

Salient Points Discussed During Presentations

Control over table I and II substances

One participant asked as to how common chemicals such as hydrochloric acid, sulphuric acid and potassium permanganate could be controlled since they are widely used. Mr. Dutt clarified that there are no controls on many Table I and II substances in India. Controls even on other chemicals do not interfere with their legitimate trade. On this issue, during his presentation, Mr. A.P. Kala clarified that in a strict sense, there is no 'control' over precursors in India. The term 'control' implies a system of licencing requirement for manufacture, trade or consumption of the substance or a permit to possess it. In this sense, India has no controls over precursors. Indian law, however, requires the operators to maintain records, file returns, report losses, etc. The reason is that over 99% of the trade in precursors is legal and should not be interfered with while less than 1% of the precursors are used in the manufacture of drugs.

Possession of a 'controlled substance'

One of the participants desired to know whether possession of a 'controlled substance', *per se*, could be treated as an offence under the law. Dr. M.C. Mehanathan clarified that possession, *per se*, may not be an offence but the person who possesses it may be asked to explain why he bought the chemical and why he was keeping it. The seller of the substance also has to verify the credentials of the buyer. Justice Desai intervened and explained that unexplained possession should be viewed strictly and, if it cannot be explained, the person should be dealt with in accordance with law. The participant said that Rajasthan High Court had ruled that mere possession of a controlled substance is not an offence. He felt that the NDPS (Regulation of Controlled Substances) Order should be modified to overcome this lacuna. Mr. Sharma, IGP Rajasthan agreed with this view.

Possession of small quantities of unaccounted precursors:

Mr. Rajesh Manchanda, Prosecutor said that the law does not distinguish between those who may have small quantities of unaccounted precursors and those who possess huge quantities. He desired to know whether it would be fair to prosecute a person for a small quantity of unaccounted precursors. Justice Desai said that the most practical approach in such cases is to prosecute the person on

the basis of the evidence available. It is for the defence to show that the accused has no *mens rea*.

Increase in global seizures of various drugs

In his presentation, Mr. Dutt stated that the global seizures of heroin and cocaine rose by 50% between 1990 and 1998 while the seizures of ATS rose by 400%. Justice Desai desired to know whether it also meant that trafficking has also gone up in the same proportion. Mr. Dutt said that an increase in seizures is usually taken as an indication of increase in trafficking and in his presentation, he only compared the relative growth in seizures between the two kinds of drugs. Mr. Sharma, IGP Rajasthan said that Government of India constituted a committee, of which he was a member, to determine the extent of diversion of licit opium in India. The committee estimated diversion to be close to 20% of the total production.