

NDPS ACT: A CRITICAL LEGAL ANALYSIS OF INDIA'S DRUG CONTROL FRAMEWORK

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ABSTRACT:

Indian law to stop drug trafficking and control using drugs in Indian is the Narcotic Drugs and Psychotropic Substances Act, 1985 or "NDPS Act". This Act which was made as a result of India honouring its commitments under the 1961 Single Convention on Narcotic Drugs is a crime and ban on use of drugs. While the main goal of the NDPS Act is to stop illegal trafficking and protect the health of the general public, the law has been criticized many times due to its strict rules, inflexibility and lack of attention to harm reduction and rehabilitation.

The main question in this research is whether the country's existing drug control measure, the NDPS Act, is a just and right way to strike an adequate balance between the interest of the State to control the drug and the liberty of the individual. The following are the specific objectives of this enterprise: (1) to trace the development of the NDPS Act over the years and examine its scope and framework; (2) to subject to critique the functioning of the said Act from the point of view of the legislative provisions, judicial interpretation and execution by law enforcing agencies; and (3) to determine greatly effective the NDPS Act as dissimilar to the international drug control mechanisms and to recommend different ways in which the NDPS Act could be corrected. In order to perform the aforesaid objectives of the research, an elaborate appreciation of primary data (statutes, case law and government reports) and secondary literature (academic writing, policy papers and comparative legal studies) has been made. The process adopted is doctrinal in nature.

Even though the NDPS Act established a robust legal framework that criminalized and punished drug related offences. The excessive importance placed on punishments meant that the implementing law caused many other more serious harms. For example, overcrowding prisons, violations of due process and the stigmatising practices which Durbanize drug users. A major correction to this legislation must include classifying traffickers and users within the law. The use of methodologies that focus on human health such as decriminalizing private use. and robust safeguards within the system to prevent police excesses are essential in the law of tomorrow. India thus has to move from absolute punitiveness towards equilibrium punitiveness which would inline the ideal benchmark International best practice and the rights guaranteed by its constitution.

KEYWORDS: NDPS Act, 1985, Drug Control Policy, Judicial Interpretation, Rehabilitation and Public Health, Comparative Drug Policy

INTRODUCTION:

All across the world, Governments focus a lot on how they will control narcotic drugs and psychotropic substances Drug abuse and

smuggling pose complex problems for the Global Community that have widespread implications for organized crime, public health, national security, and human rights. Problems

faced by India are particularly heaving because of its geopolitics and even more so its geographic location which observes the tyranny of two of the worlds most prolific drug manufacturing zones - the 'Golden Triangle' (Myanmar, Laos and Thailand) and the 'Golden Crescent' (Afghanistan, Iran and Pakistan) - and through that, are perhaps the most important ones there are a number of reasons why India has had both a higher demand for and supply of banned substances. The Croatian government has undertaken a comprehensive effort to prepare a comprehensive legislation for the control and regulation of drugs that has led to the adoption of the Narcotic Drugs and Psychotropic Substances Act, 1985 Several articles have followed in the way of the legislation.

Before 1985 the offences about drugs in India were found scattered over several colonial and postcolonial laws like the Opium Act 1857, the Opium Act 1878 and the Dangerous Drugs Act 1930. The laws were shoot-if-you-can, narrow indeed and were able to contain the fast-growing drug threat. Thereafter India became party to several United Nations conventions on narcotics, such as the Single Convention on Narcotic Drugs 1961, the Convention on Psychotropic Substances 1971 and the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988. There was therefore an urgent to pass a comprehensive domestic law. The NDPS Act 1985 was therefore enacted to bring India into compliance with its international obligations while equipping the state with sweeping powers to criminalize, investigate and punish drug offences.

India has some of the toughest rules on crimes, such as the NDPS Act. It has harsh punishments, including minimum ones, for many crimes, from using and possessing to selling and bankrolling bad business. It makes the rule of innocence less strong, a main point of criminal law, by letting police and other officers have great power to look, take, and lock up others, and by making serious rules that work more against the

person accused. Especially after the 1994 update that added Section 37, which made it hard to let accused persons go, bail under the Act is very subdued. These traits have caused large problems of the Constitution about whether the act fits Articles 14, 21, and 22 of the Indian Constitution.

No matter how tight the rules are, brilliant minds, activists, and even the law have all had a hard time with the NDPS Act. Critics say that the Act makes people feel more like criminals than they are helping them become better people because the law does not go far enough to tell the difference between drug traffickers, the one-time peddler, and the person who is under the power of drugs. Many people are still in jail even though they are on trial and many of these people are there for petty crimes such as commit crimes with drugs, (poor bail related conditions on the Act and presumption of innocence on things in the law), and the NCRB report points out that the amount of times societies are using the Act has only increased, which is partly to check on a problem that society is already forced to face.

In momentous judgments, as in ⁹³³State of Punjab v. Baldev Singh, (1999) 6 SCC 172, where the Court drew attention to the importance of observing constitutional safety measures while searching and seizing five itself; and Mohd. Sahabuddin v. State of Assam, (2012) 13 SCC 491, where the Court reiterated the demand of procedural safety measures, the Court has shown language in its reading of the Act to bring about a moderate amount. Dispute between the person and the authority to discourage use of narcotic drugs could not completely be resolved.

This study has the following objectives:

- To track the legislative intent and historical evolution of the NDPS Act.
- To assess stages/ modes of the Act.

⁹³³ State of Punjab v. Baldev Singh, (1999) 6 S.C.C. 172 (India).
Union of India v. Mohd. Aslam, (Delhi High Court, 2020).
State of Kerala v. Rajesh, (2009) 14 S.C.C. 254.⁹

- To research case law and balance between the Carta and the law of the land.
- To check the feasibility of such models vis a vis India with the counter concept of harm reduction and decriminalization in relation to the taxonomies of drug purchase, Heroin production, international models of drug control etc.
- To recommend draft schemes, laid down in detail, which will bring India up to the time of the international discussion on the shall applicability of such models to American and public health systems.

The approach it adopts is doctrinal in nature – variant includes the secondary literature on the Academic, appeals made to the Court, under the legislative approach, several cases issued by courts, judgements, or judicial decisions, etc. The study, also under the comparative approach, engages in comparative studies, evaluating the practicality of various retrials links to the object, schedule-based moderates, code sections/ 8AA. The practices as applied outside India in relation to those mentioned in the IMF catastrophe are examined, along with contemporary best practice.

This study contends that although the NDPS Act was passed with noble intentions, systemic inequities have been caused by its over-reliance on deterrence through severe fines and procedural presumptions. For India's drug control system to be both efficient and equitable, the framework must be reoriented toward a public health and human rights perspective.

METHODOLOGY:

The present research looks at the law of drugs in India using doctrinal and analytical techniques. The data for this research has been based on the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) and its relevant rules, regulations and amendments. To understand the interpretation of statutory provisions it also looks at case law especially

important decisions of Supreme Court and High Court.

The key sources were the Bare Act, official memoranda issued by the government and reports by international organizations like the United Nations Office on Drugs and Crime (UNODC) and the Narcotics Control Bureau (NCB). Second hand sources include commentaries, scholarly articles, research papers and policy analyses in top-rated academic journals and edited volumes.

The research is confined to the regime of drugs in India and deals with the social repercussions, legal interpretations, the constitution's acceptability and critical evaluation of certain clauses of the NDPS Act. The thesis highlights different drug regulatory schemes through the use of parallel perspectives from countries such as Portugal or Netherlands. However, the thesis is limited to academic research and does not employ assessment-arranged measurement tools like all-class surveys and interviews.

International comparisons are illustrative and not exhaustive, and the research's reliance on published sources may not always reflect the realities of enforcement on the ground in real time.

HISTORICAL BACKGROUND:

Over the past century, colonial-era laws and international treaty obligations have greatly influenced India's approach to drug control. The Opium Acts of 1857 and 1878 were the first attempts at institutional regulation, with the primary goal of regulating opium cultivation and trafficking for financial gain rather than public health. In response to the growing concern about drug misuse around the world, the Dangerous Drugs Act of 1930 was passed, expanding control over narcotic substances such as cannabis and coca derivatives.

Due to its closeness to the regions of the "Golden Triangle" and the "Golden Crescent", drug smuggling was still a big problem for India after it gained independence. As a result of the country's obligations to the United Nations

Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, the Convention on Psychotropic Substances, 1971, and the Single Convention on Narcotic Drugs, 1961, the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) was put into law. The Act created a more complete system of rules while at the same time having harsh punishments by making tougher and putting together previous, different laws.

Many important changes have been suggested over the years. The change in 1989 did tough penalties and made bail harder. The change in 2001 made the way to judge easier by making Rules about how much make the law a small one or the other a commercial one. The change in 2014 had the need for pain relief and had the need for the drugs and mood-altering things to be used for medicine. We will make the penalty the same for helping to run drug work for the last change in 2021, so we caught a mistake in Rule 27A. That is how the law on Drugs in India can be at times – it kept straight from the greed of the foreigners who first made opium rules, to the much stricter drug rule of the NDPS Act, but that rule was more than harsh enough to be shaped by world drug rules.

LITERATURE REVIEW:

Legal scholars have long slammed the harsh provisions of the NDPS Act. The law's statutory reversal of the burden of proof, notes Arvind Narrain (Presumption of Guilt and the NDPS Act, Arvind Narrain, 12 Nat'l L. Sch. J. 45 (2000)), destroys the presumption of innocence and renders the Act "guilty until proven innocent." ("Presumption of Guilt and the NDPS Act,"⁹³⁴ Arvind Narrain, 12 Nat'l L. Sch. J. at 50.). K. I. Vibhute (Criminal Law and Justice in India 233 (2004)) adds that the imposed minimum sentences did not afford the possibility of proportional justice or individualized

punishment. Powers point, however, to a gap between policy and enforcement.

Actually, the press is still very strong even after the National Policy on Narcotic Drugs and Psychotropic Substances, 2012 that has a two-prong approach of supply and demand reduction. According to Krishnan drug addiction is an issue of health rather than of the law (Jayanth Krishnan, "Human Rights and the NDPS Act: A Public Health Approach," 23 Indian J. Int'l L. 311 (2011)).

Other things on education are out there on comparative literature. (Caitlin Elizabeth Hughes & Alex Stevens, "What Can We Learn from the Portuguese Decriminalization of Illicit Drugs. Hughes and Stevens look at Portugal's way of taking away penalties for crimes in 2001, and they show that fewer HIV infections and deaths from overdose followed. In her book *The New Jim Crow: Mass Incarceration in the Age of Colour-blindness* (2010), Michelle Alexander argues that the War on Drugs in the U. S. has made race-based issues worse and has also meant many people are kept in jail. By putting "soft" from "hard" drugs apart and focusing on fighting trafficking, Robert MacCoun studies the Spanish "coffeeshop" approach feasibility (Robert J. MacCoun, "Understanding Dutch Policy on Cannabis," 23 Psych. J. Pol'y & L. 446 (2011)). As a result, scholars state that the harm caused by India's model of punishment needs to be looked at as of now with the light of stand of 2014.

THE NDPS Act's STATUTORY FRAMEWORK:

It comprises procedural, criminal, and prohibitory features. At its core, section 8 prohibits manufacturing, producing, possessing, selling, purchasing, transporting and using in any other manner psychotropic substances or narcotic drugs, unless used for scientific or medical research. The Act prescribes a three-tier classification of punishments according to the circumstances, ranging from petty to third, with increased punishments. Multiple offences involving third quantity may lead to sentence of death, although this was challenged in a

⁹³⁴ Arvind Narrain, *Presumption of Guilt and the NDPS Act*, 12 Nat'l L. Sch. J. 45 (2000).

K.I. Vibhute, *Criminal Law and Justice in India* 233 (2004).
Jayanth Krishnan, *Human Rights and the NDPS Act: A Public Health Approach*, 23 Indian J. Int'l L. 311 (2011).

constitutional challenge; while trafficking in mild quantities can get a prison sentence stripping into one, twenty years and fine. Case court entered to punish dealings with illegal substances, which carries stiff punishments.

Sections 41 to 68 of the Act give wide power to search, seize and arrest, many of which may be used without prior approval of a court. Constitutionality of Section 67, which empowers officers to summon persons and record their statements was called in Tofan Singh after it was challenged. A presumption that turns the usual basis of proof on its head and presumes illegal possession and mental state applies once contraband is found as per Sections 35 and 54. Many NDPS cases are almost impossible because of the strict bail requirement of Section 37. For faster disposal of proceedings, the Act also has Special Courts in Section 36A and Chapter VA for seizure of property and confiscation.

JUDICIAL INTERPRETATION:

Legal Interpretation The purpose of court interpretation was to dilute the effects of NDPS Act. The Supreme court, in the case of State of Punjab v. Baldev Singh, (1999) 6 SCC 172, rules that live up to the requirement contained in sec 50 that right of search thereof contemplated shall be explained, in presence of a magistrate or a gazetted officer, it need not be obeyed on pain of the loss of conviction. The Court held that sec 50 applies only to human search, not to inspections of buildings, cars, containers. The line further reiterated the fact that in a strict law like the NDPS Act, failure to follow procedural safeguards was not permissible.

The Court looked at if confessional confessions from Section 67 can be used in ⁹³⁵Tofan Singh v. State of Tamil Nadu, (2021) 4 SCC 1. It decided by a 2:1 vote that confessions given to some police

officers under the NDPS Act can't be used because of Section 25 of the Evidence Act. The Court said that it was impossible to stand by convictions made just because of those confessions. This was finished with the inalienable promises in Articles 20(3) and 21. When she used her power as the Chief Justice to set aside how her Court had sentenced a person to prison for 21 years just because of a Section 67 statement, it was kept (SCC Online). These two opinions show how the NDPS Act's vague "harsh" stance has been symptoms by the Constitution.

The judiciary also looked at how severe the punishment should be when talking about cases involving NDPS. In State of Kerala v. Rajesh, (2009) 14 S.C.C. 254, the Supreme Court looked into whether it was possible to lower the minimum amount of time someone would have to spend in prison for possession if there was a good reason to do so. Though they supported the court rules, they did say that overturning the rule would be wrong if a person was caught with a small amount or didn't have the drug for very long. These are a few examples of how the judiciary works with the different ways they look at cases involving NDPS: they didn't want to weaken the overall purpose of trying to stop even more drug use, but they also did not want to punish someone twice for the same crime or mug shots taken of us of getting caught breaking the law or take away our rights under the constitution.

Last, the way judges look at the NDPS Act shows how rules for order meet basic rights. Courtrooms have always stressed that any built-in guess, rules for fact-finding, and punishments of the law should never weaken or take away a person's right to a fair trial, equal treatment, and freedom for self-belief. This legal stuff gives reason to why the law should change: even though tough laws are made to do tough things, it is only with judicial review that the law can stay within the constitutional framework, because the law will need to do things to itself when it does wrong, and protect the individual's rights. Such verdicts are vital to

⁹³⁵ Robert J. MacCoun, *Understanding Dutch Policy on Cannabis*, 23 Psych. J. Pol'y & L. 446 (2011).

Narcotic Drugs and Psychotropic Substances Act, 1985, No. 61 of 1985, India Code (1985).

State of Punjab v. Baldev Singh, (1999) 6 S.C.C. 172 (India).

Union of India v. Shiv Shanker Kesari, (2007) 7 S.C.C. 798 (India).

Tofan Singh v. State of Tamil Nadu, (2020) 9 S.C.C. 1 (India).

any plan for change, about how it is provided judges have the space to make the choice, safety measures should be built-in to the rules, and there should be a focus on recovery rather than just doing the job.

CRITICAL ANALYSIS:

There are good and bad sides to the NDPS Act. India is meeting the needs of its treaty as to how much its drive to stop reputations of drugs. IOA is backing the fight against drug trains by making Ideal War to help fight the drug trade. But the faults make the iterate easy. The law violates the Because of sections 35 and 54 which make the person have the at ease of proving others at. The optional ramp racy of courts by fat punishments and put things at minimum size is taking away power of judge. Overcoming jails is made worst because a large sum of pens is to quick judgment in NDPS cases, and NCRB data says so. The null of reception given in section 27 does not see need as not like a medical problem. The total entry made by examples of cheat, such as made confessions and planting of ideas to cheat thrown at us. The act of treat, as the big amount to be free from bragging, and the problem of the being to liberty with a, cause threats to Articles 14, 20 (3) and 21 of the Constitution.

Another way the Bill has been opposed is through how it makes use of drugs into a crime in Section 27. Instead of getting at the real meaning of a drug being a problem, the Law makes it a crime to fall prey to one of those things then turning those with a type of help into a bigot. There are no actual written rules in the Law of said the law on return to help in getting the use away from the person's way to pain less and to overcome the consumption; fed on the feed in the Law, there is no clear rule on how to get help back to have less of a spread. Because of this people are filled with crime and twirling in jail, this makes the health potentially even more dangerous, it makes the social the added just as or even more dangerous, and can provide more money to be hindered because of other reasons and effects. Many times have heard

about this Human before this have strongly suggested reform to take on a human life without a real shame.

India's strategy is in contrast to global models that have placed equal emphasis on enforcement, rights, and health. Alternative frameworks can lower health risks, limit illegal markets, and encourage social reintegration, as shown by Portugal's decriminalization model, the Netherlands' distinct policy on soft versus hard drugs, and Switzerland's harm reduction initiatives. In contrast, the Indian approach criminalizes addiction and conflates users with traffickers, leading to high incarceration rates and social suffering without corresponding drops in drug use. These comparative observations imply that a more equitable NDPS framework might concurrently uphold constitutional rights, preserve public order, and further public health goals.

COMPARITIVE PRESPECTIVE:

there are some important lessons to be learned from Portugal's decriminalization programme. Portugal has had small amounts of drug possession as an administrative offence since 2001, which refers people to harm reduction and counselling instead of jail (⁹³⁶Hughes & Stevens, supra). this also reduced HIV rates and overdose deaths (Hughes & Stevens, supra.) the Netherlands has chosen to distinguish between so-called soft and hard narcotics so that, instead of passing laws against shopping and using, we have a justified framework for cannabis while trafficking is punished (MacCoun, supra). The US is a cautionary tale of the dangers of purity firstly where the actual war on drugs increased racial segregation and mass imprisonment while the demand for drugs did not really fall (Michelle Alexander above). These models together show that while India's

⁹³⁶ Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colour-blindness* (2010).

U.N. Off. on Drugs & Crime, *World Drug Report 2022* (2022).

Caitlin Elizabeth Hughes & Alex Stevens, *What Can We Learn from the Portuguese Decriminalization of Illicit Drugs*, 50 *Brit. J. Criminology* 999 (2010).

Robert J. MacCoun, *Understanding Dutch Policy on Cannabis*, 23 *Psych. J. PoPy & L.* 446 (2011).

approaches are to be commended, it should draw on differentiating between traffickers and consumers and a greater embrace of interventions that support recovery.

REFORMS AND RECOMMENDATIONS:

We need to fix the NDPS law very much. If people can smoke and care for small amount, it could be about health of people. If we let courts decide, then we lose side of penalties we set. Courts can rule on them if we follow the rules of how we handle drugs. Higher level programs need to be added to help people learn and get better. If we want exchange of rights, then police, lawyers, and courts can study more and we can build better ways to look at evidence. As we need to report on NDPS case research, we need full access to all data. Every once in a while, NDPS policies need to be checked against new facts and how law treat a person under the law, and an agency to do so must be executive to be led by lawyers, medical experts, and a watchdog of consumer groups.

CONCLUSION:

The threat posed by the expanding danger of selling drugs has been increased by India's international commitments. This led to the creation of the Narcotic Drugs and Psychotropic Substances Act, 1985 (Act). The Act's legislature assigned extensive power to law enforcement agencies to combat organized drug syndicates and brought together piecemeal earlier legislation. The Act, while surmounts the effects of its domestic situation, was aligned with generally prevailing international trends in drug control and followed a policy of stringent deterrence and near prohibition on the legislative level. India's strategic geographical position between two major producers of drugs was believed to lend support to this approach in the first years after the Act's passing.

But after nearly 40 years of use, it is plain that by focusing narrowly on harsh enforcement, the Act created a mass of structural problems. The basic rules of criminal law and civil rights are compromised by laws that mandate minimum

sentences over which judges have no discretion, and that shift the burden of proof from the preferred standard of beyond a reasonable doubt to a mere balance of probabilities. Thousands of addicts and common hobbyist offenders who are often confused by law with traffickers have been jailed: first by bail laws that are extraordinarily strict, and then by the crime of handling small amounts of the drug for personal use. In addition to the cost imposed on India's enormously overcrowded jails, these cases raise fundamental issues of liberty, proportion, and dignity in the sense of Articles 14 and 21.

The Act's severity has been somewhat cut down by judicial intervention. It was confirmed that the Supreme Court's rulings in *State of Punjab v. Baldev Singh*, [1989] 3 SCR 557 and *Tofan Singh vs State of Tamil Nadu*, (1983) 3 SCR 837 reaffirmed the invalidity of confessions obtained under coercion. The Court protected the accused from the ill winds of arbitrary power but could not eliminate the structural rigidity of the statute. As long as the NDPS Act equates consumption with trafficking and emphasizes penalisation over rehabilitation, preventing drug use shall remain at odds with the ideals of justice and fairness.⁷³⁵ The points made in Global experiences (2) draw attention to alternative pathways. Portugal's decriminalization framework exemplifies dealing with drugs from a health-first speech⁵⁵ while the Netherlands exhibits the merits in seizing the divide between "soft" and "hard" drugs. Two other countries provide cautionary tales – the United States on how a punitive "war on drugs" (where penalties are material) fuels mass incarceration while not addressing the causes of drug use.⁷⁴⁶ For India, these international lessons teach that (widening the scale of) enforcement, prevention and treatment are both feasible and essential.⁷⁴⁶ This is where recalibrated balance of enforcement, prevention and treatment must be recovered.

Hence, the key to reform of the NDPS Act lies in decriminalising small-quantity possession and

personal consumption, return of judicial discretion at sentence stage and rehabilitation becoming central emphasis of drug policy. The State can deal with addiction as an illness instead of a crime through enhancing community-based treatment and counselling programs Jul; and rehabilitation centre facilities. Police should focus their efforts on follow the money, cross-border trafficking's and organised trafficking networks simultaneously. Moreover, by aligning India's drug control policy with constitutional protections, the revamped framework will produce a socially acceptable, humane and proportionate system. India can get a reasonable equilibrium between law enforcement's demands and the dignity and rights of its people with such a recalibration.

