

LOCAL LAWS -II

UNUT II: THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985.

SYLLABUS:

1. Definition (Section 2).
2. Prohibition of certain operations (Section 8).
3. Punishment for contravention (Sections 15-17, 18, 20-21).
4. Offences to be cognizable and non Bailable (Section 37).
5. Power of entry, search, Seizure and arrest without Authority (Sections 42 and 43).
6. Conditions for search (Section 50).
7. Disposal of persons Arrested and Articles seized (Section 52).

❖ Introduction:

In recent years, the malady of drug abuse has spread its tentacles in almost every sphere of public life and has had a large array of corrosive effects on the societies in which it has been most rampant. The reason why the problem of drug abuse is viewed as a far more serious problem than other social evils is because it is inextricably intertwined with other offences such as organized crimes, human trafficking and money laundering as well as health hazards such as HIV –AIDS. India has a long history of cannabis and opium use in social, spiritual and medicinal contexts. The gravity of the problem can be gauged from the statistics released by the National Crime Records Bureau (NCRB) which indicate that drugs and narcotics worth Rs 19.51 crore and Rs 17.05 crore were seized in 2010 and 2009 respectively. The problem is especially more serious in the states of Punjab and Manipur where estimates show there are roughly 18,000 and 25,000 intravenous drug users (IDUs) respectively.

❖ An overview of drug control laws in India/Historical background:

The genesis of drug control laws in India can be traced back to the Opium Act of 1857. This was followed by the Opium Act of 1878 and the Dangerous Drugs Act of 1930. These laws were designed to regulate and monitor the use of some specific drugs in limited contexts; they were not based on any well-defined principles and did not contain any overarching provisions to grapple with the problem of drug abuse in a holistic manner. Moreover, they provided for meager punishments for their contravention which were to the tune of three years imprisonment for the first time offenders and 4 years imprisonment for repeat offenders. In the post World War 2 period, countries began working collectively on enacting human rights instruments that were designed to allow individuals to live with dignity and respect. The clearest manifestation of this general principle in the context of health can be found in Article 25 of the Universal Declaration of Human Rights and Article 12 of the International Covenant on Economic, Social and Cultural Rights which seek to promote the highest attainable standards of physical and mental health. Against this backdrop, several international instruments such as the Single Convention on Narcotic Drugs, 1961 and, more importantly, the Convention on Psychotropic Substances, 1971 unequivocally recognized the need to put in place regulatory regimes and systems to grapple with the problem of drug

abuse. In order to bring India's narcotics control law at par with international standards and to effectuate the goals of these treaties, the National Drugs and Psychotropic Substances Act, 1985 was enacted by the Government of India. The Act is widely regarded as a prohibitionist law which seeks to grapple with 2 kinds of offences: trafficking of prohibited substances i.e. cultivation, manufacture, distribution and sale, as well as their consumption.

This Act was enacted by Parliament in the Thirty-sixth Year of the Republic of India. This Act may be called the Narcotic Drugs and Psychotropic Substances Act, 1985. It extends to the whole of India and it applies also¹ (a) to all citizens of India outside India; (b) to all persons on ships and aircrafts registered in India, wherever they may be. It came into force on 14th November, 1985, vide notification No. S.O. 821(E), dated 14th November, 1985, see Gazette of India, Extraordinary, Part II, sec. 3(ii). Further, different dates may be appointed for different provisions of this Act and for different States and any reference in any such provision to the commencement of this Act shall be construed in relation to any State as a reference to the coming into force of that provision in that State.

This is a special Act, while adopting the liberal construction of the Act, it is found that the Act has been enacted with a view to make stringent provisions for the control and regulation of operations relating to the narcotic drugs and psychotropic substances; *Gulam Mohiuddin v. State of Jammu and Kashmir*, (1994) 1 Crimes 204 (J & K).

❖ OBJECT OF THE ACT:

The object of this Act is (i) to consolidate and amend the law relating to narcotic drugs, (ii) to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances, (iii) to provide for the forfeiture of property derived from, or used in, illicit traffic in narcotic drugs and psychotropic substances,² (iv) to implement the provisions of the International Conventions on Narcotic Drugs and Psychotropic Substances³ and (v) for matters connected therewith.

❖ DEFINITIONS:

(i) **“addict”** Addict means any person who has dependence on any narcotic drug or psychotropic substance.

(ii) **“Board”** It means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963).

(iii) **“cannabis (hemp)”** means:

- a) *charas*, that is, the separated resin, in whatever form, whether crude or purified, obtained from the cannabis plant and also includes concentrated preparation and resin known as hashish oil or liquid hashish;

¹ Ins. by Act 9 of 2001, s. 2 (w.e.f. 2-10-2001).

² Ins. by Act 2 of 1989, s. 2 (w.e.f. 29-5-1989).

³ *ibid.*

- b) *ganja*, that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated; and
- c) any mixture, with or without any neutral material, of any of the above forms of cannabis or any drink prepared there from.

(iv) “**cannabis plant**” means any plant of the genus cannabis:

(iva) “**Central Government factories**” means factories owned by the Central Government or factories owned by any company in which the Central Government holds at least fifty-one per cent. of the paid-up share capital].

(v) “**coca derivative**” means:

- a. crude cocaine, that is, any extract of coca leaf which can be used, directly or indirectly, for the manufacture of cocaine;
- b. ecgonine and all the derivatives of ecgonine from which it can be recovered;
- c. cocaine, that is, methyl ester of benzoyl-ecgonine and its salts; and
- d. all preparations containing more than 0.1 per cent. of cocaine.

(vi) “**coca leaf**” means:

(a) the leaf of the coca plant except a leaf from which all ecgonine, cocaine and any other ecgonine alkaloids have been removed;

(b) any mixture thereof with or without any neutral material, but does not include any preparation containing not more than 0.1 % of cocaine.

(vii) “**coca plant**” means the plant of any species of the genus *Frythroxyton*.

(viiia) “**commercial quantity**”, in relation to narcotic drugs and psychotropic substances, means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette.

(viiib) “**controlled delivery**” means the technique of allowing illicit or suspect consignments of narcotic drugs, psychotropic substances, controlled substances or substances substituted for them to pass out of, or through or into the territory of India with the knowledge and under the supervision of an officer empowered in this behalf or duly authorised under section 50A with a view to identifying the persons involved in the commission of an offence under this Act.

(viiic) “**corresponding law**” means any law corresponding to the provisions of this Act;

(viiid) “**controlled substance**” means any substance which the Central Government may, having regard to the available information as to its possible use in the production or manufacture of narcotic drugs or psychotropic substances or to the provisions of any

International Convention, by notification in the Official Gazette, declare to be a controlled substance.

(viii) “**conveyance**” means a conveyance of any description whatsoever and includes any aircraft, vehicle or vessel.

(viiiia) “**essential narcotic drug**” means a narcotic drug notified by the Central Government for medical and scientific use.

(viiiib) “**illicit traffic**”, in relation to narcotic drugs and psychotropic substances, means:

- (i) cultivating any coca plant or gathering any portion of coca plant;
- (ii) cultivating the opium poppy or any cannabis plant;
- (iii) engaging in the production, manufacture, possession, sale, purchase, transportation, warehousing, concealment, use or consumption, import inter-State, export inter-State, import into India, export from India or transshipment, of narcotic drugs or psychotropic substances;
- (iv) dealing in any activities in narcotic drugs or psychotropic substances other than those referred to in sub-clauses (i) to (iii); or
- (v) handling or letting out any premises for the carrying on of any of the activities referred to in sub-clauses (i) to (iv),

other than those permitted under this Act, or any rule or order made, or any condition of any licence, term or authorisation issued, thereunder, and includes:

- (1) financing, directly or indirectly, any of the aforementioned activities;
- (2) abetting or conspiring in the furtherance of or in support of doing any of the aforementioned activities; and
- (3) harbouring persons engaged in any of the afore-mentioned activities;]

(ix) “**International Convention**” means:

- (a) the Single Convention on Narcotic Drugs, 1961 adopted by the United Nations Conference at New York in March, 1961;
- (b) the Protocol, amending the Convention mentioned in sub-clause (a), adopted by the United Nations Conference at Geneva in March, 1972;
- (c) the Convention on Psychotropic Substances, 1971 adopted by the United Nations Conference at Vienna in February, 1971; and
- (d) any other international convention, or protocol or other instrument amending an international convention, relating to narcotic drugs or psychotropic substances which may be ratified or acceded to by India after the commencement of this Act.

(x) “**manufacture**”, in relation to narcotic drugs or psychotropic substances, includes:

- (1) all processes other than production by which such drugs or substances may be obtained;
- (2) refining of such drugs or substances;
- (3) transformation of such drugs or substances; and
- (4) making of preparation (otherwise than in a pharmacy on prescription) with or containing such drugs or substances.

(xi) “**manufactured drug**” means:

(a) all coca derivatives, medicinal cannabis, opium derivatives and poppy straw concentrate;
(b) any other narcotic substance or preparation which the Central Government may, having regard to the available information as to its nature or to a decision, if any, under any International Convention, by notification in the Official Gazette, declare to be a manufactured drug,

but does not include any narcotic substance or preparation which the Central Government may, having regard to the available information as to its nature or to a decision, if any, under any International Convention, by notification in the Official Gazette, declare not to be a manufactured drug.

(xii) “**medicinal cannabis**”, that is, medicinal hemp, means any extract or tincture of cannabis (hemp).

(xiii) “**Narcotics Commissioner**” means the Narcotics Commissioner appointed under section 5.

(xiv) “**narcotic drug**” means coca leaf, cannabis (hemp), opium, poppy straw and includes all manufactured drugs.

(xv) “**opium**” means:

(a) the coagulated juice of the opium poppy; and

(b) any mixture, with or without any neutral material, of the coagulated juice of the opium poppy, but does not include any preparation containing not more than 0.2 per % of morphine;

(xvi) “**opium derivative**” means:

(a) medicinal opium, that is, opium which has undergone the processes necessary to adapt it for medicinal use in accordance with the requirements of the Indian Pharmacopoeia or any other pharmacopoeia notified in this behalf by the Central Government, whether in powder form or granulated or otherwise or mixed with neutral materials;

(b) prepared opium, that is, any product of opium obtained by any series of operations designed to transform opium into an extract suitable for smoking and the dross or other residue remaining after opium is smoked;

(c) phenanthrene alkaloids, namely, morphine, codeine, thebaine and their salts;

(d) diacetylmorphine, that is, the alkaloid also known as dia-morphine or heroin and its salts; and

(e) all preparations containing more than 0.2 per cent. of morphine or containing any diacetylmorphine.

(xvii) “**opium poppy**” means:

(a) the plant of the species *Papaver somniferum* L; and

(b) the plant of any other species of *Papaver* from which opium or any phenanthrene alkaloid can be extracted and which the Central Government may, by notification in the Official Gazette, declare to be opium poppy for the purposes of this Act.

(xviii) “**poppy straw**” means all parts (except the seeds) of the opium poppy after harvesting whether in their original form or cut, crushed or powdered and whether or not juice has been extracted therefrom.

(xix) “**poppy straw concentrate**” means the material arising when poppy straw has entered into a process for the concentration of its alkaloids.

(xx) “**preparation**”, in relation to a narcotic drug or psychotropic substance, means any one or more such drugs or substances in dosage form or any solution or mixture, in whatever physical state, containing one or more such drugs or substances.

(xxi) “**Prescribed**” means prescribed by rules made under this Act.

(xxii) “**production**” means separation of opium, poppy straw, coca leaves or cannabis from the plants from which they are obtained.

(xxiii) “**Psychotropic substance**” means any substance, natural or synthetic, or any natural material or any salt or preparation of such substance or material included in the list of psychotropic substances specified in the Schedule.

(xxiiiia) “**small quantity**”, in relation to narcotic drugs and psychotropic substances, means any quantity lesser than the quantity specified by the Central Government by notification in the Official Gazette].

(xxiv) “**to import inter-State**” means to bring into a State or Union territory in India from another State or Union territory in India.

(xxv) “**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 the vessel, aircraft, vehicle or any other conveyance in which it is being carried.

Explanation.—For the purposes of this clause and clause (xxvi), “India” includes the territorial waters of India.

(xxvi) “**to export from India**”, with its grammatical variations and cognate expressions, means to take out of India to a place outside India.

(xxvii) “**to export inter-State**” means to take out of a State or Union territory in India to another State or Union territory in India.

(xxviii) “**to transport**” means to take from one place to another within the same State or Union territory.

(xxviii) “**use**”, in relation to narcotic drugs and psychotropic substances, means any kind of use except personal consumption.

(xxix) **words and expressions used herein and not defined but defined in the Code of Criminal Procedure, 1973 (2 of 1974) have the meanings respectively assigned to them in that Code.**

Explanation: For the purposes of clauses (v), (vi), (xv) and (xvi) the percentages in the case of liquid preparations shall be calculated on the basis that a preparation containing one per cent. of a substance means a preparation in which one gram of substance, if solid, or one millilitre of substance, if liquid, is contained in every one hundred millilitre of the preparation and so on in proportion for any greater or less percentage:

Provided that the Central Government may, having regard to the developments in the field of methods of calculating percentages in liquid preparations prescribe, by rules, any other basis which it may deem appropriate for such calculation.

❖ **Prohibition of certain operations: Section 8**

Q. There are certain operations in the Act which prohibit certain operations, Discuss?

Ans: According to Section 8 No person shall-

- (a) cultivate any coca plant or gather any portion of coca plant; or
- (b) cultivate the opium poppy or any cannabis plant; or
- (c) produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into India, export from India or tranship any narcotic drug or psychotropic substance,

except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the rules or orders made thereunder and in a case where any such provision, imposes any requirement by way of licence, permit or authorisation also in accordance with the terms and conditions of such licence, permit or authorisation:

Provided that, and subject to the other provisions of this Act and the rules made thereunder, the prohibition against the cultivation of the cannabis plant for the production of *ganja* or the production, possession, use, consumption, purchase, sale, transport, warehousing, import inter-State and export inter-State of *ganja* for any purpose other than medical and scientific purpose shall take effect only from the date which the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided further that nothing in this section shall apply to the export of poppy straw for decorative purposes.

❖ **Punishment for contravention in relation to poppy straw: Section: 15**

Q. What is the punishment for contravention in relation to poppy straw?

Ans: Section 15 of the Act provides for the punishment for contravention in relation to poppy straw. According to this section Whoever, in contravention of any provisions of this Act or any rule or order made or condition of a licence granted thereunder, produces, possesses, transports, imports inter-State, exports inter-State, sells, purchases, uses or omits to warehouse poppy straw or removes or does any act in respect of warehoused poppy straw shall be punishable:

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both;

(b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years, and with fine which may extend to one lakh rupees;

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years, and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

❖ **Punishment for contravention in relation to prepared opium: Section 17**

Q. What is the punishment for contravention in relation to prepared opium?

Ans: Under Section 17 Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses prepared opium shall be punishable:

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both; or

(b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years, and with fine which may extend to one lakh rupees; or

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years, and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

❖ **Punishment for contravention in relation to opium poppy and opium: Section 18**

Q. What is the punishment for contravention in relation to opium poppy and opium?

Ans: According to this Section Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted there under, cultivates the opium poppy or produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses opium shall be punishable:

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both;

(b) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years, and shall also be liable to fine which shall not be less than one lakh rupees which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees;

(c) in any other case, with rigorous imprisonment which may extend to ten years and with fine which may extend to one lakh rupees.

❖ **Punishment for contravention in relation to cannabis plant and cannabis: Section 20**

Q. What is the punishment for contravention in relation to cannabis plant and cannabis?

Ans: So far as this section is concerned it says whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted there under:

- a) cultivates any cannabis plant; or
- b) produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis,

Shall be punishable:

- 1) where such contravention relates to clause (a) with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine which may extend to one lakh rupees; and
- 2) here such contravention relates to sub-clause (b)

(A) and involves small quantity, with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both;

(B) and involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years, and with fine which may extend to one lakh rupees;

(C) and involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

❖ Punishment for contravention in relation to manufactured drugs and preparations: Section 21

Q. What is the Punishment for contravention in relation to manufactured drugs and preparations under Section 21?

Ans: Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted there under, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any manufactured drug or any preparation containing any manufactured drug shall be punishable:

- I. where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both;
- II. where the contravention involves quantity, lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years, and with fine which may extend to one lakh rupees;
- III. where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years, and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

❖ Offences to be cognizable and non-bailable: Section 37

Q. Offences to be cognizable and non-bailable under Section 37?

Ans: So far as this section is concerned notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974):

- a. every offence punishable under this Act shall be cognizable;
- b. no person accused of an offence punishable for 3[offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless:

- c. the Public Prosecutor has been given an opportunity to oppose the application for such release, and
- d. where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.
- e. The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

❖ **Power of entry, search, seizure and arrest without warrant or authorization:
Section 42**

Q. Explain the Power of entry, search, seizure and arrest without warrant or authorization provided under Section 42?

Ans: (1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he 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 punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset:

1. enter into and search any such building, conveyance or place;
2. in case of resistance, break open any door and remove any obstacle to such entry;
3. seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and
4. detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

Provided that in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances granted under this

Act or any rule or order made there under, such power shall be exercised by an officer not below the rank of sub-inspector:

Provided further that] if such officer has reason to believe that a search warrant or authorisation 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 at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.

❖ Power of seizure and arrest in public place: Section 43

Q. Explain the power seizure and arrest in public place under section 43?

Ans: The power of seizure and arrest is provided under section 43 of the Narcotic Drugs and Psychotropic Substances Act, 1985, wherein it says that any officer of any of the departments mentioned in section 42 may:

1. seize in any public place or in transit, any narcotic drug or psychotropic substance or controlled substance in respect of which he has reason to believe an offence punishable under this Act has been committed, and, along with such drug or substance, any animal or conveyance or article liable to confiscation under this Act, any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act;
2. detain and search any person whom he has reason to believe to have committed an offence punishable under this Act, and if such person has any narcotic drug or psychotropic substance or controlled substance in his possession and such possession appears to him to be unlawful, arrest him and any other person in his company.

Explanation: For the purposes of this section, the expression “public place” includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to, the public.

❖ Conditions under which search of persons shall be conducted: Section 50:

Q. Under what Conditions the search of persons shall be conducted under Section 50?

Ans: The Conditions under which the search of persons shall be conducted are as follows:

1. When any officer duly authorised under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, if such person so

requires, take such person without unnecessary delay to nearest Gazetted Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.

2. If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in sub-section (1).
3. The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.
4. No female shall be searched by anyone excepting a female.
5. When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).
6. After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior.

❖ Disposal of persons arrested and articles seized: Section 52

Q. Explain the procedure of disposal of persons arrested and article seized under section 52 of the Narcotic Drugs and Psychotropic Substances Act, 1985?

Ans: Firstly, as soon as possible, any officer arresting a person under section 41, section 42, section 43 or section 44 the Act, shall, inform the person of the grounds for such arrest.

Secondly, every person arrested and article seized under warrant issued under sub-section (1) of section 41 shall be forwarded without unnecessary delay to the Magistrate by whom the warrant was issued.

Thirdly, every person arrested and article seized under sub-section (2) of section 41, section 42, section 43 or section 44 shall be forwarded without unnecessary delay to:

- (a) the officer-in-charge of the nearest police station, or
- (b) the officer empowered under section 53.

Fourthly, the authority or officer to whom any person or article is forwarded under sub-section (2) or sub-section (3) shall, with all convenient despatch, take such measures as may be necessary for the disposal according to law of such person or article.