

An Analysis of Narcotics and Psychotropic Substances Act, 1985

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Abstract: Drug Addiction and Alcoholism is a problem that is havoc and is affecting the roots of our country. It has become a major cause of concern at both national and international levels and is posing a direct threat to the life of the individuals thereby also hampering the socio-economic growth of the country. Initially it was a social cause of concern but with the passing time crime rate relating to drug trafficking in India has increased tremendously. Now, it has become a challenge to control this menace. In order to combat this problem Indian government had enacted anti-drug law i.e. Narcotics and Psychotropic Substances Act way back in the year 1988. Through this research paper author has tried to throw some light over the provisions of above said Act. The researcher has also tried to include the other law enforcement agencies in India that are especially designated to deal with the problems of Drug trafficking in India. Along with this author has included suggestions that may help in channelizing things in a better manner.

Keywords: Legislation, trafficking, alcoholism

Introduction: Drug Trafficking is a major cause of concern not only for India but for the whole world. It has turned into a global menace. It is a global illicit trade involving the cultivation, manufacture, distribution and sale of substances which are subject to drug prohibition laws. United Nations Office of Drug Control is continuously monitoring and researching global illicit drug markets in order to gain a more comprehensive understanding of their dynamics. It means that supply and sale of those drugs which our legislation prohibits. Illegal drug trafficking is an example of organized crime where illegal supply of drugs is generally made to consumers through criminal drug dealers who purchase drugs in bulk or produce their own.

India is a vast country with land borders extending over more than 15,000 kms and a sea coast line of over 7000 kms. India's narcotic problem needs to be visualized from its geographical situations. From the late seventies and eighties the official stand has highlighted the role of India as a transit country for drugs that came from the bordering states close to Pakistan, Afghanistan in the north and Myanmar in the North-East. India is flanked on either side by two regions which are internationally acknowledged as major sources of illegal opiates namely south-west Asia and South-East Asia. Additionally Nepal is a traditional producer of cannabis both herbal and resinous fringes the country in the North.

Trafficking offences may include:

- Production or cultivation
- Import or export
- Transporting
- Offering
- Selling and/or in possession
- With intent to distribute or supply, or the concept of acting for gain or for commercial purposes

In India, common drugs in use are Depressants, Stimulants and Hallucinogen. Here depressants include opium, morphine, heroin, codein, synthetic opiates and barbiturates. Stimulants include cocaine, amphetamine, methamphetamine while Hallucinogens include Marijuana, LSD (Lysergic Acid Diethylamide). Except this there are some less harmful drugs used on common basis like boot polish, cough syrups, whitener, petrol, kerosene etc.

LEGISLATION ON DRUG TRAFFICKING IN INDIA: Since decades our legislation is struggling hard in order to control this menace. The statutory control over narcotics drugs is exercised in India through number of central and state enactments. The principal central acts namely the Opium Act, 1857 and dangerous Drugs Act, 1930 were enacted but with the passage of time and development in the field of illicit drug trafficking and drug abuse at national and international level many deficiencies were noted in above said acts. Thus finally a complied central act has been framed i.e. The Narcotics and Psychotropic Substances Act, 1985. After that it has been amended in the year 1988 then again in 2001 and lastly in the year 2014.

Salient Features of NDPS ACT, 1985

The NDPS Act contains 5 Chapters, with each chapter dealing with a certain subject with respect to the statute.

The first chapter discusses Preliminary chapter, introducing and defining the various narcotic drugs and psychotropic substances, and finally highlighting that the Central government has the power to omit or add other substances to the list under the NDPS Act.

The second chapter highlights the relevant Authorities and Officers that have been created under the NDPS Act. It also sets the guidelines for the Central government to appoint a Narcotics Commissioner, to set up a Narcotic Drugs and Psychotropic Substances Consultative Committee and to fund a National Fund for Control of Drug Abuse.

The third chapter lays out the Prohibition, Control and Regulation of the previously mentioned substances. It prevents the cultivation or production of the coca plant, opium poppy or any cannabis plant by anybody, while

reserving these rights with both the Central and State governments if they wish to do so, by creating rules later. Furthermore, all Inter-State and International smuggling of such substances have been prohibited. Finally, this chapter looks at the regulation on other controlled substance that can be used to create narcotic drugs and also has clauses which illustrate cases under which opium poppy, coca plant, and cannabis plant can be legally cultivated.

Chapter four deals with the Offences and Penalties under the NDPS Act. It describes with punishment duration the various possible crimes that can be tried under this Act, such as possession of such substances, for commercial or recreational use, cultivation or preparation of such substances and smuggling of such substances.

The fifth chapter looks at the Procedure of how the cases are to be dealt with, and also set the guidelines for the officers empowered under this Actⁱ.

The 2014 Amendment recognizes the need for pain relief as an important obligation of the government. It creates a class of medicines called Essential Narcotic Drugs (ENDs). Power for legislation on ENDs has been shifted from the state governments to the central governments so that the whole country now can have a uniform law covering these medicines which are needed for pain relief. Subsequently, NDPS rules which would be applicable to all states and union territories has been announced by the government of India in May 2015 It also has included 6 drugs namely Morphine, Fentanyl, Methadone, Oxycodone, Codeine and Hydrocodone. According to these rules, there is a single agency - the state drug controller - who can approve recognised medical institutions (RMI) for stocking and dispensing ENDs, without the need for any other licences. The RMIs are obliged to ensure proper documentation and to submit annual consumption statistics to the drug controller of the stateⁱⁱ

Object of the Actⁱⁱⁱ: It is an act to consolidate and amend the law relating to narcotics drugs, to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances

1. To provide for the forfeiture of property derived from, or used in, illicit traffic in narcotic drugs and psychotropic substances
2. To implement the provisions of the international conventions on the narcotic drugs and psychotropic substances
3. And for the matters connected therewith

This Act is applicable throughout the territories of India and also over the citizens of India living abroad. It further extends to all persons on ships and aircrafts registered in India wherever they may be. This Act comprises of 68 sections divided into VIII Chapters. This act talks about authorities and officers acting

under this act, National fund for control of drug abuse, prohibition, control and regulation, offences and penalties, procedure to be followed, forfeiture of property derived from or used in illicit traffic.

List of drugs included under the Act: The released list consists of approx 237 substances which are included in the list of controlled substances under the NDPS Act, 1985.

Acts Prohibited under the Act:

Cultivation/production/manufacture, possession, sale, purchase, transport, storage, consumption or distribution of any of the substances, except for medical and scientific purposes and as per the rules or orders and conditions of licences that may be issued, is illegal.

Procedural safeguards in the NDPS Act

No doubt that the Act has given wider and extensive powers to law enforcement agencies to keep a control and to keep a vigil eye over the drug abuse and over all other malpractices that are attached to it. But simultaneously has also given adequate safeguards to prevent innocent civilians from being unnecessarily harassed by the authorities. There is a need to make the report containing all relevant details to be made by any person making an arrest or seizure under the which must be sent to his immediate superior. Similarly, Sec. 100 of the CRPC states that any police officer who wishes to search any person who is believed to be concealing something suspicious must do so only in the presence of at least 2 respectable inhabitants of that locality known as panchas. Thereafter, a statement containing the details of the search and seizure, with the signature of the panchas, must be given to the accused of his perusal. Sec. 55 of the NDPS Act imposes an obligation on the police officer seizing the prohibited substances to keep them in safe custody. They must contain the seal of the officer seizing them as well as the officer-in-charge of the police station. Sec. 50 of the Act gives the accused the right to be searched in the presence of the magistrate or a gazetted officer. This right has been upheld by the Supreme Court in the case of State of Punjab V. Balbir Singh^{iv} where it was held that the police officer must, of necessity, inform the accused about this right. Finally, Sec. 58 imposes strict punishments on people making vexatious or frivolous complaints^v

Offences and Penalties^{vi}:

- Cultivation of opium, cannabis or coca plants without licence can lead to Rigorous imprisonment-up to 10 years + fine up to Rs.1 lakh
- Embezzlement of opium by licenced farmer for that the prescribed punishment is of Rigorous imprisonment -10 to 20 years +fine Rs. 1 to 2 lakhs (regardless of the quantity)
- Production, manufacture, possession, sale, purchase, transport, import, inter state, export inter-state or use of drugs if it is in small quantity R.I. up to 6 months or fine up to- Rs. 10,000 or both And in case

quantity is more than small but less than for commercial purposes the punishment is R.I. up to 10 years + fine upto 1 lakh. In case of commercial quantity then R.I. is of 10 to 20 years + fine Rs. 1 to 2 Lakhs.

- Violations pertaining to controlled substances there is punishment of R.I. upto 10 years + fine Rs. 1 to 2 lakhs
- Financing traffic and harbouring such substances can lead to R.I. 10 to 20 years + fine Rs. 1 to 2 lakhs
- Preparation to commit an offence Half the punishment for the offence
- In case of Repeat offence the provision is of One and half times the punishment for the offence. Death penalty in some cases.
- Consumption of drugs Cocaine, morphine, heroin - R.I. up to 1 year or 27 fine up to Rs. 20,000 or both in case of consumption of other drugs- Imprisonment up to 6 months or fine up to Rs. 10,000 or both Addicts volunteering for treatment enjoy immunity from prosecution.
- Punishment for violations not elsewhere specified there is provision of Imprisonment up to six months or fine or both

Critical Evaluation of the Act: overburdening of the specialized courts leads to much delay in the completion of the cases, more than necessary harsh punishments are there especially one can call offences in this act as victimless crimes. Thirdly the restrictions imposed on grant of bail under NDPS Act amount to virtual denial and ensure years of incarceration. Section 37(1) declares that an accused person is not to be released on bail unless the court has reasonable grounds to believe that the accused is not guilty and is not likely to commit an offence while on bail. This provision is identical to provisions of the Terrorist and Disruptive Activities (Prevention) Act and Prevention of Terrorism Act which resulted in long periods of imprisonment without trial, evoking strong criticism from the human rights movement.^{vii} Not only this Section 31A of the NDPS Act prescribes a mandatory death sentence for certain drug offences upon subsequent conviction. The death sentence is mandatory in that there is no punishment laid down in Section 31A other than death and the alternative of sentencing the repeat offender under Section 31 is foreclosed by the non-obstante clause in Section 31A. But in 1983 the Supreme Court of India declared mandatory capital punishment as unconstitutional. In a recent decision the Bombay High Court applied the same principle and held Section 31A of the NDPS Act to be violative of Article 21 of the Indian Constitution. The NDPS (Amendment) Bill, 2011 ignores the basis of invalidity of Section 31A as pointed out by the Constitutional Court. The Government has neither abolished nor amended Section 31A in the NDPS (Amendment) Bill, despite the findings of the Bombay High Court on its constitutional validity^{viii}.

Conclusions and Suggestions: At the end it can be concluded that even though our country has such a strong legislation which is often criticized for having harsh punishments we fail to exercise or have full control over

the drug trafficking. The major reason is the not proper implementation of the laws. Moreover there is a need to channelize both central and the state machineries in such a way that they can bring out the desired results. This is also a basic point that the common masses should be made aware of the ill-effects of the consumption of the drugs as it can only lead to the destructions of the families and then the societies. One such attempt in this direction is by making a film namely 'Udta Punjab' over this issue. Instead of criticizing things there is a need to take a joint effort in this direction as when the requirements or purchase will be less obviously the drug trafficking will reduce. Except this there is a need for judiciary also to decide such cases as fast as possible so that there will be a fear in the minds of people as due to delay or pendency of the cases obviously the effectiveness reduces.

ⁱ Understanding the NDPS Act by Chetanya Kediya available at <https://factly.in/understanding-ndps-act/>

ⁱⁱ https://en.wikipedia.org/wiki/Drug_policy_of_India

ⁱⁱⁱ Universal's Bare Act on NDPS Act, 1985

^{iv} 1994 AIR 1872

^v A detailed analysis of NDPS Act by Rahul Bajaj available at <https://blog.ipleaders.in/a-detailed-analysis-of-the-national-drugs-and-psychoactive-substances-act/>

^{vi} http://www.antidrug.gov.in/download/files/indian_drug-laws.pdf

^{vii} <http://timesofindia.indiatimes.com/edit-page/A-draconian-law/articleshow/2612602.cms>

^{viii} https://www.researchgate.net/publication/259937757_Current_status_of_the_narcotic_drugs_and_psychoactive_substances_NDPS_act

