

DRUG ABUSE AND THE LAW ON CONTROL OF NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES IN INDIA

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Abstract

The drug epidemic is a global issue. No country is immune from the problem of drug abuse. The illegal trafficking of drugs, particularly narcotics and psychotropic substances is an imminent threat to public health and welfare, especially for young people, and it has detrimental effects on the social, cultural, and political fabric of society. Almost all communities throughout the world appear to be affected by the increasing surge in drug abuse, and initiatives are being undertaken to control this grave problem. Initially, the society was unsure how to react to the problem. Drug addicts or drug users were treated as offenders. However, a subsequent shift developed from a punitive approach to individual drug users referring them to education, treatment, and rehabilitation. Surveys show that in terms of the percentage of people affected by opioid use disorders are those in the northeast (Mizoram, Nagaland, Arunachal Pradesh, Sikkim, Manipur), followed by Punjab, Haryana, and Delhi. Approximately 1.18 crore Indians aged 10 to 75 currently use sedatives for recreational or non-medical purposes. Various legal, administrative, and preventative measures against drug abuse are being implemented by the government and NGOs. While there are some significant gaps in the statutory provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985, the Indian judiciary has made a concrete attempt to fill them.

Keywords:- *Drug Abuse, Narcotic Drugs, Illicit traffic, NDPS Act*

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I. Introduction

Drug abuse is a complex issue and it is difficult to develop a single preventive strategy that would be efficient in all cases. The war on drugs was a significant revival of drug prohibition that the United States led during the 20th century. Although the current war on drugs is a relatively recent phenomenon, yet drug laws have been an integral part of human rights for thousands of years. The present war on drugs may be characterized as an endeavour to eradicate those who continue to consume or traffic illicit drugs. The Encyclopaedia Britannica defines the term drug abuse as, “The excessive, maladaptive, or addictive use of drugs for nonmedical purposes despite social, psychological, and physical problems that may arise from such use.”¹ In other words, drug abuse is the use of drugs (medical or non-medical) in a quantity, intensity, frequency, or manner that compromises one's ability to function physically or mentally. Even the excessive, prolonged, improper, or improperly combined use of medications is considered drug abuse.

Drug trafficking, an activity associated with drug abuse has tremendous economic potential. The origin and development of the Indian drug trafficking scenario are closely related to India's strategically advantageous geographic location, the Golden Crescent located in the west and the Golden Triangle in the east of India. The Golden Crescent comprises Pakistan, Afghanistan, and Iran, and the Golden Triangle consists of Myanmar, Thailand, and Laos. India is rapidly becoming a transit hub for the smuggling of drugs and is confronted with the twin challenges of drug abuse and drug trafficking, which is a matter of serious concern to the country. To reinforce drug trafficking control measures and to provide a deterrent penalty for drug trafficking offences, India designed a comprehensive piece of legislation called the Narcotic Drugs and Psychotropic Substances Act, 1985 (herein referred to as the NDPS Act). Relying on various reports, this article attempts to highlight the magnitude of the problem of drug abuse and drug trafficking in India. This article also aims to analyse the NDPS Act which was passed to meet International Commitments and to combat the menace of drug abuse in the country. In this article, an attempt has been made to trace the development of the NDPS Act and throw light on issues such as reverse onus clause, pendency, and lack of uniform yardstick in determining the quantity of drug seized. The methodology that has been adopted to complete the above task is doctrinal which is based on primary and secondary sources. To make the

¹ The Editors of Encyclopaedia Britannica, Drug Abuse, *Encyclopaedia Britannica*, <https://www.britannica.com/science/drug-abuse> (last visited Sept. 22, 2024).

discussion more fruitful various judicial pronouncements have also been taken into consideration.

II. The Problem and Consequences of Drug Abuse

When narcotics drugs² and psychotropic substances,³ which are essential in the treatment of pain and numerous ailments in humans, are abused, they endanger individuals, nations, and humanity as a whole. There are several health implications of drug abuse. The immediate health effects of drug abuse are physical and psychological dependency, as well as withdrawal symptoms. Some of the most serious consequences of heroin abuse are caused by unsafe injection practices, which induce hepatitis B and HIV/AIDS.⁴ Aside from the harm done to an abuser's health, the harm done may extend to those closest to the abuser, such as the spouse, parents, children, and so on. A pregnant woman who consumes drugs may unknowingly endanger the foetus.

The economic repercussions of drug abuse are numerous. Drug abuse has an impact on work efficiency. A nation's economy is negatively impacted by the ensuing absenteeism, accidents, and medical expenses. Advances in communication, information technology, and transportation have enabled information, services, products, and people to transcend borders at a rapid pace. Innovative ways are used to transport drugs and money earned by drug trafficking. Enforcement agencies work is made more difficult by the use of the internet for illegal drug abuse and drug trafficking.

Illegal drug manufacturing and narcotic plant cultivation both have a detrimental effect on the environment. The cultivation of narcotic plants and the production of narcotics, which require the use of large quantities of dangerous chemicals, take place in distant locations. Due to these practices, an ecological imbalance is created, endangering valuable flora and fauna.

Due to the ease with which narcotics may be transported in their small bulk and the large profit involved in their smuggling, organized criminal organizations are drawn to drug trafficking. A variety of offences are brought on by drug abuse and subsequent drug trafficking. The most significant one of these is the violation of the drug laws. The other offences include those performed by drug addicts, such as robberies and thefts carried out to fund their drug habit.

² Narcotic Drugs and Psychotropic Substances Act, No. 61 of 1985, § 2(xiv) (India).

³ Narcotic Drugs and Psychotropic Substances Act, No. 61 of 1985, § 2(xxiii) (India).

⁴ Molly Charles, Dave Bewley-Taylor & Gareth Gray, Drug Policy in India: Compounding Harm?, Briefing Paper No. 10 (2005).

Drug trafficking related incidental crimes include intimidation, corruption, terrorism, bank fraud, trading in weapons and ammunition, etc.

When characterized as a criminal offence, drug abuse is a victimless crime that may be committed in secret.⁵ In most drug cases, there is little proof linking the accused to the contraband. Possession of contraband substances is the sole evident element in the majority of drug offences. To execute prohibitionist laws, police enforcement requires measures that allow them to inspect even private property.⁶ However, some people are opposed to this measure on the ground that, drug use as mentioned is a victimless crime and as such what persons do in private should not be interfered with by the government. It is asserted that individuals ought to be free to do anything they choose with their bodies, including using drugs recreationally, as long as they do not harm others.

III. Drug Abuse in Indian Context

Drugs have a history that is as old as human civilization, and they have caused one of the darkest catastrophes that people have ever experienced. The use and abuse of drugs have been around since ancient times. Humans have spent millennia learning about, acquiring, and using nature's gifts to enhance their physical and mental capabilities. The usage of drugs that cause dependency has deep historic and societal origins in India. Throughout documented history, drugs like opium,⁷ cocaine,⁸ and cannabis⁹ have been used for both medicinal and religious purposes. Perhaps at first, man only used these drugs to treat physical and mental ailments, enhance physical ability, and execute medical and surgical operations. Human ingenuity, on the other hand, must have fostered the abuse of these drugs for their power to affect mood and, more commonly, as a method of escaping the harsh reality of existence and entering the more pleasurable realm of imagination. With time, the misuse or non-medical use of these drugs has spread far beyond the bounds of accepted cultural and social norms. Cannabis and opium were both used for recreational purposes.¹⁰ Opium was provided at family/community celebrations

⁵ M.C. Mehanathan, *Law on Control of Narcotic Drugs and Psychotropic Substances in India* 2 (3d ed. LexisNexis 2015).

⁶ Priya Ranjan Trivedi et al., *Drug Abuse: Recent Trends in Treatment and Rehabilitation* 96 (Jnanada Prakashan 2018)

⁷ *Opium*, Encyclopaedia Britannica, <https://www.britannica.com/science/opium> (last visited Sept. 22, 2025).

⁸ The Editors of Encyclopaedia Britannica, *Cocaine*, *Encyclopaedia Britannica*, <https://www.britannica.com/science/cocaine> (last visited Sept. 22, 2025).

⁹ *Cannabis (Hemp)*, Narcotic Drugs and Psychotropic Substances Act, No. 61 of 1985, § 2(iii)–(iv) (India); see also *Narcotic Drugs and Psychotropic Substances Act, 1985: Offences under cultivation of cannabis plant* (India) (prohibiting cultivation, production, etc.), § 20.

¹⁰ B.S. Nagi, *Menace of Drug Addiction in the North-Eastern States of India* (Uppal Publ'g House 1996).

whereas cannabis was linked with religious occasions. Furthermore, these substances were given to people who had migraine, malaria, cholera, or other minor illnesses. Their usage was governed by social rather than legal norms. Drug usage that was excessive or harmful was rarely reported.

During the sixteenth to nineteenth centuries, opium poppy was one of the most important export commodities, generating significant revenue. In Indian literature, where the usage of the plant for its hallucinogenic qualities is still well-established, also there are many references to the pleasurable use of cannabis. The first mention of cannabis psychotropic properties is in the Atharva Veda, which was written around 2000 BC. Early in the 20th century, British officials concluded that since cannabis usage in India was so prevalent among people, it could not and should not be prohibited.

Studies conducted by the Royal Opium Commission¹¹ provide information on the extent of the drug abuse problem in British India. The committee found that there was no desire from people for a ban on opium production, sales, or use in British India. According to the commission, opium was widely utilized for both medicinal and non-medical purposes, making it impractical to distinguish between the two during the distribution and sale of the drug. The Hemp Drugs Commission¹² noted that there was a substantial amount of information from Bengal about practices associated with hemp¹³ use, particularly the practice of providing an infusion of bhang¹⁴ on the final day of Durga Puja. The committee further noted that the use of bhang was widespread during the Holi celebration and in many other family festivities and celebrations. The committee concluded that using hemp drugs moderately had virtually no negative effects.

The Indian Government stance towards the problem shifted with the advent of its independence and the adoption of a new constitution. Except for registered opium users, the sale and consumption of opium were outlawed in 1959, and the non-medical use of cannabis was prohibited in 1989, as per the mandate of the Single Convention on Narcotic Drugs of 1961 to

¹¹ The Commission was appointed by the British authorities in the year 1893 and submitted its report in the year 1895.

¹² The Commission was appointed by the Government of India in the year 1893. It was set up to investigate the cultivation of the hemp plant in Bengal, the trade in such substances, and the impact of drug use on the social and moral condition of the population.

¹³ *Cannabis sativa* (Hemp), Encyclopaedia Britannica, <https://www.britannica.com/plant/Cannabis-sativa> (last visited Sept. 22, 2025).

¹⁴ Bhang is prepared from the leaves of the cannabis plant. It is used in food and drink.

which India is a signatory.¹⁵ In its 1996 report, the International Narcotic Control Board¹⁶ stated that traditional opium abuse was still prevalent in several Indian districts. The north-eastern region of the country, which borders the opium-producing regions of southeast Asia, has been the subject of ongoing concerns about an alarming rise in opiate use.

According to the 2019 report of the National Survey on Extent and Pattern of Substance Use in India,¹⁷ it is found that the states of Sikkim, Nagaland, Manipur, and Mizoram have the highest prevalence of current sedative usage. It is estimated as per the said report that there are roughly 8.5 lakh People Who Inject Drugs (PWID) in the country. PWID prevalence rates are high in Uttar Pradesh, Punjab, Delhi, Andhra Pradesh, Telangana, Haryana, Karnataka, Maharashtra, Manipur, and Nagaland. The said report further states that in general, people suffering from substance use disorders have insufficient access to treatment services.

The Government of India has taken multiple initiatives through several Ministries to address the issues of drug abuse and drug trafficking. The Ministry of Finance is monitoring the enforcement of the Narcotic Drugs and Psychotropic Substances Act of 1985. Currently, the said Ministry is under deliberation to segregate drug addicts from traffickers.¹⁸ The Ministry of Social Justice & Empowerment has been implementing a Scheme for the identification counselling, treatment, and rehabilitation of addicts through voluntary organizations. The said Ministry has prepared a National Action Plan for Drug Demand Reduction from 2018 to 2025 which focuses on preventive education, awareness generation, training, and capacity building of service providers through collaborative efforts of government and NGOs. The State Governments and several other government organizations such as Ministry of Health & Family Welfare, Ministry of Information & Broadcasting are also putting their best effort to tackle the problem of drug abuse. By coordinating actions on tactics described by many empowered departments and organizations, drug abuse and illegal drug trafficking may be successfully combated, and the menace of these detrimental activities can be ended. Section 4 sub-section

¹⁵ India signed the Single Convention on Narcotic Drugs, 1953 on 14th December 1978.

¹⁶ Int'l Narcotics Control Bd., *Report of the International Narcotics Control Board for 1996* 51 (United Nations Pub'n, E/INCB/1996/1 1996).

¹⁷ Ambekar A., Agrawal A. et al., *National Survey on Extent and Pattern of Substance Use in India: Magnitude of Substance Use in India* (New Delhi, Ministry of Social Justice and Empowerment, Government of India 2019).

¹⁸ MP Arora, Editorial, Department of Revenue, Ministry of Finance Deliberating to Differentiate Between Drug Traffickers and Addicts, *Express News Service* (Apr. 5, 2023), <https://indianexpress.com/article/cities/chandigarh/departments-of-revenue-ministry-of-finance-deliberating-to-differentiate-between-drug-traffickers-and-addicts-mp-arora-8539085> (last visited Apr. 29, 2023).

(1) and (2)¹⁹ of the NDPS Act provides provisions for combating the abuse of drugs and illicit traffic of drugs.

IV. Drug Trafficking Situation

India continues to be impacted by the continuously increasing illicit transit trade of drugs due to its geographical location between the Golden Crescent and the Golden Triangle, the two significant illicit suppliers of opiates. One of the key indicators used to determine the magnitude of illicit trafficking is the seizure²⁰ of drugs by law enforcement authorities.

According to the World Drug Report 2022²¹ India is cited as one of the source countries for cannabis that is exported or produced for domestic consumption. In its Annual Report of Narcotics Control Bureau 2021²² it states that over the past few years, drug seizures have significantly increased, with the dark web and maritime routes becoming the preferred modes of trafficking. Drug law enforcement agencies throughout the world, and India in particular, are experiencing major hurdles in combating drug trafficking because of the constantly shifting drug scene and shifting dynamics following the COVID-19 epidemic. During the Covid-19, constraints on vehicular, ship, and airplane transportation forced drug traffickers to rely more on couriers, parcels, and post. 146 parcels were seized in 2021, which is almost double to 67 parcels seized in 2019. The high rise in the number of parcels is also attributed to increased drug trafficking via darknet markets. In June 2021, a new mode of drug trafficking through the dark net was observed by the Narcotics Control Bureau (herein referred to as the NCB) and in this case, 15 lakh tablets of tramadol²³ and 8000 bottles of Codeine²⁴ of drugs were seized by Delhi Zonal Unit. In the period 2017-2021, opium seizures increased from 2,551 kg in 2017 to 4,530 kg in 2021. Heroin seized from 2,146 kg in 2017 to 7,619 kg in 2021. There has been a major increase in the number of seizures of ganja²⁵ from 3,52,539 kg in 2017 to 7,49,761 in 2021. In the year 2020, 44,892 persons involved in drug trafficking were prosecuted, 10,666 persons were convicted and 3,749 were acquitted. In 2021, 45,259 persons were prosecuted,

¹⁹ Narcotic Drugs and Psychotropic Substances Act, No. 61 of 1985, §§ 4(1)–(2) (India).

²⁰ The term seizure is not defined under the Narcotic Drugs and Psychotropic Substances Act, 1985. In criminal law, a seizure is the coercive taking of property by a government law enforcement official from someone who is suspected of breaking the law or is known to have violated it. Narcotic Drugs and Psychotropic Substances Act, No. 61 of 1985, §§ 42–44 (India).

²¹ United Nations Office on Drugs and Crime, *World Drug Report 2022* (United Nations Pub'n 2022).

²² National Narcotic Coordination Portal, *Annual Reports of the Narcotic Control Bureau, 2021*, <https://narcoindia.in/periodicals.php> (last visited Apr. 29, 2023).

²³ Tramadol is a narcotic medicine that is used for treatment of moderate to severe pain in adults.

²⁴ Codeine is a narcotic pain reliever and is used for treating cough and relieving mild to moderate pain.

²⁵ Ganja is the flowering or fruiting tops of the cannabis plant.

9,056 persons were convicted and 3,311 were acquitted. These numbers highlight an increase in the number of prosecutions. Also, the high number of persons acquitted shows a major concern.

According to the report of the International Narcotics Control Board in the year 2005²⁶ about 10 percent of the world's pharmaceutical production is produced in India, making it a significant producer of pharmaceuticals. Pharmaceuticals are still being diverted in India and then trafficked into nations in South Asia and other regions despite the authorities rigorous regulations. Drug trafficking in substances, particularly codeine-based cough syrups, dextropropoxyphene,²⁷ and buprenorphine²⁸ in India becomes a serious problem for neighbouring countries such as Bangladesh, Nepal, and Sri Lanka. The report also found that drug abuse by injection was the primary means of HIV/AIDS transmission in various north-eastern states in India.

The International Narcotics Control Board in its report for the year 2022²⁹ found that tramadol seizures scaled up in 2020, from the previous year, with India accounting for nearly all of the total amount apprehended in the South Asia region. In 2019, 144 kg of tramadol were seized from India and other South Asian regions reported combined seizures of 70 kg. According to the said report, Methamphetamine,³⁰ which initially surfaced in the region in 2013 and has become more prevalent since 2017, was found in seizures totalling 10,600 kg. India has recorded many seizures of crystalline methamphetamine, including one in December 2021 with 154 kg of the substance that originated in Myanmar, as well as one in March 2021 involving 10.5 kg in the State of Nagaland and 12 kg in the city of Guwahati. The Narcotics Control Board of India apprehended members of a drug trafficking organization that used online pharmacies as a front to sell pharmaceutical products and illegal narcotics such as amphetamines,³¹ cocaine, codeine-based cough syrup, and tramadol in June 2021.

²⁶ Int'l Narcotics Control Bd., *Report of the International Narcotics Control Board, 2005* 74 (E/INCB/2005/1 2005), https://www.incb.org/documents/Publications/AnnualReports/AR2005/AR_05_English.pdf (last visited Apr. 29, 2023).

²⁷ Dextropropoxyphene is a mild opioid painkiller used for relieving mild to moderate pain

²⁸ Buprenorphine is an opioid used for management of severe pain. It can be administered under the tongue and by injection. When used, it has euphoric effects and develops a physical dependence. Several countries, including India, cite instances of misuse of buprenorphine

²⁹ Int'l Narcotics Control Bd., *Report of the International Narcotics Control Board, 2022*, https://www.incb.org/documents/Publications/AnnualReports/AR2022/Annual_Report_Chapters/064_Asia.pdf (last visited May 5, 2023).

³⁰ Methamphetamine is a type of drug that enable users to engage in continuous activities while remaining awake and reduce their desire for sleep.

³¹ Amphetamines is a variety of chemical agents that increase the activity of the brain. It was first synthesized in the year 1887. It is generally administered orally or through injection.

V. Need and the Relevancy of the NDPS Act

The control of narcotic drugs began quite early in India. Both the Opium Act, 1857, and the Opium Act, 1878, were laws designed to safeguard the British monopoly over Indian opium and to regulate associated businesses including transport. India was a signatory to the Geneva Opium Convention of 1925,³² which led to the passage of the Dangerous Drugs Act in 1930 to prevent the abuse and trafficking of dangerous drugs, particularly those made from opium, Indian hemp (cannabis), and coca leaf. The Drugs and Cosmetics Act, 1940, which regulates quality control law, is another significant pre-independence law that deals with narcotics and psychotropic substances. The enormity of illegal trafficking in narcotic drugs and psychotropic substances reached such a high degree at the national and international levels that it was soon understood that the criminal system under the Central Acts was not adequately deterrent to combat the menace of drug trafficking.³³

In response to the post-independence epidemic of abuse of drugs, which began to impact India in the later part of the previous century, and the illicit production of heroin,³⁴ opium, and other drugs in the Golden Crescent and the Golden Triangle regions close to Indian territory, as well as transit trade across India, the NDPS Act was enacted by Parliament and brought into force on 14th November in the year 1985 under the power enshrined in Article 253³⁵ as well as in Article 47³⁶ of the Constitution of India.

The NDPS Act was passed primarily to offer deterrent penalties for drug offenders and to empower central authorities to investigate drug offences and to meet commitments emanating from the International Conventions on Narcotic Drugs and Psychotropic Substances. The NDPS Act prohibits the use of narcotic drugs and psychotropic substances for non-medical and non-scientific purposes. This Act also covers certain precursors used in the production or manufacture of narcotic drugs or psychotropic substances that have been designated as controlled substances under the Act. Every offence under the NDPS Act is cognizable³⁷ and

³² India ratified the Geneva Opium Convention on Feb 17th 1926.

³³ Bidyut Kumar Banerjee et al., *Law Relating to Narcotic Drugs and Psychotropic Substances: A Comprehensive Commentary on Narcotic Drugs & Psychotropic Substances Act 1985 and Step-by-Step Practical Guide for Enforcement Agencies and Pharmaceutical Industries* (2nd ed., Taxmann Publ'ns 2023).

³⁴ Heroin was synthesised from morphine in 1874. Heroin in pure form is a white powder with a bitter taste. When impurities are present, it turns brownish, thus the term brown sugar.

³⁵ Article 253 of the Constitution of India empowers Parliament to make any law for the whole or any part of the territory of India for implementing treaty, agreement or convention.

³⁶ Article 47 of the Constitution of India provides that the State shall endeavour to bring about prohibition of the consumption of intoxicating drinks and of drugs which are injurious to health except for medicinal purposes.

³⁷ Narcotic Drugs and Psychotropic Substances Act, No. 61 of 1985, § 37 (India).

non-bailable. Although Section 37 of the NDPS Act mentions the expression non-bailable, there is nothing in the body of said section that mentions the non-bailable nature of the offences. Therefore it cannot be said that all the offences under the Act are non-bailable. The unambiguous stipulations in Section 37 do not lead to the conclusion that all offences are non-bailable.³⁸

One of the most significant features of the NDPS Act is the ease with which narcotics and psychotropic substances can be added or removed from the list.³⁹ The government can implement these changes based on the information at hand or by a simple publication in the official gazette, thus no formal bills or amendments are required. The act specifically grants the ability to issue search and arrest warrants to both Magistrates and specially appointed officers of the Central and State Governments. This systematic process makes it feasible to react to any information promptly and effectively, avoiding the requirement for a warrant to be granted. However, under the NDPS Act, police officers do not have the authority to initiate investigations on their own.⁴⁰ In line with paragraph 3 of Section 4 of the NDPS Act, the Central Government established the NCB, which has the special duty of coordinating drug law enforcement on a national level. The NCB serves as the national relations coordinator and the hub for gathering and disseminating intelligence based on the parameters of the national plan.

The regulatory framework of narcotic drugs and psychotropic substances established by the NDPS Act was strengthened further by an amendment passed in 1989. Some important provisions which were incorporated are provisions for the establishment of the National Fund for the Control of Drug Abuse, the mandatory death penalty for certain habitual offenders, imposition of stringent requirements in the case of bail in serious offences.

The NDPS Act enforcement for over a decade brought harsh criticism for the Act efficacy. The acquittal rate under this Act has been among the highest of any criminal law in the country. The fact that the Act advocated an inhumane approach toward drug addicts is another criticism levelled against it. The accused, even a kingpin who organizes illegal drug trafficking, is frequently acquitted by the courts on the grounds of the benefit of doubt because of non-compliance and non-adherence to established legal processes by the enforcement officers. The acquittal of offenders due to deficiencies and procedural errors during searches, seizures, and investigations is not only a failure on the part of the investigating officer to stop committing

³⁸ Mathew v. State of Kerala, (2008) 3 Crimes 451 (Ker.).

³⁹ Narcotic Drugs and Psychotropic Substances Act, No. 61 of 1985, § 3 (India).

⁴⁰ Karam Singh v. State of Punjab, (1988) CriLJ 1181 (India).

crimes but also a continuing threat to society because the offender is almost certain to carry out such criminal acts in the future.

In 2001, the NDPS Act underwent yet another amendment. The most significant aspects of this amendment are the rationalization of sentence structure and the liberalization of the bail provisions. There are still several shortcomings in the NDPS Act that the Indian Parliament must address. The NDPS Act and its provisions lack flexible regimes to accommodate drugs for medical use and non-medical abuse. Legitimate users are finding it difficult to get drugs for their usage, such as terminally sick cancer patients who need morphine for palliative treatment, etc. Contrarily, other drugs, like cough syrup-containing codeine, are easily accessible to abusers even though such misuse would not have occurred under a regulated system.

The NDPS Act, as amended in the year 2014, introduced the concept of essential narcotic drugs⁴¹ to provide for the palliative treatment of patients, such as those with terminal cancer. Keeping in mind the difficulties that individuals experience, particularly terminally sick cancer patients who are unable to get morphine, which is necessary for pain treatment, the category of the essential narcotic drug was introduced. Also, this 2014 amendment allowed the death penalty to be at the discretion of the Court.

When the NDPS Act was amended in 2014 to permit more medical access to opioids, remove state restrictions on transportation, and license essential narcotic drugs, a drafting error was unintentionally created. This inconsistency was brought to light when an accused claimed before a special court in Tripura that he could not be tried for the offence under the NDPS Act since Section 27A⁴² of the NDPS Act refers to a blank list. The Tripura High Court in its Order⁴³ observed the anomaly and recognized that Section 27A should be interpreted as referring to Section 2(viii b). Consequently, the NDPS Amendment Ordinance, 2021 was promulgated to modify Section 27A by inserting Section 2(viii b) in place of Section 2(viii a). There were arguments behind the Bill on the ground of the principle relating to the retrospective stating that it violates Article 20(1)⁴⁴ of the Constitution of India and subsequently will lead the Bill as unconstitutional. The NDPS Amendment Act, 2021⁴⁵ has been given retrospective

⁴¹Narcotic Drugs and Psychotropic Substances Act, No. 61 of 1985, § 2(viii a) (India).

⁴²Narcotic Drugs and Psychotropic Substances Act, No. 61 of 1985, § 27A (India).

⁴³The Court in its Own Motion v. Union of India, Crl. Ref. 1/2020 (India).

⁴⁴ Article 20(1) prohibits the conviction of any person for an act that was not an offence under any legislation in effect at the time of the commission of the act.

⁴⁵ The NDPS (Amendment) Bill, 2021 after being passed by the Parliament received the assent of the President on the 29th December, 2021 and was notified on 30th December, 2021 as Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2021.

effect with effect from 01.05.2014. The Amendment Act, 2021 protected the NDPS Act from being misused by fixing a minor indexing error and the amendment retrospective application was required for it to take effect and to prevent the heinous abuse of the anomaly that the 2014 Amendment Act introduced.

VI. Drawbacks of the NDPS Act

a. Reverse Onus Clause

The NDPS Act has two provisions that utilize burden onus clauses. The first provision is of Section 35 which states that the court shall presume the existence of culpable mental state in the prosecution of the accused. As a general rule, an offence consists of two elements: the specific act and the guilty mind or dishonest intention that motivated the act. The NDPS Act, on the other hand, eliminates the necessity of dishonest intention under Section 35 and orders the court to presume the presence of a culpable mental state for all offences under the Act. Thus, in a circumstance where possession constitutes an offence under the NDPS Act, conscious possession automatically penetrates. The Court has no option but to presume the accused culpable mental state in the proceedings that necessitate such culpable mental state. The rules outlined in Section 35 of the Act represent a major divergence from established criminal jurisprudence. As per criminal law principles, the prosecution must establish all of the elements necessary to establish a crime beyond a reasonable doubt. The provision of section 35 incorporates a departure from the fundamental rules of criminal law. The second provision is of Section 54 which establishes a presumption that an accused is guilty of an offence for the possession of illicit articles of which he fails to account satisfactorily. The NDPS Act presumes that a defendant knows the contents. According to Section 54 of the Act, it will be presumed that a person has broken the law if they are found in possession of narcotic drugs, psychotropic substances, or any other incriminating items and they are unable to provide a satisfactory explanation. The court observed that if the requirement meant for therapeutic practice is not satisfied, then it will undoubtedly fall within the penal provisions of the NDPS Act.⁴⁶ The ratio decidendi is that once the possession of contraband goods has been established, the onus shifts on the accused to prove that he had no knowledge of the same.⁴⁷

⁴⁶ Md. Sahabuddin v. State of Assam, (2012) 13 S.C.C. 491.

⁴⁷ Thana Singh v. Central Bureau of Narcotics, (2013) 2 S.C.C. 603.

Violations under Sections 19,⁴⁸ 24,⁴⁹ or 27A⁵⁰ of the NDPS Act, as well as crimes involving commercial quantities⁵¹ are not eligible for bail from the courts. In criminal jurisprudence, all are presumed innocent until proven guilty. However, according to the NDPS Act, one is presumed guilty unless proven innocent. The Act reverses the burden of proof, which is contrary to Indian legal precedent, and assumes the guilt of the accused. The early mindset was that drug misuse was a threat to society that needed to be addressed. This aspect superseded the standards established for law enforcement authorities to protect the rights of the accused.

b. Pendency of cases

One of the factors contributing to pendency is the delay in forensic reports, which is generally caused by a lack of infrastructure or by other procedural delays on the part of the investigating agencies. Samples of rape and dowry cases are given more priority.⁵² The Punjab and Haryana High Court asserted that the forensic reports in drug seizure cases form the foundation of the prosecution's arguments and if these are not there, the prosecution case falls to the ground.⁵³

c. Lack of uniform yardstick

Determining the quantity of drugs that should be used as the basis for prosecution has been the subject of much discussion. The Punjab and Haryana High Court observed that the government has not adopted a uniform yardstick for notifying small and commercial quantities of certain drugs covered under the NDPS Act.⁵⁴ The Hon'ble Supreme Court of India issued a landmark decision in 2008 regarding the quantity of drugs employed in NDPS cases. In *E. Micheal Raj v. Intelligence Officer, Narcotics Control Bureau, 2008*⁵⁵ the Hon'ble Court declared that the rate of purity of the drug is crucial for determining the severity of punishment

⁴⁸§19 provides that any cultivator with a licence who embezzles or illegally disposes of the opium they produce faces punishment.

⁴⁹§24 states that anybody who engages in or manages any transaction in which narcotic drugs or psychotropic substances are procured outside of India and supplied to anyone outside India without the central government approval faces punishment.

⁵⁰§ 27A provides that any person who indulges in financing illicit traffic, or harbours any person for the same shall be punished.

⁵¹§ 2(viia) defines commercial quantity. It means the quantity of narcotic drugs and psychotropic substances which is greater than the quantity specified by the Central Government by notification in the Official Gazette.

⁵²Harpreet Kaur, Pendency of Cases Due to Delayed Forensic Reports, *Hindustan Times* (Jan. 10, 2015), <https://www.hindustantimes.com/punjab/pendency-of-cases-due-to-delayed-forensic-reports/story-MR3oAcre88z7v1NpRwG3kM.html> (last visited May 5, 2023).

⁵³Surender Sharma, Drug Seizures: Forensic Reports Integral Part of Challan: HC, *Hindustan Times* (Oct. 16, 2021), <https://www.hindustantimes.com/cities/others/drug-seizures-forensic-reports-integral-part-of-challan-hc-101634400606453.html> (last visited May 6, 2023).

⁵⁴ *Hem Rau v. State of Punjab*, (2003) AIR 2003 SC 4259.

⁵⁵ *E. Micheal Raj v. Intelligence Officer, Narcotics Control Bureau*, (2008) 5 S.C.C. 161.

for small, intermediary, or commercial quantities. However, shortly after the Hon'ble Supreme Court decision, the Department of Revenue, Ministry of Finance of the Government of India issued a contrary notification in 2009, proposing that punishment under the NDPS Act be based on the weight of the entire drug found in their possession, rather than just the pure content of such drug. The Government notification put the court and the legislature in conflict, which posed a dilemma for the judiciary when deciding cases under the NDPS Act.

In the case, *Hira Singh v. Union of India*,⁵⁶ decided by the Hon'ble Supreme Court of India observed that when determining the quantity of contraband in a seizure that also contains neutral substances, the quantity of such neutral substances must also be considered. This case has changed the process for determining the quantity at issue in NDPS Act related issues. It has interpreted the provision of the NDPS Amendment Act 2001 strictly and thereby expanded the meaning of 'small quantity'⁵⁷ possession. As the severity of the penalty largely varies depending on quantity, the quantity seized in each case under the NDPS Act plays a crucial role.⁵⁸

d. Lack of understanding of the addiction problem

The NDPS Act mandates harsh punishment for violators and harsher punishment for repeat offenders, which may extend to the death sentence. A precise line between minor offenders and severe offenders is not, however, set down in the NDPS Act. Depending on the gravity of the offence, the courts have the discretion to make this decision.

Concerning NDPS cases, India has adopted a punitive strategy. The Act penalizes drug users as well as addicts. Section 27 of the NDPS Act does not differentiate between first-time, persistent, or occasional users about substance usage when it comes to punishment. The punitive tone of this section departs from the notion of rehabilitation, which would appear to be a suitable strategy for combating drug addiction in India. In practice, the NDPS Act has taken a 'one size fits all' stance. The Act makes an effort to penalize those who use drugs and other offenders. Sections 39⁵⁹ and 64A⁶⁰ of the NDPS Act, which establish the concept of

⁵⁶ *Hira Singh v. Union of India*, (2020) (2020) 20 SCC 272.

⁵⁷ Narcotic Drugs and Psychotropic Substances Act, No. 61 of 1985, § 2(xxiiiia) (India).

⁵⁸ Aman Rab & Rajesh Bahuguna, The Congruity of Laws Governing Narcotic Drugs and Psychotropic Substances in India and the Way Forward, 6 J. Positive Sch. Psych. 3843, 3843–3869 (2022).

⁵⁹ Narcotic Drugs and Psychotropic Substances Act, No. 61 of 1985, § 39 (India).

⁶⁰ The applicant for immunity under Section 64A must be an addict. The NDPS Act defines an addict as someone who is dependent on any narcotic drug or psychotropic substance. This grants immunity to an addict

treatment and rehabilitation, have been rarely applied. While maintaining a punitive approach only for offences like trafficking, manufacture, and other commercial usage or purposes, rehabilitation for those addicted to drugs should remain the norm.

In particular, the provision of a once in a lifetime respite with mandated treatment for addicts shows that the Act is ignorant of the idea of addiction. Addicts frequently experience multiple issues of addiction. Sections 71 and 78 of the NDPS Act specify the circumstances and methods under which addicts enrolled at treatment facilities may get narcotic drugs and psychotropic substances when medically necessary. But to present, neither the district nor state levels have established any mechanisms for this.⁶¹ There is an urgent need to alter public opinion about drug users, a need to consider them as victims rather than offenders. Considering the stigma associated with drug addiction in India, fewer individuals seek medical attention as a result of the inadequate conditions of treatment and rehabilitation facilities. However, even addicts have to suffer as a result of a lack of awareness among the users and a lack of training of officials.

e. Delays in trials

Numerous times, significant gaps in time occur between the commission of the crime and the trial, raising concerns about the reliability of the evidence and resulting in acquittals based on inadequate evidence. The extremely slow pace of the Indian court system is directly responsible for the fact that many people caught on drug charges spend years in jail before their cases are ultimately heard. In other cases, persons arrested with small quantities of narcotics were subsequently acquitted after years in prison. Keeping in mind the affrays, the Hon'ble Supreme Court raised a similar issue, noting that it has been frequently emphasized that NDPS matters should be handled as early as possible because, in these types of cases, the accused are often not released on bail.⁶² Certain directions for the speedy trial of the NDPS cases have been passed by the Court and were further of the view that the NDPS cases should be prioritized over all other matters.⁶³

There are opinions expressing that the NDPS Act is a draconian law because it places the state in the capacity of a moral guardian over its citizens. In general, a person faces punishment for actions

who voluntarily seeks medical treatment to end their addiction, provided they finish the full course of de-addiction treatment.

⁶¹Joshua George & Ashwin Krishnan, Loopholes in the Narcotic Drugs and Psychotropic Substances Act, 1985 (2012), SSRN: <https://ssrn.com/abstract=2021750>; <http://dx.doi.org/10.2139/ssrn.2021750> (last visited May 6, 2023).

⁶²Achint Navinbhai Patel v. State of Gujarat, A.I.R. 2003 S.C. 2172.

⁶³Thana Singh v. Central Bureau of Narcotics, (2013) 2 S.C.C. 603.

like murder or theft, a crime that harms other people. Victimless crimes are defined by law, such as those under the NDPS Act. A person who is in possession of marijuana or consuming alcohol that contains opium causes no damage to anyone and hence, it is victimless.⁶⁴

Furthermore, the distinctions between procurement, consumption, and financing appear to have blurred. Another reason for calling the NDPS Act to be draconian is that while the traffickers walk free hunting for their next victim, the focus is on tracking the consumer with small quantities and locking them up rather than sending them to a de-addiction facility. There are also some debatable provisions under NDPS Act such as Section 32A⁶⁵ which is deemed unconstitutional because it limits the court ability to suspend sentences. In the case of *Ram Charan v. Union of India*,⁶⁶ Allahabad High Court opined that the court has no discretion under Section 32A of the NDPS Act to decide whether or not to suspend a sentence after conviction. It is arbitrary, and as a result, it violates Articles 14 and 21 of the Indian Constitution. The Court further stated that Section 32A is ultra vires and liable to be struck down.

The goal of the NDPS Act is clear, but its effectiveness is debatable, with some observers even going so far as to call it draconian. When politically influential or wealthy people are named as accused in FIRs, the already slow-moving criminal courts move much more slowly. There is quashing of FIRs and dismissal of the charges. There is interference with interlocutory orders.⁶⁷ The NDPS Act frequently results in the big fish escaping and avoiding the law because of their influence, while the small fish are apprehended. The NDPS Act which is meant to focus on breaking up the drug trafficking nexus, appears to be targeting mainly consumers with small amounts of narcotics while ignoring the big fish.⁶⁸ Some concerns have been highlighted wherein current flaws in the NDPS Act must be addressed if the NDPS Act aim, as stated in the preamble is to be accomplished.

VII. Conclusion

No general law or any criminal legislation designed to deal with specific issues is without ambiguity. And due to these ambiguities, the offenders feel free to engage in criminal activity

⁶⁴Rakesh Shukla, A Draconian Law, *The Times of India* (Dec. 11, 2007), <https://timesofindia.indiatimes.com/edit-page/a-draconian-law/articleshow/2612602.cms#:~:text=The%20Narcotic%20Drugs%20and%20Psychotropic,%2Da%2Dvis%20the%20citizen> (last visited May 6, 2023).

⁶⁵Narcotic Drugs and Psychotropic Substances Act, No. 61 of 1985, § 32A (India).

⁶⁶*Ram Charan v. Union of India*, (1991) 9 L.C.D. 160.

⁶⁷ *Ganesh Narayan Hedge v. S. Bangarappa*, (1995) 4 S.C.C. 41.

⁶⁸ Apoorava Mandhani & Ananya Bhardwaj, NCB Is High on NDPS—The Law with Loopholes: Rhea Chakraborty to Aryan Khan, *The Print* (Oct. 23, 2021), <https://theprint.in/opinion/newsmaker-of-the-week/ncb-is-high-on-ndps-the-law-with-loopholes-rhea-chakraborty-to-aryan-khan/755293/> (last visited May 6, 2023).

without worrying about being detected or penalized. The problem cannot be solved by merely amending the provisions of the NDPS Act. Instead, a variety of other measures must be implemented to bring about a general reform in the way victims of drug addiction are treated and dealt with by the legal system. Early detection and treatment,⁶⁹ mental health care, and extensive rehabilitation programmes are required. The social stigma associated with an arrest of a drug user must be taken into account. The strategy must be sympathetic, reforming, and corrective. Deterrent punishment is unlikely to alter the culprit rather, it will harden him and execute his addiction. A more compassionate and reformatory mechanism to deal with drug users is crucial to deal with the root causes of the problem of addiction. Preventive educational programmes emphasizing the hazards of drug abuse are crucial. Youth organizations can take an instrumental part in creating and conducting educational programmes in the local community and providing individual counselling. There is an urgent need to enhance efforts to comprehend drug usage patterns and trends across the nation, particularly in rural communities bordering drug trafficking routes and manufacturing areas. The war against drug abuse must continue, no matter what its causes are. The drug epidemic in our country is silent, hidden to the naked eye, yet destructive. The battle must be waged on all fronts, no matter the cost. Drug abuse is a multifaceted problem, making it challenging to develop a single preventive strategy that would be effective in every case. As such, alternative methods and strategies must be laid out and created while keeping the socio-cultural statistics of drug abuse in consideration.

⁶⁹ Jitendra Mohan & Meena Sehgal, *Youth and Drugs: A Psychological Perspective* (Abhijeet Publ'ns 2003).