, to the gallows and therefore this menace of drug dependence in Indian society can be rooted out.
- h. The most stringent provisions of the NDPS Act results as a consequence the difficulty in pouring the narcotic drugs like Opium, Heroin, Hashish etc. and the cost factor. The drug abusers are turning to new avenues to their 'kick' and at the same time saving themselves form drug enforcement agencies.

India being a best transient Centre and a pragmatic market for drug abuse, India Law enforcement agencies with their all vigor and wisdom has to be vigilant so that our society shall remain drug free. And for that purpose requirement of honest, dedicated, and prompt law machinery like NCB, NCRB, police, intelligence and people's support (to garner support and pledge against alarming drug menace) is need of hour. Courts have to refurbish, re-claim, re-devise our country's sentencing polices for such offences which are silently killing the human civilization all over world. We need to raise voice for having a most comprehensive "National Drug Policy" and let India become a role model for every other country for fighting this curse^[35].

³² The reason for such a statement is the denouncement by Law Commission of India the act of Indian Parliament is because the deaths that are caused /resulted of NDPS which is dreadful to the youth of society at large is alarming and these drugs are so deep rooted in our culture that it is very hard to fight it.

³³ There may be some indication towards the abolition of death penalty but drugs abuse are so deep rooted in our culture that it is very hard to fight it. e legislature that reformation and rehabilitation of offenders and not mere deterrence, are now amongst the foremost objects of administration of Criminal Justice System in our country.

³⁴ Supra note 70 at p. 212.

³⁵ Ibid note para 21.

13. Establishment of Special Courts: Section 36 of NDPS Act

When the NDPS Act was in its infancy, cases pertaining to the offences delineated in the Act were dealt with by conventional Sessions Courts. However, this further exacerbated the problem of judicial overburden which has plagued Indian courts for decades. In order to cure this problem, the Government of India vide an amendment to the NDPS Act in 1989 paved the way for the establishment of specialized courts to deal with offences set out in the Act. Sec. 36 of the Act empowers the government to set up as many Special Courts as it deems fit for the expeditious resolution of disputes.

14. Conclusions and Suggestions

For materializing our efforts on these front following extra measures may be adopted:

1. Improvement of socio economic conditions and greater educational advantages including the education of the parents, school teachers, police officers and other social service groups may substantially reduce drug addiction;
2. The history of Opium reflects that medical literature has extensively popularized derivatives. Sometimes individual are introduced to its euphoric properties needlessly to some physicians through either ignorance or carelessness. These addicts' practices may be suspected to become less prevalent as better medical training higher professional standards are adopted and concrete researches are made regarding physical and psychic effects of narcotic drugs;
3. Patent remedies containing Opium and other narcotic drugs and their derivatives have led to the formation of many cases of addiction so that therapeutic use of drugs be directed more at causes and less at symptoms;
4. A prescription for narcotics may be issued by a duly registered physician for a bona fide patient for medical treatment only. Any prescription not issued in course of professional treatment should be treated as violation of law;
5. International organization should become more vigilant in regard to the Illicit trade / supply of narcotic; and
6. Narcotic addicts should be treated in the early stages of addiction and compulsorily hospitalization of such addicts in a specially equipped hospital for some time is desirable to cure addicts and to prevent, spread of addiction. In addition to all these standards of morality is required in the authorities to implement laws relating to drugs with due rigidity^[36].

Therefore, we need to re-inforce sentencing policy specifically with narcotic case and offence related to socio-economic offences in general. This goal can be achieved with the quicker trail and enhanced investigation process backed with sophisticated technological use and proper enforcement of law against those who are committing socio-economic offences especially Narcotic offences.

15. References

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³⁶ Hamid. Abdul; Makkar. Sat pal Singh; “Drug addiction and legislative checkmates”, Indian Journal of Criminology and Criminalistics, VIII January –June, 1989 pp.20-21.