



DRUG ABUSE IN INDIA: NEED AND EFFICACY OF NDPS ACT, 1985

Law

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ABSTRACT

Drug abuse is proliferating in India. High and low profile individuals have been seen equal culprits in the matters of drug abuse. Despite of several amendments made in the Narcotic and Psychotropic Substances Act 1985, the consumption, possession and unauthorised sale of the narcotic drugs is common in India. The drug abusers particularly, in high profile cases, are rarely prosecuted and convicted regardless of the fact that under the NDPS Act, the drug related crimes have been declared non-bailable. The search and the seizure of the house of the drug abusers has become a daunting task due to the varied nature of the drug nexuses in India. Also, the enforcement of the NDPS Act is weak, particularly in high profile drug related cases. Having this background in mind, the aim of the present study is to throw light on drug abuse cases and to evaluate the need and efficacy of the NDPS Act and the stance of the Indian judiciary to eradicate the country's drug problem.

KEYWORDS

Drug Abuse, NDPS, law, judiciary.

1. Prelude:

The Narcotic Drugs and Psychotropic Substances are having several scientific and medical uses. But unfortunately, they can be and as a matter of fact, are also abused and trafficked. This abuse has become universal problem and it is continuously growing issue of concern to humanity. These drugs have multiple consequences not only to health but the society and economy also suffers a lot. The consequences to health are mortality, mental or physical disorder, morbidity etc. The social problems that arise out of it are family disintegration, accidents, gangland, vice crimes etc. And the economy of nation will have to face loss of productivity, drain on national resources, finances spent on developing services etc. Thus this drug abuse is a major cause of concern for each nation as it has effects on the development of entire nation and above all it may increase the crime rate as well. Our country India is not an exception to this problem. We are also suffering from this problem alongwith narco-terrorism right from the independence. In this paper the researcher attempted to study the menace of drug abuse in India with the help of the laws of the land, expert opinion and the judgments of various High Courts and the Supreme Court.

2. Meaning of Narcotic Drug and Psychotropic Substance

The word "Narcotic" derived from ancient Greek word "Narko" which means rest or to make numb. Originally it was referred medically to any psychoactive compound with numbing or paralyzing properties. In medical world it's a positive connotation and in legal world it's all together opposite. Thus as per the origin the term narcotics are the drugs that instigate rest. The Collins online dictionary defines this term narcotic as "drugs such as opium or heroin which makes you sleepy and stop you feeling pain."¹ As per Pallipedia narcotic "in common parlance and legal usage, it is often used imprecisely to mean illicit drugs, irrespective of their pharmacology."² Similarly the word psychotropic substance means and include "A drug or other substance that affects how the brain works and causes changes in mood, awareness, thoughts, feelings, or behavior. Examples of psychotropic substances include alcohol, caffeine, nicotine, marijuana, and certain pain medicines. Many illegal drugs, such as heroin, LSD, cocaine, and amphetamines are also psychotropic substances."³ These substances are also called psychoactive substances.

The drugs can be classified into two groups i.e. customary drugs and the psychotropic drugs. The customary drugs are includes alcohol, opium, cannabis, morphine and it's derivatives, cocaine etc. Whereas the psychotropic drugs are grouped by their most unmistakable conduct, impact and it includes the soft/delicate drugs, hard drugs, narcotic analgesics, alcohol, sedative mesmerizing and hostile to nervousness operators, psycho-energies etc. The soft drugs includes hallucinogenic mushrooms, cannabis, mescaline, psilocybin, LSD etc. and the hard drugs includes heroin, rocks, concentrated drugs, pethadine, cocaine, methamphetamine etc.

The NDPS Act defines the term Narcotics drugs as "coca leaf, Cannabis, opium, poppy straw and include all other manufacturing drugs."⁴ This Act defines the Psychotropic substances as "any substance, natural or synthetic, or any natural or salt or preparation of

such substance or material included in the list of psychotropic substance specified in the schedule."⁵

3. The Menace of Drug Abuse

The use of narcotics drugs and psychotropic substance for medical and scientific purpose is indispensable. These drugs and substances are necessary for the preparation of several drugs like morphine, pathadine and tranquilizers. Since India is one of the biggest producers of opium for medical and scientific purpose hence the production of the same cannot be banned altogether. But keeping in mind the menace of drug abuse the production of the drugs and substances is required to be controlled and regulated by government. Strict action is required to prevent illicit trafficking and illicit use of the same.

The drug addiction has become a curse of the present times, a menace, a threat to public health, a cause of dissolution of human personality and consequently promoting crime and lawlessness. This evil is insidious which operates secretly and generally it comes to be known to others only after the addict crosses the point of no return. The consequences of this problem are far reaching as it attracts and affects the young generation which basically is the future of a nation. It can result in subversion of a nation's culture, it's social values, integrity of nation. Therefore, it is mandatory to take effective steps to prevent this menace and to achieve this goal first of all we will have to find out the causes of drug abuse.

The causes are as under:

3.1 Drug War

The drug war is conducted by other nations on our nation's land with the help of our men, money and material. The drug addicted youngsters are more prone to be a criminal. In plenty of cases the Indian youth were sent back with drugs, arms and ammunition after making them drug addict. These youths are given task to recruit more persons in their terrorist organization by making them drug addict as well.

3.2 Narco-Terrorism

Narco-terrorism refers to the nexus between the narcotics and the terrorism. This term narco-terrorism has been defined as "terrorism financed by profits from illegal drug trafficking."⁶ The main goal behind drug trafficking is to fund the terrorist activities in a country. But it is not an easy task to sponsor terrorism because it is an expensive affair and the money for killing kidnapping and sabotage does not come through normal channels. It is possible only with the help of illegal or unlawful channels. And the best way to earn or make huge profit is drug trafficking. The trafficking in narcotics which is immensely profitable enterprise has become a global lawlessness especially in cases where it is used to promote terrorism in a country. India is also suffering with this problem of narco-terrorism since independence. The geographic conditions of our country help the narco terrorism a lot.

3.3 Gangsters and Smugglers

The gangsters and smugglers promote the drug addiction so that their supply and demand of drugs and substances shall keep on growing

everyday. If the demand will increase then the profit will also go up. The gangsters and smugglers are aware of the fact that the profit margin is more in narcotic drugs and psychotropic substances in comparison to other goods. They are in fact known as the merchants of death and destructions.

3.4 Personal and Social Reasons

There are several personal and social reasons that lead to drug addiction and trafficking. The reasons can be curiosity, new experiment, stress in personal life, bad environment, abuse of drugs among friends and peers, lack of family care, low socio-economic status, to have some pleasure or thrilling in life or to escape from realities of life.

4. Genesis of Drug Abuse and Trafficking in India

India, our country which is also known as the land of *Shiv* inherited the cultural roots with most mysterious and eccentric ways of worshipping our lords. One of the ways of worship is the use of *bhāṅg*, a form of cannabis for celebrating *Mahashivratri*, a religious festival of Hindus. Our country was consistently mindful of cannabis advantages. *Sadhus* and *God smok* as well. *Mahashivratri* is incomplete without *chillum* and similarly *holi* is incomplete without *bhāṅg thandai*. In Hindu religious literature we can find the term *Somras* which is intoxicating substance as well. Besides this in *Akha Teez* opium is also offered to strengthening family bonding. Moreover it is believed at certain places in India that cannabis smock can be utilized to cause one's foes to feel controlled by spirit. Thus, India has a cultural to use natural narcotic substances for celebrating the religious festivals since ancient times. Even during medieval times the troopers frequently took beverage of *Bhang* prior to joining war/fight in the same manner like Westerners who were used to take a drink of *bourbon*. During this period the use of hashish has been recognized by Muslim thinkers for medicinal or clinical purpose as mandatory.

In eighteenth century Portuguese found that they could import opium from India and sell it in China to earn extensive benefit. Thereafter the Britishers found the exchange and became main supplier of opium to China. The Britishers setup an imposing business model on opium development in Indian region of *Bangal*. They built up a strategy for developing opium poppies inexpensively bounteously. The opium exchange was a big business involving many countries including United States. Besides this the Britishers appointed a commission in India to investigate the development of the hemp plant, its use as drugs for medicinal purpose etc. The commission is known as the Indian Hemp Drugs Commission and surprisingly its report⁷ is still applicable today.

The first statute that regulated narcotic drugs in India was the Opium Act, 1857. This Act was infact against the backdrop of opium wars between Britain and China. This Act consolidated the Britishers control over poppy trade. It introduced the licensing system for growing poppy India. The Act provided for appointment of Opium agents and Opium Officers to supervise and collect the opium on behalf of British Government. Thereafter, the Opium Act, 1878 further strengthened the government control over the cultivation, possession, import, export, transport, sale, purchase and warehousing of opium. In the year 1930 another Act⁸ extended the regulation to coca leaves and hemp, besides opium and its synthetic variant. It will be pertinent to mention here that none of the above mentioned Acts provided for punishment for the consumption of drugs and possession for personal use. Thereafter in the year 1950 the Constitution of India came into force and it provided that "the state shall endeavor to bring about prohibition of the consumption, except for medicinal purposes, of intoxicating drinks and of drugs which are injurious to health".⁹ Finally India got a proper legislation containing penal provisions for use, possession, trade etc. of narcotics drugs and psychotropic substances.¹⁰

5. The Narcotics Drugs and Psychotropic Substance Act, 1985

The Narcotics Drugs and Psychotropic Substance Act, 1985 was enacted by the Indian Parliament to control addictive drugs and prohibit the drug abuse in India on 16th September, 1985 and came into force on 14th November, 1985. It aimed at prohibiting the manufacturing, sale, purchase, transfer, dispersion, cultivation, storage, collection, transportation of drugs import and trade in India. It banned the consumption of drugs. It provided for punishment to drug abusers in India. It banned the illegal use of narcotic and psychotropic substance. It was enacted to manage the drug system in India.

The primary objective of this Act is to regulate the manufacturing,

ownership, selling, and transportation of narcotics drugs and psychotropic substances. This Act forbids the selling of about 200 psychotropic medications, resulting in these drugs being inaccessible over the counter to the general public. These medications are only available for use with a prescription of doctor. The violation of this law can result in a sentence of incarceration or a fine or both, depending on the severity of offence, which is determined by the severity of the situation at hand. In case the drugs are being used for personal use or benefit, then the penalty can be minimized. Furthermore, the legislation has been revised several times since its inception. The major change was brought with the help of the Amendment of 2001¹¹ which changed the quantity of punishment as per the quantity of the drugs in possession

The Section 41 of the NDPS Act empowers the Metropolitan Magistrate or a Magistrate of first class or Second Class to issue a warrant for the arrest of any person who may have committed offence punishable under this Act. They can also issue warrant for search of any building, conveyance, place in which any narcotic or psychotropic substance is there or there is some document that may furnish evidence under this Act or the illegally occupied property deserves seizure, freezing or forfeiture under this Act. This act further empowers the gazetted officer of Central Government or State Government to take similar action for arrest, search, seizure etc. with the help of any officer superior to peon, sepoy or a constable. Such officer can also do the same without a warrant to avoid the escape of offender as per the Section 42 of the Act.

In all cases of possession of contrabands the suspect shall have a right to be searched by a nearest Gazetted officer, therefore the authority shall give him notice under Section 50 of the NDPS Act for the same but if he spontaneously produces the contraband to the police then there is no need to give notice under Section 50 of the Act. A complete description of packaging/wrappers/making and the contraband must be described in the writing (*ruqqa*) as well as in seizure memo. The contraband shall be checked with the help of field – testing kit. The sampling shall be done properly along with alongwith two representative samples. The CFSL/FSL/CRCL forms must be filled up then and there. The case property shall be properly sealed with standard seal and the seal used must be handed over to one witness.

In case a person is arrested under this Act, he shall be informed about the ground of arrest and the person so arrested and the articles seized shall be forwarded without unnecessary delay to the Magistrate who issued the warrant and in case of arrest by any officer under Section 42, 43 or 44 the person arrested and articles seized shall be forwarded without unnecessary delay to the officer in charge of nearest police station or the officer empowered under Section 53 of this Act. The Section 55 says that an officer in charge of a police station shall take charge of and keep in safe custody, all articles seized under this Act within the local area of the police station. All of these articles shall be sealed with the seal of the officer in charge of the police station.

Whenever a person is arrested under this Act or anything has been seized under this Act by any officer, he shall prepare a full report of the same shall and thereafter submit it to his immediate officer within a period of 48 hours.¹²

During investigation of any case under this Act the Investigating Officer shall follow all guidelines contained in this Act itself. The IO shall in writing keep a record about the raiding party's constitution, departure, vehicle if any with the name of driver, arms, ammunitions, route taken, the name of accompanying informer, number of independent public witnesses requested, their place, their background. The time shall also be mentioned about the DD entry, constitution of raiding party, time of leaving police station, time of arrival at the spot, *nakabandi*, arrest etc. The IO shall interrogate thoroughly the person accompanying the suspect. All details of vehicle if used by suspect shall be noted. In case the contraband recovered is less than commercial quantity, the challan must be filed within 60 days and in case of commercial quantity the challan may be filed within 90 days. But in all cases the IO shall try to file challan as soon as possible.

6. Loopholes in The Narcotics Drugs and Psychotropic Substance Act, 1985

The Narcotics Drugs and Psychotropic Substance Act, 1985 which was made with intention to control and regulate the drugs in India, is having several loopholes, which are as follows:

6.1 Draconian Provisions

Whenever a crime is committed in a democratic society, it becomes the duty of prosecution to prove the commission of the offence as the burden lies on them only. But in this Act the Section 35 says that if there appears any question of mental intention, knowledge or motive of accused then it is presumed that he carried mala fide intention etc. hence it is the accused himself who will have to prove that he is innocent. In case an innocent person failed to prove innocence then he will be behind bars just because he failed to prove himself innocent.

6.2. Draconian Bail Rules

The NDPS Act contains draconian bail provisions. If a person is accused under Section 19, 24 or 27A of the Act then the Court will not grant him the bail. The court is also barred to grant bail in case of commercial quantity. Refusal of bail in any matter puts a question mark in the mind of magistrate during trial as well. Generally bail shall be granted with precautions but shall not be barred in all cases. The principle of innocence until guilty is proved gets jolt if bail provisions are draconian.

6.3 Delay in Trial

Another problem is that of delay in trial. Everyone knows that the justice delayed is justice denied. It's a reality that presently the courts are overburdened. Although the Act talks about the special courts but it does not bar States to confer any other additional work to the special court which causes delay in trial. Sometimes the innocent persons may become hardcore criminals just because of this delay in trial or their stay in jail.

6.4 Disproportionate Penalty

The other major loophole of the Act is the disproportionate penalty. Sometimes the criminals escape the larger punishment despite the fact that they deserve more severe punishment and similarly sometimes the small offender is punished with higher punishment. For example the one kg ganja falls within the category of small quantity.

6.5 Medicinal Use of Drugs

The white color criminals and other criminals escape the punishment in the name of supply of drugs such as morphine or opiates to public. Hence the rules shall be too strict for issuance of license and permission for use of drugs as medicines.

6.6 Absence of Data

The other problem of present India is the absence of data pertaining to drug use, dependence and attentiveness towards health implications. It has become difficult to research the drug abuse problem in absence of proper data. In India the majority of persons consume cannabis, ganja or heroin etc. But there is no data of the same to find out the impact of the same.

6.7 Lack of Consultancy

The Act permits the Government to create a committee of 20 members for advice after preparing a social report. This number is very less especially in a huge and thickly populated country like India. Public opinion matters a lot in policy making but such a small number of person in consultancy process makes useless.

7. Judicial Response

The Indian judiciary dealt with plenty of NDPS matters and laid down landmark judgments in this field of drug abuse. Some of the major judgments are discussed hereunder:

In *Birender Kumar Rai v. U. O. I.*¹³, the Apex Court held that in each case that falls under the NDPS Act, 1985 the accused must be sternly dealt with under Section 3 of the Act. In *E. Michael Raj vs. Intelligence Officer Narcotic Control Bureau*¹⁴ the Supreme Court delivered a landmark judgment and held that in case the drug is mixed with neutral substance then at the time of punishment the original quantity of drug shall be taken into consideration.

In *Vijay Sinha Chandjuba Jadeja v. State of Gujarat*¹⁵ the Apex Court held that it is mandatory to comply with the Section 50 of the NDPS Act which casts a duty on the officer to inform the accused about his choice or right for search by or in presence of Gazetted Officer. In case of failure to comply with section 50 of the Act would render recovery of illicit article suspect and vitiate the conviction. But it will be pertinent to mention here that this notice under Section 50 is necessary only in cases of personal search of an individual and it never extends to search of a vehicle or a container or a bag or premises.¹⁶

In *Indian Harm Reduction Network vs. Union of India*¹⁷ the special NDPS court in Mumbai penalized a Kashmiri named Gulam Mohammed with death sentence under Section 37A of the NDPS Act for repeating the offence of smuggling charas. The Indian Harm Reduction Network challenged the mandatory death penalty under Section 37 of the Act being arbitrary, excessive and disproportionate to the crime. The Division Bench of the Mumbai High Court held this provision to be unconstitutional, but didn't strike it down. Thereafter in the year 2014 an amendment was introduced in this Section. After this amendment the court can either impose any punishment for imprisonment or the death penalty. Thus an option has been given to the court.

In *Hira Singh vs. Union of India*,¹⁸ the Full Bench of the Apex Court overruled the 2008 judgment given in *E. Michael Raj vs. Intelligence Officer Narcotic Control Bureau*¹⁹ and held that the quantity of neutral substances in a mixture containing the narcotic drugs or psychotropic substances must be taken into account along with the actual weight of the controlled drug while determining the question of 'small or commercial quantity' under the Narcotic Drugs and Psychotropic Substances Act, 1985.

In *Gurdev Singh v. State of Punjab*²⁰, the Division Bench of Supreme Court held that the quantity of contraband recovered is a relevant factor that can be taken into consideration for imposing higher than the minimum punishment under the Narcotic Drugs and Psychotropic Substances Act, 1985.

In *Boota Singh v. State of Haryana*²¹ the contraband was recovered from the accused while they were sitting on road in a jeep at a public place. While upholding the conviction of the accused, the High Court held that the case of accused would be covered by Section 43 of NDPS Act and not by Section 42. Section 42 deals with Power of entry, search, seizure and arrest without warrant or authorization whereas Section 43 with power of seizure and arrest in public place. The Division Bench of the Supreme Court observed that a private vehicle would fall within the expression "public place" as explained in Section 43 of the NDPS Act, 1985. The bench also observed that total non-compliance of Section 42 is impermissible though its rigor may get lessened in certain situations.

In *Ragini Dwivedi v. State of Karnataka*²² the Division Bench of Apex Court granted bail to Kannada actor *Ragini Dwivedi*, who had been arrested by the Karnataka police for allegedly consuming and supplying contrabands at parties and events organized either by her or others. The Bench set aside a Karnataka High Court order wherein her bail plea was rejected. The Bench noted that Section 37 of the NDPS Act, 1985 had been wrongly invoked by the Sessions Court and as well as the High Court.

In *Khet Singh v. Union of India*²³ the Apex Court held that even if there is some procedural illegality in conducting the search or seizure, the evidence collected thereby will not automatically become inadmissible. The Court shall consider all the circumstances and find out whether any serious prejudice has been caused to the accused. The Supreme Court further held that if the search and seizure was within the complete defiance of the law and procedure and there was any possibility of the evidence collected likely to have been tempered with or interpolated during the course of such search or seizure, then, it could be said that the evidence is not liable to be admissible in evidence.

The Apex Court delivered a landmark judgment in *Mohd Zahid v. State through NCB*,²⁴. In this case the accused was punished by two different courts in two different matters. In first case he was sentenced with 12 years imprisonment for having 4kg heroin and in another case he was punished with 15 years of imprisonment for having 750 grams of heroin. The Supreme Court observed that such accused causes deleterious effects and deadly impact on the society. They are hazard to the society. Such organized activities of clandestine smuggling of contrabands into this country and illegal trafficking in such contrabands have a deadly impact on the society as a whole. Therefore there is no need to exercise the discretionary power²⁵ under the Code of Criminal Procedure which empowers the court to order the subsequent sentence to run concurrently with previous sentence.

8. Conclusion and Suggestions

Abuse of drugs is a social fiendishness. It has become a major issue for

individual, family and the society as well. The easy and huge money which is created by drug dealing energizes the illegal intimidation. This money has been used for purchasing the arms and ammunitions. It is resulting in narco terrorism. It not only influences the financial arrangements of the State but it is additionally annihilating the fate of the nation. It is attacking the human framework for quite long time and killing and making hostage many individuals. Despite the purposeful endeavors by the Indian Legislations this issue continues as a major issue. The Narcotics Drugs and Psychotropic Substance Act, 1985, which was passed to control and regulate the abuse of the contrabands also failed to achieve its goal. Therefore certain measures are required to be taken.

The suggestions are as under:

- The Government of India shall take steps for international alliance to fight against the drug abuse because this is universal problem and the drug paddlers or smugglers work at international level. The menace requires worldwide assault and cooperation of each and every nation.
- Improvement of socio - economic conditions of Indians. Besides this the best education for all shall be a goal of the government.
- The Central Government shall establish a data centre for collection of data pertaining to drug abuse. Record pertaining to number of drug addict alongwith the drug abused, rehabilitation centre output data, arrest of person in drug cases and conviction thereof etc. shall regularly be kept by the data centre.
- The narcotics addicts shall be treated at the earliest stage of addiction and mandatory hospitalization of these addicts in some specially equipped hospital for a minimum fixed time.
- Addiction Control Board in each district shall be established. This board shall consist of doctors, psychologist, social worker, advocate and Magistrate.
- Control over narco-terrorism shall be a major aim of the government.
- Steps shall be taken to control the illicit manufacturing of narcotic drugs and psychotropic substances.
- Speedy trial of drug abuse cases is mandatory.
- The awareness programmes shall be conducted regularly by health, education, sports, police departments.
- Rehabilitation centre shall be established in each district.
- Political will and the media can play a great role for controlling the drug menace.
- Drug traffickers shall be targeted. The forfeiture of entire property of traffickers shall be mandatory.
- Treatment of addicts shall be humane.
- Enforcement agencies shall be given more power and man power. Proper training shall be given to each and every person dealing with NDPS cases so that the offenders shall not escape just because of inefficiency of authorities.

REFERENCES

1. Collins online Dictionary, Narcotics, available at: <https://www.collinsdictionary.com/dictionary/english/narcotic>, visited on 07-02-2022.
2. Pallipedia online Dictionary, Narcotics, available at: <https://pallipedia.org/narcotic-drug/>, visited on 07-02-2022.
3. National Cancer Institute, Psychotropic Substance, available at: <https://www.cancer.gov/publications/dictionaries/cancer-terms/def/psychotropic-substance>, visited on 07-02-2022.
4. The Narcotics Drugs and Psychotropic Substances Act, 1985, Sec 2 (xiv).
5. Ibid; Section 2 (xxiii).
6. Merriam Webster Dictionary, Narco Terrorism, available at: <https://www.merriam-webster.com/dictionary/narco-terrorism>, visited on 07-02-2022
7. The Indian Hemp Drugs Commission Report, 1894.
8. The Dangerous Drugs Act, 1930.
9. The Constitutional of India, Art. 47.
10. Supra Note 4.
11. The Narcotics Drugs and Psychotropic Substances (Amendment) Act, 2001 (Act No. 9 of 2001).
12. Supra Note 4; Section 57.
13. AIR 1993 SC 942.
14. (2008) 5 SCC 161.
15. AIR 2011 SC 77. Relying on this judgment the Apex Court in Narcotics Central Bureau v. Sukhdev Raj Sodhi, AIR 2011 SC 1939, dismissed the appeal of Narcotics Central Bureau and held that it is mandatory to follow the Section 50 of the NDPS Act, 1985.
16. Bira Kishore Kar v. State of Orissa, AIR 2000 SC 3626.
17. 2012 Bom C. R. (Cri) 121.
18. (2020) SCC online SC 382.
19. Supra Note 14.
20. AIR 2021 SC 1766; 2021 Cr. LJ 2387.
21. AIR 2021 SC 1913.
22. (2021) 1 Crimes 198.
23. (2000) 4 SCC 137; 2000 (2) SCALE 724
24. 2021 Online SCC 1183.
25. The Code of Criminal Procedure, 1973 (Act No. 2 of 1974), Sec. 427.