

A Critical Analysis of the Legislative Intent Behind The Narcotic Drugs and Psychotropic Substances Act, 1985

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Abstract: *The Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985, serves as the cornerstone of India's narcotics control framework, aiming to regulate the production, distribution, possession, and consumption of narcotic substances while ensuring public health and national security. However, the growing complexity of drug trafficking networks, procedural irregularities in narcotics testing, and institutional weaknesses in enforcement have exposed significant governance and regulatory challenges within the system. This paper critically examines the NDPS Act through the lens of public policy and governance, focusing on the persistent issues of testing malpractices, weak regulatory oversight, and implementation gaps in narcotics control mechanisms. The study adopts a qualitative and analytical approach based on secondary sources, including legal documents, policy reports, government publications, judicial observations, and scholarly literature. It explores how deficiencies in forensic testing, delays in laboratory reporting, procedural lapses, and corruption in enforcement agencies undermine the effectiveness of narcotics regulation and compromise judicial outcomes. The paper further evaluates the role of institutions responsible for narcotics governance and identifies structural constraints that hinder policy implementation. By situating the NDPS Act within the broader framework of governance and regulatory accountability, the study argues for stronger institutional reforms, transparent testing mechanisms, and policy-driven oversight to enhance the credibility and efficiency of India's narcotics control regime. The paper contributes to the interdisciplinary discourse on law, public policy, and pharmaceutical governance.*

Keywords: Narcotics, Policy, Drug, Regulation.

I. INTRODUCTION

The regulation of narcotic drugs and psychotropic substances remains one of the most complex and sensitive areas of public policy in contemporary governance¹. In India, the challenge of balancing public health concerns, criminal justice imperatives, and national security responsibilities has made narcotics governance a critical domain of state intervention. The increasing prevalence of drug abuse, illegal trafficking networks, cross border smuggling, and the misuse of pharmaceutical substances has intensified the need for a robust legal and regulatory framework. In response to these concerns, the Government of India enacted the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985, which serves as the principal legislation governing narcotics control in the country.² The NDPS Act was introduced with the objective of consolidating and amending existing laws relating to narcotic drugs, strengthening enforcement mechanisms, and ensuring compliance with international conventions on drug control. The Act criminalizes the production, possession, sale, purchase, transport, storage, and consumption of narcotic drugs and psychotropic

¹National policy on narcotic drugs and psychotropic substances (2017), referred from: <https://dor.gov.in/narcoticdrugpsychotropic/national-policy-ndps>

²S. Mahawar, NDPS Act: Narcotic Drugs and Psychotropic Substances Act, 1985 (2022), referred from: <https://blog.ipleaders.in/ndps-act-narcotic-drugs-and-psychotropic-substances-act-1985/>



substances, while also regulating their medical and scientific use. Over time, the legislation has undergone several amendments to address emerging challenges, including stricter penalties, improved enforcement provisions, and institutional coordination mechanisms. Despite its comprehensive legal framework, the implementation of the NDPS Act continues to face significant challenges that raise concerns regarding policy effectiveness and governance accountability. One of the most critical issues within this framework is the reliability and transparency of narcotics testing and forensic verification. Drug-related prosecutions under the NDPS Act heavily depend on scientific testing to establish the nature, quantity, and legality of seized substances. Forensic laboratories play a central role in determining whether substances fall under prohibited categories and whether the quantity qualifies for commercial or personal consumption thresholds, which directly influence judicial outcomes and sentencing severity. However, procedural delays, inadequate laboratory infrastructure, shortage of trained personnel, inconsistent testing standards, and allegations of evidence tampering have exposed serious weaknesses in the system.

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 obnoxious 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 every kind of drug into 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 impose severe consequences for those who engage in these actions, including jail and fines.

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.³

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.

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

³Kumar J , Narcotic Drugs And Psychotropic Substances Act, 1985 Act (LXI) Of 1985 At A Glance, referred from: <https://www.legalserviceindia.com/legal/article-7218-narcotic-drugs-and-psychotropic-substances-act-1985-act-lxi-of->



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.

“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 (up to 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.⁴

ASPECTS RELATED TO NDPS ACT

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.⁵

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

⁴National policy on narcotic drugs and psychotropic substances (2017), referred from: <https://dor.gov.in/narcoticdrugpsychotropic>

⁵Arya, K., & Kumar, R. R. (2018). Traditions, globalization and drug abuse in North-East India: Highlighting the renewed concerns of an organized drug crime. In R. K. Das & B. Debbarma (Eds.), Globalization and culture: Issues and perspectives (pp. xx-xx). Mittal Publications.



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.

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.⁶

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.

II. 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 14th 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 psychopatric 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.

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.⁷

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

⁶Balhara, Y. P. S., Sarkar, S., & Singh, S. (2023). Medical Use, Decriminalization, and Legalization of Narcotic Drugs and Psychotropic Substances—What Does It Mean and What Is Its Current Status in India? *Indian journal of psychological medicine*, 45(2), 179-184

⁷4 Zunkel, E., & Siegler, A. (2020). The Federal Judiciary's Role in Drug Law Reform in an Era of Congressional Dysfunction. *Ohio St. J. Crim. L.*, 18, 283



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.⁸

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.

⁸Smart, R., & Reuter, P. (2022). Does heroin-assisted treatment reduce crime? A review of randomized-controlled trials. *Addiction*, 117(3), 518-531.

