

## LEGAL FRAMEWORK FOR DRUG LAWS

**AUTHOR** – PRABHAT MAURYA, LAW STUDENT AT LAW COLLEGE DEHRADUN, UTTARANCHAL UNIVERSITY, DEHRADUN

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### Abstract

The drug regulations of India fall within the category of the most stringent and probably, the most complicated, regulatory systems in the world. The entire system revolves around the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) and is specifically designed to prevent the four basic stages, which are, the cultivation, production, trafficking, and consumption of narcotic and psychotropic substances. The initial purpose of the system is an anti, drug one, but nowadays, changes and court rulings have brought the issue to a framework of strict liability, high standard of proofs and harsh punishments, especially in cases involving commercial quantities. Nevertheless, even if the strategy is mostly preventive, the drug enforcement agencies are still encountering numerous obstacles among which procedural inconsistencies, arrest powers abuse, over, criminalization of drug, dependent individuals and delays in forensic examination are the most prominent ones. This paper deals with the past, the current legal framework, the enforcement and judicial developments of the Indian drug law regime, suggesting that there are considerable gaps and reforms are necessary. Furthermore, it asserts that a fair, research, led policy model which not only supports the fight against the drug networks but also safeguards the rights of drug, dependent individuals and facilitates their rehabilitation is the way forward.

**Keywords:** Narcotic Drugs and Psychotropic Substances Act (NDPS Act), Drug Control Laws in India, Drug Trafficking and Enforcement

### Introduction

The control of narcotic drugs and psychotropic substances is a major concern of any country's criminal justice and public health system. The drug control law in India has been influenced by India's international obligations, domestic policy, and rising concerns about addiction, drug trafficking, and organized crime. The drug laws of India, which started as a mixture of colonial regulations, were later replaced by a complete statutory drug law regime with the introduction of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) which is now the main framework of Indian drug law. The law takes a strict ban, oriented stance, making it illegal the activities

like growing, possessing, manufacturing, transporting, and distributing narcotic and psychotropic substances.

Nonetheless, the NDPS system is not only a penal one, it mirrors wider international discussions about the right mix of enforcement, rehabilitation, and public health. The legislation provides for treatment and rehabilitation, but implementation of the law is still largely driven by law enforcement resulting in drug, dependent individuals and commercial traffickers being indistinguishable in most cases.

A knowledge of Indian drug laws is indispensable in this environment. It reveals the pros and cons of the current system, the

difficulties that the law enforcement agencies encounter, and the necessity of making the punitive measures compatible with the protection of human rights and implementation of the rehabilitation process based on scientific evidence. This debate also provides basis to look into drug control measures that are more balanced, humane, and effective in India.

### **Historical Evolution of Drug Laws in India**

The history of drug laws in India shows how the laws have changed from those that were primarily interested in making money during the colonial times to a strict prohibition system influenced by the global narcotics control regimes. The legal measures taken by the country in the field of narcotic drugs and psychotropic substances have been a mix of the influences of international conventions, domestic public health concerns, and the increasingly complicated nature of trafficking networks. The knowledge of this shift is necessary to understand the present legal system that functions under the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

#### **Early Colonial Period: Regulation Driven by Revenue and Trade**

During the 18th and 19th centuries, the British colonial administration was extensively involved in the production and trade of opium. Instead of limiting the use of narcotics, the British government formalized opium production mainly for their own financial gain. The Opium Acts of 1857 and 1878 standardized the procedures for growing, manufacturing, and exporting, thus, in practice, the state took over the monopolized opium trade. These regulations were not intended to regulate public health or create criminal liability but as fiscal and administrative measures. Opium was a pressing money, making venture and the instruments of control were concentrated on taxation and licensing rather than on prohibition.

At the same time, cannabis was almost entirely unregulated as it was commonly consumed for religious, medicinal, and cultural purposes. Following an in, depth inquiry, the Indian Hemp Drugs Commission Report, 1894, declared that moderate cannabis use was neither harmful nor did it call for total prohibition. Hence, the colonial drug policy was a pragmatic and economically driven one with very little emphasis on criminalization.

#### **Post, Independence Period: Balancing Public Health and Commerce**

Post, independence, India kept the drug regulations of the colonial era but slowly progressed towards a more restrictive legislative framework. State, level excise laws, the Dangerous Drugs Act, 1930, and rules made under the Drugs and Cosmetics Act, 1940 between 1947 and 1980, constituted a fragmented control system of narcotic substances in India.

The Dangerous Drugs Act, 1930 was the main legislation that regulated narcotics, but it was not powerful enough to deal with the increasing problems of drug trafficking. The act allowed for relatively minor punishments and the violations of the law were enforced with old and weak mechanisms. India, during this period, also received an increasing number of international calls to tighten her anti, narcotics position as she acceded to various UN conventions.

#### **Influence of International Conventions (1961–1981)**

India's drug policy underwent a dramatic transformation due to its obligations under major UN conventions:

- Single Convention on Narcotic Drugs, 1961
- Convention on Psychotropic Substances, 1971
- UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic

Substances, 1988 (ratified later but influenced drafting)

These agreements favored worldwide ban based on prohibitionist principles and focused greatly on the crime of drug trafficking, harsh punishments and control by the central government. Being one of the parties to the agreement, India had to unify its scattered laws, control the cultivation of opium more tightly and bring in standard laws regarding narcotic drugs and psychotropic substances. The progressive dedication of the world community to the cause of drug control at the global level was the main reason for the NDPS Act to come into existence.

### Enactment of the NDPS Act, 1985: A Paradigm Shift

The most significant milestone in India's drug law evolution was the enactment of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act). This legislation fundamentally altered the legal landscape by:

- Imposing stringent punishments for possession, consumption, trafficking, cultivation, and financing.
- Establishing a strong central authority through the Narcotics Control Bureau (NCB).
- Providing a uniform legal framework across India.
- Incorporating reverse burden of proof and mandatory minimum sentences.

The NDPS Act marked the transition from a regulatory model to a repressive criminal justice model.

The focus shifted from state-controlled commerce to absolute prohibition.

### Post-1985 Amendments: Toward a More Balanced Approach

Over the years, criticisms regarding the harshness of the NDPS Act led to significant amendments:

- **1989 Amendment:** Introduced mandatory minimum sentences and made bail exceptionally stringent.
- **2001 Amendment:** Introduced quantity-based sentencing (small, intermediate, commercial), making the law more proportionate.
- **2014 Amendment:** Allowed essential narcotics for medical purposes and transferred licensing authority to the central government for certain drugs.

These reforms attempted to balance strict law enforcement with public health needs, especially those of terminally ill patients requiring pain medication such as morphine.

### Contemporary Landscape: Challenges and Debates

Today, India's drug law framework remains one of the most stringent in the world. While enforcement focuses heavily on trafficking, debates persist regarding:

- Criminalization of drug users
- Over-incarceration of first-time and low-level offenders
- Misuse of procedural powers
- Need for rehabilitation and harm-reduction approaches

Growing recognition of addiction as a health issue, rather than solely a crime, has prompted calls for further reform.

### Statutory Framework Governing Narcotics and Psychotropic Substances in India

The legal system for narcotics and psychotropic parts in India sizes primarily around the law named Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), a network of rules, regulations, and international treaty commitments supporting it. They, in combination, make up one of the severest drug, control systems in the world, a system that is based on prohibition, criminalization, and quite a few exceptions for medical and scientific purposes. The drug

trafficking judicial framework has been shaped through various changes and court rulings to meet the challenges of the drugs, in, their, misuse, such as prescribed medicines, synthetic drugs, and cross, border smuggling.

The NDPS Act 1985, a starter law, is the main legislation piece. It is a law enacted to bring together and strengthen existing laws that deal with narcotic drugs, psychotropic substances, and controlled chemicals and for that reason the law severely limits such actions as cultivation, production, manufacture, possession, sale, purchase, transport, import, export, and consumption of drugs, a wide range of substances unless allowed by law.

The NDPS Act's characteristics include extensive classifications of the substances it regulates. The Schedule defines narcotic drugs such as opium, cannabis, coca leaf, heroin, natural, or synthetic opioids; and also psychotropic substances like amphetamines, benzodiazepines, MDMA, and LSD.

The law is enforced through a few interrelated policy actions. The Central Government controls tightly the cultivation and production of narcotic drugs such as opium, poppy straw, and cannabis. Only a farmer holding a license is allowed to plant an opium poppy and the harvest must meet the specified minimum quotas; if not, the next licences will not be issued. At the same time, cannabis production regulation is a bit more complex: even though the NDPS Act bans the manufacture of charas and ganja, it permits State Governments to exercise control and issue licenses to cultivate industrial cannabis (fibres, seeds) and horticulture. Psychotropic substances are controlled under the NDPS Rules, 1985 through licensing operations that describe how these substances are to be made, distributed, and prescribed.

The NDPS Act also contains very strict provisions regarding the presumption of a guilty mental state (Section 35) and presumption from possession of illegal items (Section 54). Both these points significantly

shift the burden of proof on the defendant, which is a departure from the general principles of law. Another feature of the Act is bail being limited under section 37 which only allows the release from custody if the court is sure that the accused is innocent and will not commit an offence during the bail period thus creating a high threshold, especially in cases involving a commercial quantity.

Along with implementing, the legal system provides for the treatment and recovery of drug addicts. Section 64A offers immunity from charges for personal use if the accused voluntarily seeks medical treatment. Section 71 permits the establishment of de, addiction centers by the government. Despite this, these clauses are not very popular as a result of insufficient facilities and limited recognition of addiction as an issue of health rather than crime.

### **Enforcement Mechanisms and Institutional Structure under India's Drug Laws**

India's legal framework for the control and prevention of drug trafficking relies heavily on the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), which lays down the regulatory measures for the various stages of the drug life cycle right from the cultivation to the trafficking of narcotic and psychotropic substances. In the past few years, India has built up a layered enforcement system both at the central and state levels, which include areas of specialization and respective agencies. The configuration is in line with the major emphasis that drug, related crimes are given, by combining hardening of the law enforcement with scientific skill and global collaboration.

Moreover, a very important member of this team is the CBIC's Central Board of Indirect Taxes & Customs (CBIC) controlled revenue intelligence wing. Indian border checkpoints, seaports, and airports are what the DRI considers its territory to primarily fight drug smuggling.

Apart from these, some mechanisms have been included in the NDPS Act aimed at helping law enforcement officers do their job in a more stringent manner. The Act is equipped with the presumption of culpability figure (Section 35) for mental state and (Section 54) for possession thus once the recovery is established the onus of proof is on the defendant. It offers provisions for controlled delivery, joint operations, and undercover investigations. Strict procedural requirements, such as specifying in writing the reasons for search without a warrant and producing the seized samples before the magistrate, are certainly aimed at the prevention of the illegal use of them while at the same time providing for the integrity of the evidence.

But even with this intricate structure, the enforcement arsenal isn't without its problems: There is a lack of well, trained staff, procedural safeguards are not always observed, the forensic capacity is weak, and there are significant delays in the prosecution. However, the institutional setup is designed to be a robust one, with a highly centralized, multi, agency model, geared towards the elimination of drug trafficking at both the national and transnational levels.

### **Criminal Liability, Punishments & Bail Restrictions**

The Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) is the main source of one of the severest criminal liability systems in India. In contrast to general criminal laws, crimes under the NDPS concentrate largely on deterrence, which is reflected in the harsh punishments they entail, in certain burdens of proof being reversed and bail being less available. Though the law sees drug trafficking as a major risk to public health and national security, it is this very strictness which has most of the time been the cause of concern as to whether the procedures are proportional and the rights of the accused are respected.

### **Criminal Liability and the Scope of Offences**

The NDPS Act is a wide, ranging crime, law that aims at narcotic drugs and psychotropic substances by means of the afore, mentioned substances. The legislation covers drug abuse in all stages and aspects, such as the growing of drugs, their production, and the manufacture, possession, selling, buying, carrying, importing, and exporting of drugs; as well as using narcotics, and even financing their illegal trade.

One of the most important points of NDPS liability is the quantity, based framework feature that was introduced with the 2001 amendment. The confederations have been to classify the offences to small quantity, more than small but less than commercial quantity, and commercial quantity. The increase in culpability follows the increase in quantity, which shows clearly that the legislature wants to distinguish between the one who just uses and the one who traffics large quantities, and treat them differently.

### **Presumptions and Burden of Proof**

The Act contains very strong presumptions in Sections 35 and 54 where the court may assume from the facts that the accused had a culpable mental state and was in possession unless the accused is able to prove to the contrary. This in effect moves the burden of proof to the accused, which is a departure from the general rule of criminal law that the accused is presumed innocent. The courts have on many occasions pointed out that these presumptions should be used sparingly so as not to cause injustice, but they are still in force, thus being one of the factors leading to the severity of NDPS prosecutions.

### **Punishments under the NDPS Act**

Punishments depend primarily on the quantity involved:

#### **(a) Small Quantity**

Offences involving small quantities attract **up to 1 year imprisonment**, a fine, or both. This is

the least severe category and often applies to drug users and minor possession cases.

### **(b) Quantity Less Than Commercial but More Than Small**

These offences carry **rigorous imprisonment up to 10 years**, along with heavy fines. This middle category is where many first-time offenders fall, leading to significant incarceration despite relatively low-level involvement.

### **Bail Restrictions under Section 37**

One of the most controversial features of the NDPS Act is its extreme restriction on bail, especially for serious offences. Section 37 states that for offences involving commercial quantity and those under Sections 19, 24, and 27A, bail cannot be granted unless:

1. The Public Prosecutor is given an opportunity to oppose the bail, and
2. The Court is satisfied that the accused is not guilty and will not commit an offence while on bail.

These two conditions combined are almost a ban on bail, thus placing a very heavy and unrealistic burden on the accused at the pre-trial stage. Consequently, there are so many undertrial prisoners who keep lodging in jails for years before their trials are concluded, even though they might be acquitted in the end.

Courts have recognized these troubles. The Supreme Court has pointed out that procedural safeguards, such as the correctness of the search, seizure, and compliance with Sections 42, 50, and 57, should be met rigorously; otherwise, the prosecution will fail. Nevertheless, police officers and others accused of violation frequently remain in detention awaiting trial because bail is so restricted in the area.

### **Rehabilitation, Decriminalization Debates & Human Rights Concerns**

The discourse on drug laws in India is increasingly revolving around the necessity of moving the approach from being punitive and

criminal, justice, driven to one that is health, oriented and based on human rights. The Narcotic Drugs and Psychotropic Substances Act (NDPS Act) 1985 was meant to combat drug trafficking and ensure the protection of society. However, its strict provisions have led to the criminalization of drug, dependent individuals rather than their rehabilitation. Therefore, India's drug policy has been criticized for punishing more than protecting public health, thus violating the rights and dignity of addicted individuals.

The argument about human rights is a fundamental part of this debate. The harsh criminal framework under the NDPS Act that has been instrumental in the nature of the criticism, has been accused of going against the very basic rights, e.g. personal liberty, due process, and dignity as stated under Articles 21 and 14 of the Constitution. Among the arbitrarily made arrests, custodial violence, and extended pre-trial detentions, economic cornered people are mostly targeted.

Another aspect to look at is the discrimination between users and traffickers by the Act, leading to unbalanced punishments and infringement of the constitutional criminal law principle of proportionality most of all. The presumption clauses under Sections 35 and 54 bring the burden of proof to the accused and have been criticized for mala fide, trial standards. A number of international organizations, e.g., UNODC and WHO, have been urging countries to implement compassionate, investigative and evidence, based drug policies that promote health and human rights equally.

To sum up, India's drug laws of today call for drastic changes if they are to incorporate qualities of mercifulness alongside the need for enforcement. An updated law should work toward the goal of rehabilitation rather than incarceration, clarify that offenders are traffickers not users, and follow the principles of science and human dignity. It is essential to decriminalize personal use, open up the door of access to rehabilitation so as many as possible

can get help, ensure constitutional rights are protected, and finally, establish an empathetic and efficient drug policy that is in tune with the realities of today's India.

### **Gaps, Challenges & Way Forward for Reform**

India's drug regulation system, which is largely based on the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), is globally recognized as.

The primary goal of the legislation is to thwart drug trafficking and drug markets without particular reference to the constitutional principles. The system's extremely punishing strategy had left so many loopholes and problems that have obstructed not only law enforcement but also the processes of the rehabilitation and protection of human rights.

One of the major loopholes is the insufficient differentiation of users, addicts, and traffickers. In the NDPS Act, possession is treated as a serious offence even if it is only a small quantity that shows personal consumption and not sales. Although Section 64A provides a waiver for addicts who go for treatment, its application varies greatly, and the onus of proving addiction lies on the petitioner. Consequently, thousands of people, mostly the youth and the economically vulnerable groups, are prosecuted as criminals while at the same time they are denied access to medical or rehabilitative paths. A structural defect in this way not only confuses the implementation of the law but also loads the criminal justice system with it.

Another problem is the inflexible provisions concerning bail under Section 37. Those provisions put the accused in situations of commercial quantity cases where the courts have to be "most satisfied" with the innocence of the accused for bail to be granted. The very puzzling requirement that the court is to find the accused "not guilty" even before the trial is the one that is at the heart of this contradictory provision, resulting in a prolonged detention in the pre, trial period.

Third, enforcement is riddled with inconsistency in the procedures and abuse of power. NDPS cases usually resort to the claim that the illegal search, seizure and operations took place. Impacting drastically incurring several violations of these mandatory procedural safeguards invoked in respective sections 42, 50 and 57, and leading to unlawful arrest, fabricating install, or the complaint's collapse, those movements occupy significant parts of the region such as states where low conviction rates can disclose not only a lack of criminal activity but also weaknesses in investigative work. These, combined with delays in dealing with forensic requests and lack of modern drug test facilities provide an extensive situation that results in weakening the legal chain.

The fourth point to be noticed is that the legislation ill, equipped to cover rehabilitation and harm reduction. Though the Act refers to treatment for dependence, India currently suffers from a shortage of safe and adequate de, addiction centers, lack of trained medical staff, and absence of community, based programs for recovery. The imposition of punitive sanctions over health, centered interventions has been the main reason behind the creation of a vicious cycle whereby users are further criminalized, and no support is provided to them.

It is noteworthy that the NDPS Act was drafted in 1985 when there had been no digital era, and as a result, it still wrestles with regulating the emergent narcotics markets.

### **Way Forward for Reform**

A significant change in drug laws should clearly start by differentiating users from traffickers. Cases of personal consumption should be redirected to health, based interventions rather than criminal prosecution. This is in line with international best practices, such as the decriminalization model of Portugal, which concentrates on treatment and prevention rather than penalizing.

Secondly, the provisions for bail should be made more sensible in order to bring back constitutional fairness. It should not be the courts' task to decide on guilt at the bail stage. A risk, based system, assessing escape risk, danger to community, and possibility of interfering with evidence, would be more equitable.

Thirdly, there should be a strict enforcement of procedural rights, and police officers must be specially trained for NDPS investigations.

Recording operations on body cameras, digital logging of seizures, and obligatory video, recording of searches can limit the powers of the police and increase transparency.

Fourth, India has to broaden its rehabilitation and harm, reduction facilities such as government, run de, addiction centers, community clinics, and opioid substitution therapy program. Addiction treatment as a medical condition rather than a moral failure is the key to long, term public health.

At last, India should implement a drug policy based on evidence that respects proportionality, human rights, and public health. Reforming the NDPS Act according to these principles will lead to a legal framework that is more balanced in nature, thus able to protect the society as well as maintain justice and dignity.

### Conclusion

The fabric of India's drug laws, legally speaking, exhibits not only a rather rigid but also an intricate regulatory mechanism, probably one of the most stringent and complex globally. A significant chunk of the system is largely based on the NDPS Act, 1985, which essentially aimed to restrict trafficking, ensure the safety of the public, and meet India's international commitments. However, the rules are now criticized as a kind of a 'dividing line' model, wherein the boundary of the user groups, small offenders, and organized traffickers tends to get blurred up to the point where they are indiscriminately treated under the same rubric.

The law provisions are supported by tough measures and procedural safeguards to discourage the perpetration of the crime. Still, they also bring about some obstacles, mainly in situations when the burden of proof is inverted, bail becomes nearly impossible, and law enforcement officers are given great discretion in decision, making.

Simultaneously, the society is becoming more and more aware that drug addiction should not be considered solely as a criminal problem but rather as a health and social issue. Also, there are separate provisions on the matter of drug treatment, rehabilitation and granting of immunity to addicts that, unfortunately, due to the low level of implementation, have resulted in the situation of overcrowded jails and lack of adequate support for the persons seeking medical aid. Violations of human rights, misuse of law and procedural lapses are some of the signs showing that the present system needs a different approach.

So, a balanced attitude towards the problem shall be the one which: clearly distinguishes between traffickers and users, focuses on forensic and investigative capacities, and, foremost, places the rehabilitation of addicts instead of their imprisonment. India can study and learn from worldwide harm, reduction policies so as to develop her own more compassionate, science, driven drug policy. In the end, successful drug control should not only entail rigorous law enforcement but also a blend of compassion, scientific understanding and respect for constitutional rights so as to be able to guarantee that justice and public health go hand in hand.

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