

## **preface to the second edition**

The second edition of the book was long due but because of my professional commitments I could hardly find the time it required. The first edition of the book was received well by the Bench and the Bar and from the response it received, it served the purpose intended. When a book newly introduced receives such enthusiastic reception, the author feels amply rewarded. With such a good response, I rededicated myself to the task of a comprehensive revision of the book improving the presentation and contents, embracing all the changes brought about by the Legislature and the Courts during the intervening period. In the first edition I specifically mentioned how the twin menace of narcotics and terrorism, the most destructive forces, are wreaking havoc in the valley of Jammu and Kashmir and in the North Eastern States and striking deep into the peace and stability of our nation. The terrorist attacks within the precincts of our Parliament, in the commercial centre of Mumbai and serial explosions in Assam vividly haunt our memories. The initial legislation in the year 1985 proved inadequate to deal with the alarming situation necessitating two successive amendments in 1989 and 2001 removing technical snags. The Central Government in exercise of the power under section 7A of the NDPS Act, 1985 has set up the National Fund for Control of Drug Abuse and promulgated Rules entitled 'The Narcotic Drugs and Psychotropic Substances (National Fund for Control of Drug Abuse) Rules, 2006' w.e.f. 24.3.06. The juvenile who commits a crime under the narcotic laws now deserves different treatment in view of the amendment brought about by the Amendment Act, 2006 w.e.f. 22.8.06. Most of the prosecution under the NDPS Act fails due to technical defects in search, seizure, packing and safe custody of samples and not following the procedures in sending the samples to the Chemical Examiners. We require specially trained police officials to be posted in the areas infested with such criminal activities relating to trafficking of narcotic drugs and psychotropic substances. The debate relating to 'search of a person' that stormed the Apex Court in *Baldev Singh (1999)* took a long time to settle in *Pawan Kumar (2005)* followed by *Babu Ram, Suresh and Dilip* in the year 2007. In my humble way, I have tried to present a complete work on the subject, incorporating all the amendments and the reported cases of the Supreme Court and the High Courts. I am confident that this revised edition would serve the desired need of the investigating agencies, the Bench and the Bar. I have special reason to mention the sad demise of my friend Samya Sett, Judge, Special Court under NDPS Act who was hauled up by a Single Judge of the Calcutta High Court for non-compliance of the directions issued and some

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caustic adverse remarks were recorded against him in the judgment. He spent a huge amount of his personal funds and took the matter to the Hon'ble Apex Court to have such undesired adverse remarks expunged (AIR 2005 SC 3309). I salute his courage and conviction. May his soul rest in peace! I acknowledge with deep sense of gratitude the co-operation I received from Mr. Om Prakash Wadhwa, Mr. Kishan Wadhwa, as well as Mr. Chaitanya Kalbag, Publishing Director, LexisNexis Butterworths India and all the members of the staff closely associated with the second edition of the work to see it through the press.

**DOL PURNIMA**  
**The 11th March, 2009 —Dibyajyoti De**

Never before has the United Nations been so grossly composed to make a resolute attempt to combat the menace of the twin evils of terrorism and traffic in drugs. After the unfortunate incident in the USA on the 11th September last year all the nations expressed their solidarity to uproot these twin-evils wherever they exist. The unholy alliance of the terrorist groups with the drug traffickers gave them access to the huge funds they needed to keep their mission alive. The fall of the Taliban regime in Afghanistan brought some hopes to the international community but the task is yet to be accomplished. The menace of narco-terrorism, the most destructive forces, wreaking havoc in the valley of Jammu and Kashmir and in the North Eastern States are threatening peace and stability of our nation. Situated between the two major global sources of illicit drugs, the Golden Triangle (Thailand, Myanmar and Laos) and the Golden Crescent (Pakistan, Afghanistan and Iraq), India has been the vulnerable transit point in international traffic in narcotic drugs. Heroin smuggled into India from these places are transported to the USA and other European countries.

The First International Convention on Narcotic Drugs in 1961 adopted by the United Nations in New York in March 1961 was amended by the Protocol adopted by the United Nations Conference in Geneva in March, 1972. The Convention on Psychotropic Substances, 1971 was adopted by the United Nations Conference in Vienna in February, 1971. Keeping in tune with the International Conventions, our country made a bold legislative attempt in 1985 to curb the menace of traffic in Narcotic Drugs and Psychotropic Substances. But the legislation was not adequate to combat the alarming situation necessitating amendment of the Act in 1989. The prosecution under the Act failed mostly on technical grounds. The current amendment, **NDPS (Amendment) Act, 2001**, is yet another legislative attempt to iron out the anomalies and to remove the technical snags recasting almost the entire statute.

The current amendment extended the scope of the operation of the Act to all citizens of India outside India and all persons on ships or aircrafts registered in India. To identify the persons involved in the commission of an offence under the Act, the new scheme of 'controlled substances' and 'controlled delivery' has been introduced with more severe punishment for the offenders involved in dealing with 'commercial quantity'. The expression 'small quantity' has been specifically defined to avoid confusion.

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The scope for application of the National Funds for Control of Drugs Abuse has been widened to defray the expenses in connection with identifying, treating and rehabilitating drug addicts and also to educate public against drug abuse. The entire scheme of punishment for the offences under the Act underwent radical changes where the contravention involving 'small quantity' for personal consumption has been provided with liberal punishment whereas the offences involving 'commercial quantity' has been provided with severe punishment extending to twenty years. For the second and subsequent offences under the Act involving 'commercial quantity' **death penalty** has been provided.

It is often noticed that the investigation of the offences under Act involving 'commercial quantity' could not be completed within the statutory period of 90 days and the period of pre-trial detention has been extended to 180 days subject to extension of period upto one year. In the matter of cognizance of offences and commitment of cases before the Special Court some specific changes have been introduced. For the first time punishment has been provided for consumption of any narcotic drugs or psychotropic substances.

Prior to the amendment most of the prosecutions under the Act failed due to technical defects in search, seizure and arrest of the offenders and irregularities in investigation. Necessary changes have been introduced relating to the matter of personal search and seizure. Strong presumption of possession under section 54 can only be rebutted by the accused on furnishing satisfactory explanation for such possession.

There is a conceptual departure from the Indian Evidence Act, 1872 authorising the Courts trying the cases under the Act, to treat the document of inventory, photographs and list of sample drawn etc. and duly authenticated by Magistrate as primary evidence.

Drug addicts volunteering for treatment may now have immunity from prosecution. Stringent provisions have been introduced for confiscation of seized contraband and also for identifying, freezing and forfeiture of the property derived from, or used in, illicit traffic in narcotic drugs and psychotropic substances.

In my humble way I have tried to present a complete work on the subject incorporating all the amendments and reported cases of the Supreme Court and the High Court. I shall be glad if the book serves the desired need of the investigating agencies, the Bench and the Bar.

I remember my eldest uncle Sri K.R. Deb, a brilliant scholar and an educationist, now in nadir of his life, had outstanding contributions in the field of

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education and his students are now highly placed in public life. I am indebted to my wife Suchandra for her constant inspiration, encouragement and sacrifices. I have no hesitation to confess that I deprived my two little sons Raunak and Saunak of my company when I kept myself confined in my studies during the progress of the work. I convey my sincere apologies to them. Alisa, my sweet little pet, also deserves special mention.

I acknowledge with deep sense of gratitude the co-operation I received from Mr. Om Prakash Wadhwa and Mr. Kishan Wadhwa of Wadhwa and Company, New Delhi and all the members of the staff who were closely associated with the work to see it through the Press.

**MAHALAYA**

**The 6th February, 2003 —Dibyajyoti De**

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