
LOOPHOLES IN NDPS

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ABSTRACT

The purpose of the Act is mentioned in the preamble of the Act: “An Act to consolidate and amend the law relating to narcotic drugs, to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances, to provide for the forfeiture of property derived from, or used in, illicit traffic in narcotic drugs and psychotropic substances, to implement the provisions of the International Conventions on Narcotic Drugs and Psychotropic Substances and for matters connected therewith.” However, even after twenty seven years of enactment, the Act the war on drugs has failed.

Keywords- Narcotic drug, Psychotropic substance

INTRODUCTION

The misuse and abuse of substances by young people (including children and adolescents) is a very serious issue for the public's health. A person is considered to be an adolescent according to the World Health Organization (WHO) if they are between the ages of 10 and 19 years old.

¹The age at which people begin using illegal substances has been steadily declining throughout much of the world, despite the fact that overall drug usage has been steadily rising.

The use of any psychoactive chemical or drug, including legal and illegal drugs, is referred to as substance usage. Medically prescribed medications are the only exception to this definition of use. In most cases, beginning to use substances at a young age is related to a bad prognosis as well as a habit of reckless conduct that persists throughout one's whole life. In our younger years, we are most open to new experiences and are still developing our sense of ourselves.

Tobacco, alcohol, and other drug usage is an issue that exists all over the world and has a negative impact on a significant number of children and teenagers. It is believed that by the time most males in India reach the ninth grade, almost fifty percent of them had already experimented with at least one drug of an abused kind. In most cases, the use of drugs is first tried by others because of the influence of friends and acquaintances who already partake in the behaviour.

A drug problem exists in every region of the world at the present time. It is rapidly expanding throughout every region of the world, and India is becoming a victim of the drug problem as well. Alterations in social and cultural norms are being brought about by India's growing population and nuclear family structure, both of which are contributing factors in the country's rapid urbanisation. Additionally affecting mothers and younger children, the disease is rapidly expanding. When children get addicted to drugs, the entire family is affected.² Even though they are aware of the negative impacts of drug use, teenagers continue to engage in this risky behaviour. A significant negative social impact occurs when other people, such as parents, older siblings, or classmates, model conduct that involves the use of substances.

The modelling of substance use and misuse by celebrities in films, television shows, and music videos is another powerfully detrimental impact. This type of modelling occurs in the media

¹ Narcotics Control Bureau, "Drug Control Strategy and Policy", (January 2015).

² Hilary, "Drug Abuse among Children in India", *Cliffside Malibu*, available at: <https://www.cliffsidemalibu.com/blog/drug-abuse-among-children-in-india/> (last visited on June 03, 2022).

and is a product of media exposure. It has been discovered that a school social environment that increases student participation, improves relationships, and promotes a positive school ethos may be associated with reduced drug use. On the other hand, researchers have found that students who are not engaged in school and those who fail academically are more likely to engage in substance use. This calls for comprehensive preventive and control initiatives in communities and schools, geared toward targeting teenage students as well as their parents and other members of their families. Effective steps are necessary to be taken in order to support positive attitude formation among schoolchildren toward self-confidence and adequacy, as well as to avoid harmful conduct among teenagers.

DRUG

A chemical compound, whether it is produced from natural sources or not, can be referred to as a drug. Drugs are used for the pleasurable effects they cause. It is imperative that one comprehends the fact that the pharmacological effects of commonly used medications vary from one another. The term "drug" refers not to a specific type of drug but rather to a category that includes many different types of narcotic chemicals. These substances might vary from one another in terms of the quality and intensity of the effects they produce.³

Abuse of drugs refers to the use of a substance for purposes other than medical treatment, in a quantity, strength, frequency, or manner that is harmful to both the user's physical and mental health. The use of drugs not only causes damage to an individual's physical and mental health but also ultimately results in the individual's death. It destroys his family as well as his social and moral ideals. Cannabis, heroin, and opium are the three most often abused substances in India. Because of how readily available they are and the fact that they may be grown locally, the majority of the time they are employed for cultural and traditional purposes. On the other hand, there are reports of an upsurge in the misuse of prescription medications such morphine, ephedrine-morphine morphine, proxy on, diazepam, and cough syrups containing codeine. The majority of addicts are between the ages of 15 and 35, which is also the age group that has the highest rate of productivity in the country.⁴ A growing number of youngsters who are not enrolled in school or who are living on the streets are also abusing narcotics and other substances that have psychoactive effects.

³ Alan Wayne Jones, "Early Drug Discovery and the rise of pharmaceutical chemistry", 3 *Drug Testing and analysis* 337 (2011).

⁴ Id at.1

Addiction to drugs is defined as the compulsive use of psychoactive substances to the point that the user is left with no other viable option than to continue their drug usage. Physical dependency on the drug and psychological dependence on the drug are both components of drug addiction.⁵

1. A person is said to have a physical reliance on a substance if they have used it frequently enough for their body to acquire acclimated to the effects of the drug. The individual must then continue to take the medicine in order to have normal feelings; failing to do so will cause the onset of withdrawal symptoms.
2. Psychological dependency happens when a drug is used frequently and the mind becomes emotionally dependent on the effects of the drug, either to elicit pleasure or relieve pain, and does not feel capable of functioning without the drug. This can happen when a drug is used to relieve pain or to elicit pleasure. Addiction to drugs or chronic use of any chemical substance has the potential to alter states of body or mind in ways that are not intended for medical treatment.

Since ancient times, people in India have used various psychoactive substances. Medicinal purposes, recreational purposes, and social ceremonies all made use of psychoactive substances such as bhang, ganja/marijuana, and hashish. In contrast to the countries of the West, India has a religious and cultural history that is intertwined with the consumption of many forms of natural substances. Bhang is typically drunk during religious celebrations such as Shivratri. During the festival of Shivaratri, bhang is added to a drink and then afterwards drunk with the purpose of being intoxicated; this beverage is referred to as soma ras. The word soma comes from the Sanskrit language and means "intoxicating." Ancient texts include references to the same thing, which can be located.

It wasn't until 1980 that drug trafficking was recognised as a problem in India, despite the fact that the country had a long history of drug usage and faced a myriad of significant challenges following its independence. Because of the low level of use up to that point, local supply was sufficient to meet demand, and only a little amount was smuggled in from Nepal and Pakistan. After 1980, things began to alter due to the introduction of heroin, which resulted in more

⁵ MSR Ayyangar, "Drugs and Medicine – What is the Difference?", *ebnl*, May 23, 2016, available at: <https://www.ebnl.org/blogs/drugs-medicines-what-difference> (last visited on June 07, 2022).

widespread and severe repercussions.⁶ In the early 1980s, the illegal trafficking of drugs emerged as a major problem. India has emerged as the centre of the global drug trade during the past three to four decades. The term "Golden Triangle" refers to the region in Southeast Asia that was the source of the majority of the world's illegal opium production from 1950 until 1990. (Iran, Afghanistan, Pakistan).

Addiction to drugs is a difficult and pervasive public health problem in India as well as in the rest of the globe. However, despite increasing crackdowns on drug cartels in India by law enforcement agencies, both drug use and cases reported under the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 are on the rise. This is despite the fact that law enforcement agencies in India have been increasing their crackdowns on drug cartels. The National Crime Records Bureau (NCRB) recorded about 60,000 instances in accordance with the NDPS Act in the year 2020, which represents an increase that is approximately twice as large as that seen in the preceding decade alone. This raises doubts regarding the usefulness of existing legal frameworks in preventing drug usage and addiction, as well as the limitations of focusing one's attention entirely on supply-side methods.

Because "possession of drugs for personal use/consumption" and "possession of drugs for trafficking" are both made illegal by the NDPS Act of 1985, people who use drugs and those who sell drugs are both considered to be committing a crime. This fails to recognise that drug addiction is an illness that, rather than being punished for, requires treatment and recovery. In addition, the data on crimes show that law enforcement organisations place a disproportionate attention on incidents of personal consumption of narcotics rather than on the fundamental problem of drug trafficking.⁷ Even more troubling is the fact that even while there has been a rise in the number of drug arrests, treatment and rehabilitation for those who are addicted to drugs continue to be a low priority. In 2019, a research that was conducted on a national scale by the Ministry of Social Justice and Empowerment discovered that there was a treatment gap of 75% for drug use disorders. This study revealed that relatively few people who require treatment for substance use disorders actually obtain it.

What exactly is the issue here? Abuse of drugs or other substances is associated with a wide range of problems, including those pertaining to morality, health, psychiatric illnesses, and the

⁶ Nieuwlaat R, "Intervention of Enhancing Medication Adherence (Review)" 11 *Cochrane Database of Systematic Reviews* 4 (2014).

⁷ *Id* at 1.

economy. And the individual who is abusing drugs isn't the only one in the family to endure hardship; the entire household is impacted. Putting all of these difficulties to the side, the most significant threat it poses is to the nation's security. There is a connection between the so-called organised criminal drug trafficking network and terrorism. One example of this connection is that "it has been estimated that money generated from the illegal sale of narcotics accounted for 15 percent of the finances of militant groups in Jammu and Kashmir." Because the paths used by human trafficking, weapon and explosives trafficking, and other types of trafficking are all the same, this helps in other types of horrific crimes as well.⁸To provide one illustration, the explosives that were utilised in the terrorist attacks that took place in Mumbai in 1993 were smuggled into India using the same pathways that the Dawood gang utilised in order to trade heroin and other illegal goods.

Amendment to the Act

The NDPS Act has been amended three times since its inception. The first amendment was made in 1988, followed by another in 2001, and again in 2014. New provisions and regulations for the use of narcotics and psychotropic substances were established in the 2014 amendment. The NDPS Act of 2014 gave the Centre the authority to regulate the possession, sale, transportation, import, export, and use of narcotic medicines and poppy straw. Codeinone, fentanyl, morphine, methadone, and codeine are all necessary narcotic medications.

The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act was added to the NDPS Act in 1988. It allows people who are suspected or accused of drug trafficking to be put in jail for a short time.

NDPS Amendments, 1989

In 1989, the NDPS Act had its first modification. This was done in response to a Cabinet Sub-recommendation Committee's that the law be made more stringent in order to combat drug trafficking and abuse. The rhetoric of "tough on drugs" resulted in the enactment of very harsh laws, including mandatory minimum sentences of 10 years in prison, restrictions on bail, a prohibition on suspending or shortening sentences, the forfeiture of property, trial by special courts, and the death penalty for some repeat offenders. Less than four years after the law was first passed, changes were made that appear to have been influenced by global, regional, and

⁸ World Health Organisation, "Clinical Guidelines for Withdrawal Management and Treatment of Drug Dependence in Closed Settings" (2009).

national events, including the 1988 Convention's signing, discussions at the South Asian Association for Regional Cooperation (SAARC) about the growing threat of drug trafficking, the rise of political unrest and "terrorist" activity in northern states, and the idea that drug trafficking fuels terrorism.⁹

After these modifications, those found with even modest amounts of drugs were vulnerable to lengthy prison terms and steep penalties unless they could demonstrate that the substances were for their personal use (in that case, the offender would be subjected to six months or one year in prison depending on the drug). Many persons who were imprisoned for possessing modest amounts of narcotics for personal use spent more than 10 years in prison for a few milligrammes of illegal drugs since they had minimal possibilities of being released on bond.

NDPS Amendments, 2001

Change has been pushed for as a result of the criticism of this severe and discriminatory punishment system. The NDPS (Amendment) Bill was presented to Parliament in 1998, and the Parliamentary Standing Committee on Finance then examined it. Punishments were finally altered in 2001 to reflect the amount of drugs involved: "little," "commercial," or "intermediate." The criteria were established by the central government in a notification dated October 19, 2001.

The official record says that the NDPS Act was passed to make sure that drug trafficking was punished enough, to give law enforcement more power, to put into effect international agreements to which India was a party, and to control psychotropic substances. The Act has been changed three times, most recently in 2014.

NDPS Amendments, 2014

The NDPS Act was changed for the third time at the beginning of 2014. The new rules went into effect on May 1, 2014. The main things about it are:

1. Creating a new class of "essential narcotics" that the national government can categorise and regulate uniformly across the nation.

⁹ The Narcotic Drugs and Psychotropic Substances Act, 1985 (Act 61 of 1985).

2. Changing the intent of the law such that it also encourages the use of drugs of abuse and psychoactive substances for research and medical purposes. This adheres to the "balance" between control and accessibility of narcotic drugs principle outlined in international drug control treaties.
3. Including the terms "management" of drug dependence and "recognition and approval" of treatment centres, which makes it possible to set up treatment standards that are legally binding and medical interventions that are based on evidence.
4. For a second drug-related offence, making the death sentence an option in section 31A. Section 31 allows the judge to impose a sentence of up to 30 years in jail on the defendant.
5. Raised the maximum prison sentence for small-scale crimes from six months to one year.
6. Letting the private sector help process opium and poppy straw that has been concentrated
7. Increasing the rank of police who have the authority to conduct licence holder searches and make arrests for alleged NDPS infractions.
8. More detailed rules about how people accused of drug trafficking can lose their property.

NDPS (Amendment) Bill, 2021 -The measure would take the place of an ordinance that was passed earlier this year (2021) to rectify a drafting error that was made in an amendment to the Act that was passed in 2014. Before the modification in 2014, clause (viii-a) of Section 2 included sub-clauses (i) to (v) that defined the phrase "illicit traffic." These sub-clauses have now been removed.

In 2014, the Act went through a round of amendments, one of which modified the clause number of the definition for illegal conduct like these. On the other hand, clause number 1 of the definition was still referred to in section 27A, which dealt with the punishment for providing financial support for illegal acts.

This clause was not changed. The section on punishment in the ordinance was changed so that it referred to the new clause number instead of the previous one.

The Tripura High Court has recently issued a judgement in which it stated that "until the appropriate legislative change occurs by amending Section 27A of the NDPS Act appropriately, sub-clauses (i) to (v) of clause (viii-a) of Section 2 of the NDPS Act shall suffer effect of deletion." This was stated in the judgement that was issued.

Loopholes in NDPS ACT

- 1. Delay in Trial:** *“Justice delayed is Justice denied.”* -The extremely slow pace of the Indian court system is directly responsible for the fact that many people caught on drug charges spend years in jail before their cases are finally heard. Special courts have been established under the NDPS Act, but as a result of states giving them extra responsibilities, cases are being delayed longer. In addition to all of this, minor offenders who spend a lot of time in jail run the risk of being enlisted by gangs and organised crime.
- 2. Stringent Bail Rules:** Infractions under Sections 19, 24, or 27A of the NDPS Act, as well as offences involving commercial amounts, are not eligible for bail from the courts (Section 2). All people are presumed innocent until proven guilty. However, according to this legislation, you are guilty unless proven innocent! Sections 35 and 54 go a step further by adding that, unless the opposite is proven, it shall be presumed that the accused was in possession of the illegal items confiscated from him. Section 35 presupposes that someone accused under this Act had the intent, motive, and knowledge of and for his acts.¹⁰
- 3. Absence of Data:** Data is one of the main problems with Indian policies. When drafting the NDPS Act, consideration should have been given to the type and extent of drug usage, drug dependency, and the associated health effects. Ironically, this information is still lacking. In 2001–2002, the sole survey that looked at the degree of drug usage was carried out. In that survey, it was estimated that 8.7 million people used cannabis,

¹⁰ Rajkumari Sharma Tankha, “India’s drug trap: Use of psychoactive substances, especially among youth, on rise”, *The New Indian Express*, October 02, 2020, available at: <https://www.newindianexpress.com/cities/delhi/2020/oct/02/indias-drug-trap-use-of-psychoactive-substances-especially-among-youth-on-rise-2204595.html> (last visited on June 16, 2022).

of whom 2.3 million (26%) were dependent. An estimated 2 million people used opiates, of which 0.5 million (or 22%) were considered dependent.

- 4. Harsh and Disproportionate Penalties:** As we have already observed, many other nations that have created laws in response to international treaties have made them overly harsh, even the death sentence in some circumstances. In the case of *Raju v. State of Kerala*¹¹, the appellant was found guilty of possessing 100 mg of heroin worth ₹25 and was sentenced to 10 years of rigorous imprisonment and was imposed a fine of ₹1 lakh. The absence of withdrawal symptoms was interpreted as proof that the appellant was not a drug user and that the heroin was not intended for personal use. After concluding that such a small amount could not have been intended for sale or distribution, the Supreme Court reduced the penalty to that for possession for personal use.
- 5. Access to medicine:** Drugs may be used as medication under the NDPS Act. However, patients were unable to obtain morphine and other opioids because of stringent rules and sanctions. All of them were previously governed by state governments, necessitating several permits; but, since 1998, the central government has assumed control of this, with little to show for it. Indian morphine is distributed worldwide despite the country's inability to produce it at home, which is frequently questioned by Western media.¹²
- 6. Lack of consultation in policy making:** The NDPS Act of 1985 enables the government to establish the 20-member NDPS Consultative Committee as a body that provides policy advice. Any important subject for the government to consider may be the subject of a special report the committee prepares. Give the government advice on topics of policy and other matters as needed.¹³To assess and suggest improvements in practically every aspect of drug policy, the Committee may consult with experts and representatives of civil society. Unfortunately, these clauses have not yet been used.

7. Uneven coordination among agencies:

¹¹ AIR 1999 SC 2139

¹² Ambedkar A. Agarwal, "Magnitude of Substance Use in India" (Ministry of Social Justice and Empowerment, 2019).

¹³ Ambika Pandit, "India's Drug Problem is now this big", *Times of India*, November 9, 2020, available at: <https://timesofindia.indiatimes.com/india/indias-drug-problem-is-now-this-big/articleshow/79098512.cms> (last visited on June 17, 2022)

Task	Department	Ministry
Policy development including framing/amending the NDPS Act, Rules and notifications there under	Revenue	Finance
Policy coordination	Narcotics Control Bureau (“NCB”)	Home
International drug control (representation, liaison, reporting etc.)	Revenue NCB	Finance Home
Opium production and manufacture	<ol style="list-style-type: none"> 1. Central Bureau of Narcotics 2. Government Opium and Alkaloid Factories (both are under the Department of Revenue) 	Finance
Enforcement of the NDPS Act	<ol style="list-style-type: none"> 1. Directorate of Revenue Intelligence 2. Central Bureau of Narcotics 3. NCB 4. Customs 5. Excise (central &state) 6. BSF, para military forces or other designated officers 	<ol style="list-style-type: none"> 1. Finance 2. Finance 3. Home 4. Finance 5. Revenue 6. Home & Defense 7. State governments

	7. Police including Anti Narcotic Cells	
Drug use and dependence: Prevention Treatment Rehabilitation	1. National Institute of Social Defense 2. Drug De-addiction Program 3. Health or Social Welfare	1. Social Justice & Empowerment 2. Health & Family Welfare 3. State governments
Injecting drug use and HIV	National AIDS Control Organization	Health & Family Welfare
Drugs for medical use/ Pharmaceutical drugs (including distribution, marketing & retail trade)	1. Drugs Controller General of India 2. State Drug Controllers	1. Health & Family Welfare 2. State governments

There has occasionally been a confusing overlap in the application of drug policy, as well as a dereliction of duty.

CONCLUSION

Even if the goals of this Act are admirable, there are still a great number of concerns that have not been adequately addressed. When investigating a crime, it is common to find that the major participants get away, while only the minor offenders are brought to justice. It has been reported

that persons who were only sitting in the proximity of drug users were captured by the police and charged under this Act. This Act makes it a crime to possess or use a controlled substance. In terms of the severity of the punishments, the Act does not adequately differentiate between infractions that are considered small and those that are considered significant. In conclusion, these gaps in the law need to be filled in order to safeguard our children and live up to the ideals enshrined in the Constitution.