

Observations And Recommendations Of Working Group II Comprising Prosecutors And Law Enforcement Officers

The working group discussed practical difficulties in investigating NDPS cases.

The Narcotics Drugs and Psychotropic Substances Act, 1985 was enacted as a special Act on the lines of socio-economic offences Acts where certain presumptions were incorporated in the favour of the prosecution- the unusual presumption in normal criminal laws. The Act gave enormous powers to the investigating officers with only few steps in procedure to be followed carefully. This law mandated severe punishments leaving little discretion to the courts in awarding punishment, if a man is found guilty. The courts came up with the maxim of "strict proof for severe punishment" and looked into all technical aspects before awarding punishment. The N.D.P.S. Act, 1985 was, therefore, amended to rationalize the punishment with the quantum of drug seized and to do away with the misuse of the provisions by the enforcement agencies.

Enforcement agencies face numerous difficulties in the implementation of the Act which can be classified into (i) legal difficulties; and (ii) field work related difficulties.

Legal difficulties

Difficulties in finding independent witnesses:

It is rather difficult to find independent witnesses who volunteer themselves during searches and seizures due to a variety of reasons such as:

- ◆ Threats from the accused
- ◆ Long periods of time taken in attending courts
- ◆ Lack of concern for the problems posed by drugs to the society

Often, the accused even bribe the witnesses to turn hostile to the prosecution. Since *nakas* are organised at a number of places, it is difficult to associate an independent witness at every *naka*. The law, however, requires an independent witness even to search a vehicle or person during a *naka*. It is difficult to associate witnesses in each and every case.

Possession of precursor chemical is not an offence:

A plain reading of Sections 9A, 25A and 54 of NDPS Act does not give the impression that unauthorised possession of a precursor chemical is an offence.

The law only requires persons such as manufacturers, importers, exporters, consumers and dealers to maintain records and file reports to the Zonal Director of NCB. The seller only is responsible to ensure the identity and purpose of the buyer. He is under no obligation to intimate the purpose of the buyer to the Zonal Director of NCB.

On the other hand, if there is shortage of the precursor chemical, there is no adverse presumption against the person regarding it has been diverted for illegal manufacture of drugs. Thus, neither a person found with excess stocks of any controlled substance nor one found with deficient stocks of these substances can be prosecuted under the law. A rebuttable legal presumption must be introduced that if any person is found with unexplained stocks of a controlled substance, it shall be presumed to be meant for sale to illicit drug manufacturers. Conversely, if the stocks are found to be short, it should be presumed that the short precursors have been diverted for illicit manufacture of drugs.

Bail Provisions:

One of the key features of the NDPS Act is stringent bail provisions. Courts cannot grant bail to those accused of offences under Sections 19, 24 or 27A and for offences involving commercial quantities. The term 'commercial quantity' applies only to drugs and not precursors under the NDPS Act. If precursor chemicals are seized in large quantities from a person, the strict bail provisions u/s 37 of the NDPS Act, 1985 do not apply. There is a need to include offences under Section 25A in Section 37 of the NDPS Act, 1985.

Pre-trial disposal:

Section 52A of the NDPS Act provides for the pre-trial disposal of the narcotic drugs and psychotropic substances but not of controlled substances. Precursor chemicals are useful to the society and their early disposal avoids deterioration, minimizes wastage and contributes to the exchequer. Hence pre-trial disposal should be made applicable to controlled substances as well. If the accused are acquitted in the trial, the sale proceeds can be returned to the owner in lieu of the seized substance.

Disposal of vehicles:

Often, vehicles are seized along with drugs or precursors. Section 52A which deals with pre-trial disposal does not apply to vehicles and as a result, vehicles keep lying with the enforcement agency for years till the case is disposed. The vehicle not only depreciates in the interim but it also costs money to store it. Therefore, Section 52-A may be made applicable for seized conveyances as well. The sale proceeds of the vehicle may be released to the owner if the court finally releases the vehicle.

Field work related difficulties:

These difficulties can be removed if the Government pays more attention to the problems and provides funds and infrastructure.

Drug Detection Kits:

Drug detection kits cost between Rs.3,200/- and 3,500/- each and have a shelf life of 6 months from the date of manufacture. State police often do not have funds for the kits and when they are supplied, they expire within 3-4 months from the date of supply as some time is lost in supplying the kits to the field formations. Field officers are often not even trained in using these kits. Adequate supply of kits, quick disbursement and training are essential for effective use of kits.

Lack of training in identification of precursors:

Most police officers are not aware about precursors; fewer have ever seen any of them. Hence, even if they find a precursor being diverted or transported, they may not even realise the significance of it. Police officers need to be trained on these issues.

Report of the doctor under Section 27 of NDPS Act, 1985:

Consumption of narcotic drugs and psychotropic substances is an offence under the NDPS Act but no investigating officer knows how to prove it. Doctors in government hospitals are not trained in identifying whether the suspect consumed drugs. Secondly, by the time the doctor finds time to test the suspect, it is too late to get an accurate report. Often, doctors of government hospitals and dispensaries give reports only on the general medical condition of the accused which does not help in prosecuting the case in a court of law.

Malkhana:

NCB issued detailed instructions on storage and disposal of seized drugs. These instructions require such drugs to be stored in a proper malkhanas under the supervision of a gazetted officer. State police often do not follow these instructions and store them in the malkhanas of the police stations which have inadequate storage facilities with little security.

Secret Service Funds:

Secret Service Funds meant for collecting intelligence are grossly inadequate with the state police and if information has to be collected on any major syndicate, substantial money will be required. Unless the SSF with the state police is improved, not much can be achieved in terms of busting drug syndicates.

Reward for seizure of precursors:

Rewards are a major incentive both to informers and officers. However,

as per the existing reward policy, no reward is available for seizure of precursor chemicals. Precursors may be included in the reward scheme.

Long time in completion of trials:

Special Courts have been created to deal with the NDPS cases to avoid delays in trials. However, in many states, these courts are again being given additional responsibility of dealing with other cases as well. This is causing undue delays in disposal of NDPS cases.