
NARCOTICS AND DRUG ABUSE LEGISLATION IN INDIA: A DOCTRINAL CRITIQUE OF ENFORCEMENT AND PRESCRIBED PENALTIES

Bedabrata Roy, BBA LLB (H), LLM (Pursuing), ICFAI Law School, Jharkhand

ABSTRACT

Indian laws relating to narcotics and drug abuse are primarily contained in the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985, a comprehensive legislation, that was enacted as a commitment toward the United Nations treaties and conventions and has been the result of the rising challenge of drug abuse in India. This research intends to critically examine NDPS Act, the balance between deterrence and the constitutional values of due process and the aspect of human rights. It underpins by drawing on important Supreme Court judgements, such as the *Union of India v. Ram Samujh* (1999), the *State of Punjab v. Baldev Singh* (1999) and the *Tofan Singh v. State of Tamil Nadu* (2020) as well as from academic peer-reviewed literature. A critical analysis indicated that there are structural tensions between the criminalisation orientation of the Act and the public health paradigm which is the one increasingly embraced by International regimes.

Keywords: NDPS Act 1985, narcotics law India, drug trafficking penalties, judicial interpretation, drug rehabilitation, harm reduction.

Background and introduction

The issue of drug abuse and the use of psychoactive substances in the population, falls within the sensitive zone of the three disciplines of public health, criminal justice and constitutional law in India. Surprisingly, the geographic and strategic position of India in Asia is unique. It sits between the “Golden Crescent” (Afghanistan-Iran-Pakistan) and the “Golden Triangle” (Myanmar-Laos-Thailand) placing geographic area, as a transit country and destination for consumption of illicit drugs (Parmar et al., 2024)¹. United Nations Office on Drugs and Crime (UNODC, 2021)², reported worldwide, over 61 million people consumed opioids in 2020, and India being disproportionately affected. The National Drug Dependence Treatment Centre AIIMS Survey (2019) reported critical figures of multiple categories of substances found,, that motivated Indian Parliament to issue legislatures for a change in the law reform.

Before the year 1985, India had a patchwork of colonial period laws for example, Opium Act of 1857, The Opium Act, 1878 and the Dangerous Drugs Act, 1930. All of these imposed “fairly less stringent” sanctions which lacked the unified enforcement mechanism (Dave, 2023)³. Under the international obligations undertaken under the Single Convention on Narcotic Drugs, 1961, Convention on Psychotropic Substances, 1971 and United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, Indian Parliament passed the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 which has consolidated 8 chapters and 68 sections, laying down current narcotics jurisprudence in India (Balhara & Singh, 2020)⁴.

Rationale of the Research

Despite decades of enforcement, India is still facing a high ratio of drug addicts, an ongoing drug trail, and increasing claims that the NDPS Act and it has been criticised as linking drug users alongside drug peddlers, imposing harsh criminal penalties on drug users instead of

¹ A. Parmar, V.L. Narasimha & S. Nath, *National Drug Laws, Policies, and Programs in India: A Narrative Review*, 46 Indian J. Psychological Med. 5 (2024).

² United Nations Office on Drugs and Crime, *World Drug Report 2021* (2021), <https://www.unodc.org/unodc/en/data-and-analysis/wdr2021.html>.

³ S. Dave, *Critical Analysis and Assessment of NDPS Act and Trafficking from an Indian Legislation Perspective*, 5 Indian J.L. & Legal Res. 1 (2023).

⁴ Y.P.S. Balhara & S. Singh, *Provisions for Health Sector Response to Substance Use Disorders in the Indian Policy: A Critique of the National Policy on Narcotic Drugs and Psychotropic Substances*, 52 J. Psychoactive Drugs 93 (2020).

corrective treatment (Balhara et al., 2024)⁵. Despite decades of enforcement, India is still facing a high ratio of drug addicts, an ongoing drug trail, and increasing claims that the NDPS Act and it has been criticised as linking drug users alongside drug peddlers, imposing harsh criminal penalties on drug users instead of corrective treatment (Balhara et al., 2024)⁶. Nor the introduction of a graduated penalty structures in the 2001 and 2014 amendments, nor changes to death-penalty provisions, have solved structural flaws in India.

The Legislative Architecture of the NDPS Act, 1985

The three entities; prohibition, regulation and penalty under the NDPS Act, 1985 forms a tripartite structure with Part VIII as the essence of the Act, prohibiting cultivation of, production from and manufacture of, possession of, sale of and purchase of, transportation of, inter-State transport of, inter country transportation of (importing or exporting) any narcotic drug (classified by Indian govt) or any psychotropic substance. All these are illegal, except under conditions specified in the Act by the Central Government. According to the Act as the authors explained, Parmar et al., (2024)⁷ substances are categorized as narcotic drugs (mainly cannabis, opium, and cocaine derivatives) and psychotropic substances, which are defined under Schedule I of the Psychotropic Substances Rules, 1985.

The NDPS (Amendment) Act, 2001 saw a major paradigm shift in its scheme, with the abolition of the previous binary of conviction and stringent minimum sentence in favour of quantity based sentencing matrix. The amendment outlined three quantity thresholds: the first being "small quantity" for which an individual is confronted with a maximum imprisonment of 6 months or a fine of up to 10,000 takes or both; followed by the second "intermediate quantity" of goods for which a rigorous imprisonment of 10 years or a fine up to 1 lakh rupees or both was prescribed; and lastly, the third, "commercial quantity" has been prescribed for which no time period for imprisonment has been fixed but a fine ranging from 1 lakh to 2 lakhs rupees is prescribed (Department of Revenue, Government of India, 2023)⁸. This was a key

⁵ Y.P.S. Balhara, S. Sarkar, A.J. Rajguru & S. Singh, *Drug-Related Offences in India: Observations and Insights from the Secondary Analysis of the Data from the National Crimes Record Bureau*, 46 Indian J. Psychological Med. 215 (2024).

⁶ Y.P.S. Balhara, S. Sarkar, A.J. Rajguru & S. Singh, *Drug-Related Offences in India: Observations and Insights from the Secondary Analysis of the Data from the National Crimes Record Bureau*, 46 Indian J. Psychological Med. 215 (2024).

⁷ A. Parmar, V.L. Narasimha & S. Nath, *National Drug Laws, Policies, and Programs in India: A Narrative Review*, 46 Indian J. Psychological Med. 5 (2024).

⁸ Directorate of Revenue Intelligence, Dep't of Revenue, Gov't of India, Punishment for Offences Under the NDPS Act (2023), <https://dor.gov.in/punishment-offences>.

reform because it makes sentencing more proportional, but critics advocate that the ranges used are too low and, thus, minor players often end up in the intermediate or commercial range (Balhara & Singh, 2020)⁹.

The amendment in 1989 had originally added a compulsory death penalty for repeat trafficking offences of commercial quantities. The latter was later toned down by the 2014 amendment which made capital punishment a discretionary punishment and allowed the courts to choose between capital punishment and imprisonment for the prisoner for not less than 30 years with fine. In a landmark order in 2000, the Bombay High Court found the punishment of death for drug offences as unconstitutional since the Article 14 and 21 of the Constitution of India were violated, and it was fit for being reduced to a lesser rate which was already in place.

Moreover, there are a range of subsidiary instruments that complement the NDPS Act, such as the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances (PITNDPS) Act, 1988, which encompasses preventive detention measures; and the National Policy on Narcotic Drugs and Psychotropic Substances, 2012, which outlines supply reduction, demand reduction and harm reduction approaches through inter-ministerial coordination mechanism involving the Ministry of Home Affairs, Ministry of Finance, Ministry of Social Justice and Empowerment (MoSJE), and Ministry of Health and Family Welfare (Parmar et al., 2024)¹⁰.

Penalty Structure and Enforcement Challenges

The NDPS Act also moves away from the traditional criminal paradigm and introduces reverse-onus presumptions in Sections 35 and 54, where culpable mental state or possession is presumed based on the fact, and there is a requirement on the part of the accused to rebut on the balance of probabilities, with the CoC also bearing the burden of proof. Balhara & Singh, (2020)¹¹ argued that there are two requirements under section 37 to grant bail. Firstly, Court must be satisfied that there are reasonable grounds to believe that the accused is not guilty. Secondly, Court must be satisfied that there is no risk of further offence – making pre-trial

⁹ Y.P.S. Balhara & S. Singh, *Provisions for Health Sector Response to Substance Use Disorders in the Indian Policy: A Critique of the National Policy on Narcotic Drugs and Psychotropic Substances*, 52 J. Psychoactive Drugs 93 (2020).

¹⁰ A. Parmar, V.L. Narasimha & S. Nath, *National Drug Laws, Policies, and Programs in India: A Narrative Review*, 46 Indian J. Psychological Med. 5 (2024).

¹¹ Y.P.S. Balhara & S. Singh, *Provisions for Health Sector Response to Substance Use Disorders in the Indian Policy: A Critique of the National Policy on Narcotic Drugs and Psychotropic Substances*, 52 J. Psychoactive Drugs 93 (2020).

release to be an exception in cases involving commercial quantity .

Under Section 71 the Government can set up to identify, offer treatment and also rehabilitate the addicts. Yet real number in implementation exposes that fact that addicts are not taking advantage of Section 64A, which shields them from prosecution if they voluntarily go for rehabilitation (Balhara et al., 2024)¹². Critics have reported that owing to the penal facet of the Act – a minimum of 10 years imprisonment for commercial-quantity offences – there is a significant disparity between the Act's treatment of drug users and violent offenders like rapists, who face a minimum of 7 years imprisonment (Dave, 2023)¹³.

Similarly, enforcement paradoxes are supported by the data in the National Crime Records Bureau, where number of cases registered under the National Domesterol Policy (NDPS) has risen over the years (2012–21) consistently, while the number of convictions in relation to the cases has not shown a corresponding increase. Treatment gap of about 90% depicts a structural framing adopts an exclusively punitive approach is inadequate in India (Parmar et al., 2024)¹⁴.

Critical Discussion: Judicial Interpretations and Landmark Case Laws

Union of India v. Ram Samujh and Another (1999) 9 SCC 429¹⁵

In *Union of India v. Ram Samujh* (1999), the Supreme Court of India ruled on an important issue related to the criteria of bail in cases under the NDPS Act. The case happened during raid at the accused's tubewell house in May 1997 where five kilograms of opium was recovered. The Allahabad High Court granted bail on the very limited reasoning of prolonged incarceration while Special Sessions Judge had earlier held on a detailed reason recording against granting bail which satisfied the statutory conditions (Ram Samujh, 1999)¹⁶.

The order granting bail was quashed and Shah J said that courts considering NDPS bail applications would have to apply the law "in the spirit with which Parliament, after careful

¹² Y.P.S. Balhara, S. Sarkar, A.J. Rajguru & S. Singh, *Drug-Related Offences in India: Observations and Insights from the Secondary Analysis of the Data from the National Crimes Record Bureau*, 46 Indian J. Psychological Med. 215 (2024).

¹³ S. Dave, *Critical Analysis and Assessment of NDPS Act and Trafficking from an Indian Legislation Perspective*, 5 Indian J.L. & Legal Res. 1 (2023).

¹⁴ A. Parmar, V.L. Narasimha & S. Nath, *National Drug Laws, Policies, and Programs in India: A Narrative Review*, 46 Indian J. Psychological Med. 5 (2024).

¹⁵ *Union of India v. Ram Samujh*, (1999) 9 S.C.C. 429 (India).

¹⁶ *Union of India v. Ram Samujh*, (1999) 9 S.C.C. 429 (India).

consideration has amended it" (Ram Samujh, 1999, para. 7)¹⁷. A drug trafficker will not kill one or two people, for the Court said this was the analogy that had to be pulled from, he would be "an instrument causing death or inflicting a death blow to a number of innocent victims facilitation addiction. Importantly, this decision resulted for the time being in a conservative bail jurisprudence which the successive courts have followed taking the intention of the legislature to deal stringently with narcotics offences into account.

State of Punjab v. Baldev Singh (1999) 6 SCC 172¹⁸

State of Punjab v. Baldev Singh (1999) was a case referred to a constitution bench for deciding a conflict between two earlier division bench decisions whether the evidence obtainable through the procedure stated in Section 50 of the NDPS Act (which requires a person to be searched to be told that he is going to be searched in the presence of a Gazetted Officer or Magistrate) would be admissible in the court or not (Baldev Singh, 1999)¹⁹.

The Supreme Court had made it clear that Section 50 is not directory. The evidence collected through a search which was not pursuant to Section 50 was found to be inadmissible and the acquittal of Baldev Singh was upheld. The Court concluded that it is the 'unlawful possession of the contraband' that is the sine qua non to secure conviction under the NDPS Act and the same cannot be proved through illegally procured possession of the drug (Baldev Singh, 1999, para. 18)²⁰. This landmark showed NDPS rule was enforced because it ruled with much differently on procedural safeguards on the part of the law enforcement agencies.

Tofan Singh v. State of Tamil Nadu (2021) 9 SCC 06²¹

In recent times, perhaps the most constitutionally important decision pertaining to the NDPS is Tofan Singh vs State of Tamil Nadu, wherein a three-judge bench of SC, by majority, decided that officers of the customs and the narcotics as well as Border Security Force officers can be declared "police officers" as per the definition in Sec. 25 of the Indian Evidence Act, 1872. Therefore, anything that is confessed or stated to such an officer will not be admissible as evidence (Tofan Singh, 2021)²². Justice R.F. Nariman, decision was based on two fundamental

¹⁷ *Union of India v. Ram Samujh*, (1999) 9 S.C.C. 429 (India).

¹⁸ *State of Punjab v. Baldev Singh*, (1999) 6 S.C.C. 172 (India).

¹⁹ *State of Punjab v. Baldev Singh*, (1999) 6 S.C.C. 172 (India).

²⁰ *State of Punjab v. Baldev Singh*, (1999) 6 S.C.C. 172 (India).

²¹ *Tofan Singh v. State of Tamil Nadu*, Criminal Appeal No. 152 of 2013, (2021) 9 S.C.C. 06 (India).

²² *Tofan Singh v. State of Tamil Nadu*, Criminal Appeal No. 152 of 2013, (2021) 9 S.C.C. 06 (India).

rights granted by the Constitution—Article 20(3) and 21—which represent the right against self-incrimination and the right to life and liberty. The Court established that any lawful provision which allows the use of coerced confession is essentially at variance with all those fundamental rights (Tofan Singh 2021 para.). 42)²³. The impact of this ruling was huge for a number of cases that were pending but which required a heavy reliance on the statements under Section 67, as the cases collapsed, and bay jurisprudence was indirectly liberalised.

Critical Appraisal: The Punitive Paradigm Versus the Public Health Approach

The above legislative and judicial interpretation shows a basic contradiction between the conflicting requirements in the structure of Indian Narcotics law. The NDPS Act was conceived as an instrument towards deterrence but evidence of implementation showed that deterrence alone (in absence of a proportionate effort in the realm of demand and harm reduction) has failed. Combination of over-broad quantity thresholds, reverse-onus presumptions and strict bail conditions, all overlap resulting in a system where more likely than not, addicted people may be punished by incarceration rather than treated for their illness in any way.

Decisions of Baldev Singh and Tofan Singh represent a move on the judicial side to defend the Constitution in spite of prosecutorial ease, and to this extent are well-received by the field of human rights jurisprudence. Ram Samujh authority structure further showed relaxation of the necessary distinctness between pre-trial and trial detention for narcotics cases that the detention is a measure of prophylaxis for society. International comparative models, particularly Portugal's 2001 decriminalisation of personal drug use and its attendant public health outcomes—have been invoked by Indian which needed to rethink domestic framework (Dave, 2023; Balhara et al., 2024)^{24 25}.

Conclusion

The Narcotic Drugs and Psychotropic Substances Act, 1985, is a ambitious and nuanced piece of legislation influenced by international treaty commitments of India, domestic public health considerations, and a maturing constitutional interpretation. Importantly this lack, of response

²³ *Tofan Singh v. State of Tamil Nadu*, Criminal Appeal No. 152 of 2013, (2021) 9 S.C.C. 06 (India).

²⁴ S. Dave, *Critical Analysis and Assessment of NDPS Act and Trafficking from an Indian Legislation Perspective*, 5 Indian J.L. & Legal Res. 1 (2023).

²⁵ Y.P.S. Balhara, S. Sarkar, A.J. Rajguru & S. Singh, *Drug-Related Offences in India: Observations and Insights from the Secondary Analysis of the Data from the National Crimes Record Bureau*, 46 Indian J. Psychological Med. 215 (2024).

to demand and harm reduction, is a fundamental weakness of the Act which continues to be a supply-reduction tool rather than a policy addressing root cause. Future legislative changes target addicts as same standing of commercial traffickers; de-criminalise or divert offences which are for personal use for traffickers to mandatory treatment programs; resource Section 71 rehabilitation centres adequately; and have strong oversight of enforcement agencies to prevent violations of Section 50.

REFERENCES

- Balhara, Y. P. S., & Singh, S. (2020). Provisions for health sector response to substance use disorders in the Indian policy: A critique of the national policy on narcotic drugs and psychotropic substances. *Journal of Psychoactive Drugs*, 52(1), 93–100. <https://doi.org/10.1080/02791072.2019.1709000>
- Balhara, Y. P. S., Sarkar, S., Rajguru, A. J., & Singh, S. (2024). Drug-related offences in India: Observations and insights from the secondary analysis of the data from the National Crimes Record Bureau. *Indian Journal of Psychological Medicine*, 46(3), 215–221. <https://doi.org/10.1177/02537176241228415>
- Bombay High Court. (2000). Judgement on constitutional validity of Section 31A, NDPS Act, 1985. Division Bench (Khanwilkar & Bhangale JJ.).
- Dave, S. (2023). Critical analysis and assessment of NDPS Act and trafficking from an Indian legislation perspective. *Indian Journal of Law and Legal Research*, 5(2), 1–18.
- Department of Revenue, Government of India. (2023). Punishment for offences under the NDPS Act. Directorate of Revenue Intelligence. <https://dor.gov.in/punishment-offences>
- iPleaders. (2020, September 30). Death penalty for drug crimes in India. <https://blog.ipleaders.in/death-penalty-drug-crimes-india/>
- Parmar, A., Narasimha, V. L., & Nath, S. (2024). National drug laws, policies, and programs in India: A narrative review. *Indian Journal of Psychological Medicine*, 46(1), 5–13. <https://doi.org/10.1177/02537176231170534>
- PMC – National Library of Medicine. (2025). Beyond regulation: Reimagining India's narcotic drugs and psychotropic substances policy with public health perspective. *Indian Journal of Psychiatry*. <https://pmc.ncbi.nlm.nih.gov/articles/PMC12118791/>
- State of Punjab v. Baldev Singh, (1999) 6 SCC 172 (Supreme Court of India). <https://indiankanoon.org/doc/1259796/>
- Tofan Singh v. State of Tamil Nadu, Criminal Appeal No. 152 of 2013, (2021) 9 SCC 06 (Supreme Court of India, Three-Judge Bench, R.F. Nariman J.).
- United Nations Office on Drugs and Crime. (2021). World drug report 2021. UNODC. <https://www.unodc.org/unodc/en/data-and-analysis/wdr2021.html>
- Union of India v. Ram Samujh and Another, (1999) 9 SCC 429 (Supreme Court of India). <https://indiankanoon.org/doc/1378939/>