

REVIEW ARTICLE

Legislation, Society and Substance Use - Impact of NDPS Act, 1985

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INTRODUCTION

Society can be defined as an organization of individuals who lives together and controls the behavior of the constituting members through law and customs.^[1] Drugs and drug trafficking is a social and legal problem. Every civilized society irrespective of caste, creed, culture and the geographical location has been affected by the menace of substance use. During 18th century attempts by Chinese government to resist smuggling of opium into China by European powers resulted in the infamous Opium War.^[2] Drug use and trafficking activities have sharply increased over the years and there has been change in the socio-demographic characteristics and type of substance use.^[2-5]

HISTORICAL BACKGROUND

The geographical location of India makes it vulnerable to massive inflow of the dugs across the border from “Golden Crescent” comprising of Iran, Afghanistan and Pakistan in the west and in the North-Eastern side of the country is the “Golden Triangle” comprising of Burma, Laos and Thailand.^[6]

There were acts which tried to control the illicit trade of the narcotic drugs in India. The principal Central acts were:

1. The opium act 1857
2. The opium act 1878
3. The dangerous act, 1930

Newer drugs had come into use and these laws were not sufficient to cover them.

To Control and regulate the supply of opium and other narcotic drugs, the following International Conventions were entered:-

- i. 1912: International opium Convention
 - ii. 1925: Agreement Re Manufacture, international trade and use of prepared opium
 - iii. 1931: Concentration manufacture and distribution of narcotic drugs
 - iv. 1936: Convention for the suppression of illicit traffic in dangerous drugs
 - v. 1946: Protocol Amending the 1912, 1925, 1931, and 1936 instruments
 - vi. 1948: Protocol extending the 1931 convention to synthetic narcotic drugs
- 1953: Protocol Re cultivation of the opium poppy and production trade and use of opium

UN Convention on Narcotic Drugs

A major convention “the United Nations Single Convention on Narcotic Drugs,” took place in 1961, India is also a party to this and other conventions i.e. Psychotropic Substances, 1971, and the Protocol, 1972 amending the single convention on narcotic drugs.

Under UN single convention, India had to take measures to control drug trade including the traditionally used cannabis and opium.^[6] In order to meet these demands and control the menace of drug use, the Narcotic Drugs and Psychotropic Substances Act of 1985 was passed by Indian Parliament. This act came into affect from 14th November 1985.

THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (NDPS) Act:^[7]

The act consists of six chapters; chapter II and chapter V are further subdivided into II A and V A, which were included after 1989 amendment.

Chapter I

This act is called Narcotic Drugs and Psychotropic substances act, 1985 it extends to all citizens of India

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Definitions: (important definitions under the act)

- a. Addict: Any person who has dependence on any narcotic drug or psychotropic substances
- b. Illicit traffic- cultivation any coca or opium plant, cannabis or in the production and distribution of these drugs
- c. Narcotic drug- coca leaf, cannabis, opium, poppy straw and includes all manufactured goods
- d. Psychotropic substance- any substance, natural or synthetic, or any natural material or any salt or preparation of such substance or material included in the list of psychotropic substances specified in the schedule
- e. Use- any kind of use except personal consumption
- f. Commercial quantity- any quantity greater than quantity specified by the Central Government
- g. Small quantity-any quantity lesser than the quantity specified by the central Government

Table-1: Definition of small and commercial quantities*

S. No	Drug / psychotropic substance	Small quantity	Commercial quantity
1.	Cannabis	100gm	1 kg
2.	Cocaine	2 gm	100 gm
3.	Codeine	10 gm	1 kg
4.	Ganja	1 kg	20 kg
5.	Heroin	5 gm	250 gm
6.	Morphine	5 gm	250 gm
7.	Opium	25 gm	2.5 kg
8.	Opium derivatives	5 gm	250 gm
9.	Poppy straw	1 kg	50 kg
10.	Diazepam	20 gm	500 gm

* These were defined after the 2001 amendments

Chapter II- Authorities and Offences:

As per Sec 4 of the NDPS Act, the central government has to take measures for preventing and combating abuse and illicit traffic of narcotic drugs and

psychotropic substances. As per Sec 5 NDPS Act, the central government shall appoint a narcotic commission to control cultivation of opium for medical purposes. Under sections 4, 5 & 7, both the central and state government are empowered to appoint officers required to enforce the provisions of the act.

Enforcement

A number of agencies, including the department of customs and central excise, the directorate of revenue intelligence, the central bureau of narcotics, the central bureau of investigation and the border security force at the central level and state police and excise departments at the state level. The union ministries of Social Justice and Empowerment and Health cover health care, drug de-addiction, rehabilitation and social reintegration of patients with substance dependence. The Narcotics Control Bureau (NCB) was set up by the central government in 1986, to carry out these activities.

The Narcotics Control Bureau (NCB)

NCB was constituted with its headquarters at New Delhi. The NCB came into effect from 17th March, 1986. It is the apex coordinating agency and also functions as an enforcement agency. The Bureau has to exercise the powers and functions of the Central Government for taking measures to:^[8]

- i. Co-ordination of actions by various offices, state governments and other authorities under the NDPS Act, Customs Act, Drugs and Cosmetics Act.
- ii. Implementation of the obligation in respect of counter measures against illicit traffic under the various international conventions and protocols.
- iii. Assistance to concerned international organizations to facilitate coordination and universal action for prevention and suppression of illicit traffic in these drugs and substances.
- iv. Coordination of actions taken by the other concerned ministries, departments and organizations in respect of matters relating to drug abuse.

National fund (Chapter II A)

After the 1989 amendment national fund for control of drug abuse was set up. The central government is required to constitute the national fund.

The fund shall meet the expenditure incurred to

- 1. Combat illicit traffic and controlling the abuse of drug

2. Identifying, treating, rehabilitating of addicts
3. Prevent drug abuse
4. Educate public against drugs
5. Supplying drugs to addicts where such supply is a medical necessity

Chapter III- Prohibition Control and Regulation Licit Opium Cultivation

The licit opium cultivation is regulated and controlled by the narcotics commissioner of India in terms of the provisions of sections 8 and 9 of the NDPS act.

Chapter IV- Offences and Penalties (Sections 15 To 40)

Sections 15 to 21 deals with punishment of various narcotic drugs while section 22 deals with the punishment for contravention of psychotropic substances (Table-2).

Table-2: Offences and punishments

Offence	Penalty	Sections
Contravention in relation to poppy straw/ prepared opium/ Cultivation of opium Production, manufacture, possession, sale, purchase, transport, import, export or use of drugs	Small quantity- RI upto 6 months or fine upto Rs.10,000 or both; More than small quantity but less than commercial quantity-RI upto 10 years + fine Rs 1 lakh; Commercial quantity- R.I 10 to 20 years + fine Rs.1 to 2 lakhs (court can impose fine > Rs 2 lakh)	Poppy straw- 15 Prepared opium- 17 Cultivation of opium- 18 Cannabis-20 Manufactured drugs or their preparations-21 Psychotropic substances-22
Import, export or transshipment of narcotic drugs and psychotropic substances	Same as above	23
Contravention in relation to cannabis/ cannabis plant without license or coca plants/ coca leaves	Rigorous punishment upto 10 years +fine upto Rs. 1 lakh	Coca-16 Cannabis- 20
Embezzlement of opium by licensed farmer	RI for 10-20 years + fine Rs. 1-2 lakhs (regardless of the quantity)	19
External dealings in NDPS engaging in or controlling trade whereby drugs are obtained from outside India and supplied outside India	R.I. 10 to 20 years + fine of Rs. 1 to 2 lakhs (regardless of the quantity)	24
Knowingly allowing ones premise to be used for committing an offence	Same as for the offence	25
Attempts abetment and criminal conspiracy	Same as for the offence	Attempts-28 Abetment and criminal conspiracy-29
Preparation to commit an offence	Half the punishment for the offence	30
Repeat offence	One and half times the punishment for the offence. Death penalty in selected cases*	31 Death-31A
Consumption of drugs	Cocaine, morphine, heroin- RI upto 1 year or fine upto Rs.20,0000 or both Other drugs- imprisonment upto 6 months or fine upto Rs.10,000 or both Addicts volunteering for treatment enjoy immunity from prosecution	27 Immunity-64A

*Included after 1989 amendment

Chapter V (SECTIONS 41 TO 68)- Procedure

This section deals with the procedures and powers involving search of building/ place/ conveyance, arrest of the individuals/ attachment of illegal crops/ responsibility of the officers under the law.

Chapter VA- Specials Provisions Relating to Forfeiture of Property

This chapter was introduced into the act in May 1989 to provide for the investigation, freezing, seizure and forfeiture of property derived from or acquired through illicit trafficking in narcotic drugs and psychotropic substances.

Chapter VI- Miscellaneous

Immunities in Drug Cases

Addicts charged with consumption of drugs (section 27) or with offences involving small quantities will be immune from prosecution if they volunteer for de-

addiction. This immunity may be withdrawn if the addict does not undergo complete treatment (section 64A).

Minors: An offence committed under any law by persons under the age of 18 will be covered by the Juvenile Persons (care and protection) act. This act seeks to reform such juveniles rather than punish them under the respective acts. It prevails over any other act in respect of persons below the age of 18. Hence, such persons cannot be prosecuted under the NDPS act too.

Establishment of the drug de-addiction centers: The central government has the power to establish centers for identification, treatment, etc of addicts and for supply of narcotic drugs and psychotropic substances under section 71 of the NDPS Act.

AMENDMENTS

The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substance Bill (1989 Amendment)^[7]

The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substance Bill, 1988 was passed to effectively immobilize persons engaged in any kind of illicit traffic in narcotic drugs and psychotropic substances. The following amendments were included-

- a. A National Fund was created under Section IIA (described previously)
- b. Provisions for the forfeiture of property derived from or used in illicit traffic have been described under chapter VA.
- c. Death penalty for repeated offence by a person, in case he is convicted of the commission or attempt to commit or abetment of or criminal conspiracy to commit any of the offences involving commercial quantity of any narcotic drug or psychotropic substance had been included (Section 31).
- d. Special courts were constituted under section 36A.
- e. Amendments were made so that no sentence awarded under the Act should be suspended, remitted or commuted (other than section 27).
- f. Every offence punishable under the act shall be cognizable and non-bailable (Section 37)
- g. Empowering officers authorized under section 42 to order attachment/ destruction of illicit crop
- h. Provisions for destruction of seized narcotic drugs and psychotropic substances (Section 52A)

Commencement of NDPS (Amendment) ACT 2001 (2001 Amendment)^[7]

The following shortcomings were noted in the NDPS Act after the 1989 amendment

- The criminalization of drug use and the increasing rates of arrest for possessing small quantities of drugs
- There were low conviction rates
- There were weak bail laws

- Drug addicts have difficulty in seeking the treatment openly

As a consequence of such criticisms a reassessment of the Act in 2001 resulted in amendments relating to the length of imprisonment and the quantity and type of drug seized

Following amendments were included in 2001 amendment of the Narcotics Drugs and psychotropic substances act, 1985

1. Small and commercial quantities were mentioned (described previously).
2. Small quantity was redefined, which implied that possession of small quantity is for personal consumption.
3. It rationalized the sentence structure (described previously).
4. Bail provisions were made stringent for offenders who indulge in serious offences e.g. cases involving commercial quantities.
5. It made provisions for immunity of individuals convicted for small quantities who volunteer for medical treatment once in their life time.
6. The obligations of U.N conventions against illicit traffic in NDPS specially in respect of the concept of controlled delivery have been incorporated

NDPS ACT AND IMPACT ON SUBSTANCE USE

There has been mention of various psychoactive substances in the ancient Indian literature. *Atharva veda* mentions that cannabis was created by god as a medicinal plant^[9] and to protect against evil spirit.^[10] Devotees use cannabis to increase their concentration for meditation. It is considered to be the preferred decoction to be offered to lord Shiva. Use of cannabis has been sanctioned for use in various festivals like “Holi” and “Shivratri” and for spiritual uplifting.^[11] Opium has been used in India since 9th Century after it was possibly introduced by Arab traders. Opium initially was used by ruling class especially the Mughals. Now, its use had spread beyond the ruling class and socially sanctioned use.^[12] Opium has also been used by peasants to make young infant sleep and

thereafter mothers can go to field for work.^[13] In Islam, use of alcohol has been prohibited, but cannabis and opium has been used by the Muslim community in India.^[14] Similar to cannabis, it has been used for medicinal purposes and in social events.^[6]

The social control theory states that individuals have a tendency to pursue individual pleasures if there is no external control of society or there is an internal control exhibited by the individual himself.^[15] Each society has developed measures to control individual's behavior to adhere to the societal rules and norms.^[16] There were prevalent socio-cultural norms and sanctions regarding the form and mode of use, profile of users and the occasions on which cannabis was used in India, which limited the use of cannabis to specific occasions like "Shivratri." Use beyond these occasions was not approved of. Though opium was not associated with any religious occasions but, similar to cannabis there were social norms and sanctions which controlled its use e.g. used by males only and on occasions like marriages or to greet the relatives.^[6] Moreover, when used in social gathering the amount of drug each individual would consume was limited and this would act as a means to strengthen the social bond.^[17] Imprisonment and/ or fine for those prosecuted for possession of even small quantities for personal use under NDPS Act seems to be impractical in India citing prevalent cultural acceptability of opium and cannabis.^[6,18] An individual's perception and concern about social norms will determine his eventual drug use.^[19] Due to urbanization, exposure to newer drugs through tourism, production of illicit drugs and less risky trade in high potency drugs than traditional drugs, there has been change in the drug use pattern in India, with increase in the use of synthetic opioids and injectable drugs.^[2-6,20] There was a system to provide opium through legal outlets which vanished after the implementation of the NDPS Act, this has also contributed to increase in the use of the newer drug of use.^[6,21] Research has suggested that cultural norms in India have been far more effective means of drug control, and have fewer negative side effects than legislative measures.^[22]

There is some evidence to suggest that legislation has not been able to control the level of drug use. In

countries like Netherlands where at coffee shops people can smoke cannabis, and legalization of cannabis has not resulted in increase in the use of other drugs like heroin. The rate of cannabis use in past month in high school students in Netherlands is 5.4% as compared to 29% in United States.^[23,24] It is human nature to use mood altering drugs. When one drug is banned, a newer one is discovered. Such legislations have not controlled the problem but have shifted it from one to another.^[25] Better control on source, distribution and advertising of drugs than criminalization of the drugs is required to control the menace of drug use.^[26] Experiments in Netherlands have shown that some degree of decriminalization has helped in managing the drug menace while the prohibitionist policies have not yielded the desired results.^[24] Moreover, cannabis and opioids appears to be less harmful than other drugs like tobacco and alcohol,^[25,26] and these drugs are excluded from the preview of the NDPS Act. Because of the technical and the legal difficulties in obtaining opioid analgesics, pharmacies and hospitals tried not to keep opioid analgesics. This resulted in decrease in use of morphine by 97%, from 716 kg in 1985 to 18 kg in 1997.^[27] Addiction is not just a law and order problem. It involves intense craving for the substance and desire to obtain the substance even if it involves indulgence in the criminal activities. There is considerable degree of social stigma attached to the use of drugs this makes many patients not to seek treatment for substance use. The department of Social Welfare has been declared as the nodal agency in several state governments in India to co-ordinate all the measures and activities being undertaken by various Governmental and non-governmental agencies to prevent drug abuse and rehabilitate patients. Apart from its legal role in control of the drug traffic, NDPS Act made recommendations for the identification, treatment and rehabilitation of the persons dependent on the drugs.^[28,29] Ministry of Health funded various governmental organizations while non-governmental organizations were provided aid by Ministry of Social Justice and Empowerment. In 1988, government established treatment centers in 5 central institutes and 2 centers in state capitals. There were 34 government de-addiction centers by 1994. By 2003, 369 de-

addiction and 90 counseling centers across the country were provided financial aid by Ministry of Social Justice and Empowerment.^[29] There is some provision for drug de-addiction centers under NDPS, but the number of such centers is limited and the grant provided to these centers is inadequate.^[21] Also, among the centers being funded by the Ministry of Health and Family welfare only three centers have been notified.^[21] Under the NDPS Act patients can take treatment once in their lifetime if they are caught with small quantity of the substance. This respite for treatment only once in lifetime is complete disregard to the natural history of patients with substance use who have history of multiple lapses and relapses.^[21]

Despite its innumerable limitations NDPS Act has been an important milestone for the control of trade and use of illicit drugs. Between the year 1996 to 2006, 21,895 kg of opium, 10,147 kg of heroin, 8, 55,667 kg of ganja and 48,278 kg of hashish have been seized under the NDPS Act by various enforcement agencies. In cases involving these illicit traffic, a total of 1, 42,337 persons were involved including these foreigners. Out of which 38,030 persons were convicted for various offences while 44,656 persons were acquitted. The rate of acquittal has varied from 27.7% to 59.1% annually during this period.^[2]

CONCLUSION:

A variety of drugs have been used in India since centuries and the use was under the control because of various socio-cultural factors. In the last century, because of change in social factors there had been an increase in the substance use. Numerous legislations including NDPS, have attempted to control drug use. Attempts should be made to understand the sociocultural factors which plays crucial role in type and pattern of substance use and the degree of harm the drug in question causes. Other measures for control of substance use, e.g., education about harmful consequences, good coping skills, curbs on the advertisements of the drugs should be emphasized upon. Measures for treatment and rehabilitation of the patient with substance use should take into consideration the social factors leading to the substance use.

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