

## Legislative Impact of NDPS in India

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### ABSTRACT:

Narcotic medications and psychoactive chemicals are used in all medical institutions for a number of reasons. However, they also encounter abuse and human trafficking. This is how India views drugs. The use of pharmaceuticals for purposes other than medical necessity is prohibited by the Single Convention on Narcotic pharmaceuticals of 1961 and the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. India has given its support and approval to these three contracts.

India was committed in reducing drug use and trafficking before the three accords took effect. This issue is much more a disaster than it seems to be. The usage of substances like “ganja, charas, and other psychotropic compounds” as a digestive aid, pain reliever, and even as a form of psychotherapy may be found in ancient India. India does not even have a legislation that made drug possession and use illegal before to 1985. However, by passing the Act in 1985, India came up with tighter restrictions and harsher penalties to include the drug epidemic while also taking into account its duties under the three UN drug conventions and constitutional laws.

**Keywords:** Narcotic Drugs, Psychotropic Substances, Drug abuse, Drug addicts, National Drug Policy

### INTRODUCTION:

This was designed for fight against use of drugs and make it illegal to consume, distribute, manufacture, and trade drugs. While psychotropic chemicals impact the mind and improve it, narcotic medications create sleepiness. These are seen to be used in the practising of medicine. The result under this, Act includes that what should be the norms to grow plants of coco, cannabis etc. synthesis of psychoactive substances w.t.t development, Controlling and the manufacture, purchase, distribution, is its primary objective.

The sale of psychotropic drugs to customers is prohibited by this regulation. Only prescriptions are accepted for the purchase of these drugs. The legislation has undergone multiple modifications since it was first created.

The NDPS treats everyone involved in the drug trade equally, including users, sellers, and outright criminals. ALSO prohibited for everyone to do anything related to these materials and substances. or use any drug or substance that is classified as a narcotic or psychotropic without the consent of the appropriate authorities. The Act contains clauses with severe penalties. The capacity to post bail is restricted for more serious offences by provisions like Section 37.

### AN OVERVIEW ON NDPS ACT:

- It is an Act in India that deals with the regulations of substances related to narcotics and substances. This was enacted in 1985 with the idea of obstaning drug abuse and trafficking in India. Since its implementation, the NDPS Act has had several legislative impacts on the country. Here are some key points:
- **Classification of substances:** The NDPS Act classifies dividers every kind of drug it I different categories based on their abilities and know the potential for misuse of medical use. This classification determines the regulatory measures and punishments for offences related to the same.
- **Criminalization and penalties:** The manufacture, cultivation, possession, sale, purchase, and transit of substances related to narcotics and psychotropic Substances to imposes severe consequences for those who engage in these actions, including jail and fines. The amount and kind of drug used determines the severity

of the punishment.

- **Establishing enforcement agencies:** The Act led to the management of specialized agencies to enable its provisions effectively. The NCB was created as the primary agency responsible for combating drug trafficking and coordinating with other law enforcement agencies.
- **International cooperation:** The NDPS Act enables India to maintain cordial relations with other nations in issues related to drug control and trafficking. It provides a legal framework for extradition, mutual legal assistance, and sharing of intelligence and information with foreign counterparts.
- **Amendments:** Over the years, the NDPS Act has undergone amendments to address emerging challenges and improve its effectiveness. Amendments have been made to modify punishment provisions, and align with international conventions on drug control.
- **Focus on rehabilitation:** While the NDPS Act primarily emphasizes prohibition and control measures, it also recognizes the need for rehabilitation and treatment of drug addicts. Also encourage the involvement of medical professionals and NGOs in the rehabilitation process.
- **Legal challenges and debates:** The NDPS Act has faced criticism and legal challenges regarding its stringent provisions, particularly in cases where small-scale drug offenders face disproportionately harsh penalties. There have been debates around the effectiveness of a punitive approach.

#### DEVELOPMENTS OF LAW RELATED<sup>ii</sup>

Much before the time when there was an existence of this Act went into force in 1985, drugs in India were not subject to any kind of legal regulation. During the \*Atharv veda\* describes which was formerly as common and accepted in society as drinking wine. Up until 1985, the selling of cannabis and related products was legal everywhere. India is required to uphold its responsibilities under the UN Convention which was not supportive in field of drugs and Substances, the Convention on Substances, and the only Convention on Narcotic Drugs.

Drug abuse is a serious socioeconomic problem in India, and the government is attempting to combat it by lowering drug demand and encouraging drug addicts to reintegrate into society.

#### THE VARIOUS PRINCIPAL CENTRAL ACTS

S.NO	NAME OF ACTS	YEAR IN WHICH ACT CAME
1.	THE OPIUM ACT	1857
2.	THE OPIUM ACT	1878
3.	THE DANGEROUS DRUG ACT	1930

Our nation has brought various changes and signed the convention of the UN abased on drugs which was brought about in 1971. And the other convention which was brought up in 1988.

the restriction on the use of narcotic medications and psychotropic substances for medical and scientific objectives, as well as the prevention of their abuse, are both necessary to achieve these aims. The Narcotic Drugs and Psychotropic Substances (Amendment) Bill, 2021 was introduced to the Lok Sabha on December 6, 2021. This ordinance will take the place of the Narcotic Drugs and Psychotropic Substances (Amendment) Ordinance, 2021. The new law corrects a drafting mistake in the Narcotic Drugs and Psychotropic Substances Act of 1985. Controlling the production, acquisition, distribution, and transportation of medications classified as narcotics or psychotropics is its main goal. The selling of 200 psychoactive medications to walk-in clients is forbidden by this regulation. These medications may only be purchased with a prescription. Since it was initially enacted, the Act has undergone several changes.

Additionally, the NDPS doesn't distinguish between users of addict, traffickers, and outright criminals when it comes to this industry. Any substance that is categorised as a psychotropic may not be created, produced, grown, in possession, sold, purchased, transported, stored, or used without the permission of the relevant authorities.

The DPCO, enacted by the Indian government in 1963, aims to regulate the prizes related to all the medication facilities which are sold outside. DPCO rarely made a dent despite a number of pharmaceutical companies departing

the nation.

And hence, the source of numerous medications. DPCO experienced a huge reorganisation in 2013. Since there were no new investments made in 2013, several people thought that DPCO supported on Products which are not in controlled any more.

In 1961, the Indian government voted against amendments of the only convention on Narcotic Drugs. The accord gave India a period of over 25-year, may exclusively use cannabis for research and medical needs. Nation had a obligation to maintain peace with other countries provided one of the most crucial matters for nation.

## **CONDITIONS FOR GRANTING THE BAIL UNDER ACT**

Whenever in cases where bail has been granted, there are presence of no such reasons where and accused is believed to be an innocent. That if there is bail he hasn't broken any rules.

We can clearly understand that section 37 under NDPS prevail over section 439 of the CrPC. And also to learn more about non obstacle clause. The primary sentence of the aforementioned section, which is phrased in the negative, precludes granting bail to anybody accused of violating the Act unless two conditions are satisfied.

Also, bail prohibition is in force if one of these two conditions is not met: should be satisfied that presence proper arguments to think, defendant is not guilty for the charges ; and the other party must have the chance to prove the application.

Also one must always know that the act prevails over CRPC.

### **Judicial Decision Regarding Bail Provision**

#### **“Hakimpilla v. State of Rajasthan S.B.(2019)”**

Although offences that are cognizable and not subject to bail are stated in the term prefixed to Section 37 in this case, the Court noted. However, the provision opens with a non-obstante clause that says: every offence punishable and must be cognizable, regardless of what is stated in the CrPC Nothing in the context of law, prohibits bail for any offence. Schedule I, Paragraph II , deals with offences that fall under other statutes. If the alleged offence (under the other law) carries a term of less than in prison and both:

- Bailable
- Non-Cognizable

#### **Landmark case: “Rhea Chakraborty v. The Union of India and Ors.(2020)”**

Now, if Section 21 of the NDPS Act's provisions regarding occupancy of a modest amount (upto 1 kg) of marijuana are proven, a term of up to six months in prison and a penalty may result. The offence is now cognizable u/s Section 37(1) of the Act.

In State of Punjab v. Baldev Singh (1999), the Supreme Court observed that Section 37 establishes strict criteria for the granting of bail and cognizable and non-bailable.

Justice Kotwal's statement on the same and said that "the situation has not changed since 1999 when these The Honourable Supreme Court offered several observations. In actuality, things have gotten worse. The findings made are obligatory and more pertinent to the current scenario because all wrongs within this act are not subject to bail.

## **CULPABLE MENTAL STATE VARIOUS PRESUMPTIONS**

The idea of person being innocent, a suspect is presumed to be not a guilty unless and unless and until provenweong, is fundamental concepts of criminal law. This main concept is drawn from the Latin the burden of proof lie with the accused.

According to Section 35, in order to continue with an Act prosecution, the Court must assume the fact that accused has a guilty mind has a guilty mental state. A person's goal or motive, awareness of a fact, and acceptance of, or justification for, a fact are all instances of this section, according to the following language.

This only implies that a person accused of engaging in NDPS activities would have to fight the presumption against him and have the burden of demonstrating that he had not done so. The presumptions of guilt against the respondent under Sections 35 and 54 of the Act are rebuttable, the Hon. SC ruled in the case of **“Naresh Kumar alias Nitu v. State of Himachal Pradesh”**<sup>1</sup>. It definitely does not include the prosecutor beyond a shadow of a doubt.

A truth is deemed to have been demonstrated in accordance with Section 35 (2) if it is unquestionably confirmed. Just establishing a truth beyond a reasonable doubt as opposed to just a majority of the evidence, Section 35 (2) states that it has been demonstrated.

The Supreme Court also stated in **“Noor Aga v. State of Punjab and Others (2008)”**<sup>2</sup> that "Section 35 and 54 of the Narcotics Act, says that always accused has to prove himself as. It guilty because here concept of revers burden of proof is applied and generally under this accused to prove his innocence is not that high.

### Aryan Khan's Case

- Aryan Kha, and 7 other people were recently detained by the NCB, who claimed they were in violation of many NDPS Act regulations. According to the NCB, there were 8 people who were involved in this drug burt on cruise. The NDPS Act has so far been used by the NCB four times.
- These are NDPS Act provisions 8(c), 20(b), 27, 28, 29, and 35. A drug or substance is not allowed to be in one's possession, bought, sold, transported, consumed, etc., according to Section 8(c). Cannabis possession, sale, transportation, consumption, and other related activities are covered by Section 20(b).
- The severity of the sentence depends on how much cannabis was found; given the little amount found, it might involve.

INPRISIONMENT	FINE
1 year	Fine up to 10000 rupees or both

- According to the drugs eaten, Section 27 stipulates that the penalty for ingesting any drug or psychotropic substance is either six months to 1 year of prison, a fine if 10 thousand rupees to 20 thousand rupees, or both. Any attempt to commit an NDPS Act infraction is punishable under Section 28 with the penalty as the actual offence.
- Similar to section 28 which deals with aiding and abetting illegal activity, Section 29 imposes the same penalty as the crime that was aided and abetted or plotted to be committed. According to Section 35, all the offences within this act are prosecuted, a culpable mental condition is presumed, and it is the accused's responsibility to show that there has been occurrence of mental state or any such Purpose like that
- LIMITATIONS:<sup>iii</sup>

Accused must convince the court that there are strong reasons to think they are not at fault of the charges and that they are not likely to commit crime without a bail. A chance to contest the bail request must be offered to the public prosecutor. Only when the benefits of posting bail are in doubt do the restrictions on doing so apply. In addition to giving the public prosecutor a chance, the accused must persuade the court consist of various evidences to accept the fact that a person is innocent and not guilty made against him and that it is not possible that he can commit any crime. In the instance of the current accused-respondent out on bond, this is significant. The following criteria and restrictions apply for granting bail in proceedings. The Right to Personal Liberty and the Right to Bail are both specifically mentioned in Article 3 of the UDHR with regard to the human rights component. Article 21 of the IC, which also underlines the rights to personal liberty and privacy, specifically states a right to leave a person on bail. In any case, the degree and kind of the offence determine whether or not it is cognizable and whether or not bail is available.

Although the bail procedure is specifically mentioned u/s 439 of the C.r.P.C, Section 37 of the Act, 1985 lays out a number of requirements and limitations for providing bail in NDPS hearings. Also harsh

<sup>1</sup> Criminal Appel No.1053 of 2016

<sup>2</sup> Criminal Appeal no. 1034 of 2008

restrictions that have been put in place to prohibit the illegal drug trade, more NDPS instances have come to light over time as a result of increased drug use.

### **ASPECTS RELATED TO NDPS ACT<sup>iv</sup>**

#### **Positive aspects:**

The ease with which narcotics and other psychoactive substances may be added to and removed from the list is one of the law's main benefits. The NCB was invented under Central Government in line with Section 4's paragraph 3, and it was given the main task to make sure that laws w.r.t to drug control are made across the country. These adjustments can be made based on the existing situation or just by a declaration in the official gazette; the government does not need to approve any formal legislation or amendments. The NCB coordinates the national liaison while acting as a hub for intelligence collection and dissemination. officials from both (centre & state) government's This technology should provide prompt replies that. The NCB acts as a hub for acquiring and distributing intelligence while overseeing intergovernmental relations.

The legislation clearly grants magistrates and other officially approved federal and state officials the authority orders to issues orders of search and arrest. This idea should make it possible to react quickly and appropriately to any information, eliminating and the requirement of warrant for a persons arrest need to be given.

#### **Negative aspects:**

When using marijuana or drinks laced with opium, a person is unable to hurt herself or others. The two parts of any crime are often the act committed and the criminal notion or dishonest motive that inspired it. On the other hand, repeals need of having a unworthy motivation in Section 35 and instructs the court to presume that all activities relating to the Act were carried out with a guilty mental state. Therefore, conscious possession is required in conditions where possession is forbidden under the Act. Under this on the other hand, urges the court to infer that all actions related to the Act were taken with a guilty mental state and repeals the need of having a dishonest purpose under Section 35. Therefore, if possession is prohibited and possession which is conscious is required.

The prosecution is deemed to be known to the information under the Act. With respect to section 54, it is clearly stated that that a persons act is discovered to have any of drugs, psychoactive substances, or any other incriminating items without being able to offer a convincing defence, it will be presumed that they have breached the law.

Section 31-A prescribes the following actions, According to Section 31-A, the death penalty will be applied instead of a life sentence in the event of a subsequent conviction, even if it just involves helping, encouraging, to do any crime. Because the Act imposes such severe penalties as Civil activists argue that the legislation has to be go through again or reevaluate all the rights related to civil rights due to the the various punishments given.

#### **NDPS Act Criticism<sup>v</sup>**

The Act has drawn criticism from a number of sources for failing to distinguish between soft and heavy narcotics. Some contend that if all substances received the same punishment, drug dealers would switch to heavier narcotics where they could earn more money. The prohibition of cannabis has drawn criticism for being 'elitist'. Some advocate for legalising soft drugs, arguing that doing so could lessen heroin addiction. The argument against this is that soft drugs are gateway drugs, and taking them increases the likelihood that a person would use heavy drugs in the future?

#### **This argument is refuted by the following negative effects of the NDPS Act:**

Trial delays: "Justice delayed is justice denied."

For every matter there has been settling up many courts. And so for these also special courts have are there which particularly deals with these matter though these courts have to handle unrelated extra cases, which unnecessarily delays the adjudication of drug-related charges. Additionally, the accused has made several threats, making it exceptionally difficult to get witnesses. Other times, there were significant gaps between the time of proceedings of the case, uprising questions about the fact of the proof and leading to acquittals based on insufficient proof. It is common knowledge that knowledgeable solicitors can use cross-examination to highlight inconsistencies in a witness' evidence in an effort to discredit the prosecution, fundamental fault is that it presumes the accused is guilty, putting the onus of proving his

sincerity entirely on him. Bail is frequently denied to anybody which are into doubt of committing any offence Coming u/s 19, 24, or 27A of the Act or crimes involving significant amounts of narcotics. In India, a defendant's guilt is not presumed unless that fact is proven. Despite the fact that this Act has separate courts intended for specific situations, delayed rulings happen far too frequently. Because "Justice Delayed is Justice Denied," people who were detained for possessing a little amount of narcotics occasionally are freed from incarceration.

**Harsh Punishments:** "No punishment has ever had sufficient deterrent power to stop crimes from being committed. Contrarily, regardless of the punishment, once a particular crime initially appears, it is more likely to recur than it might have ever been before. Eichmann in Jerusalem (1963), by Hannah Arendt

According to the Act's sections 15 to 25 and 27A to 29a, a convicted individual shall be sentenced to serious penalties, also the punishment can be:

Imprisonment duration	Fine	Both (yes or no)
Harsh imprisonment for not less than 10 years which may extend to 20 years.	Minimum 1 lac. And maximum 2 lakh rupees.	Yes, both can also be given

#### Cannabis-related offences

Imprisonment duration	Fine	Both (yes or No)
Minimum 5 year	Up to 50,000	Or both

Anyone detected possession of even a minimal amount of illegal substances is subject to a 10-year jail term under Section 27. These limitations make the Act even more unworkable. The bulk of drug users, as was previously said, are from rural or disadvantaged backgrounds. Due to their inability to pay the penalties and the lack of competent legal representation, these individuals are denied justice.

**Strict Bail Requirements:** under this a person is not granted bail or is not released on bail until and unless the court of law believes it by itself that the person is not guilty and has no involvement in this.

Except for the need utilised in conformity with guidelines mentioned u/s 37, powers granted to the High Court u/s 439 of the Cr.P.C. , regarded favourably under any norms. Normally, a quick scan of these rules may result in

**Treatment-seekers** are exempt from accused u/s 64A of the current Act if the charge concerns a small amount of drugs or is one of consumption. Concerns have been raised about whether this provision is actually applicable. Most drug addicts are avoided by a number of technological considerations.

in becoming immune. Demanding proof of addiction, confessing, and waiting for the prosecution to build the case are a few examples. The output that came was so to not encourage the criminalisations of drug addicts but rather try to help them towards betterment.

They develop a distance between deterrence and show the limitations of the notion of punishment based on deterrence. It might also recommend that we alter the fundamental premise of a narratives to take into account the reality that strict laws and harsh penalties alter social behaviour, deterring more criminal conduct. The social realities of the context where the legislation aims to effect changes must be taken into account while developing the law. A common criticism of the deterrence theory is that it only considers the The "near pleasure," which outweighs the "long distance danger," of committing a crime. In other words, unpredictable variables might have an impact on human conduct.

#### Conclusion

The NDPS treats everyone involved in the drug trade equally, including users, sellers, and outright criminals. prohibited for any substance that is categorised under NDPS ACT. On 14<sup>th</sup> November, 1985, ACT got effective and has since then served as the legal framework for all disputes involving the ownership, use, and distribution of narcotics. The most essential goal is to regulate growth , ownership, commerce, lastly movement of psychotropic substances. Around 200 psychotropic chemicals are prohibited by the act; as a result, walk-in customers cannot purchase these drugs over the counter. Only when there is a tradition for them is it possible to trade these medicines. Discipline for breaking this law may include harsh imprisonment, a fine, or both. The severity of the matter will

determine how harshly discipline will be applied. Since its creation, the NDPS Act has undergone three revisions. The initial modification was done in 1988, then again in 2001, and once more in 2014. In the 2014 amendment, new guidelines and rules for the use of drugs of abuse and psychoactive substances were developed. This granted the power to control the usage, and importing and exporting of substances and transit of narcotic drugs as well as poppy straw. The narcotic drugs codeine, fentanyl, morphine, methadone, and codeineone are all essential.

### Suggestions

While I can give some broad recommendations, we should know that any alterations of NDPS Act should be made after consulting with legal professionals and decision-makers: Here are a few ideas that you might want to take into account:

- **Put your attention on healing and recovery:** Instead than depending primarily on punitive measures, emphasise the value of drug addicts receiving treatment and recovery. By addressing the underlying reasons of drug abuse, this can help lower the demand for illegal narcotics.
- **Establish laws that distinguish between small-scale and large-scale drug offenders,** such as individual users of drugs, by making them subject to various punishments. By doing so, it will be possible to guarantee that law enforcement resources are used to effectively pursue significant drug trafficking networks while also giving low-level criminals the treatment and rehabilitation they need.
- **Decriminalise personal use and possession:** Take into account decriminalising individual drug use and possession of minor amounts. The main motive of this is to not give harsh punishment but rather make them a better person and not a drug addict.
- **Strengthen international cooperation and intelligence collecting:** To combat drug trafficking, foster global cooperation and improve intelligence gathering skills. Enhancing information exchange between law enforcement agencies, working with international organisations, and coordinating with nations where drugs are produced and transported overseas could all be part of this.
- **Promote alternative development initiatives:** Invest in initiatives that help communities engaged in drug cultivation find alternate sources of income. The dependence on illicit drug crops can be lessened by offering viable alternatives, such as agricultural diversification or skill development efforts.
- **Put sentencing guidelines into action:** Create thorough and lucid sentencing guidelines that consider the gravity of the offence, the offender's role, and the quantity and kind of drugs involved. This may encourage uniformity and fairness in sentencing across various cases.

**Enhance public education and awareness by allocating resources to inform people about the risks associated with drug usage, the benefits of early intervention, and the range of available treatment choices. Public awareness campaigns can motivate people to seek help for addiction-related problems and decrease drug demand.**

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