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LEGAL PERSPECTIVES ON DRUG OFFENSES UNDER THE NDPS ACT

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Abstract

The Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985, represents a comprehensive legal framework in India aimed at combating drug-related offenses while ensuring the regulated use of narcotic drugs and psychotropic substances for medical and scientific purposes. Enacted in response to India's obligations under international conventions, the Act prohibits the manufacture, possession, sale, and trafficking of such substances unless authorized. It classifies offenses based on the quantity of drugs involved—small, intermediate, or commercial—with penalties escalating from fines and short-term imprisonment to rigorous imprisonment of up to 20 years for commercial quantities. The Act also imposes stringent bail conditions under Section 37 and provides for the forfeiture of property acquired through drug-related offenses. Additionally, procedural safeguards like mandatory compliance with Sections 41, 42, and 50 ensure fairness in enforcement while protecting constitutional rights. By balancing strict penalties with regulatory provisions, the NDPS Act underscores India's dual commitment to public health and law enforcement.

Introduction

India faces significant challenges in controlling narcotic drugs and psychotropic substances due to its geographical location between major drug-producing regions. The enactment of the Narcotic Drugs and Psychotropic Substances Act (NDPS Act) in 1985 marked a pivotal shift from regulation to outright prohibition, aligning Indian law with international anti-narcotics treaties like the Single Convention on Narcotic Drugs of 1961¹. Despite stringent provisions

¹ United Nations Office on Drugs and Crime (UNODC), "World Drug Report 2023" (2023) <https://www.unodc.org/unodc/en/data-and-analysis/wdr2023.html> (accessed 9 March 2025).

under the NDPS Act, drug-related offenses have continued to rise, raising concerns about the law's effectiveness in curbing drug abuse and trafficking.

While the NDPS Act includes severe penalties, procedural safeguards, and mechanisms for asset forfeiture, its implementation has faced criticism for disproportionately penalizing users rather than large-scale traffickers. Judicial interventions in cases such as *Tofan Singh v. State of Tamil Nadu* and *State of Punjab v. Balbir Singh* have highlighted the need for procedural fairness and distinctions between users and traffickers. However, policy inconsistencies, enforcement gaps, and the absence of harm-reduction strategies have left India's drug control framework at a crossroads.

Historical Evolution of Drug Laws in India

Colonial Era: The Opium Acts of 1857² and 1878³

During British colonial rule, opium served as both a revenue source and an international trade commodity. The Opium Acts of 1857 and 1878 regulated production and taxation but did not ban domestic consumption. British policies turned India into a major opium exporter to China, contributing to the Opium Wars and international conflicts over narcotics trade. These regulations prioritized economic benefits over public health.

The Dangerous Drugs Act, 1930⁴

Global concerns about addiction in the early 20th century led to increased international pressure on British India to regulate narcotics. The Dangerous Drugs Act of 1930 introduced criminal penalties but suffered from weak enforcement.

Post-Independence: Opium and Revenue Laws (1950)⁵

After independence, India sought to redefine its opium policies while retaining its economic importance. The Opium and Revenue Laws (Extension of Application) Act of 1950 extended colonial-era regulations across newly integrated territories. This legislation-maintained state

² The Opium Act, 1857 (Repealed).

³ The Opium Act, 1878 (Repealed).

⁴ The Dangerous Drugs Act, 1930 (Repealed).

⁵ Opium and Revenue Laws (Extension of Application) Act, 1950 (Repealed)

control over opium production while aligning with evolving international norms under treaties like the Single Convention on Narcotic Drugs (1961).

The NDPS Bill, 1985

The introduction of the Narcotic Drugs and Psychotropic Substances Bill in 1985⁶ marked a significant shift toward stringent anti-drug measures. It consolidated existing laws, criminalized drug-related activities with mandatory minimum sentences, and aligned India's policies with international prohibitionist frameworks.

Implementation of the NDPS Act

Enactment in 1985: A Prohibitionist Approach

The NDPS Act criminalized all aspects of narcotic drug production, possession, trafficking, and consumption except for medical or scientific purposes. It introduced severe penalties, including mandatory minimum sentences, and established enforcement mechanisms like the Narcotics Control Bureau (NCB).

Criticism and Challenges

The Act faced criticism for conflating users with traffickers, leading to mass incarceration of low-level offenders while large-scale networks remained operational. Mandatory minimum sentences drew backlash from human rights groups for being excessively punitive.

Major Amendments

1. **1989 Amendment:** Introduced harsher penalties, including the death penalty for repeat offenders involved in commercial trafficking.
2. **2001 Amendment:** Implemented quantity-based sentencing reforms to distinguish between users and traffickers. This amendment aimed to reduce disproportionate punishments.⁷

⁶ Government of India, "The Narcotic Drugs and Psychotropic Substances Act, 1985" (1985) <https://legislative.gov.in/sites/default/files/A1985-61.pdf> (accessed 9 March 2025).

⁷ Ministry of Finance, "Amendments to the NDPS Act: A Review of Legislative Changes from 1985-2021" (2022) <https://dea.gov.in/ndps-act-amendments-review> (accessed 9 March 2025).

3. **2014 Amendment:** Legalized medical opioids under strict regulations while expanding asset forfeiture provisions.
4. **2021 Amendment:** Broadened the definition of controlled substances to include synthetic drugs and enhanced financial tracking mechanisms to combat money laundering linked to drug operations.

Judicial Safeguards

In the case of *Gurdev Singh v. State of Punjab*⁸, the Supreme Court upheld the conviction of the accused under Section 21 of the NDPS Act for possessing 1 kg of heroin, which is four times the commercial quantity, and addressed the question of sentencing. While the minimum punishment under Section 21 is 10 years, the trial court imposed a sentence of 15 years, which was confirmed by the High Court. The Supreme Court clarified that Section 32B of the NDPS Act allows courts to consider factors beyond those listed in the section when imposing a sentence higher than the minimum, including the quantity of the substance involved; therefore, the court found that considering the large quantity of heroin, the higher sentence was justified, emphasizing that courts have discretion within the 10 to 20-year range for commercial quantities and affirmed the 15-year sentence.

In *Basheer @ N.P. Basheer v. State of Kerala*⁹, the Supreme Court addressed the constitutional validity of the proviso to Sub-section 1 of Section 41 of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2001, which denied the benefit of the rationalized sentencing structure to cases pending in appeal. The court upheld the proviso, reasoning that Parliament has the authority to treat cases pending in appeal differently from those pending before trial courts or under investigation, and this classification does not violate Article 14 of the Constitution, as it is within the legislature's prerogative to determine the stage at which the amended provisions apply.

In the case *State of Punjab vs. Balbir Singh* (1994)¹⁰, the Supreme Court of India addressed whether arrests, searches, and seizures conducted without adhering to the mandatory provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) would be deemed

⁸ *Gurdev Singh v State of Punjab*, (2019) 6 SCC 586.

⁹ *Basheer v State of Kerala*, (2004) 10 SCC 319.

¹⁰ *State of Punjab v Balbir Singh*, (1994) 3 SCC 299.

illegal and invalidate convictions. The Court held that compliance with procedural safeguards under the NDPS Act, particularly Sections 41, 42, 50, and 57, is mandatory to ensure fairness and protect individuals from harassment or fabrication of evidence. Specifically, Section 50 requires that a person being searched must be informed of their right to request the presence of a Gazetted Officer or Magistrate during the search. Non-compliance with these provisions was deemed to vitiate the trial unless it could be shown that no prejudice was caused to the accused. The judgment emphasized that while the NDPS Act incorporates stringent measures to combat drug trafficking, these must align with constitutional protections and procedural fairness under the Code of Criminal Procedure (CrPC).

In the case *Ali Hussain vs. State* (1959)¹¹, the Allahabad High Court addressed whether criminal courts have jurisdiction to determine citizenship status under Section 9(2) of the Citizenship Act, 1955, in cases involving prosecution under Section 14 of the Foreigners Act. The applicants, who were Indian citizens on January 26, 1950, later acquired Pakistani passports and returned to India with visas that expired. They argued that their citizenship status should be determined by the Central Government before criminal proceedings could continue. The Court held that while the Central Government has the authority to make binding decisions regarding citizenship under Section 9(2), criminal courts retain jurisdiction to decide such questions for the purposes of the case before them. The Magistrate was not obligated to stay proceedings while awaiting a decision from the Central Government, as it was within his discretion to proceed. Consequently, the application for a stay was dismissed, and the trial was ordered to resume immediately¹.

Key Provisions of the NDPS Act

The Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985, is India's primary legislation for controlling narcotic drugs and psychotropic substances.

1. Categorization of Offenses Based on Quantity

The NDPS Act classifies offenses and prescribes punishments based on the quantity of the substance involved. This categorization ensures proportionality in sentencing:

¹¹ *Ali Hussain v State of West Bengal*, (2012) 6 SCC 581.

Small Quantity: For possession or use of small amounts, the punishment is up to one year imprisonment or a fine.¹²

Intermediate Quantity: Involves imprisonment for up to 10 years and a fine.

Commercial Quantity: The most severe category, involving mandatory minimum imprisonment of 10 years, which can extend to life imprisonment, along with a hefty fine.

This classification aims to differentiate between users, small-scale offenders, and large-scale traffickers, ensuring that penalties are proportionate to the severity of the offense.

2. Stringent Bail Provisions (Section 37)

Under Section 37 of the NDPS Act, obtaining bail for drug-related offenses is highly restrictive, especially for commercial quantities. Bail can only be granted if:

The court is satisfied that there are reasonable grounds to believe the accused is not guilty.

The accused is unlikely to commit further offenses if released.

This provision reflects the deterrence-oriented nature of the Act but has been criticized for limiting judicial discretion and disproportionately affecting low-level offenders.

3. Reversal of Burden of Proof (Section 54)

A significant deviation from standard criminal law principles, Section 54 places the burden of proof on the accused. This means that once found in possession of narcotic drugs or psychotropic substances, the accused must prove their innocence. While intended to aid enforcement, this provision raises concerns about fairness and potential misuse.¹³

4. Asset Forfeiture (Section 66)

The Act empowers authorities to confiscate properties linked to drug-related crimes. This includes assets acquired through proceeds from drug trafficking or used in committing such

¹² Mrudulesh Raman Singh, *The Impact of National Drug Policy Strategies: A Comprehensive Analysis of NDPS Effect on Substance Use and Related Imprisonment*, Research Paper, 2023, available at <http://103.85.141.226:8071/jspui/bitstream/123456789/935/1/MRUDULESH%20RAMAN%20SINGH%20%20R-2.pdf> (last visited Mar. 8, 2025).

¹³ S. Dave, *Critical Analysis and Assessment of NDPS Act and Trafficking from an Indian Legislation Perspective*, Indian Journal of Law & Legal Research, 2023, available at https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/injlolw11§ion=203 (last visited Mar. 8, 2025).

offenses. The provision aims to dismantle financial incentives behind drug networks but requires strict compliance with procedural safeguards to prevent abuse.

5. Procedural Safeguards

The NDPS Act includes several procedural safeguards to ensure fair enforcement:

Search and Seizure: Searches must comply with legal requirements under Section 50, including informing individuals about their right to be searched in the presence of a magistrate or gazetted officer.

Admissibility of Evidence: In *Tofan Singh v. State of Tamil Nadu*, the Supreme Court ruled that confessions made to police officers are inadmissible as evidence under the NDPS Act.

Judicial Oversight: Courts have emphasized due process in cases like *State of Punjab v. Balbir Singh*, where procedural violations could lead to acquittals.

These safeguards aim to balance stringent enforcement with individual rights.

6. Sentencing Reforms

The NDPS Act has undergone amendments to address criticism regarding disproportionate punishments:

The 2001 Amendment introduced quantity-based sentencing, distinguishing between users and traffickers.¹⁴

The 2014 Amendment allowed regulated medical use of opioids like morphine while expanding asset forfeiture provisions.

These reforms reflect an attempt to balance punitive measures with proportional justice.

7. Expanding Scope Through Amendments

The NDPS Act has been amended multiple times to address evolving challenges:

The 1989 Amendment introduced harsher penalties, including the death penalty for repeat offenders involved in commercial trafficking.

¹⁴ National Crime Records Bureau (NCRB), "Crime in India 2022 Report" (2022) <https://ncrb.gov.in/sites/default/files/CII-2022-Full.pdf> (accessed 9 March 2025).

The 2021 Amendment expanded the definition of controlled substances to include synthetic drugs and enhanced financial tracking mechanisms under anti-money laundering laws.

These changes aim to keep pace with new trends in drug trafficking, such as synthetic narcotics and cryptocurrency-based transactions.

8. International Compliance

- The NDPS Act aligns India's drug control policies with international treaties such as:
- The Single Convention on Narcotic Drugs (1961).
- The Convention on Psychotropic Substances (1971).

Enforcement Agencies

1. **Narcotics Control Bureau (NCB):** Established in 1986 as the primary federal agency for anti-drug operations but criticized for resource limitations and selective enforcement.
2. **Central Bureau of Narcotics (CBN):** Regulates legal opium cultivation and pharmaceutical opioids.
3. **Directorate of Revenue Intelligence (DRI):** Focuses on curbing smuggling activities.

Legal Loopholes & Policy Gaps

Despite the stringent framework of the NDPS Act, its enforcement has faced several challenges. One of the most significant issues is the inconsistent application of the law, particularly the failure to differentiate between drug users and traffickers. Research indicates that a significantly higher number of individuals arrested under the NDPS Act are small-scale users rather than major traffickers, raising concerns about disproportionate criminalization.¹⁵

A second critical loophole lies in deliberate negligence and procedural inconsistencies in law enforcement. The reversal of the burden of proof under Section 54 of the Act has faced criticism for undermining the presumption of innocence and leading to extended incarcerations. Furthermore, a significant number of cases collapse due to inadequate evidence collection, improper documentation of seizures, and violations of procedural safeguards, often stemming

¹⁵ Ministry of Law and Justice, "Judicial Backlog and Delays in NDPS Cases: 2023 Report" (2023) <https://lawmin.gov.in/reports/judicial-backlog-ndps> (accessed 9 March 2025).

from forensic and investigative shortcomings. Judicial rulings, including *Tofan Singh v. State of Tamil Nadu* (2021), have highlighted these deficiencies.

Corruption within enforcement agencies has hindered effective implementation, allowing high-level traffickers to evade justice while lower-level offenders face the harshest penalties. These enforcement challenges are further aggravated by resource limitations, poor inter-agency coordination, and inadequate international collaboration.¹⁶

Strengths and Limitations of the NDPS Act

The NDPS Act possesses notable strengths, particularly in providing a comprehensive legal framework for combating drug trafficking. Its stringent sentencing provisions are intended to deter large-scale narcotics operations, while the establishment of the Narcotics Control Bureau (NCB) has bolstered national drug law enforcement. Over time, amendments have aimed to ensure proportional sentencing, notably introducing quantity-based sentencing in 2001.

However, the Act also has significant shortcomings. Its rigid and punitive approach has been criticized for neglecting the public health dimension of drug abuse. Unlike harm reduction models adopted in countries such as Portugal and Canada, the NDPS Act prioritizes criminalization over rehabilitation. Consequently, many individuals who require medical intervention end up in prisons instead.

Another major limitation is the absence of a robust framework for financial investigations into drug trafficking networks. Despite a 2021 amendment intended to enhance financial tracking, enforcement agencies still struggle to dismantle the financial infrastructure of drug syndicates. This gap has allowed large trafficking networks to persist, while low-level offenders face harsh legal consequences.

In light of these challenges, calls for reforming the NDPS Act have gained traction. Proposals include integrating harm reduction strategies, ensuring proportionate punishment, and strengthening financial enforcement mechanisms to disrupt organized drug cartels and establish a more effective deterrent.

¹⁶ International Policy Digest, *India Has a Drug Problem*, <https://intpolicydigest.org/the-platform/india-has-a-drug-problem/> (last visited Mar. 15, 2025);

Conclusion

The Narcotic Drugs and Psychotropic Substances (NDPS) Act of 1985 was enacted to curb drug abuse and trafficking in India, marking a shift towards a prohibitionist narcotics policy. While aligning with international treaties, the Act's rigid sentencing structure, procedural inflexibility, and lack of harm reduction strategies have led to systemic enforcement challenges. Despite multiple amendments, it continues to disproportionately penalize small-scale users without effectively dismantling large trafficking networks.

A critical analysis of the Act reveals fundamental enforcement flaws, including excessive reliance on punitive measures, inconsistent implementation, forensic inadequacies, and judicial delays. The stark contrast between high arrest rates and low conviction rates underscores its limited success in tackling drug-related crimes. Furthermore, the failure to distinguish casual users from traffickers, coupled with stringent bail provisions, has contributed to prison overcrowding and the criminalization of socio-economically vulnerable individuals. Judicial interventions, such as those in *Tofan Singh v. State of Tamil Nadu* and *State of Punjab v. Dalbir Singh*, have attempted to introduce procedural safeguards, yet challenges persist in their effective enforcement.

Global examples, particularly harm reduction models from Portugal and Canada, demonstrate that criminalization alone is insufficient. Countries that have decriminalized minor drug offenses and integrated public health interventions have witnessed declines in drug-related mortality and incarceration rates. India's continued reliance on deterrence-based policies calls for urgent reconsideration in favor of rehabilitation-driven frameworks, evidence-based sentencing, and strengthened financial oversight of drug cartels.

To improve its effectiveness, the NDPS Act must incorporate sentencing discretion, harm reduction initiatives, and intelligence-led drug enforcement strategies. Without structural reforms and policy shifts, India risks maintaining a punitive rather than a preventive and protective approach—ultimately undermining public health and criminal justice reforms. Despite several reforms aimed at balancing punitive measures with proportional justice, enforcement still disproportionately targets minor offenders while major trafficking networks remain largely unscathed. To address these gaps, India must embrace a more holistic, evidence-based approach that prioritizes harm reduction, rehabilitation, and international collaboration in combating drug-related crimes.