

NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT (NDPS 1985) : A CRITICAL ANALYSIS ¹

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Abstract

Narcotic and Psychotropic Substances Act is an Act which was presented in the Parliament of India and came into existence on 14th November 1985, it prohibits the person to produce, manufacture, cultivate, possess, sell purchase, transport, and store or consume any narcotic drug or psychotropic substance in any form. The main aim of this law is to control the manufacture and distribution of drugs, to keep a check on the quality of drugs, to mandate the display of ingredients of drugs, and to prevent substance abuse in society. Cannabis and its derivatives (marijuana, hashish/charas, and bhang) were legally sold until 1985 and their recreational use was commonplace before the enactment of the Act. The violation of this law results in punishment which includes rigorous imprisonment or fine or both. The degree of the punishment depends upon the harshness of the case which is being dealt with. The present study is a look into the limitations and the drawbacks of the Act and its competency in the implementations of the NDPS law.

Keywords: Narcotic Drugs, Psychotropic Substances Act (NDPS 1985)

Introduction

India is known as the “land of gods” lord shiva the universal of this universe is worshipped in the most mysterious and eccentric way, the bhang, a form of cannabis celebrating the religious festival known as “Shivratri” In Ancient religious cultures the deva’s especially the Indra deva has been seen consuming “Somras” The word “soma” is a Sanskrit word which mean intoxicating, the same property which is used by the narcotic drugs used as somras since centuries and historical times. Similarly Opium is offered at “akha teej” which is celebrated to bring the family members closer together with one another thus tightening the bond between the each member of the family (Molly Charles, Dave Bewley Taylor, Amanda Neidpath ,2005)

The menace of drug abuse cannot be overlooked which is on a rapid rise in our country like India. We are having large number of addicts in our society who bring lot of problems to the society like increased mortality rate, increased psychiatric problems, socio economic issues, financial constraints etc. Disintegration of the family leads to criminal activities like theft, murder thus finally ruining their lives as well as the lives of the society. It is the actual cause of the rise of the white collar crimes to blue collar crimes (Shweta. S, Kapil K, Gyanendra S.,2017) Drugs have become the way of funding the terrorist activities and these views should be taken into consideration while framing and amending the laws related to NDPS Act.

Content

Narcotic Drugs and Psychotropic Substances Act (NDPS) is an Act which was passed in the Parliament of India and this Act prohibits the person to produce, manufacture, cultivate,

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possess, sell purchase, transport, and store or consume any narcotic drug or psychotropic substance. The main aim of this law is to control the manufacture and distribution of drugs, to keep check on quality of drugs that are being manufactured, to mandate display of ingredients of drugs and to prevent drug abuse in the society. Cannabis and its derivatives (marijuana, hashish/charas, and bhang) were legally sold until 1985 and their recreational use was common place. Consumption of cannabis was not seen as the socially deviant behavior and was similar to the consumption of alcohol; ganja and charas were considered as poor man's intoxicant while rich consumed bhang during holi. The United States campaigned for worldwide laws against all drugs following adoption of the Single Convention on Narcotic Drugs in 1961 Convention against (the Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988,2009) India stood against the American Pressure to keep Cannabis illegal for 25 years, as the pressure from the U.S. increased in 1980 and 1985, the then Government of India implemented the NDPS Act thus banning all the drugs in India. The Central Government has the power to add or to omit any drug from the list of psychotropic substance by notification in the official gazette. The Central and the State Government takes measures for preventing and combating abuse of and illicit traffic in narcotic drugs. The NDPS Amendment Act, 2014 (Act 16 of 2014) amended the NDPS act to relax restrictions placed by the act on Essential Narcotic Drugs (Morphine, Fentanyl and Methadone) making them accessible for use in pain relief and palliative care. India has not placed fentanyl on its controlled substances list, easing production and export. Indian only regulates 17 of the basic precursor chemicals for fentanyl. The NDPS Amendment also contained the measures to improve treatment and care for the people dependant on the drugs, opened up the processing of opium and concentrated poppy straw to private sectors and strengthened the provisions related to the forfeiture of property of persons involved in drug trafficking. The amendment also removed the mandatory death sentence for repeated conviction in large quantities of drugs giving courts the discretion to use the alternative sentence of 30 years imprisonment of repeated involvement in the offence. However the amendment increased the punishment for carrying the "small quantity" from 6 months to 1 year imprisonment.

The Punishment for contravention of the NDPS Act includes rigorous imprisonment and fine or both if person if found in possession of the banned drugs.

Table 1 Possession of the banned drugs.

Drug	Small Quantity (grams)	Punishment	Commercial Quantity (kilograms)	Punishment	Intermediate (In between smaller & commercial quantity)
Amphetamine	2 gm	Maximum of 1 year rigorous imprisonment or fine up to Rs 10,000 or Both	50 gm	Rigorous imprisonment from 10 years (min) to 20 years (max) and a fine from Rs 1 lac to 2 lac	Rigorous imprisonment that may extend to 10 years and fine that may extend to Rs 1 lac
Charas	100 gm		1 kg		
Coca leaf	100 gm		2 kg		
Cocaine	2 gm		100 gm		
Ganja	1 kg		20 kg		
Heroin	5 gm		250 gm		
LSD	2 mg		100 mg		
Methadone	2 gm		50 gm		
Morphine	5 gm		250 gm		
Opium	25 gm		2.5 Kg		

Whereas the contravention involves a "small quantity" then the rigorous imprisonment is from 6 months to 1 year or a fine of Rs 10,000/- (Ten Thousand only)

Whereas the contravention involves quantity lesser than commercial quantity but greater than the small quantity then the rigorous imprisonment may extend to 10 years and fine to the tune of Rs 1, 00000/- (One Lac only)

Whereas the contravention involves commercial quantity then the rigorous imprisonment is not less than 10 years but may extend to 20 years and also a fine which shall not be less than 1,00000/- (One Lac only) but may extend to 2,00000/- (Two Lac only)

Bottlenecks of the NDPS Act: One of the major drawbacks of the NDPS Act is that

1. It presumes the guilt of the accused bringing the complete responsibility of proving his innocence on himself alone. Bails cannot be granted to the accused which falls under Section 19, 24, or 27 A of the act and to those relating to the commercial quantity. Though our judicial system considers each person innocent till proven otherwise “Justice delayed is justice denied” but the person is sent to prison as soon as he is arrested with the drug. Though special courts have been also assigned but delayed judgments are too common. The main reason for the delay in the justice system is that there is too many cases. Once a person is arrested by the police, the trial begins and the case property is produced in the court. The case property is opened in the presence of the Judge and then it is resealed in his presence only. Photograph are clicked with the help of digital camera of the entire proceeding. The sealed case property is then sent to FSL (Forensic Science Laboratory), Mohali (Chandigarh) if we talk about the cases from Punjab. Usually it takes 6-8 months for the report of the FSL to come and during this tenure the accused arrested in the NDPS case is kept in the custody. This delay in the report of FSL is due to lot of samples which are sent daily for testing in the FSL, Mohali. Hence due to the heavy work lot the testing, pendency the case gets delayed.

2. In certain cases the accused arrested for having small quantity of drugs are freed from custody after a very long time which ruins their job as well as socio-economic life thus ruining their family and children. If we look into the pharmaceutical classification of the drugs the drugs are categorized into hard drugs and soft drugs. Hard drugs are those which are hard in nature for example Heroin. Softer drugs are those drugs which are soft in nature for example Opium. Heroin is a potent drug which is used by the addicts to give them a “kick” than the opium. As the addict wants a “kick” and it is faster in action than opium hence the drug peddlers move towards the heroin than the opium because it provides more profits in small quantities than opium and hence preference is given to heroin than opium. Synthetic drugs has higher effect on the systemic circulation of the human body hence it is being given preference now a days over natural substances of abuse.

3. In the section 54 of the NDPS Act it is stated that unless the person is proved it is presumed that the accused has committed an offence related to the drug. Here it is worthy to mention that harsher punishments have been proposed for repeated offences. An amendment made in 1989 section 31A mentions death penalty for the repeated offence if the quantity of the drug seized from the accused is more than the certain limits.

4. There is no distinction between a casual drug user, a hard core addict, a small petty drug peddler, drug peddler and an addict. Apart from there there is a need for the review of the act from time to time since newer and newer drug forms are coming into existence. Earlier amphetamine was seized in large quantities. Now let us discuss the newer forms of the drugs being used by the addicts.

Fentanyl is a potent narcotic synthetic opioid 80-100 times stronger than morphine. It is a mu opioid agonist. It has analgesic and anesthetic properties. Fentanyl was first developed in 1959 and introduced in 1960 as intravenous anesthetic and its powerful pain killing activity diverted it to misuse. Fentanyl is added to heroin to increase its potency or disguised as highly potent heroin. Most of the users think that they are buying heroin but actually don't know that

they are purchasing fentanyl and don't have tolerance to fentanyl thus over dosage results in death.

Methadone is used in de-addiction centres to treat heroin addicts who are mostly adolescents. The drugs help to prevent withdrawal symptoms in the patients addicted to opiate drugs. Methadone produces less intense effects and helps addict avoid withdrawal symptoms. Methadone produces effects similar to drugs like brown sugar and one feels sedated and relaxed. When methadone is taken there is no "rush" in the body and the drug produces its effects slowly. The effect of the drug methadone on the user last for up to around 86 hours making him sluggish for the period of time. Often methadone addiction is seen when one of the following things occurs firstly an addict convinces the doctor to give him more of the drug than he actually needs, secondly when methadone is prescribed and the dose is increased. As the treatment continues the patient develops tolerance and more of more methadone has to be used to get the desired effect. Methadone if combined with alcohol becomes a deadly combination thus leading to death.

In such newer drugs and its derivatives it becomes difficult to justify it in NDPS Act. Inclusion of the newer drugs and newer drug derivatives is required for increasing the effectiveness of the NDPS law. NDPS Act amendment came in the year 2014 (1 May 2014), under section 71 of the NDPS Act the management of the drug dependent cases and rules for the treatments facilities has been incorporated. The amendments increased the penalties for the offences at lower level and continued to punish the addicts consuming the drugs. Morphine producers just need single license from respective State Drug Controller unlike the earlier procedure and the prolonged steps and multiple licenses and formalities. This amendment ensured uniform regulations within the country thus eliminating the state wise conflicts between them. The death penalty for repeated attempts of trafficking larger quantities of drugs has been diluted with given courts to discretely sentence for 30 years whereas on the other hand the punishment has been increased for "small quantity offences" from a maximum of 6 month to 1 year imprisonment after this amendment.

Conclusions

Time to time amendments with the addition of newer drug substances and their derivatives need to be done. Quality assurance must be taken into account. Maintenance of drug data of addicts should be maintained and regulated by incorporating various agencies and organizations working in this area. Transparency in the policy needs to be implemented for solving the crime related problems, differentiating the synthetic drugs from natural substances of abuse, bringing awareness and educating the people can eradicate the problem of drug addiction. Rehabilitation centers should coordinate with the central and state government for preventing the substance abuse. (Shweta. S, Kapil K, Gyanendra S.,2017)

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