

An Analytical Study on Illicit Drug Trafficking in India and its' Legal Combat Mechanism

Sourav Banerjee*

School of law, Kalinga Institute of Industrial Technology, Bhubaneswar, Odisha, India

Abstract

The drug menace in India is primarily impacted from the two largest opium production centre in the world, Golden Crescent and Golden Triangle exploiting the proximity it shares with India and infiltrating the opiates produces in their regions inclusive of Nepal and Pakistan who supply the traditional sorts like cannabis, marijuana and hashish. However, given the alarming substance of seizure with regard to cocaine, heroin and other drugs by the Narcotics Control Bureau at an annual scale since the early 1980s', the chief exponent factors can be considered to be drug abuse, drug-driven HIV/AIDS, licit pharmaceutical diversion, illegal cultivation, Amphetamine Type Stimulants, money laundering, human trafficking, militancy, crime and corruption across the nation, all acting as either a medium or result of drug trafficking in India. Infiltration of narcotic drugs has spread across the map of India with a maximum magnitude of its smuggle taking place in the states of Jammu & Kashmir, Rajasthan, Punjab and Gujarat. The Indian legal machinery monitors the narcotics drugs scenario primarily with the Narcotic Drugs and Psychotropic Substances Act, 1986 (enacted under three UN Conventions) and Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988, The Dangerous Drugs Act, 1930 along with the shield of Article 47 enshrined in the Constitution of India. Agencies like Narcotics Control Division, Narcotics Control Bureau and Central Bureau of Narcotics function to proctor illicit use of drugs within the territory of it together with some relevant judgments capturing illegal drug abuse in India. The study shall analyze how far such laws and regulatory agencies have been successful in controlling the drug menace in India and how some amendments to India's drug policies can be considered.

Keywords: infiltration, NDPS Act, seizure, Narcotics Control Bureau, drug abuse

***Author for Correspondence** E-mail: souravsmiles.banerjee@gmail.com

INTRODUCTION

"Drugs and drink are the two arms of the devil with which he strikes his helpless slaves into stupefaction and intoxication." - **Mahatma Gandhi** [1].

Since the last three and a half decade India has evolved to become the transit hub and destination when it comes to illicit trafficking of narcotic drugs like cocaine and heroin along with other psychotropic substances like Amphetamine Type Stimulants which is smuggled inside the territory of India primarily from the 'Golden Triangle' i.e., three nations of Southeast Asia, namely, Laos-Thailand-Myanmar and region of the 'Golden Crescent', situate at juncture of Central-Southern-Western Asia overlapping the three neighboring countries of Pakistan-Afghanistan-Iran, whose enormous

mountainous region determine the said crescent. Such dual gate acts as catalysts for illegitimate effluent of trade with regard to drugs and other psychotropic substances that surpasses the Indian line of control and also detriments the national security [2].

Organized crime that functions with a nexus of close proximity between terrorists and drug peddlers are responsible for socio-political disharmony and tension extending the entire country. Heaps of unaccounted money yielded by means of the illicit drug trade are instrumental in funding several terrorist activities throughout the country. For example, an approximate of 15 percent of total militant activities are funded through such unaccounted money generated via means of illicit drug menace [3]. Jammu and Kashmir, known to people as the 'Heaven on Earth' is going up

gradually in smoke not only because of militant insurgency in the state with likes of Hizbul Mujahideen and Lashkar-e-Taiba but the state also accounts to be one of the high density drug abuse state, where the youth for easy money engage themselves in drug peddling and trafficking. Similarly, Sikh Militant Groups like Khalistan Liberation Force, Khalistan National Army, Shaheed Khalsa Force, they all have been found to be funded by drug peddlers and non-state actors by providing a major lump of unaccounted money for sustaining their radicalism and channelizing drugs across different sectors across the nation [4].

With the rise in illicit actions by drug mafia in India, it threatens the law enforcement structure of the country. Drug trafficking, being regarded as one of the white collar crimes; threaten the national security, stability, and integrity of the nation. It also facilitates other organized crimes like human trafficking and gun running, where similar routes and networks are used to smuggle people, arms/ammunition, and bootleg. For example, the arms and explosives that were used in the Mumbai serial bomb blast in the year 1993, the mastermind of the same being internationally wanted terrorist Dawood Ibrahim and his gang men who used the similar route of the sea that they utilized for their drug dealings [5]. Unrestrained air and sea linkage also make India vulnerable and susceptible to drug trafficking. India accounts for 1.62% of the total world's seizure with regard to illicit trafficking of narcotic drugs [6].

One of the primary reasons which led to the emergence of drug laws in India had been the lack of or rather absence of specific legislation to curb the illicit usage of drugs and other psychotropic substances by people, which were previously dealt by means of the Opium Act, 1857, the Opium Act, 1878 and the Dangerous Drugs Act, 1930, all of such legislation got repealed subsequently as new legislation was enacted by the Parliament of India, which will be discussed later. The Union of India is a party to the three United Nations (UN) Drug Conventions, namely, (1) Single Convention on Narcotic Drugs, 1961 (2) Convention on Psychotropic Substances, 1971

and (3) Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 together with a SAARC Convention on Narcotic Drugs and Psychotropic Substances dated November 23, 1990. In the 1980s' India in terms and according to the aforesaid conventions, comply its mandate there under legislating her domestic laws to combat against drug abuse [7].

The Indian legal machinery monitors the narcotics drugs scenario primarily with the shield of Article 47 enshrined in the Constitution of India along with legislative enactments such as The Narcotic Drugs and Psychotropic Substances Act, 1985 (**NDPS**) (enacted under three UN Conventions) and the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (**PITNDPS**). Agencies like Narcotics Control Division, Narcotics Control Bureau, Central Bureau of Narcotics and Chief Controller of Factories also function to proctor illicit use of drugs within the Indian Territory. The study shall analyze how far such laws and agencies have been successful in controlling the drug menace in India given the large composure of seizures of drugs rising annually and what can be some suggestive remedies for better law enforcement and how India can adopt certain prevalent foreign policies as an effective mechanism to control drug abuse.

DRUG TRAFFICKING PRACTICE, PATTERNS AND ROUTES IN INDIA

From a traditional viewpoint, India has commodified opium and other several cannabis derivatives such as bhang, marijuana and ganja along with hashish. Although such derivatives were primarily consumed in India *prima facie* for medicinal purpose but gradually it led to recreational purposes especially during social and certain religious ceremonies. Apart from hashish which was smuggled from Pakistan and Nepal although in very less quantity, all the other drugs derivatives were manufactured and traded in local markets of India itself. With the growth of smuggling and trade of heroin, a fatal drug having a widespread and disastrous effect and consequences on health and society, the matter became of grave concern in India from the early 1980s'. Amongst all other drugs that

were prevalent in being trafficked in India heroin and cocaine was smuggled and transmitted in longer distances in heavy quantity whereas hashish was transmitted in a shorter distance and in relatively smaller quantity. Similarly, marijuana and ganja were infamously transmitted within local peripheries along with other psychotropic substances such as ATS, known as Amphetamine Type Stimulants. There are several modes of transportation that are adopted like *inter alia* donkey, horse, mule and Camelbacks in order to smuggle such drugs, which is estimated as high as 70% of the total illicit drug traded in India through the country's international border with the aid of private agents operating locally in the border areas and bypassing the armed forces, as they are familiar with the loopholes of the area where such goods can get transported avoiding the vigilance by armed forces and without any suspicion [8]. Such trafficking mode generally varies from border to border after understanding the geographical and security personnel dynamics involved in that region along with the demand and supply level that exists in those areas from the foreign peddler associates [9].

INDIA–PAKISTAN BORDERS

The 'Golden Crescent' territory originates from the border proximity that exists between India and Pakistan, where opium and cannabis are produced in the highest numbers in the world and it acts as the central hub for trafficking of deadly drugs such as cocaine, heroin and hashish. However, there were several other factors that were instrumental in the influx of cocaine and heroin smuggled through the fringes of borders. Firstly, the traditional Balkan via Iran route at the time of Iran-Iraq conflict (1980–1988) which was gradually closed resulted in re-routing such deadly drugs in India. Secondly, there were bullion smugglers who had pre-exist in those border areas who facilitated drug trafficking in the mid-1980s' through operation of their criminal networks. Thirdly, the insurgency of the Sikh and Kashmir militancy in mid-1980s' and late 1980s' respective also aggravated the trafficking of drugs to fund such extremist movement and intimidate the people and the government. Finally, the traditional routes

used for smuggling and weak borders further facilitated drug trafficking [10].

DRUG TRANSPORTATION CHANNELING ROUTES IN INDIA

The states of Jammu and Kashmir, Gujarat, Punjab, Haryana and Rajasthan, forming the 'Golden Crescent' territory act as a catalyst when it comes to production and illicit trafficking of Heroin and Hashish into India from Pakistan. Thar Desert, where more than 60% of it stretches in Jaisalmer, Rajasthan and extends till Gujarat, Punjab and Haryana, in the early 1980s' was one of the desirable routes for drug smuggling inside India and for this numerous factors were responsible like firstly, opium made in Malwa were bootleg or smuggled at Karachi and therefrom gradually to China and the same served as a traditional route for such smuggling during the colonial times [11]. Secondly, the area of Thar Desert is enormous, barren and inadequately secured by armed personnel, thus providing hideouts for illegal drug storage which were subsequently transmitted in various parts of India [12]. Sukkur, Rahimyar Khan, Sahiwal and Khokhrapar, mostly all border towns in Pakistan were the chief places from where Heroin was smuggled into India and consignments from these places reached in the towns of Kishangarh, Barmer, Sikar, Churu, Jaisalmer, Ramgarh and Anupgarh in Rajasthan and therefrom such drugs were transported to big metropolitan cities like New Delhi and Mumbai (erstwhile Bombay) [13]. Camelbacks were primarily used for transporting stuff like Heroin and Hashish from the Thar Desert to their nearest collection center in towns and on arriving there; they were further transported to big cities by vehicles. Moreover, the Thar Express that plied between Munabao and Khokrapar were reported to carry a large amount of these drugs from Pakistan since the train was inaugurated in 2005. With the rising Sikh militancy, a major route was developed in Punjab for illicit drug trafficking. The Lahore-Fazilka-Bhatinda-Delhi route and the Attari-Wagah route during the 1980s' became the favorite routes for drug trafficking. The Samjhauta Express was even alleged to carry a large amount of drugs and psychotropic substance from Pakistan and this made

Amritsar in Punjab emerge as a central hub for all illicit drug dealing and storage with primarily cocaine and heroin as products [14].

Bordering areas of Gurdaspur and Ajnala turned out to be major collection centers of Punjab. Though insurgency of militancy gradually extinguished in Punjab yet it served as an important transit point, acting as an epicentre and destination for safe storage of cocaine and heroin that were manufactured in the Afghanistan-Pakistan region and thereafter from such storage hub being transmitted to larger cities like New Delhi, Mumbai and Chennai via Rajasthan and Punjab which gradually made its way to the international markets [15]. The rapid militancy rise in Jammu and Kashmir aggravated the cocaine and heroin being trafficked across the state 1995 onwards, which was primarily smuggled in Jammu and Kashmir through areas viz. Samba-Akhnoor-Ranbirsingh Pura and until of late, majority of heroin that enters the transit and storage hub is located at the District of Jammu. Such consignments from Sunderbani in the district of Rajaori reaches Jammu where from they are further transported to small towns like Pathankot-Gurdaspur-Amritsar-Faridkot-Jaisalmer/Barmer-Ahmedabad and finally reach the grand city of Mumbai [16].

Acetic Anhydride, a heroin manufacturing substance, travels in the similar path although in opposite direction, which originates from India and travels to neighbors like Afghanistan-Pakistan. Gradually, the routes for drug trafficking routes gets altered from land routes to sea routes as awareness regarding such illegal transit of these deadly drugs became widespread and vigilance and security increased in the border areas of land resulting the marshlands and water bodies of Gujarat were increasingly instrumental in smuggling of heroin from different regions of Afghanistan and Pakistan. The Country made boats are used to smuggle Heroin into the Rann of Kutch from Karachi. These marshlands with their numerous interconnected streams and other water bodies, sandbars and mangroves had been instrumental in providing ideal hideaways for drug traffickers. In the year 2009, the

Narcotics Control Bureau has seized approximately 21 kg of Hashish transported from the Rann of Kutch to Pathankot, Punjab [17]. The D-Company based in Karachi, Pakistan presently along with the Nigerian, Afghan and Kenyan drug dealers who act in conjuncture engages in illegal trafficking in respect to the arrangement of drug cartels. Generally, Pakistan smuggles heroin and cocaine in the territory of India by using land or air routes by using couriers based in Afghanistan. There also exists a secretly prevalent practice of human transmitters where poor farmers, villagers or even ordinary travelers commuting between India and Pakistan are provided with illicit drugs and they are asked to carry them until they reach their destination and hand over the same to the agents of such peddlers for lucrative monetary benefit or at times even at gunpoint with the threat to slain their families in case they did not adhere to their terms and these innocent people are forced to put their lives in danger and smuggle drugs through international borders by escaping immigration check to India. Once such consignments safely reaches the transit hub acting as an epicentre be it Amritsar, Delhi, Ludhiana or Jaipur, these drugs are then dealt by peddlers usually of Nigerian or Kenyan origin who are familiar with operating a syndicate that engages in transporting such drugs in international markets of America, United Kingdom, Canada and the entire European Union. A substantial amount of drug trafficking can also be found in the borders of India-Myanmar (formerly Burma), India-Bhutan, India-Nepal and India-Bangladesh. These countries are specifically targeted considering their low economy level and their vulnerability to embrace unaccounted money which shall escalate the trade of drug mafias operating in a transnational arena. The youths of these countries play a vital role in these countries as mostly they are unemployed and their lure for easy money often makes them a victim of such illegal drug deals. Moreover, the armed forces operating in these borders also lack powerful vigilantism and they often get susceptible to such acts of drug trade for extra money offered by drug dealers as a bribe against free and safe access of drugs and other psychotropic

substances inside the respective country's territory [18].

LEGISLATIVE AND CONSTITUTIONAL MEASURES AGAINST ILLEGAL DRUG TRAFFICKING

Constitutional Framework Against Drug Abuse in India

The approach made by India in order to recognize the NDPS Act, is enshrined in Article 47 of its Constitution, which lays down that the '*State shall endeavor to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health*' [19]. The Constitution of India directs the State to consider human health through providing optimum nutrition facility and thereby enhancing the standard of living of people in a proper hygienic environment and to take necessary measures in order to ban and prohibit trade and intake of alcohol, narcotic drugs and psychotropic substances, except for medical needs as per prescriptions medicinal purposes considering their ill effects on human health. Such a Constitutional directive adhered with the legislative enactment of the Narcotic Drugs and Psychotropic Substances Act, 1985 which provides for rigorous control and regulation any sort of illicit trade and usage of such narcotic drugs and other psychotropic substances and simultaneously the said Act also acts as a Bible which empowers the Government to set up as many centers as it deems appropriate with regard to educating people about the adversities of drugs and also identifying, treating and rehabilitating addicted victims as patients and healing them with due care and affection. Moreover, the said Act of NDPS shall also enact necessary guidelines and policies for overall establishment and maintenance of such rehabilitation and treatment centers to frame laws and rules for the formation, maintenance and management of such centers and conduct workshops and training for personnel employed therein to treat drug-addicted victims [20].

The Narcotic Drugs and Psychotropic Substances, 1988

The Union of India is a party to the three United Nations drug conventions, as discussed

earlier. In 1980s' India finally fulfilled the mandate to have her own legislation in respect of drug law as per the said treaties and conventions where she has been a party [21]. The Parliament of India passed and thereby enacted the Narcotic Drugs and Psychotropic Substances Act, 1985 in haste, avoiding much analysis and discussion on the same. The statute was enforced on November 14, 1985, replacing predominant the Opium Act of 1857 and 1878 and the Dangerous Drugs Act, 1930 (which primarily governed pharmaceutical and medical use of drugs). However, The Drugs and Cosmetics Act, 1940 acts in replacement of the Dangerous Drugs Act, 1930 now as an aiding statute to the NDPS Act. The primary objective behind the enactment of the NDPS Act as per official records has been to provide comprehensive punitive guidelines against offenses of drug abuse and to act according to the mandate under the three international conventions of the UN where India has endorsed as a party. The Act was time to time amended, keeping in mind the latest developments that emerged in 1989, 2001 and latest in 2014. According to the NDPS Act, if anyone is found to be engaged in cultivating, producing, possessing, selling, purchasing, trading, importing, exporting, using and consuming any sort of narcotic drugs or any other psychotropic substances, which are strictly prohibited by law as per the Act, save and except such quantity as maybe prescribed by law itself for any medicinal and scientific purposes shall be prosecuted in accordance with law [22]. The Act also prescribes punishment for preparation or attempt to commit any prohibited offense under the NDPS Act and the same is deemed as abetting or criminal conspiracy, also prosecuted under Section 120B of the Indian Penal code, 1860 [23]. The NDPS Act has been categorized into three broad classes of substances: (1) Narcotic Drugs, covered under the Single Convention on Narcotic Drugs, 1961; (2) Psychotropic Substances, covered under the Convention on Psychotropic Substances, 1971 as well as other psychoactive substances like Ketamine which are yet to be classified under any international conventions and (3) "controlled substances" that are used for manufacture of narcotic drugs or psychotropic substances, for instance chemicals like acetic anhydride, ephedrine and

pseudo ephedrine, all of which act as a forerunner [24]. The said Act prescribed, rigorous imprisonment for a minimum term of ten years together with imposition of fine worth Rupees One Lakh and such punishment of rigorous imprisonment can extend to a maximum period of twenty years together with a period of Rupees Two Lakhs, depending on the quantum of drugs seized from the offender and how much of such drugs are commercially used by him/her. In case of a recidivist offender, the statute provides rigorous imprisonment as punishment for a term of fifteen years and Rupees One Lakh and Fifty Thousand as fine along with it, which may extend till thirty years of rigorous imprisonment and Rupees Three Lakhs as fine depending upon the case. However, there is a mandate for capital punishment awarding death penalty for the second offense, which is mainly awarded to serve as a deterrence effect upon the society. Although this measure by the judiciary has been severely criticized by noted jurists and academicians on its implementation policy as most of these death penalty sentences are commuted to life imprisonment [25].

Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988

Illegal traffic in narcotic drugs and other psychotropic substances are detrimental to human health and welfare and such activities also bring down the national economy. Considering the rapid growth of illegal drug trafficking spreading all across India and in order to implement strong preventive measure to curb the same, the Indian Parliament legislated the PITNDPS Act [26]. In terms of this Act, "area highly vulnerable to such illicit traffic" means (i) The Indian Customs Waters (ii) The Customs Airports (iii) The Metropolitan Cities of Bombay (Mumbai), Calcutta (Kolkata), Delhi (New Delhi), Madras (Chennai) and the city of Varanasi (iv) The inland area of one hundred kilometres in width from the coastal region of India falling within the State territories of Andhra Pradesh, Goa, Gujarat, Karnataka, Kerala, Maharashtra, Odisha, Tamil Nadu and West Bengal and the Union territories of Daman and Diu and Pondicherry; (v) The width of one hundred kilometers adjoining the inland areas from (a)

The India-Pakistan border surrounding the States of Gujarat, Punjab and Rajasthan (b) The India-Nepal border surrounding the States of Bihar, Sikkim, Uttar Pradesh and West Bengal (c) The India-Burma border surrounding the North-Eastern States of Arunachal Pradesh, Manipur, Mizoram and Nagaland along with (d) The India-Bangladesh border surrounding the States of Assam, Meghalaya, Tripura and West Bengal; (e) The India-Bhutan border surrounding the States of Arunachal Pradesh, Assam, Sikkim and West Bengal (vi) Such other areas or customs station, as the Central Government may deem fit and proper and declare the same by issuance of notification in the Official Gazette. The PITNDPS Act further empowers the Central Government and State Governments to issue orders for detention of any person including a person of foreign origin if they are of the view that such persons are involved in the illicit trade and transit of narcotic drugs or other psychotropic substances in India [27]. Thus, the said PITNDPS Act has measures towards preventive detention. It further states that 'no detention order shall be invalid or inoperative merely by reason (a) That the person to be detained in beyond the territorial jurisdiction of the Indian Government of the officer-in-charge, or (b) the rear from detention is to be done is outside the territorial jurisdiction of India [28]. Moreover, if the person absconds or deliberately conceals himself, such person shall be punishable with maximum imprisonment of one year, or with fine or, with both; and the offense shall be treated as cognizable [29].

Drugs and Cosmetics Act, 1940

The Drugs and Cosmetics Act, 1940 is a Central Act passed by the Parliament of India on the recommendation of the Select Committee with the primary objective of the act is to closely monitor the drugs and cosmetics that are sold in the Indian market are safe for human consumption and meets the minimum quality standards. The statute consists of schedules that prescribe the sale, consumption and usage of drugs and cosmetics as per respective categories [30]. Section 16 of the Act prescribes the standard of quality to be maintained [31], whereas the Section 17 of the

Act deals with misbranding of drugs and cosmetics and also sets respective parameters for adulterated drugs, spurious drugs, misbranded cosmetics, spurious and adulterated cosmetics [32].

AGENCIES THAT ARE ENGAGED TO PREVENT DRUG ABUSE

The Narcotics Control Bureau (NCB)

The enactment of the NDPS Act, made a requirement of establishing a central authority for regulation in exercise of the powers and functions bestowed under the Central Government, which effected constituting a central body called the “Narcotics Control Bureau (NCB)” under the Department of Revenue, Ministry of Finance, Government of India effected by virtue of an Order dated March 17, 1986, with its headquarter at New Delhi and having its branches at Mumbai, Kolkata, Chennai, Varanasi, Jodhpur, Chandigarh, Jammu, Ahmadabad, Bhubaneswar, Imphal and Thiruvananthapuram [33]. The NCB functions under the close monitoring of the Revenue Department of the Central Government with the following functions:

- i. Correspondence and coordinate with various departments holding their offices under the NDPS Act, the Customs Act, 1962, the Drugs Act and Cosmetics Act, 1940 and several state governments where NCB has its branch office, and any other applicable law in force under the said Act.
- ii. Framing and incorporating combat measures against any illicit drug abuse or trafficking that India has the obligation to counter under international treaties and conventions.
- iii. Provide necessary assistance to respective departments not only within India but also of foreign nations including transnational organizations and extend necessary information, as maybe required to hinder the growth of illegal drug trafficking and abuse of the same.
- iv. Consolidate in a comprehensive manner any steps implemented by any organization across the world combating drug crimes and adopt effective means to replicate the same in India [34].

Central Drugs Standard Control

Organization

The Central Drugs Standard Control Organization (CDSCO) under the Ministry of Health and Family Welfare, Government of India at New Delhi, this organization functions as a central drug authority and as an agency constituted under the Drugs and Cosmetics Act, 1940, having widespread coverage across the country with six zonal offices, thirteen offices and different ports and seven laboratories for scientific research of drugs and cosmetics. The primary functions of CDSCO are (a) close monitoring of drugs that are imported from foreign lands (b) trial and tests of new drugs as per the Drugs and Cosmetic Act before they are sent at the market for consumption (c) Coordinating meetings with Drugs Consultation Committees and Drugs Technical Advisory Board. The headquarters of CDSCO act as the approval authority for licenses used to sell drugs [35].

Central Bureau of Narcotics (CBN)

In times of the British colonialization and administration by the East India Company, the fiscal policy included the revenue collection through trade of opium in India those days and agencies working thereof in Bengal, Benaras, Bihar, and Malwa had been formed. Before 1950, the Provincial Government undertook the maintenance of law and order. All the said agencies merged to form the Opium Department in November 1950, which is known now by the name and style of Central Bureau of Narcotics (CBN) chaired by the Narcotic Commissioner. Shimla, Himachal Pradesh which used headquarter CBN was gradually relocated to Gwalior, Madhya Pradesh in 1960. Headquarter of Central Bureau of Narcotics was relocated from Shimla to Gwalior in 1960. With human resource strength of 16,000 employees, the CBN is accountable for all aspects of the opium industry and prevention of smuggling illicit chemical substances. License and supervision of all opium cultivators are granted by CBN along with obtainment of opium from such cultivators. CBN also functions under the Export-Import (EXIM) Policy, where it acts as a competent authority accountable for export of all types of psychotropic and substance chemicals, along

with correspondence with various foreign Governments, UN bodies and other international organizations [36]. The responsibilities of CBN include: (a) monitoring the illegal poppy cultivation in India (b) investigate the matters falling under NDPS Act, 1985 and filing appropriate complaint cases before Court with regard thereto (3) forfeiture of property illegally acquired (4) issuing licenses for manufacture or production of synthetic drugs (5) authorizing exports made or granting importing certificates for export-import of goods and commodities under the NDPS Act and (6) correspondence with International Narcotics Control Board, a UN quasi-judicial organ for implementation of all UN Drug Conventions at Vienna, Austria and such other international competent authorities of different bodies in order to verify the authenticity of every import-export transaction prior to they are shipped [37].

LANDMARK JUDICIAL DECISIONS WITH REFERENCE TO DRUG ABUSE IN INDIA

1. *Namdi Francis Nwazor v. Union of India* [(1998) 8 SCC 534] [38], a Nigerian citizen having two luggage bags was about to board a flight to leave India. At the time of clearance by the customs officials, the Nigerian was suspected by a team of NCB officials to be a drug peddler and upon searching his luggage, smuggled drugs were found to be in his possession. The Trial Court convicted the accused under Section 21 [39], 23 [40] and 28 [41] of NDPS Act. Thereafter, an appeal was made by the accused before the High Court where it was contended that Section 50 [42] of the Act did not comply which is fatal with respect to the prosecution's case. However, the High Court upheld the decision given by the Trial Court by dismissing the appeal made. Subsequently, a SLP was applied before the Apex Court again on the same contention of non-compliance of Section 50 of the NDPS Act but to no avail as the Apex Court upheld the decision by Trial Court and High Court.
2. *Sayar Puri v. State of Rajasthan* [AIR 1998 SC 3224] [43], The cops were patrolling around while the accused was sitting on a bench at a public place, the cops suspected the movements of the accused and empowered under Section 50 [44] of the Act, issued notice against the accused for searches his searches to be conducted in presence of magistrate or gazetted officer. However, on denial by the accused to be searched before a magistrate, the accused wanted the search to be conducted by the police themselves on the presence of *panch* witness; the cops conducted the search and took seizure of a large quantity of opium. Based on the seizure by cops, the accused was convicted under Section 17 [45] of the Act by the Trial Court. An appeal was filed against the decision of the Trial Court before the High Court which again was turned down and the conviction by Trial Court was upheld in the High Court. Being aggrieved again in the High Court, the accused further appealed to the Hon'ble Supreme Court of India, and took the plea for non-compliance of Sections 42 [46] and 50 [47] of the NDPS Act, which again was dismissed by the Supreme Court upholding the decision made by the said earlier Courts.
3. *Sukhdev Singh v. State of Haryana* [AIR 2013 SC 953] [48], the accused was suspected to be in possession of "*chura powder*" by a team of NCB who immediately caused search on the accused and found the same to be in possession. However the NCB officials neither recorded the seizure nor communicated about it to higher officials. When the accused was tried under Section 15 [49] of the Act before the Trial Court, he was imposed a punishment of rigorous imprisonment for a term of 10 years together with Rupees One Lakh as fine but the Trial Court clearly contended that no compliance of Section 42 [50] of the NDPS Act was performed by the NCB officials. On awarded with punishment, the accused appealed to High Court, where the Superior Court declined to intervene with the decision of the Trial Court and upheld the same. The accused being aggrieved again filed an appeal to the Court of the last resort, where it was

contended that Section 42 being an important aspect on favour of the accused did not comply at all. The Supreme Court took cognizance of the case and set aside the ruling of the Trial Court and High Court by acquitting the accused.

4. Dalel Singh v. State of Haryana [AIR 2009SC(Supp) 2880] [51] The accused was carrying certain contraband items and selling the same for commercial gain from his residence. The cops had this information and in course of patrolling they caught the accused red-handed in possession of such illegal items and immediately a FIR was lodged against the accused. The accused was sent up for trial, where he was convicted under Section 20 [52] of the NDPS Act and the Ld. Court imposed punishment of rigorous imprisonment for a term ten years along with fine of Rupees One Lakh. Being aggrieved, the accused filed an appeal before the High Court contending non-compliance of Section 42 [53] of the Act, which however, was turned down and Trial Court's decision was upheld. A further appeal by way of a Special Leave Petition under Art. 32 was made before the Apex Court, where the non-compliance of the Section 42 was again highlighted but to no avail and the Apex Court too had upheld the previous decisions by its subordinate Courts.

DRUG POLICY CHALLENGES FOR CONSIDERATION IN THE INDIAN SCENARIO

In light of the above discussion, taking into consideration the factors leading to drug abuse and the legal mechanism for its combat, the following reformatory measures can be recommended for adoption by the Government of India [54]:

- i. The sentencing structure needs a review as it is considered to be inconsistent and disproportionate.
- ii. Soft drugs like cannabis, hashish, opium etc. maybe decriminalized as that will help in reduction of crime as the curiosity to try the illegal will cease amongst people.
- iii. Death penalty for recidivist offenders hardly has any deterrence effect so it may be removed and rather consecutive punishment approach maybe initiated.
- iv. Ensuring that provisions of law with regard to drug treatment get substantively levied which shall enable the drug users to get access to services of evidence-based treatment without any penal sanction imposing prosecution or imprisonment acting as a threat.
- v. Treatment methods that are adapted to treat drug addicts or victims of drug abuse should maintain certain minimum quality standards where basic human rights of such affected victims should not be jeopardized at any cost.
- vi. For medical and medicinal purposes the ambit of reaching access to various narcotic drugs and psychotropic substances should increase but with a close monitoring so that to ensure no illicit trade or use takes place.
- vii. Non-compromisable mandates should be imposed on state governments and agencies with effective guidance mechanism for better coordination amongst them and each of such state government and agencies will act in order to implement policies related to control of drug abuse.
- viii. Various opinions and suggestions can be considered to be taken from medical practitioners, academicians who are expertise in the subject of drugs and cosmetics for better formulation of policies.
- ix. Periodical surveys and accurate data collection methodologies to be conducted to proctor the rate of drug abuse cases and terminal diseases like HIV and viral hepatitis caused through drug injection by addicts.
- x. The magnitude of harm or ill effect that any prohibited drug causes to the human body should be minimized and for that principles may be formulated of conducting more scientific experiments and minimizing the risk factor present in them.

GRAPHICAL AND STATISTICAL REPRESENTATIONS

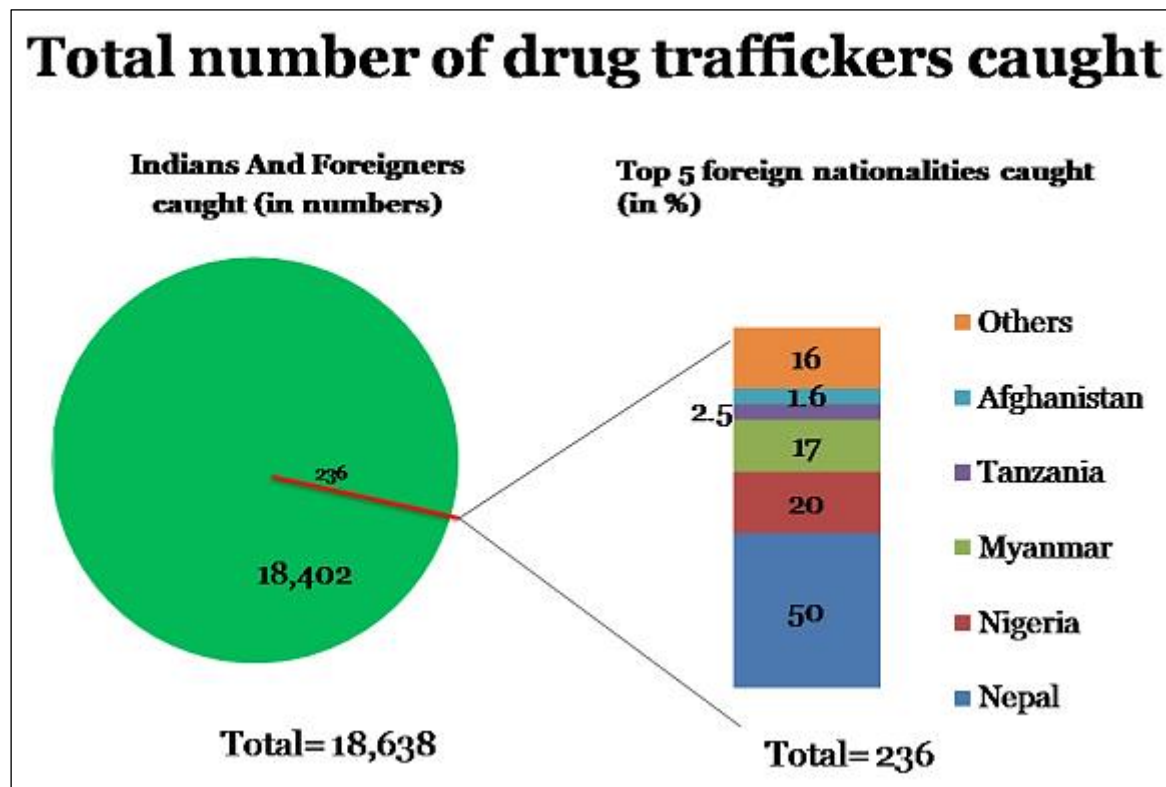


Fig. 1. Total Number of Drug Traffickers Caught.
 Source: Narcotics Control Bureau

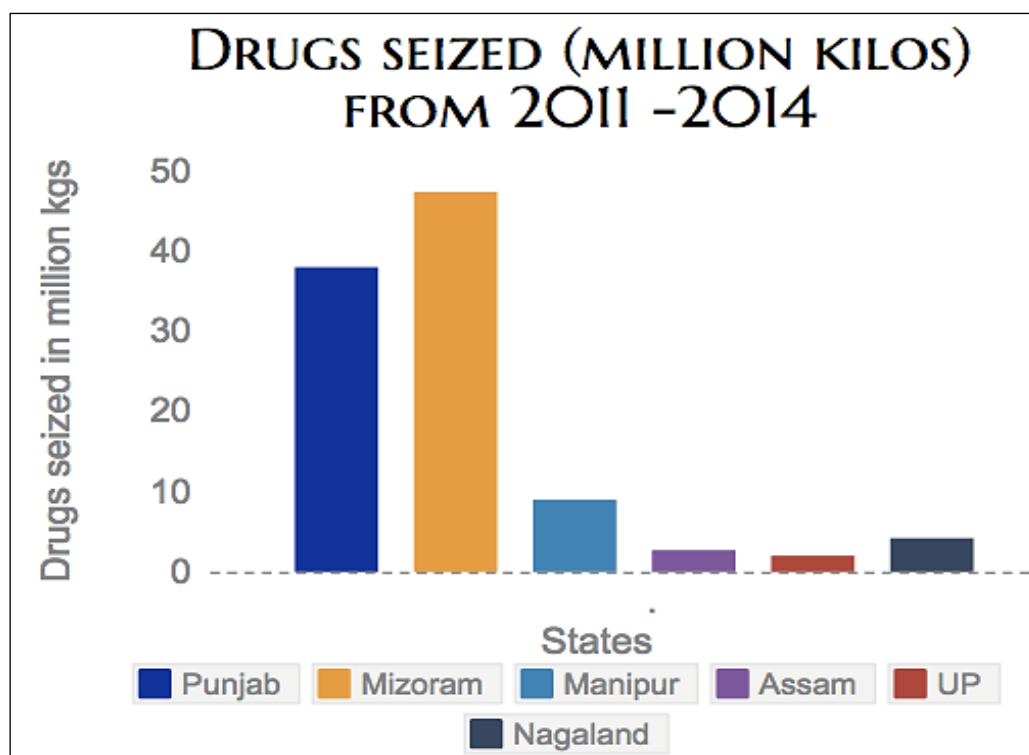


Fig. 2. Drugs seized in Youth in certain States.

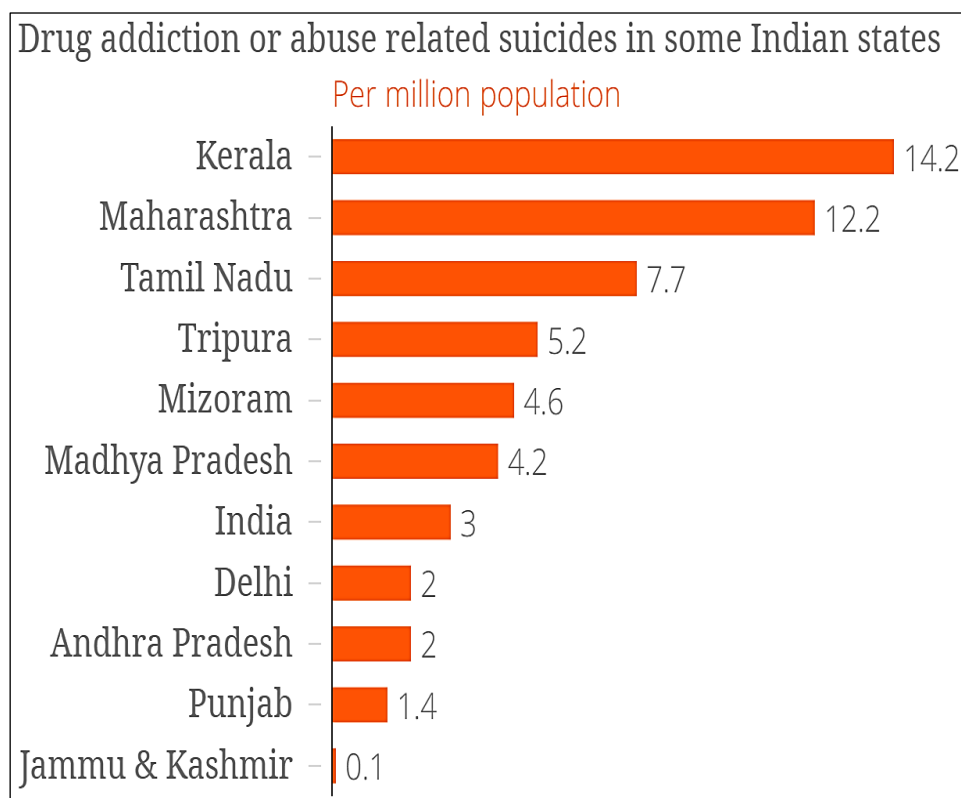


Fig. 3. Suicide due to drug addiction or abuse in Indian States.
Source: Ministry of Social Justice and Empowerment, Government of India.

CONCLUSION

The Parliament of India had enacted the NDPS Act, 1985 considering that more stringent and tightened law enforcement mechanism needs to be adopted in order to control and combat the drug menace in India, thereby the said Act had replaced the pre-existing legislatures on drug abuse namely, the Opium Act, 1857, the Opium Act, 1878 and the Dangerous Drugs Act, 1930. The NDPS Act has been very been drafted with a lot of articulation and keeping in consideration the various nuances and intricacies involved in drug abuse in the Indian scenario. However, the problem lies in the effective enforcement for the Act, the punitive measures practices seem to have a plethora of loopholes for which it becomes difficult for proving the guilt of any accused and thereby reducing the conviction rates against the number of drug offense cases that are reported annually. There seems to exist a tremendous amount of imbalance when it comes to the rising crime rate generating annually and the number of convictions taking place against thereof. Such an anomaly requires a deep

thought, reasoning, thorough analysis and articulation, for better functioning of the Criminal Justice System in our Adversarial system of justice.

The NDPS Act provides stringent punishment by considering cognizable or non-bailable offenses, in cases of drugs which are seized by anti-drug trafficking agencies of high quantity or drugs that are illicitly transmitted for commercial use. However, the legislation fails to provide proper punitive measures for drugs seized in small quantities or small drug peddlers who have been engaged for illicit drug trade, either such drug peddlers dealing with small quantity of drugs do not get caught by the law enforcement agencies or even if they are caught they are acquitted soon due to lack of evidences, which are usually manipulated and fabricated.

Though the NDPS Act is considered to be a draconian law and imposes harsh punitive measures, however, it fails to implement the policies that the drafting committee of the statute had envisaged. This is primarily

because the law requires scientific methods to be adopted for investigation and administration of criminal justice. In India, there exists a nexus between the drug mafias and the administration, given the hugely profitable business the drug menace is, this acts as a major hindrance for conviction of cases in spite of being reported since deviations by law enforcers lead to encouragement of more crime. A probable solution to this may be considered to shift the burden of proof for acceptance of guilt on the accused himself/herself rather than law enforcement agencies, this can be done by establishing separate prosecuting and investigating bodies or agencies who shall ensure the burden of proof is on the accused may be in form of confession statements which makes the entire process of conviction easier and speedy for the criminal justice system.

Foreign nationals consider India as a big trade hub when it comes to illicit drug trafficking. A major problem observed while trying the accused foreign nationals is they tend to jump bail and flee to foreign nations when they are put on trial.

There is hardly any consensus amongst the judges when it comes to the aims to punish any convict. Judges with different ideologies award different sentences on the same offense. The aggravating and mitigating factors of the crime and the criminal at times act as a bar to have any uniformity towards sentencing of offenses. A perception of a judge on an issue of drug abuse and the seriousness involved in the act will help him to frame the sentence and quantum of punishment, which shall result in imposition of minimum mandatory punishment but the length of such minimum mandatory sentence requires careful imposition so that it does not operate harshly in a particular case and differently or less harshly on another case of the same offence. For petty drug offenses, the discretion of imposing punishment should be on the sentencing judge. If such discretion of the judge is unable to impose proper sentence depending on the gravity of the offense, the option of approaching to appellate court

should be exercised for revising the punishment imposed.

REFERENCES

1. Narcotics Control Bureau, Ministry of Home Affairs, Government of India, *Annual Report* 2016.
2. Narcotics Control Bureau, Ministry of Home Affairs, Government of India, *Annual Report* 2009.
3. NCB Annual Report, 2016 Supra, 1.
4. Vol. 26 (1), N. S. Jamwal, Terrorist Financing and Support Structure in Jammu and Kashmir, *Strategic Analysis*, P. 143, 2001.
5. Vol. 17(1), Jim Masselos, The Bombay Riots of January 1993: The Politics of Urban Conflagration, *South Asia, Special Issue*, P. 79–95, 1994.
6. Shankar Pratap Singh, Transnational Organized Crime: The Indian Perspective, P.572.
7. Charles M, Bewley-Taylor D, Neidpath A. Drug policy in India: Compounding harm? The Beckley Foundation Drug Policy Programme, Briefing Paper Ten, October 2005.
<http://reformdrugpolicy.com/wp-content/uploads/2011/10/Drug-Policy-in-India-CompoundingHarm.pdf>. (Accessed on December 12, 2017, 13:16 hours).
8. Volume -III, Giri Raj Shah, *Encyclopedia of Narcotics Drugs and Psychotropic Substances: Indian Initiatives*, New Delhi, Gyan Publishing House, P. 883, 1998.
9. Ibid. at 9.
10. James D. Medler, *Afghan Heroin: Terrain, Tradition, and Turmoil Orbis*, Spring, P. 286, 2005.
11. Ravneet Kaur, *Drug Abuse: Trends and Issues*, at <http://dspace.iimk.ac.in/bitstream/2259/348/1/387> (Accessed on December 12, 2017, 15:15 hours).
12. Vol. 43 (1), Claude Markovits, The Political Economy of Opium Smuggling in Early Nineteenth Century India: Leakage or Resistance? *Modern Asian Studies*, P.94, 2009.
13. Giriraj Shah, Dikshit RC. *Narco-Terrorism*, (New Delhi: Siddhi Books), P. 46, 1996.

14. Pierre Arnaud Chouvy. *Opium: Uncovering the Politics of the Poppy*. Harvard University Press; 2010. pp 16.
15. Ravi Chand Kohli, Punjab focuses on Drug Trafficking, The Hindu, Chandigarh, July 1, 2010, <http://www.thehindu.com/health/policy-and-issues/article495301.ece> (Accessed on December 12, 2017, 23:16 hours).
16. Narcotics Control Bureau, Min. of Home Affairs, GOI, Annual Reports of 2007, 2008 and 2009.
17. Narcotics Control Bureau, Min. of Home Affairs, *Annual Report*, P.12, 2009.
18. Six foreigners held with heroin worth Rs 11 crore, The Tribune, New Delhi, August 5, 2011, http://zeenews.india.com/news/delhi/sixforeigners-held-with-heroin-worth-rs-11-crore_724540.html, (Accessed on December 14, 2017, 21: 35 hours).
19. Article 47, The Constitution of India, J.N. Pandey, Central Law Agency.
20. Article 13(1), The Constitution of India.
21. Charles M, Bewley-Taylor D, Neidpath A. (October 2005), Drug policy in India: Compounding harm?, The Beckley Foundation Drug Policy Programme, Briefing Paper Ten, <http://reformdrugpolicy.com/wp-content/uploads/2011/10/Drug-Policy-in-India-CompoundingHarm.pdf>
22. See: Section 8, NDPS Act.
23. See: Sections 28, 29 and 30, NDPS Act.
24. See: Section 2 (viid), NDPS Act.
25. See: Section 17 and 18, NDPS Act.
26. See the Preamble of the PITNDPS Act.
27. See Section 3 of the PITNDPS Act.
28. See Section 7 of the PITNDPS Act.
29. See Section 8 of the PITNDPS Act.
30. See Preamble of Drugs and Cosmetics Act, 1940.
31. See Section 16 of Drugs and Cosmetics Act, 1940.
32. See Section 17 of Drugs and Cosmetics Act, 1940.
33. See, Section 4(3) of the NDPS Act, 1985.
34. Charter of NCB, <http://narcoticsindia.nic.in/upload/download/CharterofNCB.pdf>, (Accessed on December 14, 2017, 23: 45 hours).
35. Official Website of Central Drugs Standard Control Organization, <http://www.cdsc.nic.in/forms/contentpage1.aspx?lid=1423>; (Accessed on December 16, 2017, 13: 59 hours).
36. Website of Central Bureau of Narcotics, <http://www.cbn.nic.in/>; (Accessed on December 16, 2017, 14:15 hours)
37. As per the provisions of Chapter V-A of the NDPS Act, 1985.
38. Namdi Francis Nwazor v. Union of India [(1998) 8 SCC 534], <https://indiankanoon.org/doc/1894780/>, (Accessed on December 17, 2017, 12:34 hours).
39. Punishment for contravention in relation to manufactured drugs and preparation, See: Section 21 of NDPS Act.
40. Punishment for illegal import in to India export from India or transshipment of narcotics drugs and psychotropic substances, See: Section 23 of NDPS Act.
41. Punishment for attempts to commit offenses, See: Section 28 of NDPS Act.
42. Conditions under which search of persons shall be conducted, See: Section 50 of NDPS Act.
43. Sayar Puri v. State of Rajasthan [AIR 1998 SC 3224], <https://indiankanoon.org/doc/1150088/>, (Accessed on December 17, 2017, 16: 14 hours).
44. Ibid, Note 44.
45. Punishment for contravention in relation to prepared opium, See: Section 17 of NDPS Act.
46. Power of entry, search, seizure and arrest without warrant or authorization, See: Section 42 of NDPS Act.
47. Supra, Note 43.
48. Sukhdev Singh v. State of Haryana [AIR 2013 SC 953], <http://www.advocatekhoj.com/library/judgments/announcement.php?WID=2914>; (Accessed on December 17, 2017, 18: 33 hours).
49. Punishment for contravention in relation to poppy straw, See: Section 15 of NDPS Act.
50. Supra, Note 47.
51. Dalel Singh v. State of Haryana [AIR 2009SC(Supp) 2880], <https://indiankanoon.org/doc/994218/>;

- (Accessed on December 17, 2017, 19:58 hours).
52. Power for contravention in relation to cannabis plant and cannabis, See: Section 20 of NDPS Act.
 53. Supra, Note 47.
 54. Tandon Tripti, Drug Policy in India, International Drug Policy Consortium.
 55. Narcotics Control Bureau, Total Number of Drug Traffickers Caught <http://www.indiaspend.com/wp-content/uploads/Drug-Traffickers-Caught-620x460-23042013.png>, (Accessed on December 17, 2017, 20: 54 hours).
 56. https://www.google.co.in/url?sa=i&rct=j&q=&esrc=s&source=images&cd=&cad=rja&uact=8&ved=0ahUKEwirvaLBw_XXAhVMN48KHSXaA4MQjRwIBw&url=http%3A%2F%2Fwww.quora.com%2FHow-did-the-youth-in-the-Indian-state-of-Punjab-get-addicted-to-drugs-and-alcohol-Is-this-only-the-case-of-Punjab-or-other-states-as-well&psig=AOvVaw2cazW0hJrAWCjd2gij6ezz&ust=1512654195318200;
 57. Ministry of Social Justice and Empowerment, Government of India, https://www.google.co.in/url?sa=i&rct=j&q=&esrc=s&source=images&cd=&cad=rja&uact=8&ved=0ahUKEwjVqdPHx_XXAhXIto8KHYhwB-EQjRwIBw&url=https%3A%2F%2Fscroll.in%2Farticle%2F812278%2Fevery-day-10-people-commit-suicide-in-india-from-drug-abuse-and-only-one-of-them-is-from-punjab&psig=AOvVaw2GKTFx4SJQPB4JKuXsnBpP&ust=1512655594034430 (Accessed on December 17, 2017, 23:13 hours).

Cite this Article

Sourav Banerjee. An Analytical Study on Illicit Drug Trafficking in India and its' Legal Combat Mechanism. *National Journal of Criminal Law*. 2018; 1(1): 7–20p.