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Evaluating the Effectiveness of Legal Measures in Combatting Drug Trafficking under the NDPS Act

Yuv Sharma^a

^aHILSR, School of Law, Jamia Hamdard University, New Delhi, India

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The Indian government's legislative reaction to the rising problem of drug trafficking and substance misuse is included in the Narcotic Drugs and Psychotropic Substances (NDPS) Act of 1985. The purpose of this abstract is to assess how well the legislative actions outlined in the NDPS Act work to stop drug trafficking. To evaluate the effect of the NDPS Act on the dynamics of drug trafficking in India, the research conducts a thorough examination of pertinent literature, legislative provisions, and empirical data. A strong legal framework for regulating the manufacture, distribution, and misuse of narcotic narcotics and psychotropic substances is offered under the NDPS Act. It lays up strict guidelines for drug trafficking-related offenses, enforcing harsh punishments and setting up procedures for both enforcement and prosecution. However, several elements must come into play for these legal measures to be successful. Drug traffickers use worldwide networks and permeable borders to avoid discovery and punishment, making their transnational character a major barrier to police operations. Furthermore, there are worries about how the focus on punitive measures—like mandatory minimum sentences—may affect marginalized populations and low-level offenders. In conclusion, even if the NDPS Act offers a solid framework for drug control, its efficacy depends on resolving several issues and using tactics that are supported by research to successfully fight drug trafficking. To improve the efficiency of legal measures in the fight against drug trafficking under the NDPS Act, future research should concentrate on identifying best practices, assessing the effects of various approaches, and influencing policy choices.

Keywords: *cocaine, heroin, drug abuse, drug trafficking, rehabilitation, narcotics, psychotropic substances.*

INTRODUCTION

The Narcotic Drug and Psychotropic Substance passed in the year 1985 is a combined legislation of 6 chapters and 83 sections that objectify to establish regulation and control of narcotic drugs and psychotropic substances throughout India. Per the act,¹ a narcotic drug² denotes coca leaf, hemp also called cannabis, poppy straw, opium, or other manufactured drugs. Drugs can be classified into four chief brackets. Firstly, Narcotics include the substances such as Opium, Heroin, and Morphine. Secondly, depressants include Barbiturates and tranquilizers. Thirdly, stimulants are the drugs that contain Amphetamine and Cocaine, and lastly, the dizziness-causing drugs known as hallucinogens include Lysergic Acid Diethylamide (LSD), Mescaline, charas, or Ganja. A psychotropic substance³ is connoted as any substance synthetic or natural in nature or any salt or any material natural or synthetic or preparation of psychotropic substances enlisted in the schedule of the act. Stringent legislations are imposed over the manufacture, production, possession, purchase, sale, import, consumption, transport, export, cultivation, or use of psychotropic substances. Pertinent to note the primary objective of the act is to control the illicit trafficking and related activities of drugs and other related substances that includes the distribution and production of the drugs as well as the financing of narcotic drugs and psychotropic substances. The act lines up to safeguard public health and safety by synchronizing the achievable accessibility of narcotic drugs and psychotropic substances, guaranteeing that such substances are only used for the pretext of medical or scientific purposes but not for illicit use. The deterrence in the public is a true example of less committal of such offenses as the act in itself imposes strict penalties and stringent punishments *per se* to deter the youth and the other public at large from engaging in such activities⁴ mentioned in the act. The act also aims to let habitual offenders seek relief by the true means of rehabilitation from the abuse of drugs and

¹ Narcotic Drugs and Psychotropic Substances Act 1985

² Narcotic Drugs and Psychotropic Substances Act 1985, s 2

³ Narcotic Drugs and Psychotropic Substances Act 1985, s 2(xxiii)

⁴ Narcotic Drugs and Psychotropic Substances Act 1985, s 8

addiction in youth by advancing the establishment of de-addiction centers, and free counseling services to the public. The rights of the accused person are also ensured by the act that follows the principles of natural justice and the opportunity of fair trial. Drug trafficking in parallel to addiction boosts drug-related crimes, as potently it is associated with divergent forms of criminal activities that include honor killings, violence, assault, and corruption. Dismantling the drug cartel networks through stringent laws. Mitigation of the crimes related to the drugs can be ensured by the law enforcement agencies. Trafficking impacts vulnerable populations mainly the youth, the marginalized communities, and those individuals going through trauma and mental depression that leads to addiction and exposure to drugs are related substances. Safeguarding the vulnerable population remains the avid duty of the government from the exploitation, victimization, and harm associated with narcotic substances. Through the promotion of an atmosphere of fear, instability, and social disintegration, drug trafficking jeopardizes the well-being of communities. Disrupting drug trafficking operations can help communities feel safer and more cohesive, which improves public health and quality of life in general. The modus operandi of consumption of drugs contains the sharing of syringes that can lead to chronic diseases that can amount to death such as HIV/AIDS and hepatitis. The act aims to curb such diseases and secure public community health.

THE EVOLUTIONARY HISTORY OF DRUGS AND THE NEED FOR SPECIALIZED LEGISLATION LIKE THE NDPS ACT

The factors determining the evolution of such substances are the drastic change in the global drug markets, the misuse of advancement of technology, geopolitical dynamics, and socioeconomic factors. Per the pre-independence phase of India before 1947 the scope of drugs were limited sense comparative to contemporary times as there was a lack of technology to derivate manufactured drugs and the practice of production of drugs revolved around the spheres of traditional substances i.e. cannabis and opium. The lucrative trade of the British East India Company played a crucial role in the opium trade as the opium produced in India was exported to China. During the colonial period, the procedure of licensing of opium manufacture was duly followed and the production and cultivation were strictly regulated by the British. The

prevalence of the growth of cannabis is traced in the regions of the Gangetic plains and the Himalayan foothills. Anciently, the population for religious and medicinal beliefs utilized cannabis. Profit maximization received from the export to China caused disruptions in the use of such drugs and posed a threat to public health and moral order. The post-independence evolution is bracketed into two parts:

- **The Emergence of Heroin Trafficking in India during the 1970's -1980's**

The region of Myanmar, Laos, and Thailand is known as the Golden Triangle region which saw an elevation during the 1970s to 1980 and behindhand the region of Afghanistan, Iran, and Pakistan that is prominently known as the Golden Crescent region saw a surge in heroin production. The porous land borders are responsible for the smuggling of heroin in India as this drug transited from the Golden Triangle and Golden Crescent region to the global markets illegally. Various drug syndicates giving a staggering rise in organised crime backed the trafficking. Pertinently the law enforcement mechanisms were not technically updated to curb the total regulation of illegal trafficking.

- **Expansion of the Networks of Drug Trafficking throughout Indian During the 1990s**

The period of the 1990s is prominently known for the revolutionary liberalization and economic reform policies in India that hiked trade and boosted connectivity with other nations worldwide. As an outcome of such policies rise in illicit drug trafficking occurred during the movement of the concealed substances in the goods. Increased trade practices brought more interest in substances in India as the market overflowed with distinct traditional as well synthesized drugs like Cocaine, ecstasy popularly known as MDMA, and methamphetamine. Synthetic drugs proved to be the never-ending addictive substances amongst the urban youth. Significantly, the organised crime and syndicate expanded leading to new transport routes and quality of varieties.

THE CORE PROVISIONS OF NDPS ACT, 1985

The Indian judicial system is themed on the tenets of natural justice granting the right of Prima Facie to the accused but in the pragmatic practice an accused in the offenses of the NDPS act is seen as a guilty person and the burden of proof lies on the accused to establish the non-participation in any restricted practice of drugs and psychotropic substances. The hierarchical categorisation of the NDPS Act is classified into three schedules that are in complete reliance on the potential for abuse and dependence. The very first schedule includes formidable and dangerous substances known as cocaine (also called crack) or heroin (also known as smack, brown sugar, or Diacetylmorphine). The second schedule consists of substances that are less harmful in gravity such as codeine and morphine. The third schedule contains preparations containing small quantities of narcotic drugs and psychotropic substances.

The procedure to issue authorization and warrant⁵ remains intact in the hands of the Metropolitan Magistrate or Metropolitan Magistrate first Class or second class who are empowered by the respective state government to issue the arresting warrant against any person whom the designated person mentioned above has a reason to believe that the person has committed an offense related to narcotics and psychotropic substance or the concerned duty MM can order for the search on the grounds of suspicion on a person carrying any illicit substance during the day or the night. The sub-clause (2)⁶ permits the officers of the gazetted rank of the various departments inclusive of Narcotics, Customs, Directorate of Revenue Intelligence, Excise, or paramilitary forces who have a suspect or secret information that too to be induced in writing to conduct search and seizure of any narcotic or illicit substances per the NDPS act and the officer must be above the rank of constable, sepoy or peon. In the landmark case⁷ the Hon'ble Justice S.R. Pandian of the Supreme court held that, *“Under Section 41 certain classes of Magistrates are competent to issue warrants for the arrest of any person whom they have reason to believe to have committed any offence punishable under Chapter IV or for search of any building, conveyance or place in which they have reason to believe that any narcotic drug or psychotropic substance*

⁵ Narcotic Drugs and Psychotropic Substances Act 1985, s 41

⁶ Narcotic Drugs and Psychotropic Substances Act 1985, s 41(2)

⁷ *State of Punjab v Balbir Singh* (1994) SCC (3) 299

in respect of which an offence punishable under Chapter IV has been committed, is kept or concealed.” In another case⁸ Justice R.D. Gattani of Rajasthan High court held that- “a police head constable and a station house officer were not empowered to carry out investigation and it was contended that the whole investigation was illegal and consequently the trial was vitiated.” The Rajasthan High Court held that “for launching the prosecution or for initiating the proceedings under the Act, the authority doing so must have a clear and unambiguous power.”⁹ Similarly, the Punjab and Haryana High Court in a case observed that - “only officers empowered under the Act can take steps regarding entry, search, seizure and arrest and that the relevant provisions of the Act are mandatory.”¹⁰

Per the consecutive provision¹¹, there is the power conferred to the gazetted officers to search, seize, or arrest without warrant authorization but the distinct factor in both the sections is the former section authorizes the warrant by the metropolitan magistrate but in the absence of such warrants, and suspicion of any drug transit or trade the gazetted officers of the rank superior of sepoy, peon or constable can search in any building or conveyance but the information received by the officer of the authority empowered by the state or central government must be mandatorily be induced in writing and in case of arrest or seizure or search he may send the copy of grounds of his belief under which circumstances he has committed such act to the immediate superior officer in his department within 72 hours.

The Supreme Court in the landmark case threw light over the provision where Justice P. Sathasivam held - “as it stood prior to amendment such empowered officer who takes down any information in writing or records the grounds under proviso to Section 42(1) should forthwith send a copy thereof to his immediate official superior. If there is total non-compliance of this provision the same would adversely affect the prosecution case and to that extent it is mandatory. But if there is a delay whether it was undue or whether the same has been explained or not, will be a question of fact in each case, it is to be concluded that the mandatory enforcement of the provisions of Section 42 of the Act non-compliance of which may vitiate a trial has been restricted only to the provision of sending a copy of the

⁸ *Nand v State of Rajasthan* 1973 AIR RAJ 103

⁹ *Ibid*

¹⁰ *Bhajan Singh v State of Haryana* (1991) CriLJ 1311

¹¹ Narcotic Drugs and Psychotropic Substances Act 1985, s 42

information written down by the empowered officer to immediate official superior and not to any other condition of the Section.”¹² In another case of the Supreme Court it was argued by the learned senior counsel for the state that- “under Section 42(1) of the NDPS Act, there is no restriction on the Central Government or the State Government to empower only a gazetted officer and, therefore, additional checks and balances over officers acting under Section 42 have been provided in the proviso to Section 42(1) and in Section 42(2) of the NDPS Act. It was, thus, contended that the language of Section 42 of the NDPS Act makes it clear that the provision applies only to an officer empowered under Section 42(1) and not an empowered Gazetted Officer under Section 41(2) of the NDPS Act. In support of the submission that a distinction between a Gazetted Officer and an officer acting under Section 42 of the NDPS Act has to be maintained.”¹³

The pivotal role in the investigation of drug-related offenses involves absolute compliance with the provision of Section 50¹⁴ of the act whose abrogation is not tolerable in the eyes of the law. Per the provision, the accused person is delegated with the right to know about detaining rights where he must be given a notice in his vernacular about the raiding party and the information by which he is intercepted. The person in apprehension has a right to be searched before the gazetted officer or nearest magistrate but the dependence of the right remains upon the accused. Also, in the provision enshrined, there is a clause pertaining that no female should be searched by anyone except a female. It is a matter of situation if the accused wishes to get searched before the gazetted officer or magistrate then the officer can proceed with the search as per the provisions of Section 100¹⁵ of the Cr.PC and it is mandatory for the officer to record the reasons that led him to search in such a way and send a copy of it within the next seventy-two hours to the superior officer.

The Supreme Court in a landmark case held- *“that in the context in which the right had been conferred, it must naturally be presumed that it is imperative on the part of the officer to inform the person to be searched of his right that if he so requires, he shall be searched before a Gazetted Officer or Magistrate*

¹² *Karnail Singh v State of Haryana* Crim App No 36/2003

¹³ *Vijaysinh Chandubha Jadeja v State of Gujarat* (2011) 1 SCC 609

¹⁴ Narcotic Drugs and Psychotropic Substances Act 1985, s 50

¹⁵ Code of Criminal Procedure 1973, s 100

and on such request being made by him, to be taken before the Gazetted Officer or Magistrate for further proceedings. The reasoning given in Singh's case was that to afford an opportunity to the person to be searched if he so requires to be searched before a Gazetted Officer or a Magistrate he must be made aware of that right and that could be done only by the empowered officer by informing him of the existence of that right. The Court went on to hold that failure to inform the person to be searched of that right and if he so requires, failure to take him to the Gazetted Officer or the Magistrate, would mean non-compliance with the provisions of Section 50 which in turn would affect the prosecution case and vitiate the Trial.”¹⁶ In the same case regarding Section 100 was held- “provisions of Sections 100 and 165 Cr.P.C. are not inconsistent with the provisions of the NDPS Act and are applicable for affecting search, seizure or arrest under the NDPS Act also. However, when an empowered officer carrying on the investigation including search, seizure or arrest under the provisions of the Code of Criminal Procedure, comes across a person being in possession of narcotic drugs or psychotropic substances, then he must follow from that stage onwards the provisions of the NDPS Act and continue the investigation as provided thereunder.”¹⁷

In the recent scenario, the Supreme Court has made it mandatory to follow Section 57¹⁸ of the act to file a report of the items of search and seizure of the arrest within forty-two hours to an immediate senior official. There must be strict compliance with the abovementioned sections as the derogation of such necessary provision vitiates the case and grants the accused a benefit that leads to his acquittal or bail in the case.

THE PROCEDURE OF RAIDS ON SECRET INFORMATION

In practical appliance whenever an officer is being passed with secret information or any officer empowered by the state or central government then the information of the said suspected movement or conscious possession of NDPS substances is to be induced into writing by the officer and then the officer has to convey the same to his immediate superior who upon satisfying himself may induce the same in writing and appoint an officer per Section 42 to lead the operation to raid. The raiding team would constitute and proper daily dairy entries are to

¹⁶ *State of Punjab v Baldev Singh* (1999) 6 SCC 172

¹⁷ *Ibid*

¹⁸ Narcotic Drugs and Psychotropic Substances Act 1985, s 57

be registered by the officials of the raiding party. It's a common practice that the informant remains with the raiding party and helps in identifying the accused. It is matter-of-fact passersby are asked to join the investigation to keep the transparency of the raid and also if the accused are apprehended then the contraband seized must be checked through the field-testing kit that indicates the type of drug seized. The information of the secret informer is never revealed during the investigation as well as the trial per the Evidence Act¹⁹. The proper arrest and seizure memo of goods is to be prepared by the investigating agency and the accused may be detained.

HOW STRINGENT PUNISHMENTS ARE IMPOSED?

Per Section 22²⁰ of the act if any person throughout the territory of India without a license engaging any sort of possession, manufacture, sale, import, export, or purchase of psychotropic substances then the punishment is decided on the amount and type of illicit substance the accused is charged off. If the quantity of the illicit substances were small, then the accused would be punished with rigorous imprisonment for a term that may extend to a year or with a fine of up to ten thousand rupees or both. On the other hand, when the contravention involves an intermediate quantity that is described as a quantity more than the smaller quantity but less than the commercial quantity of the illicit substance then the accused may be punished with rigorous imprisonment of up to ten years and with a fine up to one lakh. When the contravention involves the commercial quantity of the substance then the hardest punishment i.e. rigorous imprisonment which may extend from 10 years to twenty years shall also be liable for a fine up to two lakh rupees.

ADHERENCE TO INTERNATIONAL COOPERATION AND INSTRUMENTS REGARDING NDPS

As per the provisions of Article 51²¹ and Article 253²², the legislation is obligated to formulate laws regarding the convention to which the state is a signatory. India has engaged in bilateral

¹⁹ Indian Evidence Act 1872, s 125

²⁰ Narcotic Drugs and Psychotropic Substances Act 1985, s 2

²¹ Constitution of India, 1950, Art 51

²² Constitution of India, 1950, Art 253

agreements with many nations to augment collaboration in the fight against drug trafficking and associated offenses. These agreements frequently contain clauses about information sharing, reciprocal legal support, cooperative investigations, and suspect extradition. India is a signatory to several multilateral agreements and treaties that attempt to address drug usage and trafficking on a global scale. These include the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988²³, the Convention on Psychotropic Substances, 1971²⁴, and the Single Convention on Narcotic Drugs, 1961²⁵. The terms of these international instruments are in line with the NDPS Act. To strengthen capacity-building, technical support, and information-sharing initiatives connected to drug control, India works with international organizations like the International Narcotics Control Board (INCB) and the United Nations Office on Drugs and Crime (UNODC). These organizations help to fortify India's drug control infrastructure and support the NDPS Act's implementation. India engages in cooperative task groups and operations alongside other nations to tackle the transnational drug trade. Coordinated operations, intelligence sharing, and interagency collaboration are all part of these collaborative attempts to take down organized criminal syndicates and destroy drug trafficking networks. Effective drug control requires cross-border collaboration because of India's position and its porous borders with neighboring nations. India collaborates extensively with its neighbors to combat drug trafficking and smuggling operations across common borders, including Bangladesh, Bhutan, Nepal, Myanmar, and Sri Lanka. Enhancing border security and interdiction activities frequently involves the use of joint border patrols, intelligence-sharing platforms, and capacity-building projects.

REHABILITATION SCHEMES BY THE NDPS ACT

The Narcotic Drugs and Psychotropic Substances (NDPS) Act is used in India to execute several rehabilitation plans and programs aimed at treating drug misuse and addiction as well as offering assistance and therapy to those who are impacted by substance usage. *Nasha Mukta Bharat Abhiyan* is a comprehensive nationwide program that was initiated by the Ministry of

²³ United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988

²⁴ Convention on Psychotropic Substances 1971

²⁵ Single Convention on Narcotic Drugs 1961

Social Justice and Empowerment to combat drug misuse and addiction throughout the nation. The campaign's main objectives are to prevent drug usage in people and to provide treatment, rehabilitation, and aftercare programs. The government has set up Drug Addiction and Rehabilitation Centres (DDRCs) in several states and union territories under the NDPS Act to offer treatment and rehabilitation services to those who are abusing substances. These facilities assist people in overcoming addiction and reintegrating into society by providing counseling, medical care, detoxification, job training, and aftercare assistance. As part of its larger mission to promote mental health and well-being, the Ministry of Health and Family Welfare administers the National Mental Health Programme (NMHP)²⁶, which includes measures for managing drug misuse and addiction. The program backs community-based activities for drug misuse prevention and treatment, the creation of de-addiction centers, and the education of mental health professionals. Ayushman Bharat, commonly known as the Pradhan Mantri Jan Arogya Yojana (PMJAY)²⁷, is a government-sponsored health insurance program that offers financial security to disadvantaged groups, such as those pursuing addiction and drug misuse treatment. At hospitals and treatment facilities that have collaborated with PMJAY, qualified beneficiaries can get free or reduced-cost care.

CONCLUSION

When assessing how well the Narcotic Drugs and Psychotropic Substances (NDPS) Act works as a legal tool to combat drug trafficking, it is clear that there are still issues and room for improvement, even though the legislation offers a strong framework for tackling the problem. One of the main tools used by India to combat the manufacturing, distribution, and misuse of narcotic narcotics and psychotropic substances is the NDPS Act, which was passed in 1985. It creates channels for enforcement and prosecution, lays forth heavy consequences for infractions, and sets tough measures for offenses relating to drug trafficking. Even with the strict restrictions of the NDPS Act, there are still several obstacles and variables that can affect how successful

²⁶ 'National Mental Health Programme' (*Ministry of Health & Family Affairs*)

<<https://main.mohfw.gov.in/?q=Major-Programmes/non-communicable-diseases-injury-trauma/National-Mental-Health-Programme-NMHP>> accessed 07 February 2024

²⁷ 'About Pradhan Mantri Jan Arogya Yojana (PM-JAY)' (*National Health Authority*) <<https://nha.gov.in/PM-JAY>> accessed 07 February 2024

legal actions are in stopping drug trafficking. First, major barriers to policing arise from the international character of drug trafficking. To avoid being discovered and prosecuted, traffickers frequently make use of transnational networks, permeable borders, and highly skilled smuggling methods. Improved coordination and collaboration with surrounding nations, international organizations, and law enforcement agencies are necessary to combat cross-border trafficking. Furthermore, the NDPS Act's focus on punitive measures—like mandatory minimum sentences—raises questions about how it would affect marginalized populations, those with drug use problems, and low-level offenders. The need for a more well-rounded strategy that combines enforcement actions with treatment, harm reduction, and prevention is becoming increasingly apparent. To address the underlying causes of drug dependence and lower the demand for illicit substances, funding for preventive initiatives, community-based interventions, and rehabilitation services is crucial. Furthermore, a comprehensive strategy that combines drug control measures with larger development initiatives is needed to address the socioeconomic factors—such as poverty, unemployment, and social inequality—that underlie drug trafficking. Enhancing economic prospects, expanding access to healthcare and education, and tackling social inequalities can all contribute to lessening the risk of drug trafficking and supporting long-term fixes for the issue.

In summary, even though the NDPS Act offers a strong legal foundation for preventing drug trafficking, its efficacy relies on resolving several issues and taking a comprehensive strategy that integrates enforcement, treatment, preventive, and socioeconomic development initiatives. To successfully combat drug trafficking and accomplish the goals of the NDPS Act in improving public health, safety, and well-being, it is imperative to prioritize evidence-based methods, strengthen international collaboration, and enhance institutional capacity.