



- The Indian intelligence system did not evolve out of any detailed & well thought out administrative policy, but emerged as an extension of the Indian police system due to a need driven colonial decision making process.
- According to Shri M. Hamid Ansari, former Vice President of India, “While intelligence information is at times incomplete, good intelligence often has made the difference between victory & defeat, life and death.
- After the Kargil operations in 1999, an enquiry by Kargil Review Committee lead to the setting up of the G.C. Saxena Special Task Force which recommended the creation of the Defence Intelligence Agency (DIA).
- Conventional threats are defined as “offensive armed postures by hostile powers, subversion, nuclear, biological & chemical threats, as also terrorism”
- While, “non-conventional threats include migration, epidemics, natural disasters, human trafficking, transnational crimes (e.g. drug smuggling or trade in counterfeit currency) & environmental security”.
- In the US, the Hoover Commission report of 1953 defined intelligence as the collection, collation, analysis & assessment of information pertaining to national security or having a bearing on formulation of national strategies.
- The concept of national security itself has changed dramatically.
- Till the First World War, it was viewed largely in military & political terms, & was mainly concerned with the armed forces of known adversaries.
- The cold war causing political destabilisation in other countries was recognised as a major threat during the Cold War years and was often covertly exercised.
- Previously, counter-intelligence in its traditional sense could be defined as, the pre-empting of threats by hostile countries in espionage, subversion or sabotage.
- Today counterintelligence has to perforce focus more on
 - constantly denying tactical victories to terrorists,
 - frustrating the plans &
 - capabilities of non-state actors.
- Three major gaps in intelligence :
 - 1) The absence of systematic dissemination & analysis of open intelligence;
 - 2)The absence of the practice of reverse analysis to look at things from the perspective of the adversary;
 - 3)The absence of independent thinking at the level of the joint intelligence committee.
- Open Source Intelligence (OSINT) is the process of gathering, analyzing, & sharing information that is publicly available & legal to access.
- In today’s information rich complex strategic environment, access is largely unrestricted & threats or opportunities can emerge from almost anywhere.
- This argues for a more “cognition–centric” model that prioritises sound thinking ahead of mere secret data collection.
- Even earlier, after the 1975 emergency, the L.P. Singh Committee had gone into the working of the IB & recommended a written charter for it.
- Absence of legislative cover can be a serious lacuna as all intelligence work is carried out under executive instructions.
- None of the prominent international organisations depend upon the general federal recruitment procedure for recruiting their staff.
- The problem in India is that both the law enforcement & intelligence organisations do not have a sound legal basis.
- 2013 Gauhati High Court judgement, which called the CBI illegal.
- In 2011, Manish Tewari, moved a private member’s bill in the Lok Sabha- “The Intelligence Services (Powers and Regulation) Bill” that sought to bring “appropriate statutory basis” for intelligence agencies.
- The bill also dealt with the question of balancing the demands of security & privacy of individuals.
- Mr. Tewari listed an improved version of the bill in 2019 but it got the conventional private bill response.
- Apex court had not so far adjudicated on the legality of the organisation that had the authority to deprive people of their life & liberty
- To a question raised by Mr. Tewari in 2009 on the legal basis of the Intelligence Bureau (IB) & the Research and Analysis Wing (RAW), the govt admitted that the RAW had no basis in law.
- The IB, derived its existence from being on the Union List. This was not enough to make the CBI or the IB legal.
- In each evolved democracy, intelligence agencies are subject to very rigorous parliamentary oversight.
- There are specific parliamentary committees that look at the functioning of intelligence agencies.

- In India, there is a complete absence of even a public discussion on how to hold the agencies accountable.
- The agencies empowered by the govt in accordance with the Information Technology Act, 2000, include the Intelligence Bureau (IB), Narcotics Control Bureau, Enforcement Directorate (ED), Central Board of Direct Taxes (CBDT), Directorate of Revenue Intelligence (DRI), Central Bureau of Investigation (CBI), National Investigation Agency (NIA), Cabinet Secretariat (RAW) and the Commissioner of Police, Delhi.

NATIONAL INTELLIGENCE GRID

- First conceptualised in 2009, NATGRID seeks to become the one-stop destination for security & intelligence agencies to access database related to immigration entry & exit, banking and telephone details of a suspect on a "secured platform".
- Currently, security agencies directly contact an airline or a telephone company if they are on a suspect's trail.
- The data is shared through international servers such as Google etc.
- The NATGRID will ensure that such information is shared through a secure platform, safeguarding it from leaks.
- It aims to provide a "cutting-edge technology to enhance India's counter-terror capabilities"
- Synchronisation & testing" of the ambitious electronic database, which was mooted after the 26/11 Mumbai terror attacks in 2008, is being carried out so that it can go live.
- Union Home Ministry had recently indicated that NATGRID, conceptualised as a seamless & secure database for information on terrorists, economic crimes and similar incidents, may finally come to throne.
- The NATGRID has been envisaged as a robust mechanism to track suspects & prevent terrorist attacks with real-time data & access to classified information like immigration, banking, individual taxpayers, air & train travel
- According to the first phase plan, 10 user agencies & 21 service providers will be connected with the NATGRID, while in later phases, about 950 additional organisations will be brought on board.
- Prominent federal agencies of the country have been authorised to access the NATGRID database.
- They are the Central Bureau of Investigation, the Directorate of Revenue Intelligence, the Enforcement Directorate, the Central Board of Indirect Taxes and Customs, the Central Board of Direct Taxes (for the Income Tax Department), the Cabinet Secretariat, the Intelligence Bureau, the Directorate General of GST Intelligence, the Narcotics Control Bureau, the Financial Intelligence Unit, and the National Investigation Agency. These

are federal agencies of the country have been authorised to access the NATGRID database.

- Lack of quick information to intelligence & enforcement agencies was considered one of the major hurdles in detecting U.S. terror suspect David Headley's movement across the country during his multiple visits between 2006 & 2009.
- The Cabinet Committee on Security (CCS) had given approval to the ₹3,400 crore NATGRID project back in 2010 but its work slowed down after 2012.
- NATGRID is an online database for collating scattered pieces of information & putting them together on one platform.
- NATGRID's data recovery centre started in Bengaluru.
- NATGRID was exempted from the Right to Information Act, 2005 under sub-section (2) of Section 24.
- The National Intelligence Grid (NATGRID) has signed a memorandum of understanding with the National Crime Records Bureau (NCRB) to access the centralised online database on FIRs & stolen vehicles.
- The MoU, will give NATGRID access to the Crime & Criminal Tracking Network & Systems (CCTNS) database, a platform that links around 14,000 police stations.
- All State police are mandated to file First Information Reports (FIR) in the CCTNS.
- The MoU enables the NATGRID to get information about details of a suspect as mentioned in the FIR such as his/her father's name, telephone number & other details."
- The ambitious National Intelligence Grid (NATGRID) project wants to link social media accounts to the huge database of records related to immigration entry & exit, banking & telephone details among others.
- Intelligence agencies had also earlier opposed the NATGRID itself amid fears that it would impinge on their territory & possibly result in leaks on the leads they were working on to other agencies.
- NATGRID is intending to set up an Entity Extraction, Visualization & Analytics (EVA) system that would collect & analyse information available from various data sources.
- "Entity extraction" refers to the use of natural language processing (NLP) techniques to automatically identify and categorize key pieces of information like people, locations, organizations, dates, and events from unstructured text sources like news articles, social media posts, or documents etc.

INTELLIGENCE BUREAU

- The I.B. is India's internal security agency. It works with other intelligence & law enforcement agencies & is responsible for mitigating threats from terrorism.

- It is also tasked with the collection & dissemination of intelligence.
- It ensures protection of infrastructure, especially aviation, & guards against secessionist activities.
- The I.B. also performs background checks for security clearances for diplomats, judges & other important individuals.
- Its exact functions, are not identified.
- The agency functions under the Ministry of Home Affairs.
- I.B. Director is part of the Strategic Policy Group & the Joint Intelligence Committee (JIC) of the National Security Council & enjoys the privilege of reporting directly to the Prime Minister.
- The I.B. has fostered partnerships with crucial agencies abroad, in particular in the United Kingdom, the United States & Israel.
- There is no direct recruitment for personnel in the I.B.; its personnel are inducted from within law enforcement agencies, although the Indian Police Service (IPS) accounts for the bulk of the organisation.
- The I.B. enjoys sweeping powers under the Indian Telegraph Act & the Indian Post Office Act to monitor all forms of communications.
- The I.B. has its roots in the colonial era. It is believed that the I.B. was founded on December 23, 1887, after 1857 revolt, as the "Central Special Branch" by the Secretary of State for India in London in order to detect potential unrest.
- Some others claim that the I.B. had its genesis in India's first intelligence unit which Major General Sir Charles Metcalfe MacGregor established in 1885.
- The Central IB has its own units in various states called Subsidiary IBs.
- In the British Era these were called the Provincial Special Branch. This is a lean staff.
- It works largely through the local police & State Intelligence branches
- Subsidiary IBs report to the Centre while State IBs report to the State government.
- If the political parties in power are different at both places, it will create trouble.
- Since there is no legal mandate there is no oversight for the Intelligence Bureau – intelligence sharing & information withholding, depends entirely on a system of back channels.
- An attempt to pass a security services bill in 2011 actually tried to formalize the back-channel system as a "security measure."
- State IB, may not be able to share information with Sub IBs or with each other, if they are not alliance partners.
- In 2012, a former IB officer filed a PIL, asking the organisation to explain its constitutional or statutory sanction.

- More than 75% offices of the Intelligence Bureau (IB) are running from rented buildings, the Ministry of Home Affairs (MHA) has informed a parliamentary committee.
- IB has its own building at 246 locations which is only approximately 20-25% of overall post/unit of IB.

COUNTER-TERRORISM CENTRE

- The CIA had a Counter-Terrorism Centre (CTC) for tasks of coordination & follow-up action on the intelligence collected by various agencies.
- The CTC had officers taken on deputation from different agencies. They worked under a CIA officer.
- The Vajpayee govt set up the CTC, under an executive order, as part of the IB but for reasons not clear - named it the Multi-Agency Centre (MAC) & not the CTC.
- The 9/11 terrorist strikes in the U.S. brought out serious gaps in the functioning of the CTC of the CIA.
- The Bush administration, therefore, set up a National Counter-Terrorism Centre (NCTC) in 2004 as an independent institution not under the control of any existing agency.
- It was placed under the Director, National Intelligence, who is part of the President's personal staff.
- While the U.S. gave up the CTC after 9/11, the Indian model of the MAC, patterned after the U.S. model, has continued functioning.
- Neither the Vajpayee govt nor the Manmohan Singh govt revisited the recommendations of the Saxena Task Force in the light of the 9/11 lessons.
- The U.S. NCTC is an independent institution not under the control of any of the existing agencies.
- In India, it is to be made a wing of the IB & will work under the Director of IB.
- In the U.S., the NCTC is a legal institution set up under Congressional legislation after bipartisan consultations, but it does not have any legal powers to act on its own in matters such as arrest, detention, interrogation, searches etc.
- The Indian NCTC has been set up by executive notification under the Unlawful Activities Prevention Act of 1967.
- India's Intelligence Bureau, which tops the list of agencies authorised to snoop into the private communication of citizens, has no charter under Indian law post-independence.

RTI & INTERCEPTIONS

- The Indian NCTC is to be given powers of arrest & searches as part of its preventive operations.
- Granting these powers to the IB through the NCTC mechanism could have two undesirable consequences–
1)the allegations of misuse of the IB for harassing political opponents & 2)Against allegations of human rights violations.

- IB's role as a clandestine intelligence collection organisation may get affected.
- The IB will be preoccupied with defending its arrests before the courts & against allegations of human rights violations.
- IB enjoys protection from the Right to Information Act.
- If it has these powers & adds policing to its functions, it may no longer be able to enjoy this protection.
- The apex court has directed the Delhi HC to decide the applicability of the Right to Information (RTI) Act to intelligence & security organisations.
- Currently, the laws authorising interception & monitoring of communications are Section 92 of the CrPC (for call records, etc), Rule 419A of the Telegraph Rules, & the rules under Sections 69 & 69B of the IT Act.
- Indeed, it is unclear when the Telegraph Act applies & when the IT Act applies. A limited number of agencies are provided powers to intercept & monitor.
- In 2014, the Ministry of Home Affairs told Parliament that nine central agencies & the DGPs of all States & Delhi were empowered to conduct interception under the Indian Telegraph Act
- In 2018, nine central agencies & one State agency were authorised to conduct intercepts under Section 69 of the IT Act.
- Yet, the Intelligence Organisations Act, which restricts the civil liberties of intelligence agency employees, only lists four agencies, while the RTI Act lists 22 agencies exempted from RTI.
- So, it is unclear which entities count as intelligence & security agencies.
- Further, a surveillance alphabet soup exists, with programmes such as CMS, TCIS, NETRA, CCTNS, and so on, none of which has been authorised by any statute, and thus fall short of the 2017 K.S. Puttaswamy judgment, making it clear that any invasion of privacy could only be justified if it satisfied three tests:
 - 1) the restriction must be by law;
 - 2) it must be necessary (only if other means are not available) & proportionate (only as much as needed); &
 - 3) it must promote a legitimate state interest (e.g., national security).
- In 2010, then Vice-President Hamid Ansari called for a legislative basis for India's agencies, and the creation of a standing committee of Parliament on intelligence to ensure that they remain accountable and respectful of civil liberties
- In 2011, the Cabinet Secretary in a note on surveillance held that the Central Board of Direct Taxes having interception powers was a continuing violation of a 1975 Supreme Court judgment on the Telegraph Act
- In 2013, the think-tank, the Institute for Defence and Strategic Analysis, published a report, "A Case for Intelligence Reforms in India", a core recommendation of which was: "the intelligence agencies in India must be provided a legal framework for their existence & functioning; their functioning must be under Parliamentary oversight & scrutiny"
- In 2018, the Srikrishna Committee on data protection noted that post the K.S. Puttaswamy judgment, most of India's intelligence agencies are "potentially unconstitutional", since they are not constituted under a statute passed by Parliament — the National Investigation Agency being an exception.

NARCOTICS CONTROL BUREAU

- One of the Directive Principles in the Constitution (Article 47) directs the state to act against narcotic activities injurious to health.
- The "Narcotic Drugs & Psychotropic Substances, NDPS Act mandates the formation of a central authority to exercise its powers & functions under the statute.
- The govt constituted the NCB on March 17, 1986 to coordinate with other departments & ministries to fight illicit traffic in drugs & drug abuse.
- The NCB, created in March 1986 under the terms of Section 4 (3) of the Narcotic Drugs & Psychotropic Substances Act, 1985, sets & enforces the government's drug policy.
- Its primary role is to ensure the prevention of narcotics import & the export of indigenous narcotics such as high-quality cannabis grown widely in India.
- The NCB is also responsible for gathering intelligence, often with the help of satellite images, on unauthorised cultivation of opium & illegal manufacture of precursor chemicals & drugs.
- It is empowered to conduct raids & seize chemicals, drugs or equipment and make arrests.
- The NCB adheres to relevant international conventions, such as those adopted by the United Nations and the South Asian Association for Regional Cooperation (SAARC).
- It liaises with International agencies such as the U.N. Drugs Control Programme, the International Narcotics Control Board, Interpol, the Customs Cooperation Council & the Regional Intelligence Liaison Offices.
- According to a Ministry of Home Affairs (MHA) reply in the Lok Sabha. India has signed 26 bilateral pacts, 15 memoranda of understanding & two agreements on security cooperation with different countries for combating illicit trafficking of narcotic, drugs and psychotropic substances, besides chemical precursors.
- The Narcotics Control Bureau (NCB) coordinated with various international organisations for sharing

information & intelligence to combat transnational drug trafficking

- They included the SAARC Drug Offences Monitoring Desk; Brazil, Russia, India, China and South Africa (BRICS); Colombo Plan; Association of Southeast Asian Nations (ASEAN); ASEAN Senior Officials on Drug Matters (ASOD); Bay of Bengal Initiative For Multi-Sectoral Technical & Economic Co-Operation (BIMSTEC); United Nations Office on Drugs & Crime (UNODC), and the International Narcotics Control Board (INCB).
- Sharp vigil, effective surveillance, public cooperation, source-based intelligence, sensitisation of field officials and associated measures had resulted in a gradual increase in the registration of a number of drug trafficking related cases in the country, the MHA stated
- For coordination among various Central & State agencies, the Narco Coordination Centre (NCORD) mechanism was set up by the MHA in year 2016 for effective drug law enforcement.
- NCORD system has been restructured into a four-tier scheme up to district level on July 29, 2019, for better coordination,
- A Joint Coordination Committee, with the NCB Director General as its chairman was set up on July 19, 2019, to monitor the investigation into cases involving large seizure
- For digitisation of pan-India drug seizure data, the MHA has launched an e-portal called 'SIMS' (Seizure Information Management System) in 2019 for all the drug law enforcement agencies under the mandate of Narcotics Drugs & Psychotropic Substances Act (NDPS)
- Besides the Directorate of Revenue Intelligence, the Border Security Force, Sashastra Seema Bal, Indian Coast Guard, Railway Protection Force and the National Investigation Agency have also been empowered under the NDPS Act for making drug seizures.

NARCOTIC DRUGS & PSYCHOTROPIC SUBSTANCES ACT 1985

- The procedure of seizing narcotic drugs is important first. Section 50 of the Act specifies conditions under which search of persons shall be conducted - all they needs to be followed properly.
- During a routine check, the drugs must be seized in front of a Gazetted Officer or a Magistrate.
- In cases of sudden development, the suspect is taken to the nearby Magistrate or the latter is brought to the spot & then only drugs are seized.
- If this is not adhered to, the court acquits the accused persons.
- Only then the next stage of investigation commences.
- While tracking drugs cases, investigators go from consumers to drug suppliers.

- Since the seizure procedure is to be followed, there could be one Magistrate at the time of seizing drugs.
- This is a stringent law where the death penalty can be prescribed for repeat offenders.
- Since drug peddling is an organised crime, it is challenging for the police to catch the persons involved from the point of source to the point of destination.
- Identifying drugs that are being transported is a challenge since we cannot stop each and every vehicle that plies on Indian roads.
- Most drug bust cases are made possible with specific information leads.
- Going beyond State jurisdiction, finding the source of narcotic substances & destroying them is another big challenge.
- Catching the accused cultivating ganja in areas bordering the States too is turning out to be a herculean task.
- Securing conviction for the accused in drugs cases is yet another arduous task. There are frequent delays in court procedures. Sometimes, cases do not come up for trial even after two years of having registered them.
- The accused are out on bail and do not turn up for trial.
- Bringing them back from their States to trial is quite difficult let alone getting them convicted.
- We need to make a clear distinction between a drug supplier and an end user.
- A drug user needs to be seen as a patient.
- The Act as of now prescribes jail for — the end user & the drug supplier.
- The proposal to send persons to rehabilitation centres is good on paper but it needs proper infrastructure & implementation
- We face an acute shortage of psychiatrists & counsellors.
- Policing is a State subject. It is not in the Concurrent list.
- The govt could also study some of the best practices in the world. In Iceland, a community-led approach has worked wonders. Iceland witnessed acute drug abuse among its children and the youth. The govt decided to tackle the issue right from the school level.
- The COVID-19 pandemic, has aggravated anxieties among the youth.
- We need to allocate more money for the fund, help transform drug addicts & make the job of policing easier.
- We cannot think of legalisation of drugs usage in isolation. We need to think of the harmful effects first. There are connected issues like absenteeism in schools, loss of jobs, income, depression and suicide.

- The crime rate could go up, throwing up yet another new challenge for the police.
- It could lead to proliferation of drugs.
- There are many street children who use whiteners, glue, painting chemicals, etc.
- There is no focus on such children becoming victims of substance use.
- There are three types of drugs — party drugs, prescription drugs and others, namely inhalants (also known as synthetic drugs).
- While bringing up their wards, parents must be able to talk to their children & assure them of all support should they face a problem.
- Parents have to act as confidants first. Mutual trust should be so strong that wards come to them at the first sign of trouble.
- Teachers should keep an eye on school surroundings to stop selling hookah pipes or ganja papers.
- Civil society support is equally important.
- What is 'Conscious Possession' ?
 - "Intention, motive, knowledge"
 - Section 35 of the Act recognises the 'presumption of culpable mental state'. Possession need not be physical & could be 'constructive'.
 - The Supreme Court defines the word 'conscious' as "awareness about a particular fact" -- a state of mind which is deliberate or intended.
 - An illustration of 'conscious possession' is if a person keeps his gun in his mother's flat, which is safer than his own home, he must be considered to be in possession of the firearm.
- The liability is on the accused to dispel the court's presumption of his culpable mental state.
- Section 54 of the Act also allows for a similar presumption in the possession of illicit articles.
- The NDPS Act treats drug offences very seriously & penalties are stiff. Penalties depend on the quantity of drugs involved.
- The Centre has notified the individual small & commercial quantities for each drug. For hashish, the commercial quantity is 1 kg. A small quantity of cocaine is two grams and commercial quantity is 100 grams; heroin is five grams and 250 grams respectively. For methamphetamine, the corresponding figures are two grams and 50 grams; and for MDMA, 0.5 gram and 10 grams.
- Under the Act, abetment & criminal conspiracy & even an attempt to commit an offence under the Act attracts the same punishment as the offence itself.
- Preparation to commit an offence attracts half the penalty. Repeat offences attract one & half times the penalty and in some cases even the death penalty.
- Production, manufacture, possession, sale, purchase, transport, import inter-state, export inter-state or use of narcotic drugs and psychotropic substances in small quantities involve rigorous imprisonment up to six months or fine up to Rs.10,000 or both.
- More than small quantity but less than commercial quantity involves rigorous imprisonment up to 10 years and fine up to Rs. 1 lakh. Those activities involving commercial quantity of drugs attract rigorous imprisonment of 10 to 20 years and fine of Rs.1 lakh to 2 lakh.
- This law has "stringent" provisions for the control & regulation of operations relating to narcotic drugs & psychotropic substances. These include forfeiture of property derived from, or used in, illicit traffic.
- Human rights advocates have criticised the NDPS Act as a severe law which leans towards incarceration rather than bail.
- Section 37(1) mandates that an accused person should not be granted bail unless the court has reasonable grounds to believe that he is not guilty and that he is not "likely to commit any offence while on bail". The provision is on the same terms as anti-terror laws.
- These include cultivation of coca plant to 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 offences under the law.
- It also includes financing, abetting, conspiring, harbouring, and even letting out premises to persons engaged in illegal activities under the Act.
- The power given to the Central government to "take measures for preventing and combating abuse of and illicit traffic in narcotic drugs, etc" is wide.
- The statute allows the Centre & States to empower officers, who are above the rank of peon, sepoy or constable in central excise, narcotics, customs, revenue intelligence or any other department to act on "personal knowledge" or third-party information given in writing, with the power to enter, search, seize and arrest without warrant or authorisation.
- According to SC ,confessions made by accused persons to officials invested with powers of an "officer-in-charge of a police station" under the Narcotic Drugs and Psychotropic Substances (NDPS) Act are not admissible as evidence during court trial .
- Any use of such "confessional statements" would be an infringement of the fundamental right of privacy & the right against self-incrimination of the accused person - : a three-judge Bench led by Justice Rohinton F. Nariman.
- According to SC ,the interpretation of a statute like the NDPS Act must needs be in conformity with the spirit of fundamental right not to incriminate oneself, and the right to privacy... A person's

privacy is not to be trifled with, because if it is, the officer who trifles with it is himself punishable under the provision,”

- The judgment interpreted Section 53 of the NDPS Act. Under this provision, the Central government, in consultation with the State, can invest officials of certain departments like central excise, narcotics, customs, revenue intelligence or even paramilitary or armed forces, with the powers of a police officer.
- Confessions made before a police officer are inadmissible in court as per the Evidence Act.
- The question before the court was whether officers empowered under Section 53 could actually be a “police officer” in all sense of the term.
- A statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.
- The Social Justice & Empowerment Ministry has recently recommended that the National Fund to Control Drug Abuse be used to carry out de-addiction programmes, rather than just policing activities.
- A proposal to decriminalise possession of “small quantities” of drugs, as defined in the NDPS Act, had also been sent to the Department of Revenue under the Finance Ministry, by Social Justice and Empowerment Ministry
- According to the Social Justice Ministry & All India Institute of Medical Sciences’ report on magnitude of substance use in 2019, there were 3.1 crore cannabis users (of which 25 lakh were dependent users) and 2.3 crore opioid users (of which 28 lakh were dependent users)
- A magistrate's court has no jurisdiction to entertain a bail application for an offence with prescribed punishment of more than three years under the Narcotic Drugs and Psychotropic Substances (NDPS) Act as it is triable by a special court .
- The NDPS Act was amended in 2014 to allow better medical access to narcotic drugs & removing state barriers in transporting & licensing of essential narcotic drugs.
- Justice C.T. Selvam, exercising his inherent powers under Section 482 of CrPC, stayed the proceedings pending before the Special Court and sent the accused for rehabilitation.
- NDPS Act excludes the seeds & leaves of the cannabis plant, though these are used in the making of bhang, a common and fairly potent intoxicant imbibed during festivals

DEATH PENALTY FOR DRUG

- The death penalty for drugs has been a subject matter of intense debate, centring on the question of whether the state can take life for an offence that does not involve the taking of life.
- The opinion of most international experts as well as the overwhelming majority of states, is clear that drug offences do not warrant death sentences.

- India has a long history of opium and cannabis use, especially in medicinal, spiritual and social contexts. Serving opium is an age-old tradition in many parts of the country that marks respect for guests
- In 1989, the NDPS Act underwent amendments to incorporate harsher provisions, including mandatory death penalty upon subsequent conviction, if the quantity of contraband exceeds the threshold under Section 31A of the Act.
- The offender's whether young or old, sick or mentally infirm, socially and economically disadvantaged or acting under duress or pressure , were irrelevant in sentencing.
- The death sentence is applied uniformly, irrespective of whether the convicted person is a carrier, an intermediary, organiser or lead player in the drug trade.
- A constitutional challenge in 1998 was disallowed, as no one had been sentenced to death for a drug crime at the time. Ten years later, two men were sentenced to death
- Bombay High Court read in judicial discretion and empowered the sentencing Court to award a sentence other than death.
- While the death penalty is not prohibited in international law, international human rights authorities have clarified certain conditions associated with its application. For example, it should not be imposed on juveniles or pregnant women.
- These standards also stipulate that only certain offences or ‘most serious crimes’ should be eligible for capital punishment
- Drug offences do not involve killing or taking of life. Though serious, drug dependence can be addressed with counselling, treatment and aftercare.
- The twelve drugs that attract capital punishment under the NDPS Act are not similar in their addictive potential, harmful effects or therapeutic value.
- Two of these drugs , Morphine & Codeine , are included in the National List of Essential Medicines, 2011 for their analgesic properties.
- Cannabis, which is also part of the list, neither causes death nor results in serious physical or psychological impairment.
- The United Nations Human Rights Committee (UNHRC) has held that drug trafficking is not the “most serious crime” under international law.
- In 1997, the UNHRC asked India to “limit the number of offences carrying the death penalty to the most serious crimes, with a view to its ultimate abolition”
- Significantly, the United Nations Office on Drugs and Crime, has denounced capital punishment as a means to contain illicit trafficking.
- India has consistently ignored these opinions.
- In the seminal case of Bachan Singh in 1980, the Supreme Court upheld the death penalty under

Section 302 of the Indian Penal Code, 1860 for murder , an act that puts an end to life.

- It is on the principle of retributive justice that the court regarded death penalty to be constitutional, with a further qualifier that it can only be imposed in the “rarest of rare” case.
- Anti-narcotics campaigns have often tended to label drug offences as being worse than homicide. Such

observations are mere rhetoric & not backed by scientific evidence.

- India voted with the majority in the UN to remove cannabis and cannabis resin from the list of most dangerous substances. This decision was taken at the International Conventions on Narcotic Drugs in December 2020



New Vision IAS Academy
....wings to aspirations