

---

# FROM OPIUM MONOPOLIES TO NDPS AMENDMENTS: TRACING THE SHIFTING CRIMINAL POLICY OF INDIA'S DRUG LAWS

---

Adv Yadhu Krishnan M P, BBA LLB, Central University of Kerala

Adv Akhila Lekshmi V L, BA LLB, Central University of Kerala

## 1. INTRODUCTION

In order to preserve the public welfare, the primary goal of drug control legislation is to avoid and eliminate the negative social and moral impacts that are often linked with the reckless use of narcotics and psychoactive substances.<sup>1</sup> This is accomplished by preventing and eliminating the negative effects. Without a shadow of a doubt, one of the most heinous crimes of our day is the widespread commercial distribution of lethal narcotics that cause harm to the body, the mind, and the spirit<sup>2</sup>. Brains are destroyed, bodies are devalued, and a significant portion of our society is prevented from developing as a result of this. People of all ages who are victims of it often develop mental health issues, become aggressive, and even become homicidal criminals. Therefore, the most stringent traffic control laws and enforcement measures are essential in order to mitigate the consequences of these factors.<sup>3</sup>

The possession of psychotropic chemicals and narcotic opioids is strictly prohibited by laws that ban drug abuse. This is done in order to protect society from the social ills that are bound to be caused by an unregulated drug trade. It is possible that the usage of medications might have a variety of adverse effects on one's health. The conditions surrounding the manufacture and consumption of illicit drugs, as well as the absence of quality control, may eventually lead to severe poisoning, which can ultimately result in the death of these individuals. Due to the use of filthy injection procedures, the most significant consequences of heroin use include the transmission of hepatitis and HIV/AIDS. Abuse sufferers may not only cause harm to their own health, but they may also bring harm to their dependents, including their spouse, parents,

---

<sup>1</sup> United Nations Office on Drugs and Crime (UNODC), *World Drug Report 2023* (United Nations, 2023) p. 5.

<sup>2</sup> Ratanlal & Dhirajlal, *The Indian Penal Code* (34th edn., LexisNexis 2022) p. 1200.

<sup>3</sup> Law Commission of India, 156th Report on the *Narcotic Drugs and Psychotropic Substances Act, 1985* (1997), p. 35.

and children. Abuse of substances during pregnancy has the potential to accidentally and adversely affect the unborn child. Substance misuse may have a significant impact on one's financial situation. Harmful usage of drugs has an effect on production. Absenteeism, accidents, and the costs associated with medical care all have a detrimental effect on the economy of a nation. Crime, which is one of the most significant social and economic impacts of drug misuse, is something that society has to manage and avoid using the tools it has available to be as effective as possible.

The consumption of drugs and the trafficking of drugs have become even more significant problems as a result of globalization and the opening of the economy. Because of advancements in communication, information technology, and transportation, it is now feasible for people, information, and things to move across international borders in a short amount of time. The transportation of drugs and the money that is produced from drug trafficking is accomplished via the use of cutting-edge methods. When it comes to carrying out their tasks, law enforcement has a far more difficult challenge when illicit drug usage and trafficking occur online.<sup>4</sup>

In addition to having a detrimental effect on the environment, the production of illegal drugs and the cultivation of narcotic plants are also unlawful activities. In distant places, both the production of drugs and the cultivation of plants that produce narcotics take place. Because of these actions, uncommon plants and animals are put in risk, and the natural equilibrium is disrupted. Organizations that are involved in organized crime are encouraged to engage in drug trafficking because of the simplicity of transportation and the huge payout that is associated with drug smuggling. Abuse of drugs and the subsequent trade in drugs are the driving forces behind a wide range of other criminal activities, including militancy, corruption, and the heinous atrocities that are perpetrated by militant organizations. The violation of laws pertaining to substances is the most significant of all aspects.

Furthermore, there are additional types of criminal activities that are triggered by the pharmacological effects of drugs that are consumed. These include predatory or acquisitive crimes that are committed by drug users, such as robberies and thefts, in order to finance their drug habit. Additionally, there are incidental crimes that are associated with drug trafficking,

---

<sup>4</sup> Law Commission of India, 156th Report on the *Narcotic Drugs and Psychotropic Substances Act, 1985* (1997), p. 35.

such as bank frauds, terrorism, intimidation, corruption, and the sale of weapons and ammunition. The Manusmriti provides a description of the several sources of wealth that the ancient ruler of the land used. Not a single word was said on the matter of alcohol tariffs. It does not seem that any other ancient literature has placed an emphasis on the fact that alcoholic beverages are subject to taxation.

The leaves of a certain plant were often used by Sadhus in ancient India as a method of intoxication. Both the production and distribution of alcoholic beverages that included a high concentration of spirits were specifically prohibited by law. Manu smriti was of the opinion that individuals who were responsible for the production and distribution of alcoholic beverages should be expelled from the country because of the crimes they committed by enslaving the people. There is a lack of clarity on the extent to which the Mohammedan period saw active government regulation of alcoholic beverages. The Mohammedan government put particular tariffs on the sale of alcoholic beverages in a number of regions of the country during the final years of its rule. During the time when the East India Company took control away from the Mohammedan emperors, it seems that the zamindars accumulated these taxes under the guise of sayer income.<sup>5</sup> In the fourteenth century, it seems that the opium vine was carried to the regions of Cambay and Malwa respectively. During the time when the Mughal Empire was being founded in Central India, Emperor Akbar stumbled across the opium farm that was located in Malwa., Fatehpur, Allahabad, and Ghazipur were the primary places where opium poppies were grown and harvested. It was believed by Emperor Akbar and his successors that the government had a monopoly on the production of opium.

In the latter half of the sixteenth century, the Mughal dynasty established a monopoly on the production and distribution of opium. In the latter years of the Mughal Empire, Patna merchants supplied financial support, which resulted in the state relinquishing its power over the cultivation of opium in the northern state of Bihar.

In 1758, the British military took control of Bengal, marking the beginning of the subsequent stage in the history of the subject. Taking advantage of the Mughals' breakdown in power and the instability that followed, the Europeans constructed armies, fortified their businesses, and maintained these fortifications. They did this in a manner that was completely independent of

---

<sup>5</sup> B. B. Misra, *The Central Administration of the East India Company, 1773–1834* (Oxford University Press 1959) p. 102

the Mughals.

As a consequence of this, there were disagreements between the French and the British in India, as well as agreements and disagreements with the Native Princes across the continent. At the end of the day, in the year 1758, the armies of the English East India Company were successful in taking control of Bengal and Bihar. After arriving at Hugli, European sea merchants established their inland headquarters for dealing with Northern India at Patna, which was one of the vast landmasses that the Company eventually acquired<sup>6</sup>. Patna was the location of their headquarters. When it comes to the transportation of opium from Bengal to the east, Patna was the primary port of entry for the transportation of the drug.<sup>7</sup> Between the years 1758 and 1858, poppies were produced in almost every region of British India, provided that the climate and the terrain were suited for their cultivation<sup>8</sup>.

Both the cultivation of the commodities and their commercialization were done without charge. The origin of opium traffickers in Patna may be traced back to the country that imposed a prohibition on purchasing opium directly from cultivators in the 17th century.

In the years before to 1758, the monopoly was shattered. A group of affluent opium traffickers who had established a monopoly in Patna was discovered by the British after they had successfully conquered the state of Bihar. In order to discourage farmers and business owners in small towns from engaging in commercial transactions with outsiders, they made use of their influence. They made a decision on the amount of money that they would collect from naval merchants in Europe or elsewhere for the morphine.<sup>9</sup>

Lord Clive's accomplishments made it possible for the English merchants to regain the position they had previously had in Patna. Unrest arose as a direct result of European merchants engaging the peasants in a direct confrontation.

According to the Indian Hemp Commission, the actions of the Bengal Zamindars in the year 1789 were the impetus for a reaction. Inadequate monitoring by zamindars led to the rapid growth of the criminal activity of drinking among the most impoverished members of society.

<sup>6</sup> H. H. Dodwell, *Duties of the East India Company in India* (Cambridge University Press 1922) p. 89

<sup>7</sup> Amartya Sen, *The Argumentative Indian* (Penguin Books 2005) p. 112.

<sup>8</sup> R. P. Dutt, *India Today* (People's Publishing House 1940) p. 55

<sup>9</sup> <https://juniperpublishers.com/jfsci/pdf/JFSCI.MS.ID.555644.pdf> Shweta Sharma, Kapil Kumar & Gyanendra Singh, "An Overview on Narcotic Drugs and Psychotropic Substances Act, 1985", (2017) 4(3) J Forensic Sci & Criminal Inves 555644, DOI: 10.19080/JFSCI.2017.04.555644.

As an appropriate solution, it was proposed that the government levy a tax on alcoholic beverages that include spirituous ingredients. In accordance with the Abkari Regulation of 1791, those who manufactured and sold alcoholic beverages were subject to a tax assessment. For the purpose of determining the tax rates, the location of the stills and firms, the volume consumed, and the selling price were all taken into consideration. Without proper authorization, personal stills were not permitted.

## 1.2 THE OPIUM ACT, 1857: REGULATING CULTIVATION

The Opium Act, 1857 (Act XIII of 1857), was primarily designed to regulate the cultivation of the opium poppy (*Papaver somniferum*) and the manufacture of opium. Enacted by the Governor-General of India in Council, it aimed to prevent illicit cultivation and protect the colonial monopoly over opium production. The Act applied to British India but was extended to other regions through subsequent legislation, such as the Opium and Revenue Laws (Extension of Application) Act, 1950.

### Key Provisions

- Prohibition of Illicit Cultivation The Act prohibited the cultivation of poppy without a license from the colonial government. Unauthorized cultivation was punishable by imprisonment or fines.
- Regulation of Manufacture It restricted opium production to government-authorized entities, ensuring that only licensed manufacturers could process poppy into opium.
- Penalties: Offenders faced imprisonment for up to one year or fines, with harsher penalties for repeat offenses.

### Impact and Limitations

The 1857 Act was effective in curbing illicit cultivation in British-administered territories, particularly in Bengal, where the government controlled opium production. However, its scope was limited to cultivation and manufacture, leaving gaps in regulating possession, transport, and sale. These gaps allowed illicit trade to persist, especially in regions outside direct British control, such as the princely states. Moreover, the Act was silent on domestic consumption, reflecting the colonial priority of revenue over social welfare.

### 1.3 THE OPIUM ACT, 1878: EXPANDING CONTROL

The Opium Act, 1878 (Act I of 1878), supplemented the 1857 Act by addressing the shortcomings in regulating the broader opium trade. Enacted under the Viceroy's Legislative Council, it extended controls to possession, transport, import, export, and sale, reflecting the colonial government's recognition of opium's domestic implications.

#### Key Provisions

**Comprehensive Regulation:** The Act defined opium broadly, including any mixture containing more than 0.2% morphine, but excluded manufactured drugs covered by later legislation like the Dangerous Drugs Act, 1930.

**Licensing and Duties:** It introduced licenses for possession, transport, and sale, along with excise and countervailing duties on opium produced in or imported into certain regions, such as Uttar Pradesh.

**Enforcement Powers:** Authorized officers from departments like Excise, Customs, and Police could enter, search, and seize opium suspected of being illicitly held, with powers to arrest offenders.

**Penalties:** Violations carried penalties of up to three years' imprisonment or fines, with confiscation of illicit opium.

#### Impact and Significance

The 1878 Act marked a shift toward comprehensive regulation, addressing both economic and social dimensions of opium use. By imposing duties and licensing requirements, it generated additional revenue while restricting unregulated trade. The Act's enforcement mechanisms strengthened colonial control over opium, particularly in provinces where poppy cultivation was concentrated. However, its implementation varied across regions, with princely states adopting similar rules at their discretion, leading to uneven enforcement. The Act also laid the groundwork for provincial regulations, as the Government of India delegated rule-making powers to provincial governments under constitutional reforms in 1919 and 1935.

## 1.4 THE DANGEROUS DRUGS ACT, 1930: RESPONDING TO GLOBAL AND DOMESTIC PRESSURES

The Dangerous Drugs Act, 1930 (Act II of 1930), represented a significant evolution in narcotics legislation, driven by international commitments and domestic concerns about drug abuse. The Act was enacted to implement the Hague Opium Conference (1912) and the Geneva Opium Conferences (1925), which called for global controls on opium, cocaine, and cannabis derivatives. It marked a departure from the revenue-centric focus of earlier laws, prioritizing the suppression of illicit trafficking and abuse.

### Key Provisions

**Expanded Scope:** The Act covered opium, cannabis (Indian hemp), coca leaves, and their derivatives, including morphine, heroin, and cocaine. It defined “dangerous drugs” to include manufactured drugs with high abuse potential.

**Prohibition and Control:** It prohibited the unlicensed import, export, manufacture, possession, and sale of dangerous drugs, with exceptions for medical and scientific purposes.

**International Compliance:** The Act aligned with international conventions by restricting opium exports to licensed entities and banning the import of crude opium for heroin production.

**Penalties:** Offenses carried imprisonment of up to three years (four years for repeat offenses), with provisions for deportation of foreign offenders and forfeiture of vehicles used in trafficking.

### Impact and Legacy

The 1930 Act significantly strengthened narcotics control in India, aligning domestic laws with global standards. It established the legal framework for the Federal Bureau of Narcotics, created in 1930 to enforce drug laws. The Act's focus on manufactured drugs like heroin reflected growing concerns about addiction, particularly in urban areas. However, its penalties were later deemed inadequate to deter trafficking, leading to the enactment of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), which repealed the earlier acts. The 1930 Act also highlighted the tension between medical access and prohibition, as it

allowed doctors to prescribe certain drugs while criminalizing non-medical use.

## 1.5 NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT 1985

Three Central Acts—the Drugs and Cosmetics Act of 1940; the “Narcotic Drugs and Psychotropic Substances Act” 1985; and the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act of 1988—comprise the comprehensive official approach to this subject. Drug abuse prevention is a priority area that is carried out by numerous government ministries, agencies, and commissions. Both the “Narcotic Drugs and Psychotropic Substances Act” of 1985 (NDPS Act) and the “Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act” of 1988 (PITNDPS Act) have oversight agencies, among them the Ministry of Finance, Department of Revenue.

An express arrangement for including An expert to exercise the forces and elements of the central government under the Act was made on 14<sup>th</sup> November, 1985, when the Narcotic Drugs and Psychotropic Substances Act, 1985 went into effect. On March 17, 1986, the "Narcotic Control Bureau" was established as part of the armed forces, with its headquarters located in Delhi. Under the direction and control of the central government, the authority puts its own forces and capabilities to use.

### 1.5.1 SALIENT FEATURES OF NDPS ACT, 1985

The “NDPS Act contains 5 Chapters, with each chapter dealing with a certain subject with respect to the statute”<sup>10</sup>.

The first chapter is a discussion of the Preliminary chapter, which introduces and defines the numerous psychotropic substances and narcotic drugs, and emphasizes that the Central government has the ability under the NDPS Act to exclude or add substances to the list. This chapter is discussed in the first chapter.

In the second chapter, we go over the new authorities and officers that were established as a result of the NDPS Act. It requires the appointment of a Narcotics Commissioner, the formation of a Narcotic Drugs and Psychotropic Substances Consultative Committee, and the

---

<sup>10</sup> Salient features of narcotics drugs and psychotropic substances, I pleader, Updated on 23<sup>rd</sup> June 2017, available at:<https://legalraj.com/articles-details/salient-features-of-narcotics-drugs-and-psychotropic-substances-act> accessed on 24<sup>th</sup> April 2025

establishment and funding of a National Fund for the Control of Drug Abuse.

The ban, control, and regulation of the substances are the topics covered in the third chapter. It makes it illegal for anybody to cultivate cocaine, opium poppies, or cannabis, and it gives rule-making authority to the federal government as well as to individual states, should they want to exercise it. Additionally, it is now against the law to carry any type of illegal narcotics across state lines or across international borders. This chapter will come to a close with a review of the laws and regulations that pertain to the production of opium poppies, coca plants, and cannabis, all of which are considered to be precursors to illegal narcotics.

It outlines the several offences that can be prosecuted under this Act, including possession for commercial or recreational use, cultivation or preparation, and smuggling, as well as the punishments that are associated with each of these crimes.

In the fifth chapter, we take a look at the Procedure for how cases are supposed to be handled, and we lay out the instructions for the officers who are empowered by this Act. In accordance with the amendment that passed in 2014, the necessity of pain relief was formally acknowledged as a responsibility that lies with the government. This act has resulted in the creation of a new category of medication known as essential narcotic substances. In order to ensure consistency in the administration of these important medications across the country, the federal government has taken control of the legislation governing ENDs, which were formerly the purview of individual states.

After that, in May 2015 the government of India made an announcement that "NDPS rules," which are applicable to all states and union territories also, would be implemented. In addition to that, it has comprised of the following six substances: "morphine", "fentanyl", "methadone", "oxycodone", and "hydrocodone". In accordance with these regulations, there is a single agency known as the state drug controller that has the authority to grant approval to recognized medical institutions (RMI) for storing and dispensing ENDs. In addition, no further permissions are required for this. The RMIs are required to guarantee that appropriate paperwork is kept and to provide the state's drug controller with annual usage figures."

### **1.5.2 OBJECTIVES OF THE ACT**

The purpose of the act is to provide more strict rules for the control and regulation of

operations involving narcotics and psychotropic substances, as well as to consolidate and revise the law dealing to these substances.

1. To allow for the confiscation of assets connected to the illegal sale of narcotics and other psychoactive substances.
2. To put into effect the norms established by the UN agreements on pharmaceuticals that have psychoactive properties
3. This law applies to all of India, including its overseas territories and all Indian nationals. Additionally, it covers everyone aboard Indian-flagged vessels and airplanes. The 68 articles of this Act are organized into eight chapters. Prohibition, control, and regulation; offences and punishments; required procedures; and the seizure of property derived from or utilized in illicit traffic are all addressed in this law.

The following substances are covered by the Act: About 237 chemicals, all of which are on the NDPS Act, 1985's list of banned substances, have been made public. The Act has prohibited all the mentioned substances but by providing exceptions to few that are used for medical and scientific purpose who does with a license, the cultivation, production, manufacture, possession, sale, purchase, transportation, storage, consumption, and distribution of any of the substances<sup>11</sup>.

### **1.5.3 PROCEDURAL SAFEGUARDS IN THE NDPS ACT**

Without a doubt, the Act has granted law enforcement agencies broader and more expansive authority to maintain vigilance and control over substance abuse and all associated illegal activities. However, at the same time, enough protections have been put in place to prevent the unnecessary harassment of innocent individuals by the authorities. It is necessary for each individual who makes an arrest or seizure in accordance with the to compile a report that contains all of the pertinent data, and that report must be given to the individual's immediate supervisor.<sup>12</sup>

---

<sup>11</sup> <https://blog.ipleaders.in/ndps-act-narcotic-drugs-and-psychotropic-substances-act-1985/>

<sup>12</sup> <https://bhattandjoshiassociates.com/procedural-safeguards-immunities-under-the-ndps-act/#:~:text=The%20officer%20searching%20the%20person,or%20the%20Magistrate%20and%20searched.>  
Referred from bhatt and joshi associated

Similarly, Sec. 100 of the CRPC<sup>13</sup> states that “Before making a search, the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do”

Sec. 55 of the NDPS Act<sup>14</sup> states that “An officer-in-charge of a police station shall take charge of and keep in safe custody, pending the orders of the Magistrate, all articles seized under this Act within the local area of that police station and which may be delivered to him, and shall allow any officer who may accompany such articles to the police station or who may be deputed for the purpose, to affix his seal to such articles or to take samples of and from them and all samples so taken shall also be sealed with a seal of the officer-in-charge of the police station”. Sec. 50 of the Act gives the accused “the right to be searched in the presence of the magistrate or a gazette officer”. This right has been upheld by the Supreme Court in the case of “*State of Punjab V. Balbir Singh*<sup>15</sup>” where it was held that the police officer must, of necessity, give the information to the accused about his right. Finally, Sec. 58 imposes “strict punishments on people making vexatious or frivolous complaints”.

#### 2.5.4 OFFENCES AND PENALTIES

- “Cultivation of opium, cannabis or coca plants without license can lead to Rigorous imprisonment-up to 10 years + fine up to Rs.1 lakh”
- “Misuse of opium by licensed farmer for that the prescribed punishment is of Rigorous imprisonment -10 to 20 years +fine Rs. 1 to 2 lakhs” (regardless of the quantity)
- “Production, manufacture, possession, sale, purchase, transport, import, inter state, export inter-state or use of drugs if it is in small quantity R.I. up to 6 months or fine up to- Rs. 10,000 or both And in case quantity is more than small but less than for commercial purposes the punishment is R.I. up to 10 years + fine up to 1 lakh. In case of commercial quantity then R.I. is of 10 to 20 years + fine Rs. 1 to 2 Lakhs”.

<sup>13</sup> Under Section 100 of CrPC

<sup>14</sup> Narcotic drugs and psychotropic substances Act, 1985 section 55

<sup>15</sup> (1994) 3 SCC 299

- “Violations pertaining to controlled substances there is punishment of R.I. up to 10 years + fine Rs. 1 to 2 lakhs”
- “Financing traffic and harboring such substances can lead to R.I. 10 to 20 years + fine Rs. 1 to 2 lakhs”
- “Preparation to commit an offence Half the punishment for the offence”
- In case of Repeated offences “the provision is of One and half times the punishment for the offence and Death penalty in some cases”.
- “Consumption of drugs Cocaine, morphine, heroin - R.I. up to 1 year or 27 fine up to Rs. 20,000 or both in case of consumption of other drugs- Imprisonment up to 6 months or fine up to Rs. 10,000 or both Addicts volunteering for treatment enjoy immunity from prosecution”.
- “Punishment for violations not elsewhere specified there is provision of Imprisonment up to six months or fine or both”<sup>16</sup>

### 1.5.5 CRITICAL EVALUATION OF THE ACT

As a result of the overburdening of the specialized courts, there is a significant delay in the completion of the cases. Additionally, there are harsher fines in place than are appropriate, particularly considering that offences in this act can be considered victimless crimes. Thirdly, the NDPS Act places limits on the granting of bail that amount to a virtual denial and ensure years of incarceration for those who violate them. Section 37(1)<sup>17</sup> states that “an accused person is not to be released on bail unless the court has reasonable grounds to believe that the accused is not guilty and is not likely to commit an offence while on bail”. This provision is identical to those of the Terrorist and Disruptive Activities (Prevention) Act and the Prevention of Terrorism Act that resulted in extended incarceration without trial, provoking severe criticism from the human rights movement.

Not only this, Section 31A of the NDPS Act prescribes a “mandatory death sentence for certain drug offences upon subsequent conviction”. The death penalty is obligatory in the sense that Section 31A does not provide for any other form of punishment than the death

<sup>16</sup> <https://www.legalserviceindia.com/legal/article-10956-offences-and-penalties-under-ndps-act-1985.html>

<sup>17</sup> NDPS Act, 1985 sec 37 (1)

penalty, and the non-obstante clause in Section 31A precludes the possibility of the repeat offender being sentenced under Section 31, which would have been an alternative. However, in 1983 the Supreme Court of India ruled that the mandatory use of the death penalty was contrary to the country's constitutional provisions.

In a recent judgement, the Bombay High Court followed the same principle and found that Article 21 of the Indian Constitution is violated by Section 31A of the NDPS Act. The NDPS (Amendment) Bill, 2011, completely disregards the Constitutional Court's explanation for why Section 31A should be struck down as unconstitutional. Despite the decision of the Bombay High Court on the constitutional validity of Section 31A of the NDPS (Amendment) Bill, the government has not abolished nor altered the section. Instead, they have simply ignored the findings.

## 2.5.6 SMALL AND COMMERCIAL QUANTITIES<sup>18</sup>

DRUG	SMALL QUANTITY	COMMERCIAL QUANTITY
“Amphetamine”	2 gm	50 gm
“Buprenorphine”	1 gm	20 gm
“Charas/ hashish”	100 gm	1 kg
“cocaine”	2 gm	100gm
“Codeine”	10 gm	1 kg
“Diazepam”	20 gm	500 gm
“Ganja”	1 kg	20 kg
“Heroin”	5 gm	250 gm
“MDMA”	0.5 gm	10 gm
“Methamphetamine”	2 gm	50 gm
“Methaqualone”	20 gm	500 gm
“Morphine”	5 gm	250 gm
“Poppy straw”	1 kg	50 kg

<sup>18</sup> Referred from department of revenue/ dor.gov.in

## 1.6 THE NDPS ACT (AMENDMENT) ACT, 1988

The NDPS Act, 1988's Section 1 Subsection (2) stipulates that the Act will be implemented on the date specified by the Central Government in the notice published in the Official Gazette. By notification S.O. 379 (E), dated May 29, 1989, the Central Government established May 29, 1989, as the effective date of the aforementioned Act.<sup>19</sup> The Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2001 (9 of 2001) further amended the laws.

- (i) The Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2001 (9 of 2001) delineates the subsequent objectives and rationales: The Narcotic Drugs and Psychotropic Substances Act of 1985 imposes deterrent penalties on a diverse array of activities that involve the trafficking of illicit drugs and psychotropic substances. The minimum sentence for the majority of crimes is 10 years of solitary confinement, while the maximum sentence is 20 years of imprisonment. The Act simultaneously enforces severe penalties for drug traffickers and encourages drug consumers to adopt reformatory thinking. It has been demonstrated that addicts do not utilize the Act's provisions due to the lengthy trial procedure. Their distress is exacerbated by the Act's stringent bail requirements. It is therefore advised that the sentence structure be rationalized to ensure that drug users and other individuals who commit less severe crimes are punished less severely, while drug traffickers who trade in large quantities of narcotics are punished in a manner that discourages future drug use. Given this, it is imperative to substantiate the sentence structure of the Act. It is also advisable to restrict the duration of parole periods to those that are exclusively applicable to convicted felons who have committed severe offences.
- (ii) In 1989, the Act was amended to incorporate, among other things, measures for the identification, expropriation, and forfeiture of property that had been acquired improperly. The implementation of the requirements has been delayed due to the discovery of specific deficiencies over time. A multitude of additional deficiencies are present in the Act's numerous clauses. In order to rectify these deficiencies, it is imperative to revise the pertinent legislation.

---

<sup>19</sup> Sharma, Shridhar, Sharma, Gautam, and Barkataki, Bristi., (2016), Substance use and criminality among juveniles-under-enquiry in New Delhi, Indian journal of psychiatry, 58(2), 178-182. doi-10.4103/00195545.183791.

(iii) The ineffectiveness of law enforcement efforts to combat illicit drug trafficking is a result of the deficiency of the rules that regulate certain procedural components, such as search and seizure. In addition to the ability to enter, search, seize, and forfeit property that has been obtained unlawfully, it has been determined that authorized officials must also possess the authority to prosecute, freeze, confiscate, and forfeit offences involving prohibited substances.

(iv) Specific obligations, particularly in relation to the concept of "controlled." The Act must also address delivery issues that were created by the 1988 United Nations Conventions Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, to which India acceded. This can be achieved by executing the requisite procedures.

(v) The objectives of this legislation are to be achieved. The rise in the number of people who were found not guilty. As a direct consequence of this, the Narcotic Drug Act of 2001 was once again approved on May 9th. When the Act was finally approved by the President, it was finally able to go into effect. At the moment, the National Defense Personnel Act of 1985 is rather comprehensive. 83 qualifications and explanations are included in the following. One of the legislative goals of the Act is to make structured transactions easier to complete.

## **1.7 NDPS (AMENDMENT) ACT, 2001:<sup>20</sup> TOWARDS PROPORTIONALITY IN PUNISHMENT**

The 2001 amendment to the NDPS Act marked a significant shift in the legislative approach from rigid sentencing to a more proportional and nuanced framework. Before this amendment, the Act imposed mandatory minimum sentences that did not differentiate between the severity or context of the offense, resulting in undue harshness, even for minor infractions. Recognizing the principle of proportionality in criminal law, the 2001 amendment introduced the concept of graded punishment based on the quantity of drugs involved — categorized as small quantity, intermediate quantity, and commercial quantity. For instance, possession of drugs in a small quantity would attract a lighter sentence (rigorous imprisonment up to one year or a fine or both), whereas involvement with a commercial quantity continued to carry

---

<sup>20</sup>The Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2001, No. 9 of 2001, § 2, Gazette of India, Extraordinary, Part II, Section 1, dated May 2, 2001.

the previously existing harsh penalties, including a minimum of 10 years' imprisonment.

Additionally, this amendment emphasized the need to treat drug addicts as individuals in need of medical intervention rather than solely as criminals. Section 64A was introduced to offer immunity from prosecution to addicts who voluntarily opt for de-addiction treatment at recognized institutions. This reflected a more rehabilitative rather than retributive stance and aligned with global best practices, which increasingly advocated a public health approach to addiction. Moreover, the 2001 amendment brought clarity to procedural safeguards and the burden of proof in drug-related offenses, thereby attempting to strike a balance between enforcement and fairness.

### **1.8 NDPS (AMENDMENT) ACT, 2014: CENTRALIZING ACCESS TO ESSENTIAL NARCOTIC DRUGS**

The 2014 amendment was largely prompted by public health concerns, particularly regarding the inaccessibility of opioid analgesics such as morphine for pain relief and palliative care. Prior to the amendment, the regulatory framework was so cumbersome and decentralized that most medical institutions avoided stocking such drugs, fearing legal complications and prosecution. This deprived many terminally ill patients of essential pain relief. The 2014 amendment addressed this issue by centralizing the regulation of Essential Narcotic Drugs (ENDs) under the purview of the Central Government. This eliminated the need for multiple licenses from state authorities and established a uniform framework for the distribution and usage of ENDs across the country.

The amendment also brought changes to the definitions and procedural aspects under the Act. It expanded the definition of illicit traffic to include broader categories of offenses and clarified provisions concerning bail and pre-trial detention. While retaining stringent measures for major trafficking offenses, the amendment was guided by a public health approach, ensuring that genuine medical and scientific uses of narcotic drugs were not unduly hindered. Notably, this change was in line with India's obligations under international law and was praised by health rights activists and legal experts for being a progressive and humanitarian step.

### **1.9 NDPS AMENDMENT ACT 2021**

The controversy began after a legal loophole was identified by courts regarding the definition

of “small quantity” and “commercial quantity” as used in Sections 2(xxiiiia) and 2(viia) of the Act.<sup>21</sup> It was found that a 2014 amendment had inadvertently omitted the enabling clause that defined the term “small quantity.” This led to judicial interpretations, including those by high courts, that questioned the enforceability of certain penal provisions during the interim period.<sup>22</sup>

To rectify this, Clause (viiia) was inserted in Section 2 retrospectively, thereby validating the prior notifications that had defined drug quantities for enforcement purposes. However, this retrospective change was heavily criticized for violating the principle enshrined in Article 20(1) of the Constitution of India, which prohibits the enactment of *ex post facto* criminal laws. Legal scholars and human rights advocates argued that amending penal statutes retrospectively undermines legal certainty and due process, potentially affecting pending and past cases by imposing penal consequences not previously defined by law.

Moreover, the method of introducing this amendment through a finance bill — bypassing a detailed parliamentary debate — raised concerns about legislative transparency and accountability<sup>23</sup>. While the government defended the amendment as a mere clarification to plug a legal loophole, its impact on ongoing prosecutions and the rights of accused persons remains a contentious legal issue.

## 1.10 CONCLUSION

India's drug control laws have evolved from colonial revenue-driven monopolies to a comprehensive, internationally aligned framework emphasizing deterrence, rehabilitation, and public health. The NDPS Act, 1985 and its amendments reflect this progression, balancing stringent penalties for trafficking with procedural safeguards and access to essential medicines, though challenges like delayed trials, harsh bail conditions, and constitutional concerns persist

---

<sup>21</sup> Tofan Singh v. State of Tamil Nadu , (2021) 4 SCC 1.

<sup>22</sup> Hitesh Verma v. Union of India , 2021 SCC OnLine Del 3672.

<sup>23</sup> Parliamentary Debates, Lok Sabha, Vol. XII, No. 7, 2021, pp. 134–138 (regarding objections raised on the use of Finance Act for amending penal statutes).