



LAWS AND REGULATIONS

PROMULGATED TO GIVE EFFECT TO THE PROVISIONS OF THE INTERNATIONAL TREATIES ON NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

In accordance with the relevant articles of the international treaties on narcotic drugs and psychotropic substances, the Secretary-General has the honour to communicate the following legislative texts.

INDIA

Communicated by the Government of India

NOTE BY THE SECRETARIAT

- (a) Some editing of texts may be done by the Secretariat in the interest of clarity. In this connection, words in square brackets [] have been added or changed by the Secretariat.
- (b) Only passages directly relevant to the control of narcotic drugs or psychotropic substances have been reproduced in this document. Non-relevant parts of laws and regulations have been deleted by the Secretariat; such deletions are indicated by [...].

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SECTION 52A. DISPOSAL OF SEIZED NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

incorporated in December 1988 into the Narcotic Drugs and Psychotropic Substances Act, 1985 1/

(1) The Central Government may, having regard to the hazardous nature of any narcotic drugs or psychotropic substances, their vulnerability to theft, substitution, constraints of proper storage space or any other relevant considerations, by notification published in the Official Gazette, specify such narcotic drugs or psychotropic substances, or class of narcotic drugs or class of psychotropic substances which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may, from time to time, determine after following the procedure hereinafter specified.

(2) Where any narcotic drug or psychotropic substance has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, the officer referred to in subsection (1) shall prepare an inventory of such narcotic drugs or psychotropic substances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers of such other identifying particulars of the narcotic drugs or psychotropic substances or the packing in which they are packed, country of origin and other particulars as the officer referred to in subsection (1) may consider relevant to the identity of the narcotic drugs or psychotropic substances in any proceedings under this Act and make an application, to any magistrate, for the purpose of:

(a) Certifying the correctness of the inventory so prepared; or

(b) Taking, in the presence of such magistrate, photographs of such drugs or substances and certifying such photographs as true; or

(c) Allowing to draw representative samples of such drugs or substances, in the presence of such magistrate, and certifying the correctness of any list of samples so drawn.

(3) Where an application is made under subsection (2), the magistrate shall, as soon as may be, allow the application.

(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872) or the Code of Criminal Procedure, 1973 (2 of 1974), every court trying an offence under this Act shall treat the inventory, the photographs of narcotic drugs or psychotropic substances and any list of samples drawn under subsection (2) and certified by the magistrate, as primary evidence in respect of such offence.

E/NL.1989/19

Government of India
Ministry of Finance
(Department of Revenue)

New Delhi, 13 June 1989

STANDING ORDER No. 1/89

"WHEREAS the Central Government considers it necessary and expedient to determine the manner in which the narcotic drugs and psychotropic substances, as specified in Notification No. 4/89 dated 29 May 1989, which shall, as soon as may be after their seizure, be disposed of, having regard to their hazardous nature, vulnerability to theft, substitution and constraints of proper storage space;

NOW, therefore, in exercise of the powers conferred by subsection (1) of section 52A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the Act"), the Central Government hereby determines that the drugs specified in the aforesaid Notification shall be disposed of in the following manner, namely:

SECTION I - DRUGS MEANT FOR DISPOSAL

Narcotic drugs:

- (1) Opium
- (2) Morphine
- (3) Heroin
- (4) Ganja
- (5) Hashish (Charas)
- (6) Codeine
- (7) Thebaine
- (8) Cocaine
- (9) Poppy straw; and
- (10) Any other manufactured drug, as defined under clause (xi) of section 2 of the Act.

Drugs specified
in Notification
No. 4/89
Drugs meant for
disposal
specified

Psychotropic substances:

- (1) Methaqualone
- (2) T.H.C.
- (3) Amphetamine; and
- (4) Any other psychotropic substance, as defined under clause (xxiii) of section 2 of the said Act.

SECTION II - GENERAL PROCEDURE FOR SAMPLING, STORAGE, ETC.

2.1 All drugs shall be properly classified, carefully weighed and sampled on the spot of seizure.

Sampling,
classification,
etc. of drugs

2.2 All the packages/containers shall be serially numbered and kept in lots for sampling. Samples from the narcotic drugs and psychotropic substances seized shall be drawn on the spot of recovery, in duplicate, in the presence of search witnesses (Panchas) and the person from whose possession the drug is recovered, and a mention to this effect should invariably be made in the panchanama drawn on the spot.

Drawal of samples

2.3 The quantity to be drawn in each sample for chemical test shall not be less than 5 grams in respect of all narcotic drugs and psychotropic substances save in the cases of opium, ganja and charas (hashish) where a quantity of 24 grams in each case is required for chemical test. The same quantities shall be taken for the duplicate sample also. The seized drugs in the packages/containers shall be well mixed to make it homogeneous and representative before the sample (in duplicate) is drawn.

Quantity to be
drawn for the
sampling

2.4 In the case of seizure of a single package/container, one sample in duplicate shall be drawn. Normally, it is advisable to draw one sample (in duplicate) from each package/container in case of seizure of more than one package/container.

Method of drawal:

(a) Single con-
tainer/
package

2.5 However, when the packages/containers seized together are of identical size and weight, bearing identical markings, and the contents of each package given identical results on colour test by the drug identification kit, conclusively indicating that the packages are identical in all respects, the packages/containers may be carefully bunched in lots of ten packages/containers except in the case of ganja and hashish (charas), where it may be bunched in lots of 40 such packages/containers. For each such lot of packages/containers, one sample (in duplicate) may be drawn.

(b) Bunch of
packages/
containers

2.6 Where after making such lots, in the case of hashish and ganja, less than 20 packages/containers remain and, in the case of other drugs, less than 5 packages/containers remain, no bunching would be necessary and no samples need be drawn.

Bunching for
(i) Hashish and
ganja

2.7 If such remainder is 5 or more in the case of other drugs and substances and 20 or more in the case of ganja and hashish, one more sample (in duplicate) may be drawn for such remainder package/container.

(ii) Other drugs

Drawal of representative samples 2.8 While drawing one sample (in duplicate) from a particular lot, it must be ensured that representative samples in equal quantity are taken from each package/container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot.

Storage of samples - procedure 2.9 The sample in duplicate should be kept in heat-sealed plastic bags as it is convenient and safe. The plastic bag container should be kept in a paper envelope which may be sealed properly. Such sealed envelope may be marked as original and duplicate. Both the envelopes should also bear the No. of the package(s)/container(s) from which the sample has been drawn. The duplicate envelope containing the sample will also have a reference of the test memo. The seals should be legible. This envelope along with test memos should be kept in another envelope which should also be sealed and marked "Secret - Drug sample/Test memo", to be sent to the chemical laboratory concerned.

Despatch of samples for testing: To whom to be sent? 3. The seizing officers of the Central Government Departments, viz., Customs, Central Excise, Central Bureau of Narcotics, Narcotics Control Bureau, Directorate of Revenue Intelligence, etc. should despatch samples of the seized drugs to one of the laboratories of the Central Revenues Control Laboratory nearest to their offices depending upon the availability of test facilities. The other central agencies like BSF, CBI and other central police organizations may send such samples to the Director, Central Forensic Laboratory, New Delhi. All State enforcement agencies may send samples of seized drugs to the Director/Deputy Director/Assistant Director of their respective State Forensic Science Laboratory.

Preparation of inventory 3.1 After sampling, a detailed inventory of such packages/containers shall be prepared for enclosure with the panchnama. Original wrappers shall also be preserved for evidentiary purposes.

SECTION III - RECEIPT OF DRUGS IN GODOWNS AND PROCEDURE

Custody of drugs in godowns - storage procedure 3.2 All drugs shall invariably be stored in safes and vaults provided with a double-locking system. Agencies of the central and state governments may specifically designate their godowns for storage purposes. The godowns should be selected keeping in view their security angle, juxtaposition to courts, etc.

Maintenance of godown and procedure for deposit of drugs 3.3 Such godowns, as a matter of rule, shall be placed under the overall supervision and charge of a gazetted officer of the respective enforcement agency, who shall exercise utmost care, circumspection and personal supervision as far as possible. Each seizing officer shall deposit the drugs fully packed and sealed in the godown within 48 hours of such seizure, with a forwarding memo indicating NDPS Crime Number as per Crime and Prosecution (C & P Register) under the new law, name of the accused, reference of test memo, description of the drugs, total number of packages/containers etc.

Acknowledgement to be obtained 3.4 The seizing officer, after obtaining an acknowledgement for such deposit in the format (annexure I), shall hand over such acknowledgement to the investigating officer of the case along with the case dossiers for further proceedings.

Action to be taken by godown-in-charge before acceptance of drugs for deposit 3.5 The officer-in-charge of the godown, before accepting the deposit of drugs, shall ensure that the same are properly packed and sealed. He shall also arrange the packages/containers (case-wise and lot-wise) for quick retrieval, etc.

Maintenance of godown register 3.6 The godown-in-charge is required to maintain a register wherein entries of receipt should be made as per format at annexure II.

Inspection by inspecting officers 3.7 It shall be incumbent upon the inspecting officers of the various departments mentioned at annexure II to make frequent visits to the godowns to ensure adequate security and safety and to take measures for timely disposal of drugs. The Inspecting Officers should record their remarks/observations against column 15 of the format at annexure II.

3.8 The heads of the respective enforcement agencies (both central and state governments) may prescribe such periodical reports and returns, as they may deem fit, to monitor the safe receipt, deposit, storage, accounting and disposal of seized drugs.

Prescription of periodical reports and returns

3.9 Since the early disposal of drugs assumes utmost consideration and importance, the enforcement agencies may obtain orders for pre-trial disposal of drugs and other articles (including conveyance, if any) by having recourse to the provisions of subsection (2) of section 52A of the Act.

Pre-trial disposal of drugs

SECTION IV - ACTION TO BE TAKEN BY POLICE AND OTHER
EMPOWERED OFFICERS FOR PRE-TRIAL DISPOSAL

4. Where any narcotic drug or psychotropic substance has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, the officer, referred to in paragraph 3.3 of the Order shall prepare an inventory of such narcotic drugs or psychotropic substances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs or psychotropic substances or the packing in which they are packed, country of origin and such other particulars as may be considered relevant to the identity of the aforesaid drugs in any proceedings under the Act and make an application to any magistrate for the purpose of:

Follow-up action to be taken by police and empowered officers

(a) Certifying the correctness of the inventory so prepared; or

Application to magistrate for pre-trial disposal

(b) Taking, in the presence of such magistrate, photographs of such drugs or substances and certifying such photographs as true; or

(c) Allowing to draw representative samples of such drugs or substances, in the presence of such magistrate, and certifying the correctness of any list of samples so drawn.

4.1 Where an application is made under subsection (2) of section 52A of the Act, the magistrate shall, as soon as may be, allow the application.

Magistrate to allow application

4.2 Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872) or the Code of Criminal Procedure, 1973 (2 of 1974), every court trying an offence under this Act shall treat the inventory, the photographs, or narcotic drugs or psychotropic substances and any list of samples drawn under subsection (2) *ibid* and certified by the magistrate, as primary evidence in respect of such offence.

Courts to treat documents and list of samples certified by magistrate as "primary evidence"

4.3 While preferring an application under section 52A to any magistrate, emphasis may be laid on "expediency of disposal". The grounds that may be highlighted may pertain to:

Grounds to be enumerated in application

(i) Risk of pilferage, theft and substitution;

(ii) Constraints of storage and hazardous nature;

(iii) High potential and vulnerability of abuse;

(iv) High temptations to traffickers;

(v) Diminution in the value of other articles (including conveyances) due to long storage, etc.

4.4 Since the filing of charge-sheet/complaints is a condition precedent for expeditious issue of orders for pre-trial disposal, complaints by the respective enforcement agencies must be filed after completion of investigation within the stipulated period of 90 days of seizure/arrest, on a priority basis. This requires to be meticulously adhered to.

Filing of charge-sheet/ complaint

- Documents to accompany application 4.5 While moving the application under subsection (2) of section 52A of the Act as above, production of all seized articles/drugs, etc. along with the panchanama (in original) and detailed inventory thereof is essential. The inventory shall be complete in all respects and contain such particulars as may be relevant to establish nexus/identity of articles. The chemical analysis report shall also be simultaneously filed.
- Mode of disposal of drugs on which court's orders obtained 4.6 After the court orders are passed for pre-trial disposal of drugs, those drugs which have no legitimate value (excepting opium, morphine, codeine and thebaine, which are required to be transferred to the Government Opium and Alkaloid Works Undertaking at Ghazipur or Nee-much, as the case may be) are required to be destroyed consistent with the guidelines issued under this order and not repugnant to the court's order.
- Application of Customs Act 4.7 As the bulk of seizures of drugs relate to illicit import or export and are made at the points of entry or exit or in transit traffic, such drugs are liable to seizure under section 110 of the Customs Act, 1962 and confiscation under sections 111 or 113 ibid. In such cases, it would be appropriate to initiate proceedings under the Customs Act also.

SECTION V - CONSTITUTION AND FUNCTIONS OF DRUG DISPOSAL COMMITTEE

- Constitution of Drug Disposal Committee 5. A three-member committee of the respective enforcement agencies (both central and states), known as the "Narcotic Drugs and Psychotropic Substances Disposal Committee" should be constituted to discharge its functions from the headquarters of the respective heads of departments. The Committee will be headed by an officer not below the rank of:
- (i) Deputy Collector of Customs and Central Excise with two members of the rank of Assistant Collector of Customs and Central Excise in the case of a Customs and Central Excise Collectorate;
 - (ii) Deputy Narcotics Commissioner with two members of the rank of Assistant Narcotics Commissioner in the case of Narcotics Commissioner's organization;
 - (iii) Deputy Director of Revenue Intelligence with two members of the rank of Assistant Director in the case of Directorate of Revenue Intelligence;
 - (iv) Deputy Director and two other officers, as may be authorized by the Director-General, Narcotics Control Bureau in the case of that organization;
 - (v) Deputy Inspector-General of Police with two members of the rank of Superintendent of Police in respect of state police organizations; and
 - (vi) Deputy Commissioner of Excise with two officers of the rank of Assistant Commissioner, in respect of state excise organizations.
- 5.1 The Committee will be directly responsible to the head of the department concerned.
- Functions 5.2 The functions of the Committee will be to:
- (a) Undertake detailed analysis of drugs pending disposal; and
 - (b) Advise the respective investigating officers/supervisory officers on the steps to be initiated for expeditious disposal.
- Meeting by the Committee 5.3 The Committee shall meet as frequently as possible as may be considered necessary for quick disposal of drugs and at least once in two months. While the central agencies shall endorse a copy of the minutes of such meetings directly to the Narcotics Control Bureau, the state enforcement agencies concerned shall report the same to their respective State Police Headquarters (CID), who, in turn, may keep the Narcotics Control Bureau informed of the progress made from time to time.

5.4 The officers-in-charge of godowns shall prepare a list of all such drugs that have become ripe for disposal to the chairman of the respective drug disposal committee. After examining that they are fit for disposal and satisfying that they are no longer required for legal proceedings and the approval of the court has been obtained for the purpose, the members of the respective drug disposal committee shall endorse necessary certificates to this effect. The committee shall thereafter physically examine and verify the drug consignments with reference to the seizure report and other documents like chemical analysis, etc., including its weight and record its findings in each case.

Procedure to be followed by the Committee with regard to disposal of drugs

5.5 The composite sample shall be drawn for getting the same tested by the Central Revenues Control Laboratory or the state forensic science laboratory/state drug control laboratory concerned. If no variation, either in the purity or quantity, is found, the same shall be ordered for destruction by the department. Where any minor variations are noticed, a detailed report may be submitted to the head of the department of the enforcement agency concerned. In the case of wider variations, the matter shall be immediately reported to the Narcotics Control Bureau indicating the follow-up action taken in this regard. The destruction of drugs in such cases can be done only after obtaining the orders of the head of the department concerned.

Variation in chemical analysis report - Other action to be taken

5.6 The Committee shall be empowered to order destruction of the seized drugs in the following cases:

Power of Committee for destruction of seized drugs

<u>Name of drug</u>	<u>Quantity (kg)</u>
1. Heroin	2
2. Hashish (Charas)	50
3. Hashish oil	10
4. Ganja	500
5. Cocaine	1
6. Mandrax	150
7. Other drugs	Up to value of Rs. 5 lacs

5.7 The disposal committee shall intimate to the Head of the Department concerned the programme of destruction (giving complete details) in advance (at least 15 days before the date of destruction) so that, in case he deems fit, he may either himself conduct surprise checks or depute an officer for conducting such surprise checks. The disposal committee shall inform the respective heads of department in respect of every destruction made by it indicating the date of destruction, quantities destroyed, etc.

Intimation to head of department on destruction

5.8 In those cases where the quantities exceed the above limits, destruction shall be ordered and take place only under the supervision by the head of the department himself along with the chairman and members of the Drug Disposal Committee.

Quantities in excess of delegation - procedure to be followed

5.9 All drugs excepting opium, morphine, codeine and thebaine shall be destroyed by incineration in such places where adequate facilities and security arrangements exist for the same after ensuring that this may not be a health hazard from the point of view of pollution. Open destruction of such drugs may also be resorted to, wherever considered feasible and necessary, after due publicity to gain the confidence of the public. Wide publicity, in such cases, would be consequential.

Mode of disposal of drugs

SECTION VI - MISCELLANEOUS

6. A certificate of destruction (in triplicate) containing all the relevant data like godown entry number, file number, gross and net weight of the drugs seized, etc., shall be prepared and duly endorsed by the signature of the chairman as well as members of the Committee. This could also serve the purpose of panchanama. The original copy shall be pasted in the godown register after making necessary entries to this effect, the duplicate to be retained in the seizure case file and the triplicate copy will be kept by the Disposal Committee.

Certificate of destruction

6.1 The procedure as outlined above should be followed by all central and state enforcement agencies concerned. Other goods (including conveyance) ripe for disposal may be disposed of by public auction or in such manner as is deemed convenient in the best interests of the Government.

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