

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

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AN INTRODUCTION TO THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985

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ABSTRACT

The Narcotic Drugs and Psychotropic Substances Act, often referred to as the NDPS Act, was created to control the use of harmful drugs and prevent their use, spread, sale, production, and trade. Narcotic drugs are those that cause sleep, while psychotropic substances affect a person's mind. The NDPS Act was passed by the Indian Parliament on 14 November 1985. Even though some of these drugs are important for medical purposes, the act also allows for the cultivation of certain plants like cannabis, poppy, and coca, as well as the production of psychotropic substances used in medicine. The main goal of the act is to regulate the making, having, selling, and transportation of these substances. The act prohibits around 200 psychotropic substances, meaning they are not available for purchase without a prescription. These drugs can only be sold with a valid prescription. Breaking the law can lead to serious consequences, including long-term imprisonment, fines, or both. The severity of the punishment depends on the nature of the case. If the drugs are used for personal purposes, the punishment might be less severe. However, since the law was introduced, it has been changed several times. Despite these updates, the challenge of dealing with new drugs, especially synthetic and street drugs, remains difficult. The NDPS Act also struggles to distinguish between users, sellers, and serious criminals involved in the drug trade. This study provides an overview of the NDPS Act and its effectiveness.

KEYWORDS: Narcotics; Psychotropic substance; NDPS; Prohibition.

INTRODUCTION

India, often called the land of Shiva, has a rich cultural heritage with unique, mysterious traditions of deity worship. One such tradition involves the use of bhang, a form of cannabis, during the religious festival of Shivaratri. The Sanskrit word "Soma" refers to something intoxicating, a quality that has been associated with narcotic substances for centuries, as mentioned in various ancient texts. Besides cannabis, opium is also used in a ceremony called Akha Teej, which is aimed at strengthening family bonds ¹Unlike in Western countries, India has a deep cultural tradition of incorporating certain natural narcotic substances into religious celebrations. This cultural context is crucial when considering the formulation and enforcement of drug laws in India.

On the other hand, we cannot ignore the serious problem of substance abuse, which is increasing in our country. There are a lot of drug addicts in society. Substance abuse causes many health issues like death and mental health problems, as well as economic problems such as the cost of setting up treatment services, the use of national resources, and the loss of productivity. It also creates several social problems, including family breakdown, which can lead to criminal behavior. ²The war on drugs has created more complex issues than any other issue in our history. It can be linked to crimes ranging from white-collar to blue-collar offences. In the current era of terrorism, where drugs are used to fund terrorist activities, it is a crucial area that must be considered when creating and changing drug-related laws.

Effective laws are needed to deal with the problem of drug use. In less than a year, around 14,564 people were arrested under the NDPS Act in Punjab, with almost one-third of these arrests linked to criminal drug-related cases.³To address this situation, the government launched special drives aimed at reducing drug. India is one of the countries that has joined the three major United Nations drug conventions: the 1961 Single Convention on Narcotic Drugs, the 1971 Convention on Psychotropic Substances, and the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. These treaties became active in the 1980s after a lot of discussion about stopping the non-medical use of opium and cannabis.

¹ Molly Charles, Dave Bewley-Taylor, and Amanda Neidpath (2005) Drug Policy in India: Compounding Harm? Briefing paper ten. The Beckley Foundation Drug Policy Programme.

² Anil malhotra, Ashwin mohan (2000) National policies to meet the challenge of substance abuse: programmes and implementation. 004 This work is licensed under Creative Commons Attribution 4.0 License DOI: 10.19080/JFSCI.2017.04.555644 Indian Journal of Psychiatry 42 (4): 370-377.

³ Rohan Dua (2014) Drug-related crime reported highest in Punjab: National Crime Records Bureau.

DRUG POLICY IN INDIA

India was one of the first developing countries to create a National Drug Policy (NDP) to ensure that poor people had access to medicines, even though major pharmaceutical companies were gaining more control through doctors' prescriptions. In 1963, the Indian government introduced a Drug Price Control Order (DPCO) to monitor drug prices in the market. However, this first DPCO didn't work very well because many drug manufacturers left the country. Some production moved to China instead. A revised DPCO was introduced in 2013. This new DPCO was more favourable to non-controlled products, as it didn't encourage new investments. Only the drugs listed in the National List of Essential Medicines (NLEM) were regulated under the rules of the 2013 DPCO.

During the time of British rule, the Chinese managed to stop the India-China opium trade with the help of the British. After several international agreements that banned the use of harmful substances worldwide, India passed the Narcotic Drugs and Psychotropic Substances Act in 1985. However, three years after the implementation of this act, there was a need for another law to prevent the illegal trafficking of narcotic drugs and psychotropic substances. As a result, this new act was introduced by the Indian lawmakers in 1988.

At first, the main reason people became addicted to narcotics was because opium and morphine were used for medical purposes during the Civil War. During this time, many soldiers became addicted to these drugs, which is why it was also called "soldier's disease". Even though the production of hemp (marijuana) was officially banned in 1937, during World War II, several governments suddenly found they needed it for basic purposes like making ropes and other types of cordage. In India, the use of cannabis has a long history, dating back to the Vedic period. The Atharvaveda, which is a few hundred years old, mentions the use of cannabis. Until 1985, cannabis and its derivatives like bhang, charas, and ganja were legally available and commonly used for recreational purposes in India.

India opposed the Single Convention on Narcotic Drugs (1961), which was proposed by the United States with a law that banned all drugs. Because of this opposition, the convention made a favorable decision, giving India a 'Grace period' of 25 years to allow the use of cannabis for scientific and medical purposes only, not for other reasons. Since this was a politically sensitive topic, India became bound by commitments to the international community. This led the Indian government to take steps to reduce the deep-rooted use of cannabis among certain ethnic groups. As a result, on November 14, 1985, the Narcotic Drugs and Psychotropic Substances (NDPS) Act was passed, banning all narcotic drugs in India with little resistance. The only exception in the 1985 Act for non-medical, cultural use was that drinks made from cannabis

leaves could be sanctioned, as noted by Britto in 1989. The NDPS Act mainly prohibits the cultivation, manufacture, possession, sale, and transportation of these drugs and substances, except for medical and scientific purposes as defined. Drugs covered under this act include cannabis, coca, opium, or any other narcotic substance. The main goals of this law were to control the production and distribution of drugs, ensure the quality of drugs, require the listing of ingredients, and prevent drug abuse in society. The major shortcomings of the law include the lack of clear definition of small quantities and the punishments for possessing small amounts of drugs.

One of the main problems with the act is that it assumes the person is guilty from the start, making the accused responsible for proving their innocence. Bails are not allowed for people accused of crimes under Sections 19, 24, or 27A of the NDPS Act, or those involving commercial amounts of drugs. Common drugs covered under the NDPS Act While the Indian judicial system assumes everyone is innocent until proven guilty, the saying "**Justice Delayed is Justice Denied**" still holds true. Punishments can include imprisonment for up to 10 years and a fine of up to Rs 2 lakhs, or imprisonment ranging from 10 to 20 years along with a fine of up to Rs 1 lakh. There is often debate about how the NDPS Act fails to clearly distinguish between a casual drug user, a heavy addict, a small-time dealer, and a major drug trafficker. Beyond the sections that need reform, the lack of specialized courts for handling cases under this act leads to delays in judgments. Sometimes, people arrested for possessing small amounts of drugs are released after a long time in custody during investigations. A major reason for the inefficiency in drug laws is that investigators focus more on big-time dealers rather than regular small-scale sellers. Additionally, corruption, which is a problem in any system, affects drug-related investigations.

In this new type of drugs and their derivatives, it's hard to justify their control under the NDPS Act. Including new precursors, drugs, and their derivatives that have narcotic or psychotropic effects in the Act is needed to make the law more effective. A study by some researchers also suggests that opioids and alcohol should be treated in a similar way. The study shows that the age at which people start using them and the way they develop dependence are the same for both alcohol and opioids. The problems related to alcohol can range from drunk driving to serious crimes. So, certain laws should be considered to address the use of alcohol and its effects leading to social issues According to a study done in **Tihar jail**, on average 76 percent of people involved in drug-related cases were prosecuted, but only 28 percent were convicted. This shows that the conviction rate in drug cases is quite low compared to the number of cases reported.

AMENDMENTS

To address the growing use and spread of psychotropic substances across the country, the government at that time decided to update and combine existing laws.

This led to the creation of the Narcotic Drugs and Psychotropic Substances (NDPS) Act, which has since been amended in 1989, 2001, 2014, and 2021. The 2016 Finance Act also brought changes to the same act.

AMENDMENT OF 1989: In 1989, India's drug laws were significantly made stricter with the revision of the NDPS Act.

This change introduced harsher punishments for both drug possession and trafficking. It focused on imposing even more severe penalties for large-scale drug trafficking operations and increased the power of law enforcement agencies to monitor and prosecute these cases. Additionally, the amendment introduced strict penalties for repeat offenders and allowed for the seizure and confiscation of property linked to drug-related crimes.

Although the amendment aimed to disrupt drug trafficking networks, it faced criticism for potentially worsening human rights issues and causing overcrowding in prisons. Overall, it strengthened the legal stance against drug-related offenses but raised questions about its broader effects.

AMENDMENT OF 2001: The 2001 revision of the NDPS Act marked a major shift in India's approach to drug control. It introduced stricter penalties for drug trafficking, including longer prison sentences and higher fines. It also expanded the definition of drug trafficking to cover a broader range of substances and activities. The amendment made it possible to form specialized teams and improve cooperation among law enforcement agencies.

The amendment also targeted the financial aspects of drug-related crimes by strengthening rules on the seizure of assets connected to drug trafficking. It also recognized the importance of rehabilitation and focused on providing support for treatment and recovery of offenders. The goal was to create a more comprehensive and effective legal system to combat drug misuse and trafficking in India.

AMENDMENT OF 2014: The 2014 update to the NDPS Act of 1985 aimed to modernize and simplify India's legal framework around these substances. A key change was the reorganization and renumbering of sections and clauses in the act to clearly define and categorize different types of drugs and related offenses.

AMENDMENT OF 2021: Constitutional Issues and Backdated Effect The 2021 amendment aimed to resolve a strange issue created by the 2014 amendment. Backdated Effect: The changes made in 2014 were made to apply from May 1st of that year, meaning they were

effective from that date.

Constitutional Concerns: This backdating raised issues regarding Article 20(1) of the Indian Constitution, which says that a law cannot be applied in a way that creates new crimes or makes existing ones harsher.

Government's Defense

Clarifying Amendment: The government said the 2021 amendment was just for clarity, not for making new rules or increasing punishments. It was meant to fix a mistake instead of changing the law in a way that could be seen as unfair. **Legal Grounds:** The government also pointed to past cases where similar mistakes in laws were corrected using clarifying amendments without making things worse for people.

PUNISHMENTS Cannabis-Related Offenses

Possession: For small amounts, you can face a fine of up to Rs 10,000 and up to a year in jail. For larger amounts but not commercial, the fine goes up to Rs 1 lakh and the jail term can be up to 10 years.

Commercial Amounts: Those caught with large amounts may face fines decided by the court and jail terms from 10 to 20 years. If you are involved in growing, producing, selling, buying, transporting, or trafficking cannabis, you will face harsher penalties based on the amount involved.

Other Psychotropic and Narcotic Substances Use: For consuming these substances, you could face fines up to Rs 20,000 or a year in jail.

Repeat Offenders: Those who commit the same offense again might face higher fines and longer jail terms, up to 1.5 times the maximum allowed.

CRITICISM OF NDPS ACT, 1985

Strict Penalties: The NDPS Act is criticized for being too harsh, especially for small drug issues. **Non-Bailable Offenses:** Many offenses under the NDPS Act are not bailable, leading to long detentions and overcrowding in prisons, which raises issues regarding fair treatment.

Lack of Differentiation: The Act does not clearly separate traffickers from small users, and often penalizes addicts instead of focusing on helping them recover. **Impact on Vulnerable Groups:** Poor drug users and other vulnerable communities are hit hardest by strict enforcement.

Lack of Focus on Rehabilitation: Critics argue that punishing drug users instead of helping them recover through rehabilitation and harm reduction is not the right approach.

Enforcement Challenges: The complexity of the drug trade, corruption, and difficulty in

prosecuting top-level traffickers make it hard to carry out the NDPS Act properly.

Incorrect Drug Policy: There is a call for a more comprehensive drug policy that includes treatment, harm reduction, and prevention in addition to legal actions.

International Influence: International treaties impact India's drug laws; critics want more flexibility in adapting rules to local needs.

Need for Sentencing Reforms: Some people want the NDPS Act to be changed so that each case is considered on its own, and alternatives to jail are taken into account.

CONCLUSION

The Narcotic Drugs and Psychotropic Substances (NDPS) Act of 1985 is the main law in India dealing with drug abuse and trafficking. Since its introduction in 1989, and later in 2001, 2014, and 2021, the act has been revised multiple times to improve penalties, clarify terms, and address procedural problems. Notably, the 2014 amendment corrected some confusing language in Section 27A, but because it applied retroactively, it led to constitutional concerns. The NDPS Act has faced criticism for its strict penalties, lack of distinction between traffickers and users, and non-bailable offenses that result in long prison terms. Critics are calling for reforms that address challenges in enforcement and focus more on helping people recover rather than just punishing them. In summary, while ongoing discussions highlight the need for balanced amendments that consider changing cultural attitudes and make the Act more efficient and fair in dealing with drug crimes in India, the Act remains essential in tackling drug-related issues.

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