

A COMPARISON OF NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT WITH DRUGS AND COSMETICS ACT: SALIENT DIFFERENCES

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REVIEW ARTICLE

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ABSTRACT

This article assesses the comparison of Narcotic Drugs and Psychotropic Substances Act (NDPS Act) with the Drug and Cosmetic Act (D & C Act) and also point out the salient features of NDPS Act. Drugs and Cosmetics Act, 1940 is a life-saving statute. It was enacted with an objective to regulate the import, manufacture, distribution and sale of drugs and cosmetics without licensing. Domestic legislation for regulating narcotic drugs and psychotropic substances in India has come in the form of NDPS Act, 1985, with an objective to limit the use of these substances and to prevent the abuse of these drugs. Both the aforesaid acts regulate narcotic drugs and psychotropic substances but the NDPS Act is special and strictest legislation for these substances. Stringent provisions of this act are examined in depth like minimum mandatory sentence of ten years and fine of one lakh rupees, offences are cognizable and non-bailable, consumption of drugs is also punishable offence, death sentence for certain repeat offences, attempt to commit an offence would be punishable with similar sentence as provided for that offence, power to tender immunity from prosecution, etc. In this article the authors provides some necessary recommendations in D & C Act on the basis of NDPS Act and also highlights some lacunas in both acts which need to be overcome.

Keywords: D & C Act, NDPS, Offence, Sentence, Narcotic Drugs and Psychotropic Substances, Presumption, UN Convention.

INTRODUCTION

NDPS Act

In India the system of management of narcotic drugs has been put in place considering the need of narcotic drugs and psychotropic substances for medicinal use and the India's obligations towards the UN Conventions. India is a signatory to three major UN Convention as: Single Convention on Narcotics Drugs 1961, Convention on Psychotropic Substances, 1971 and Convention on Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 which recommend different types of control whose aim to achieve dual goal of limiting the use of narcotics drugs and psychotropic substances for medicinal and scientific purposes as well as preventing the abuse of the same. On the basis of UN Convention, the Govt. of India has

framed the administrative and legislative setup in the field of narcotics is the Narcotics Drugs and Psychotropic Substances Act, 1985. (1) The act was passed in a hurry without any discussion, and it replaced the Dangerous Drugs Act, 1930, but the Drugs and Cosmetics Act, 1940 remained and still continues to apply. The Act of 1985 has been amended three times in 1989, 2001 and then a couple of years ago in 2014. (2)

The NDPS Act prohibits cultivation, production, possession, sale, purchase, trade, use and consumption of narcotic drugs and psychotropic substances apart from medicinal and scientific purposes under license. The Act covers three types of substances: 1) "narcotic drugs", that is, those covered under the 1961 Convention, 2) "psychotropic substances" or those covered under the 1971 Convention and 3) "controlled

substances” which are used to manufacture narcotic drugs or psychotropic substances, for e.g. precursor chemicals like ephedrine and pseudoephedrine, acetic anhydride, etc. The act describes the procedure for search, seizure and arrest of persons in public and private places. Safeguards like prior recording of information, informing a superior, limiting powers of arrest to empowered officers, informing the person of their rights of being searched have been scrupulously imposed by the courts, in light of the rigorous sentences given under the act. Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act was implemented in 1988 to provide for preventive detention of suspected persons or the accused involved in drug trafficking. (3)

Drug and Cosmetic Act (D & C Act)

The Drugs Act 1940 was a colonial legislation designed to protect the opportunistic rights of foreign traders who were controlling the import and distribution of drugs in India. (4) The Drugs and Cosmetics Act 1940 and Rules 1945 have been passed with an objective to regulate the import, manufacture, distribution and sale of drugs and cosmetics. (5) The act also ensures that the drugs available to the people are safe and efficacious and the cosmetics marketed are safe for use. The act regulates the manufacture and sale of drugs and cosmetics through licensing so that these are manufactured, distributed and sold only by qualified persons and it also regulates the manufacture of drugs so that no substandard or spurious drugs get manufactured in India. (6) The act does not regulate the possession of drugs or the use of drugs by any person or by medical practitioner and it does not control the practice of medicine too. The manufacturing of bulk drugs are not covered under this legislation. There are two organizations, which have control over the drugs and cosmetics are:

- Central Drug Standard Control Organization (CDSCO) headed by Drug Controller General India
- State Drug Control Organization in each state. (4)

The regulation of manufacture, sale and distribution of drugs is primarily the concern of State authorities while the approval of new

drugs, laying down the standards for drugs, clinical trials in the country, control over the quality of imported drugs, coordination of the activities of drug control organization are regulated by the central authorities. (6) The provisions of this act are in addition to NDPS Act and any other law for the time being in force. (4)The act and rules have amended from time to time according to needs. (6)

How the two Acts overlapping?

D & C Act is a legislation which regulates both drugs and cosmetics but the NDPS Act is a special legislation which regulates only narcotic drugs and psychotropic substances because the offences related to these drugs are of grave nature. D & C Act and NDPS Act are overlapping in many areas, regarding the narcotic drugs, which are common for both the acts. NDPS Act permits medicinal or scientific use of narcotic drugs and psychotropic substances, strict rules and complex licensing procedures along with controls under the D & C Act, 1940. For e.g., if any person who manufactures narcotic drugs or psychotropic substances without license, then this offence will be punishable under both the acts. Despite some similarities, a lot of differences are observed under both the acts. NDPS Act is one of the harshest laws in the country and the act have stringent provisions which makes it a unique Act from D & C Act.

In this review, authors have tried to compare the provisions of the two acts, with an eye to suggest improvements in the D & C Act.

Important provisions where NDPS is unique act

Minimum sentences and fine

Under the NDPS Act there is minimum mandatory sentence of 10 years and fine of rupees 1 lakh for almost all the offences. Under this act once the offence has proved judge has no discretion power to reduce the sentence and fine. Most of the offences under this act are cognizable and non-bailable. (7)

Under the D & C Act, several offences have minimum sentence of approximately 3 to 7 years or fine up to Rs 5000 or both. The court may award the imprisonment for lesser time but

not less than 3 years and the court may however, for adequate and special reason to be recorded in judgement, may award sentence for less than 3 years. In most of the offences under this act, judge has a discretion power to reduce the sentence and the fine. So it is observed that the total sentence and total fine is less and the judge can also reduce the sentence and the fine depending upon the circumstances and reasons to be recorded in the judgement but in some cases sentences are more severe. Under this act certain offences are cognizable and non-bailable. (8)

Offences and penalties related to manufacture, import and export of drugs under NDPS and D & C Act are described as follows:

a) Manufacture

Under NDPS Act ‘manufacture’ is defined as all the processes other than production by which such drugs or substances may be obtained, refining of such drugs or substances, transformation of such drugs or substances and making of preparation with or containing such drugs and substances. (7)

Sentence for manufacture of narcotic drugs and psychotropic substances is described in Table 1.a.

Under D & C ‘manufacture’ is defined as any process or part of process for making, altering, ornamenting, finishing, packing, labeling, breaking up or otherwise treating or adopting any drug or cosmetic with a view to its sale or distribution but does not include the compounding or dispensing of any drug, or the

packing of any drug or cosmetic in the ordinary course of retail business. (8)

Sentence for manufacture of drugs and cosmetics is described in Table 1.b.

b) Import and export

Under NDPS Act ‘to export from India’ is defined as, with its grammatical variations and cognate expressions, means to take out of India to a place outside India.

‘to export inter- State’ means to take out of a State or Union territory in India to another State or Union territory in India.

‘to import into India’ with its grammatical variations and cognate expressions, means to bring into India from a place outside India and includes the bringing into any port or airport or place in India of a narcotic drug or a psychotropic substance intended to be taken out of India without being removed from vessel, aircraft, vehicle, or any other conveyance in which it is being carried.

‘to import inter- state’ means to bring into a State or Union territory in India from another State or Union Territory in India. (7)

Sentence for import and export of narcotic drugs and psychotropic substances is described in Table 1.a.

Under D & C Act ‘to import’ is defined as, with its grammatical variations and cognate expressions means to bring into India. (8)

Sentence for import of drugs and cosmetics is described in Table 1.b.

Table 1.a- Offences and penalties of manufacture, import and export of narcotic drugs and psychotropic substances

Section	Offence	Sentence
Sections 17, 18, 20, 21, 22	Any contravention related to manufacture and import inter-State or export inter-State of prepared opium, opium, cannabis, manufactured drugs and preparations, psychotropic substances	Small quantity – Sentence upto to 1 year, or fine up to rupees 10,000 or both. More than small quantity but less than commercial quantity – Sentence up to 10 years and fine up to rupees 1 Lakh. Commercial quantity – Sentence of 10 to 20 years and fine of rupees 1 to 2 Lakh. However in special circumstances, for the reasons to be

		recorded in judgement, the judge may impose a fine exceeding rupees 2 lakh.
Section 23	Illegal import in to India and export from India of narcotic drugs and psychotropic substances	Sentence of 10 to 20 years and a fine of rupees 1 lakh to 2 lakh. However in special circumstances, for the reasons to be recorded in judgement, the judge may impose a fine exceeding rupees 2 lakh.

Table 1.b- Offences and penalties of manufacture and import of drugs and cosmetics under D &C Act

Section	Offence	Sentence	
		Drug	Cosmetic
Section 27	Manufacture and sale of:		
Section 27 (a)	a) any adulterated or spurious drug or drug not of standard quality	Sentence of imprisonment of 10 years to life time and fine of rupees 10 lakh.	-
Section 27 (b)	b) any adulterated drug but not containing any toxic or harmful substance which may render it injurious to health	Sentence of imprisonment of 3 to 5 years and fine of rupees 1 lakh. However, in special circumstances, for the the reasons to be recorded in judgement, the judge may impose sentence of imprisonment of less than 3 years and a fine of less than rupees 1 lakh	-
Section 27 (c) or 27 A (i)	c) any spurious drug or adulterated or spurious cosmetics	Sentence of imprisonment of 7 years to life time and fine of rupees 3 lakh. However, in special circumstances, for the reasons to be recorded in judgement, the judge may impose sentence of imprisonment of less than 7 years but not less than 3 year and fine of less than rupees 1 lakh	Sentence up to 3 years and fine of rupees 50,000
Section 13 (a)	Import of adulterated or spurious drugs or spurious cosmetic or any cosmetics containing any ingredient which may render it unsafe or harmful for use	Sentence up to 3 years and fine up to Rs 5,000	

Wide range of officers

Section 42 of NDPS Act describes wide range powers of officers to entry, search, seizure and arrest. The following officers are empowered to enter, search, seizure and arrest:

- a) any officer who is superior in rank to sepoy, peon or constable of the departments of narcotics, revenue intelligence, customs, central excise or any other department of Central Government including armed forces or paramilitary forces.
- b) any officers who is superior in rank to sepoy, peon or constable of drug control, revenue, excise, police or any other department of State Government. (7)

Under D & C Act power of entry, search, seizure are given only to Drug Inspector. (8)

Extra ordinary powers of search and seizure

Section 42 of NDPS Act lays down powers on empowered officers to entry, search, seizure and arrest without warrant and authorization. If empowered officer, has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug or psychotropic substance or controlled substance in respect of which an offence has been committed under this act, between the sunrise and sunset, the officers are empowered to:

- a) enter into and search any building, conveyance or place
- b) in case of resistance, break open any door or remove any obstacle to entry
- c) seize drug or substance and materials used in manufacture, animal or conveyance
- d) detain search and arrest

If the officer believes that the search warrant or authorization cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place anytime between sunset and sunrise after recording the grounds of his belief. When an officer takes down any information in writing or records grounds for his belief need to send a copy of this record to his immediate official superior within 72 hours.

Section 43 of the act provides powers of seizure and arrest to empowered officer in public place. Under this Section empowered officer of either Central or State Government can take following actions:

- a) Seize narcotic drug or psychotropic substance or controlled substance in any public place if he has reason to believe an offence has been committed. He may seize the other materials including animal or conveyance, document, liable to confiscation.
- b) Detain and search any person believed to have committed offence and arrest if such person found in possession of unlawful of substances. (7)

The provisions of search and seizure are different in D & C Act. Under this act Drug Inspector cannot perform any action of search or seizure without warrant and authorization. (8)

Punishment for consumption of any narcotic drug or psychotropic substance

Section 27 of NDPS Act provides punishment for consumption of any narcotic drug or psychotropic substance. Under this Section punishment depends upon consumption. If any person consumes morphine, heroin, cocaine or any other narcotic drug or psychotropic substance then punishment may extend up to 1 year rigorous imprisonment, or with a fine up to 20000 rupees or with both. In case of any other substance not mentioned above, imprisonment may extend to 6 months or with fine which may extend to 10000 rupees or with both. (7)

Under D & C Act consumption of any drug (either Prescripational or OTC), except schedule X drugs is not a mentioned offence because offences under this act are not grave in nature as comparison to NDPS Act.

Death sentence for certain offences

Section 31A of NDPS Act provides death sentence after previous conviction. Under this Section death sentence is given to the person who has been subsequently convicted of the commission of, abetment of, or criminal conspiracy to commit, attempt to commit, an offence relating to production, possession, transportation, import into India, export from

India or transshipment and financing directly or indirectly any of these activities in large quantities. (7)

Under D & C Act, there is no provision of death sentence for any committed offence.

Presumption of culpable mental state

Culpable mental state includes intention, motive, knowledge of a fact and belief in or reason to believe, a fact. This is general principal of law that an act is not punishable itself unless it is done by melafide intention. Section 35 of NDPS Act provides that if there is any prosecution for an offence, which requires a culpable mental state of the accused, the court shall presume the existence of such mental state or the act had been done with guilty intention. Then in that case the burden of proof (B.O.P) is on the accused to prove that he had not done that act with guilty intention. If he is unable to prove that the act has not been done with guilty intention then he will be liable for that act. Under this Section, only on the basis of mere probability, the court can not regard a fact to be proved, unless and until the existence of fact proved beyond the reasonable doubt.

Section 54 of the act deals with presumption from possession of illicit articles. Under this act if there is trial for an offence, the court may presume that the accused has committed the offence, unless and until the contrary is proved.

Similarly, Section 66 of the act describes presumption as to documents in certain cases. Under this act, when any document is produced or furnished by any person or has been seized from the custody or control of any person, or has been received from any place outside India (duly authenticated) is tendered as evidence, the court shall presume the signature and every part of the document be in the handwriting of that particular person from whom it is recovered. (7)

Under both the Section 54 and 66 burden of proof lies on that particular person from whom there is recovery of illicit article or documents.

Under D & C Act there is no such provision like this.

Attempt to commit an offence

The line between an attempt to commit an offence and preparation for committing it, is very thin. There are four stages of an offence: intention, preparation, attempt and commission. If the stage of attempt is completed, the offender will be liable for commission of an offence and if his attempt gets fail, he will be liable for attempt to commit the offence. So the stage of attempt is said to begin when the stage of preparation is complete and the culprit wants to do something with the intention of committing the offence, which is a step towards the commission of the offence. Section 28 of NDPS Act prescribes punishment for attempt to commit an offence. Under this Section, same punishment is provided for the commission of an offence and attempt to commit that particular offence whether such offence be committed or not be committed. (7)

Under D & C Act there is no such provision like this.

Punishment for abetment and criminal conspiracy

Instigation, conspiracy or intentional aid are three forms of abetment. To constitute the offence of abetment it is not necessary that the act abetted should be committed or that the effect requisite to constitute the offence, should be caused. Thus, whenever someone possessing illicit drug but does not carry it himself however entrusts another for carrying it, then the person who carries it would be the abettee and the person who directs him to do so would be the abetter of the offence. For the sentence of an abetment, it is not necessary that the act abetted should be completed or person abetted should be capable under law for that offence. Section 29 of NDPS Act prescribes punishment for abetment and criminal conspiracy. Under this act, any person or a party to criminal conspiracy for committing an offence shall be liable with the same punishment for that specific offence whether such offence be or not be committed. (7)

Under D & C Act there is no such provision like this.

Punishment for financing illicit traffic and harboring offenders

Section 27 of NDPS Act prescribes punishment for the financing illicit traffic and harboring offender. Under this Section, when any person, who indulges in financing, directly or indirectly, or harbors any person relating to cultivation of any of plant viz. opium poppy, cannabis, coca, or engaged in the manufacture, production, sale, purchase, possession, concealment, warehousing, transportation, use or consumption, import inter - State, export inter-State, import into India, export from India or transshipment of any narcotic drugs or psychotropic substances and handling or letting out any premises for the carrying on of any of the activities permitted under this act, or any rule or order shall be punishable with imprisonment up to 10 to 20 years and fine up to 1 to 2 lakh rupees. In special circumstances, judge has discretionary power to impose a fine exceeding 2 lakh rupees, for reasons to be recorded in the judgement. (7)

Under D & C Act there is no such provision like this.

Restriction over external dealings

Section 12 of NDPS Act describes that no person is allowed to engage in or control any trade involving procurement of narcotic drug and psychotropic substance from outside India or supply to any one outside the India except with the previous authorization of the Central Govt. and conditions imposed by that Govt. Punishment for this offence is provided under Section 24 of this act. Any one who involves in or controls any trade mentioned above shall be punishable with a imprisonment of 10 to 20 years and a fine of rupees 1 lakh to 2 lakh. In special circumstances, for the reasons to be recorded in judgement, the judge has discretionary power to impose a fine of exceeding 2 lakh rupees. (7)

Under D & C Act there is no such provision like this.

Power of court to release certain offenders on probation

Section 39 of NDPS Act lays down the power on court to release certain offenders on

probation. Under this act when any addict is convicted for an offence involving small quantity of narcotic drug and psychotropic substance or relating to possession and consumption of any narcotic drug or psychotropic substance, the convicting court after considering the age, character, antecedents or physical or mental state of an offender, direct him to undergo medical treatment, with his consent, rather than sentencing him to any imprisonment. The offender has to enter into a bond in the prescribed form with or without sureties to appear and furnish the report of his medical treatment and to get abstained from committing further offence within one year. Based on the report of medical treatment, the convicting court may direct to release the offender for a period not exceeding 3 years. On his failure to abstain, from committing further offence, during such period, he will be called upon to receive sentence. (7)

Under D & C Act there is no such provision like this.

Power of court to publish names, place of business, etc. of certain offenders

Section 40 of NDPS Act describes that when any person is convicted for an offence related to cultivation, manufacture, possess, sell, purchase, use, transport, import inter-state, export inter-state of opium poppy, cannabis, coca plant, poppy straw, prepared opium, manufactured drugs and preparations, psychotropic substances, illegal import and export of narcotic drugs and psychotropic substances, external dealing, attempt to commit offence, abetment and criminal conspiracy and preparation to commit offence, allowing premises for offence, the convicting court may publish the name, place of business or residence, nature of contravention of convicted person in newspaper. The expenses of publication are recoverable from the convicted person in case, if it were fine imposed by that court. (7)

Under D & C Act there is similar provision like this.

Power to tender immunity from prosecution

Section 64 of NDPS Act lays down power on the Central and State Government to tender

immunity from prosecution. The power is granted with a view to obtaining the evidence of any person appearing to have been directly or indirectly concerned in or relating to the offence. This power is granted on the condition of his making full and true disclosure of the whole circumstances relating to the contravention. The reason for having such opinion of giving immunity should be recorded in writing. The person to whom tendered immunity make him immune from prosecution of any of the offence. If in the appearance of Central or the State Govt., the person to whom tendered immunity has not complied with conditions of immunity or willfully conceals or gives a false evidence, the immunity can be withdrawn. (7)

Under D & C Act there is no provision like this.

Security for abstaining from commission of offence

Section 34 of NDPS Act describes that whenever any person is convicted of an offence punishable under this act, the convicting court, at the time of sentencing, may order such person to execute a bond for a sum proportionate to his means, with or without sureties, for abstaining from commission of any offence under the act, during such period not exceeding 3 years. Such an order may be made by an appellate court or High Court or Session Judge when exercising the powers of revision. The bond shall be in such manner as may be prescribed by the Central Government and the provisions of Code of Criminal Procedure, 1973, shall apply to all matters connected with such bond, in so far as they are applicable, if it were a bond to keep the peace ordered to be executed under Section 106 of that Code. The bond so executed becomes void, if the conviction is set aside. (7)

Under D & C Act there is no such provision like this.

Duty of land holder to give information of illegal cultivation

Section 46 of NDPS Act casts duty on every land holder to give immediate information about the illegal cultivation of opium, cannabis plant or coca plant within his land to the officers

authorized under Section 42 or to any police officer.

Similarly under Section 47 of the act, it is a duty of every officer of Govt., panch, sarpanch and other village officer to give immediate information about the above plants to the authorized officer, otherwise they are liable to punishment. (7)

Under D & C Act there is no such provision like this.

Power of attachment of illegally cultivated crop

NDPS provides power of order of attachment or destroy of any plant like opium poppy, cannabis or coca which are believed to have illegally cultivated, to the Metropolitan Magistrate, First Class Judicial Magistrate, Magistrate especially empowered by State Govt. or the gazetted officers. (4)

Under D & C Act there is no such provision like this.

Reward Policy

A scheme of reward policy has been developed by the Government of India. Any person who gives information about drug trafficking is liable to get incentive. NCB is a nominated agency for processing and sanctioning the reward proposals relating to seizure of narcotics and psychotropic substances effected by state enforcement agencies within the country. The reward committee of the NCB meets every month for considering the reward proposals. The state reward committees are constituted by the State Governments and other enforcement agencies, which may sanction and pay rewards up to rupees ten thousand per officer, per case according to the instructions laid down within the reward scheme. The State Governments will claim compensation from NCB by submitting such bills once in 3 months. Reward Committees of enforcement agencies can recommend cases to the NCB for consideration and sanction, wherever the reward admissible and proposed is above rupees ten thousand per person. If the purity is less than the prescribed level then there will be reduction in the reward amount. (9)

Under D & C Act there is no such provision like this.

18. Liability of illicit drugs, substances, plants, articles and conveyances to confiscation

Section 60 of NDPS Act describes that whenever any offence related to opium poppy, cannabis plant, coca plant, narcotic drug, psychotropic substance along with the materials, apparatus, utensils and any animal or conveyance in respect of which an offence has been committed will be liable to confiscation. (7)

Under D & C Act there is no such provision like this.

Rehabilitation centres for addicts

Section 64A of the NDPS Act describes that whenever any addict is punishable for the offence involving small quantity of narcotic drug and psychotropic substance or with the consumption of any narcotic drug and psychotropic substance, and if that person wants to take medical treatment for de-addiction from hospital or an institution and undergoes such medical treatment, shall not be liable to prosecution for offences, under the act, involving small quantity.

Section 71 of the act describes power of Govt. to establish, recognize or approve as many as centres which are fit for the purpose of education, rehabilitation, social re-integration of addicts and for supply to the addicted persons who are registered with the Government and to others wherever such supply is medicinal requirement.(7)

Under D & C Act there is no such provision like this.

No suspension, remission or commutation in any sentence

Section 32 A of the NDPS Act describes that any sentence provided under this act will not be suspended, remitted or commuted. (7)

Under D & C Act there is no such provision like this.

Contravention related to licensed or unlicensed drugs

Under NDPS Act when a person is found guilty in the possession of licensed or unlicensed narcotic drug and psychotropic substance, then both the contraband will be confiscated.

Under D & C Act when a person is found guilty in the possession of licensed drugs and spurious drugs or adulterated drugs, then whole contraband will not be confiscated, only spurious drugs or adulterated drugs will be confiscated.

CONCLUSION

It is concluded that both the acts deals with narcotic drugs in common. The reason behind the enactment of these acts is to regulate the narcotic drugs and to deter the offences relating to narcotic drugs which were increasing day by day. So to deter these offences there was a requirement of special act in this regard, hence the provisions under the NDPS Act are strict in comparison to D & C Act. Under NDPS Act minimum mandatory sentence is 10 years and fine of 1 lakh rupees. Once the offence has been proved, judge has no discretionary power to reduce the imprisonment and the fine. Almost every offence under this act is cognizable and non-bailable. No action related to narcotic drugs has been left uncovered under the NDPS Act. Under D & C Act certain offences are cognizable and non-bailable, minimum sentence is of 3 years, but the judge has discretionary power to reduce the sentence and fine. If a drug is manufactured without license or found spurious, and is also covered under NDPS Act, in that case there will be mandatory sentence. Under NDPS Act, extraordinary powers for search and seizure are granted to the wide range of officers of different departments, to deter the crime at initial stage. The offences under this act are grave in nature as compare to D & C Act. Under NDPS Act there is provision of death sentence for certain repeated offences while there is no such provision under D & C Act. Even attempt to commit several serious offences in NDPS Act would attract sentences similar to the situation as if the offence has actually been committed. Provision of reward for conducting raids & seizures in NDPS Act is encouraging, and lacking in D & C Act. A significant feature of the NDPS Act is the presumption of culpable mental state, presumption as to documents, and shifting of onus of proof to the accused, which

is not found in the D & C Act. In addition there are several striking features of the NDPS Act, including sentence for abetment and criminal conspiracy, financing of illicit traffic and harbouring offenders, conditions in which court can release offenders on probation, power of Central or State Govt. to tender immunity from prosecution, power of court to publish names, place of business etc. of certain offenders, duty of land holders to give information of illicit cultivation, reward policy, etc.

Thus, the authors recommend that on the model of NDPS, some features in the D & C Act may be improved, such as:

- 1) Once the offence in D & C Act has been proved, there should be no provision of awarding less than prescribed sentences / fine /both.
- 2) Search / seizure powers to the Drugs Inspectors should be widened, on the pattern of NDPS Act.
- 3) More offences in the D & C Act should be made cognizable and non-bailable.
- 4) Presumption of culpable mental state & onus of proof on the accused should also be brought in the D & C Act.
- 5) Incentives need to be given to informers, and officials, for detecting cases of infringement of provisions of D & C Act.

However, in both these acts, there exist some lacunae, which need to be addressed:

- 1) Very wide powers in NDPS Act also give ample scope of harassment, and therefore, the responsible officers in NDPS Act should be given very severe sentences in case of harassments.
- 2) In both the acts, several cases would be pending in the court, remaining undecided, and the actual purpose of delivering justice would be defeated, when justice is delayed. Hence, fast track courts / summary trials / dedicated benches to deal with D & C Act and NDPS Act cases should be established.
- 3) More effort are needed on part of the government, to spread awareness regarding crimes / infringement of both these acts, for which schools / colleges etc may be made active partners.

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CONFLICTS OF INTEREST

The authors declare that there are no conflicts of interest.

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