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Rethinking the NDPS Act through Kerala's lived Experience

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This paper examines whether the Narcotic Drugs and Psychotropic Substances (NDPS) Act of 1985¹ is effective in dealing with the rising drug menace in Kerala. While Kerala has high conviction rates under the NDPS Act, the growing number of youths involved with synthetic drugs indicates that the deterrent-oriented prohibitionist approach of the NDPS Act is largely ineffective. This paper identifies key issues accepted as practice relating to the NDPS Act, including difficulties with structural implementation, inflexible bail provisions, over-reach in custodial contexts, under-application of Section 64A, and failure to protect juvenile offenders. By emphasising a rights-based therapeutic jurisprudence model, this paper outlines a case for reforming such punitive policies to instead promote restorative ways, promote as a priority poorly protected populations, and thereby provide more effective long-term strategies for combating drug and for preventing misuse. In the end, it articulates a call for a redefined and responsive justice system for a shifting drug-related context in Kerala.

Keywords: *ndps, drugs, narcotics, rehabilitation.*

INTRODUCTION

Kerala, a state often celebrated for its progressive social indicators, high literacy, robust healthcare, and expansive educational infrastructure, is currently battling an insidious and escalating crisis: narcotic drug abuse. Recent data from the Kerala Excise Department

¹ Narcotic Drugs and Psychotropic Substances Act 1985

indicates a disturbing trend, as 70% of surveyed users noted the onset of use at 10-15 years old, and the rapid rise in the use of drugs like LSD and MDMA indicates that they are now commonly used by adolescents.² According to data submitted by the Ministry of Home Affairs to Parliament, Kerala had the highest number of NDPS-related arrests in the country in 2022, 2023, and 2024, highlighting the size of the crisis and the severity of the enforcement. Geographically and demographically, Kerala provides a uniquely susceptible environment. The state's extensive coastline allows for ocean-based smuggling, its urban and educational centres facilitate youth exposure, and the depth of digital penetration allows exposure to online drug markets via encrypted platforms. Despite heavy policing, the drug problem has metastasised, and it is indicative that law enforcement is ineffective in treating the deeper, structural crises.

From a legal standpoint, this crisis lies at the nexus of criminal law, public health, and constitutional rights. The NDPS Act, 1985, conceptualises a punitive and non-negotiable framework for drug control; however, in practice, Kerala's use of enforcement has revealed doctrinal rigidity and procedural anomalies, and a concerning disregard for the rehabilitative principles entailed in the structure of the law. This article puts forward that while the NDPS Act is a rigid legal framework for addressing issues of drug-related crime, its applications in Kerala underscore pervasive enforcement challenges, procedural overreach, and a lack of a rehabilitative agenda, compelling urgent legal reform.

LEGAL FRAMEWORK GOVERNING NARCOTIC CONTROL IN INDIA

The Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) is the major regime of laws in India related to narcotics. The NDPS was enacted to amalgamate the narcotic legislations and amend the law to bring into force India's international convention and treaty obligations. The NDPS is a highly punitive law criminalising and prohibiting the production, manufacture, possession, sale, purchase, transport, and consumption of narcotic drugs and psychotropic substances covered in Sections 8³ and 20 to 27 of the NDPS.⁴ Sections, such as 36A (special courts and extended detention)⁵ and 37 (non-bailable offences and reverse burden of proof), enact a strict liability environment where the enforcement of control is

² Kerala Excise, *Survey Report 2020-2021* (2023)

³ Narcotic Drugs and Psychotropic Substances Act 1985, s 8

⁴ Narcotic Drugs and Psychotropic Substances Act 1985

⁵ Narcotic Drugs and Psychotropic Substances Act 1985, s 36A

prioritised over constitutional protection. The constitutionality of the NDPS lies in Article 47 of the Indian Constitution, which imposes a directive duty on the State under the Directive Principles to ban intoxicating substances.⁶ The state's public health requirement under Article 47 often conflicts with the fundamental right to life and personal liberty in Article 21.⁷ Courts in India have reiterated on multiple instances that Article 21 includes life, and not just survival, but dignity, due process, and the right to a free and fair trial, which are imperviously impacted by the NDPS terse procedures.

The dual strategy outlined in the National Policy on Narcotic Drugs and Psychotropic Substances, to treat supply reduction through enforcement and demand reduction through treatment, rehabilitation, and social reintegration, has not been mirrored by its implementation.⁸ The stark reality today is of an almost ubiquitous focus on punitive enforcement, instead of ensuring commensurate investment in the public health infrastructure or therapeutic jurisprudence. This misalignment is accentuated in the enforcement landscape in Kerala. India's international commitments contribute to its drug law regime. As a party to the Single Convention on Narcotic Drugs, 1961, the Convention on Psychotropic Substances, 1971, and the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, India has obligations towards criminalising drug trafficking as well as balancing human rights obligations. Despite this being the ambition of the drug law regime, as demonstrated in Kerala, over-criminalisation and indiscriminate incarceration have, unfortunately, become enshrined in the drug law regime, subverting the very equilibrium these treaties intended to create.

Critics have long pointed out that the NDPS Act fails to distinguish adequately between traffickers and users, thereby conflating criminal intent with medical dependency. In **Tofan Singh v State of Tamil Nadu (2020)**⁹, the Court held that confessions made to officers under the Act are inadmissible, reasserting procedural due process. Despite these judicial interventions, the Act's operational reality remains rigid. As Kerala demonstrates, a law

⁶ Constitution of India 1950, art 47

⁷ Constitution of India 1950, art 21

⁸ 'NATIONAL POLICY ON NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES' (*Narcotics India*, 02 June 2012) <https://narcoticsindia.nic.in/Notifications/National_Policy_on_NDPS_published.pdf> accessed 01 July 2025

⁹ *Tofan Singh v State of Tamil Nadu* (2021) 4 SCC 1

designed to deter has often ended up ensnaring vulnerable individuals in procedural labyrinths, without treatment, without reform, and often, without justice.

THE ENFORCEMENT LANDSCAPE IN KERALA

Kerala's struggle against drugs is not monolithic, for that state law enforcement consists of Kerala Police, the Excise Department, the Narcotics Control Bureau (NCB), and numerous anti-narcotics task forces at the district level. While these entities are empowered under Sections 9¹⁰ and 10¹¹ of the Narcotic Drugs and Psychotropic Substances Act (NDPS) and have unique jurisdictions, often the duplicity in functions raises operational ambiguities and turf battles. This fragmented enforcement approach diminishes drug control effectiveness and impedes the development of an overarching statewide approach and strategy. The Kerala Police enforce and investigate criminal activity or obtain intelligence about criminal activity. The Excise Department can detect, arrest, seize, and prosecute under the NDPS Act. The NCB is a central agency with jurisdiction over interstate and international drug trafficking. However, the relationships between these agencies are not optimal, stemming from bureaucratic delays, inconsistent data and information flow, and the lack of a state-level centralised narcotics intelligence centre.

The expanding digital drug economy is one of the most notable contemporary challenges. Increasingly more purchases and sales of narcotic drugs take place on the dark web and social media, or within private encrypted channels like the messaging apps Telegram and Signal. Our law enforcement agencies are slow to adapt to these modern and technological forms of narcotic drug economic activity, as they continue to focus on their traditional surveillance and search-and-seizure activity. There is a shortage of trained cyber-narcotics personnel, limited digital forensics capabilities, and a lack of clarity over jurisdictions. States and law enforcement agencies have limited options and discretion to impede the digital drug economy, and unfortunately, incidents of headline-grabbing narcotics activity in Kerala suggest that higher-level narcotic crime produces a relatable problem, instead. The Excise Department in Kochi seized MDMA, LSD, and synthetic cannabis, and arrested students from various universities. Reflected in the 2023 Excise Department Annual Report, the exciting news was that more than 4,000 narcotics-related cases were registered in and around

¹⁰ Narcotic Drugs and Psychotropic Substances Act 1985, s 9

¹¹ Narcotic Drugs and Psychotropic Substances Act 1985, s 10

educational institutions, a development that suggests how entrenched drugs are as part of a university student's lived experience.

Despite a high conviction rate, there are many systemic inefficiencies. Investigations are often slow to open because of a lack of personnel, a lack of forensic labs, and a lack of long-term deterrent or enforcement measures. The growing presence of synthetic drug manufacturing 'labs' operating from rented apartments, as well as the creation of teenage 'cook' networks, points to an unmistakable shift from a singular reactive enforcement to a collaborative, intelligence-led intervention approach. An interdepartmental collegial response, with a substantial technology upgrade, is needed to begin to respond to the shifting landscape of drug problems in Kerala.

OFFENCES, PUNISHMENTS & PROCEDURAL COMPLEXITY

The punitive structure of the NDPS Act follows a quantity-based classification system outlined in Section 2.¹² The offences can be categorised as small quantity, intermediate quantity, and commercial quantity. In theory, the categorisation system is intended to reasonably classify the severity of the offence, but in practice, it usually results in poor outcomes. For example, the possession of a small quantity of LSD, say 1 gram, would carry a sentence of up to six months, whereas the possession of a 'commercial quantity' (20 grams or more of LSD) would carry a minimum sentence of ten years and a maximum of twenty. The sentencing structure is restrictive on the exercise of judicial discretion, even if there are compelling mitigating factors. As a result, users and petty carriers, usually addicts who are selling to support their addiction, are treated with the same severity as large-scale traffickers.

Procedural complexities also hinder the system. Section 37 renders most of the NDPS offences non-bailable and places a reverse burden of proof on the accused.¹³ The accused is required to satisfy the court not only that they did not commit the offence, but also that they are not likely to commit an offence while on bail. This evidentiary burden is nearly impossible to fulfil at the preliminary stage of the proceedings. The judiciary has also attempted to alleviate the law's harshness. In **State of Punjab v Baldev Singh (1999)**¹⁴, the Court again emphasised the statutory requirement of informing an accused of their right to

¹² Narcotic Drugs and Psychotropic Substances Act 1985, s 2

¹³ Narcotic Drugs and Psychotropic Substances Act 1985, s 37

¹⁴ *State of Punjab v Baldev Singh* (1999) 6 SCC 172

search before a gazetted officer or magistrate, as required by Section 50.¹⁵ The Supreme Court held in *E. Micheal Raj* (2008) that in determining whether a seized substance is a 'small' or 'commercial' quantity under the NDPS Act, only consideration should be given to the actual content of the narcotic drug, not the total weight of the mixture, including neutral substances. This position was overturned by a larger bench in ***Hira Singh v Union of India* (2020)**¹⁶, which held that the entire weight, including neutral substances, of the mixture needs to be taken into account when determining quantity under the NDPS Act. Therefore, the Micheal Raj principle is no longer 'good law' and does not apply at this time.

A pivotal moment arose in ***Tofan Singh v State of Tamil Nadu* (2020)**¹⁷ when the Court held that officers authorised under Section 53¹⁸ of the NDPS Act qualify as 'police officers' for the competent police authorities under Section 25 of the Indian Evidence Act.¹⁹ As a result, confessions made to police officers or officers empowered under that section cannot be produced in evidence. As a result, there is a huge change in how NDPS trials are approached now. Despite these judicial interventions, it is unfortunate that the structural processes initiated by the NDPS Act are still rather cumbersome. In places in Kerala, many field officers still rely on confession-led convictions and have disregarded the Tofan Singh case. Under the NDPS Act, search powers are followed in an incomplete manner, and officers fail to even note the fact that they followed the process, which results in acquittals not because of innocence, but because of a failure of the prosecution. In essence, the current state of NDPS law in Kerala means that due processes are traded for deterrence. There is a need for a more refined principle-based approach that separates those who use drugs and those who traffick, while keeping in mind the procedural safeguards.

YOUTH INVOLVEMENT AND JUVENILE JUSTICE CONCERNS

The narcotics crisis afflicting Kerala has an alarming youthful visage.²⁰ Adolescents are not simply victims in this scenario; adolescents are recruited as traffickers or participate as

¹⁵ Narcotic Drugs and Psychotropic Substances Act 1985, s 50

¹⁶ *Hira Singh v Union of India* (2020) 20 SCC 272

¹⁷ *Tofan Singh v State of Tamil Nadu* (2021) 4 SCC 1

¹⁸ Narcotic Drugs and Psychotropic Substances Act 1985, s 50

¹⁹ Indian Evidence Act 1872, s 25

²⁰ Lucy Raphael et al., 'Prevalence and determinants of substance abuse among youth in Central Kerala, India' (2017) 4(3) International Journal of Community Medicine and Public Health
<<http://dx.doi.org/10.18203/2394-6040.ijcmph20170752>> accessed 01 July 2025

amateur drug ‘cooks’.²¹ The distinction between victim versus perpetrator is increasingly blurry. However, the NDPS Act does not distinguish between juvenile and adult offenders in terms of penal policy. The Juvenile Justice (Care and Protection of Children) Act, 2015, which specifically takes a rehabilitative stance as opposed to just punishing kids, is in direct opposition to this. In the field, this mismatch plays out in tragic consequences. Juvenile suspects are regularly detained without any consultation with Child Welfare Committee members, sometimes detained in police lock-ups and thereby denied easy access to probation officers or psychological counselling. While Section 64A of the NDPS Act provides addicts an immunity defence if they seek medical treatment voluntarily, it is not often utilised enough, especially for juveniles. Most enforcement officers do not know of, or are reluctant to use, the exception provisions because they see them as loopholes, not rehabilitative tools. Moreover, the collateral consequences of drug cases against juveniles create a stigma that is irrecoverable.

Arrest can lead to suspension from or expulsion from school, which can also lead to lost opportunities for higher education and the long-term psychological trauma that many will experience. These are counterproductive to the basic objectives of the juvenile justice system. In Kerala's juvenile courts, there is an urgent need to have specialised NDPS Juvenile Benches populated with judges who have an understanding of narcotics law and an understanding of child psychology. Measures such as school-based legal literacy programs and mental health programs led and implemented by civil society in partnership with legal aid cells can also help combat these problems. Ultimately, a flexible, child-focused interpretation of NDPS offences is a legal necessity and a constitutional duty under Articles 14 and 21.²²

REFORMS AND COMPARATIVE LEGAL MODELS

To address the multifaceted challenges exposed by Kerala's experience, both legal and policy reforms to the NDPS regime are imperative. Recent anti-narcotics operations in Kerala highlight the depth and the immediacy of the crisis. To address the multifaceted challenges exposed by Kerala's experience, both legal and policy reforms to the NDPS regime are imperative. Recent anti-narcotics operations in Kerala highlight the depth and the immediacy

²¹ Dileep V Kumara and Sreelakshmi Soman, ‘Kerala's ‘stoned’ generation: ‘Cooks’ make merry as drugs spur youth to crime’ (*The South First*, 03 March 2025) <<https://thesouthfirst.com/kerala/keralas-stoned-generation-cooks-make-merry-as-drugs-spur-youth-to-crime/>> accessed 01 July 2025

²² Constitution of India 1950, art 14

of the crisis. The Excise department launched a special drive called Operation Clean Slate in light of a rise in drug-related cases to tackle drug trafficking. As part of the drive, the Excise department carried out 3,568 raids in eight days (March 5 - 12). The operation, which included 360 cases and involved arrests of 368 people under the NDPS Act, was carried out in just five days, according to the excise minister. The Kerala Police operated on June 12, and as part of an anti-narcotics drive called Operation D-Hunt,²³ the police inspected 1,758 persons believed to be involved in the trafficking of drugs. Operation D-Hunt resulted in 77 cases being recorded, and 79 arrests were made. The operation identified persons involved in the storage and delivery of banned drugs and substances, and led to seizures of 4.54 grams of MDMA, 222.08 grams of cannabis, and 59 cannabis-laced beedis.²⁴ The authorities have established a 24/7 Anti-Narcotics Control Room for the public to report anonymously, to encourage public involvement with the initiative. This was again an enforcement operation that will be monitored by senior police leadership, while junior intelligence units will monitor on a range and state level.

Statutory amendments should begin with Section 27 (punishment for consumption) and Section 37 (bail restrictions). Section 27 must be revised to differentiate between addiction and recreational use, allowing first-time users to be diverted to treatment rather than prison.²⁵ Section 37 should be redrafted to restore judicial discretion in bail matters, especially for small quantity cases.²⁶ A 'rehab-first' model must be institutionalised through judicial guidelines and circulars mandating that courts explore Section 64A²⁷ immunity for those seeking treatment.²⁸ Special NDPS Juvenile Benches must be constituted in every district to ensure child-sensitive adjudication. These benches should be supported by trained probation officers and linked directly to child welfare committees and de-addiction centres. Policy-level interventions must also evolve. Drug education must be embedded in school

²³ 'Comprehensive action plan to tackle rising drug abuse in Kerala' *The Hindu* (10 April 2025) <<https://www.thehindu.com/news/national/kerala/comprehensive-action-plan-to-tackle-rising-drug-abuse-in-kerala/article69432024.ece>> accessed 01 July 2025

²⁴ 'Op D-Hunt: Kerala Police Arrests 79 in Crackdown on Drugs' *The Times of India* (13 June 2025) <<https://timesofindia.indiatimes.com/city/thiruvananthapuram/op-d-hunt-kerala-police-arrests-79-in-crackdown-on-drugs/articleshow/121832427.cms>> accessed 01 July 2025

²⁵ Narcotic Drugs and Psychotropic Substances Act 1985, s 27

²⁶ Narcotic Drugs and Psychotropic Substances Act 1985, s 37

²⁷ Narcotic Drugs and Psychotropic Substances Act 1985, s 64A

²⁸ Harpreet Bajwa, 'Punjab government to prioritise rehabilitation over criminalisation for drug addicts under NDPS Act' *The New Indian Express* (13 March 2025)

<<https://www.newindianexpress.com/nation/2025/Mar/13/punjab-government-to-prioritise-rehabilitation-over-criminalisation-for-drug-addicts-under-ndps-act>> accessed 01 July 2025

curricula with age-appropriate modules on substance abuse and legal literacy. Kerala's law colleges and universities can host legal aid clinics focused on NDPS issues, while fast-track courts can be established to address prolonged undertrial detention.

There should be formal coordination across Health, Education, and Home Departments to establish an integrated prevention-treatment-recovery system. Other legal models can provide valuable insights into this context. Portugal's 2001 harm reduction and decriminalization policy, which classifies drug consumption as an administrative sanction, is often cited as a successful instrument in curbing overdoses and incarceration of drug users, where drug users are directed to 'Dissuasion Commissions' of legal and health professionals, instead of judges.²⁹ Critiques of the Portuguese model, however, highlight the continued prevalence of challenges and suggest that the success of drug policy ultimately depends on the strength of health and social supports. In the United States, we see that many states have legalised or decriminalized cannabis, have shifted enforcement from minor offences to high-volume traffickers, and invested in harm reduction and other non-enforcement-based justice initiatives. India's sociocultural context is different, but anything is flexible to the local context. A hybrid model could be constructed that leverages deterrent criminal charges for large traffickers, decriminalises, and links drug users to treatment and recovery programs, while remaining respectful of constitutional values and principles of community-based human rights. Kerala has an active civil society sector as well as a progressive judiciary to foster ideas for future treatment options.

CONCLUSION

Kerala's drug crisis reveals the paradox of a stringent legal regime coexisting with growing substance abuse. Even after strong enforcement measures, procedural rigidity, lack of rehabilitation, and overreaction have resulted in many cases of the NDPS Act being ineffective and unjust. Instead of deterring people, the law ensnares the vulnerable, youth, first-time users, and people from socioeconomic disadvantage in stigma and imprisonment. Kerala's legal ecosystems provide an important means of contemplating narcotics policy in India. From bail reform to therapeutic courts and school-linked interventions, Kerala can be

²⁹ Yatan Pal Singh Balhara et al., 'Drug-related Offences in India: Observations and Insights from the Secondary Analysis of the Data from the National Crimes Record Bureau' (2024) 46(6) Indian Journal of Psychological Medicine <<https://doi.org/10.1177/02537176241228415>> accessed 01 July 2025

the foundation for a more humane, constitutional approach. Reforming a legal environment that rests on legal accountability and compassion, deterrence, and rehabilitation is the best way forward. The law should not just punish, but rather it should heal.