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**“ANTI-DRUG JUSTICE IS A CRIMINAL DIMENSION OF SOCIAL JUSTICE” – A LEGISLATIVE COMMENTARY
ON THE NARCOTIC DRUGS AND PSYCHOTROPIC ACT 1985**

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Abstract

In his inaugural address at the 19th Annual Zone III conference of Commonwealth Parliamentary Association in Gangtok, Lok Sabha speaker Shri Birla stated that drug abuse is affecting the young generation. This problem is not only present in the North East region, but in the entire country. Referring to the detailed discussions held on this matter in the Parliament on 20 and 21 December 2022, Shri Birla said that after a detailed and in-depth discussion on this topic, it emerged that members must conduct a comprehensive public awareness campaign across the country to educate the youth. He urged all to work with a collective spirit to end the growing problem of drug abuse in the nation and work towards a drug free India.

The Narcotic Drugs and Psychotropic Substance Act ³⁶of 1985 is one of the laws that the Indian government has passed in an effort to curb drug abuse. It was enacted to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances. The paper via three segments provides a legislative commentary on the Narcotic Drugs and Psychotropic Substances Act of 1985. The first segment outlines the nature of the legislation by explaining its background and formation. The second segment describes the scope by providing a comprehensive overview of the legislation, and the final segment describes how the legislation is applied through enacted amendments and statistical data.

Key Words – Narcotic Drug, Psychotropic Substance, Drug abuse, Drug Trafficking, Legislative Commentary

Introduction

Though a decision of the past, the observation made by the Hon’ble Supreme Court of India in the case of Baldev Singh ³⁷ stands through the years, demonstrating the upsetting and detrimental consequences of drug abuse. The Hon’ble Supreme Court said,

Drug abuse is a social malady. While drug addiction eats into the vitals of the society, drug trafficking not only eats into the vitals of the economy of a country, but illicit money generated by drug trafficking is often used for illicit activities including encouragement of terrorism. There is no doubt that drug trafficking, trading and its use, which is a global phenomenon and has acquired the dimensions of an epidemic, affects the economic policies of the State, corrupts the system and is detrimental to the future of a country. It has the effect of producing a sick society and harmful culture.

Criminal activity and drug abuse are closely related. Drug addicts who commit crimes to pay for their narcotics become hasty in determining the morality of their actions and thus become elements of harm to society. Drug trafficking is another outcome of drug abuse. These addicts are exploited by drug peddlers and smugglers, who pose a serious threat to the minds of the people and the country's

³⁶ Henceforth abbreviated as NDPS Act

³⁷ The State of Punjab v. Baldev Singh, 1999

commitment to safeguarding its citizens. In this regard, the NDPS Act was enacted to make stringent provisions for the control and regulation of narcotic drug and psychotropic substance operations.

I. Background Of The Act

The following headers explain the background of the legislation;

- Historical Context
- Ratification or Acceding to International Conventions

A. Historical Context

The historical context of the enactment is comprehensively explained in the supra case, in which the Supreme Court stated;

Prior to the passing of the NDPS Act, 1985 control over narcotic drugs was being generally exercised through certain Central enactments though some of the States also had enacted certain statutes with a view to deal with illicit traffic in drugs.

These Acts, however, failed to control illicit drug traffic and drug abuse on the other hand exhibited an upward trend. New drugs of addiction known as Psychotropic Substances also appeared on the scene posing serious problems. It was noticed that there was an absence of comprehensive law to enable effective control over psychotropic substances in the manner envisaged by the International Convention of Psychotropic Substances, 1971. The need for the enactment of some comprehensive legislation on Narcotics Drug and Psychotropic Substances was, therefore, felt. The Parliament with a view to meet a social challenge of great dimensions, enacted the NDPS Act, 1985 to consolidate and amend existing provisions relating to control over drug abuse etc. and to provide for enhanced penalties particularly for trafficking and various other offences. The NDPS Act, 1985 provides stringent penalties for various offences.

B. Ratification or Acceding to International Conventions

Section 2(ix) of the NDPS Act, provides for International Conventions which India has ratified or acceded in relation to the legislation.

The Conventions mentioned ³⁸in the provision are;

- The Single Convention on Narcotic Drugs, 1961 adopted by the United Nations Conference at New York in March, 1961³⁹
- The Protocol, amending the Convention mentioned in sub-clause (a), adopted by the United Nations Conference at Geneva in March, 1972
- The Convention on Psychotropic Substances, adopted by the United Nations Conference at Vienna in February, 1971⁴⁰

II. Formation Of The Act

The formation of the legislation is explained under the following headers;

- Composition and Arrangement of the Act
- Provisions of the Act

A. Composition and Arrangement of the Act

The legislation comprises 6 chapters and 83 sections.

It is arranged as follows;

CHAPTER	SECTIONS
I	1-3
II	4-7

³⁸ any other international convention, or protocol or other instrument amending an international convention, relating to narcotic drugs or psychotropic substances

³⁹ The aim of the Convention was to combat drug consumption through coordinated international intervention. Its intent was to limit the possession, consumption, trade, distribution, import, export, manufacture and production of drugs to medical and scientific purposes only.

⁴⁰ The Convention establishes an international control system for psychotropic substances. It responded to the diversification and expansion of the spectrum of drugs of abuse and introduced controls over a number of synthetic drugs according to their abuse potential on the one hand and their therapeutic value on the other.

III	8-14
IV	15-40
V	41-68
VI	69-83

B. Provisions of the Act

The legislation includes the following provisions:

- Chapter I provides for Preliminary
- Chapter II provides for Authorities and Officers
- Chapter III provides for Prohibition, Control and Regulation
- Chapter IV provides for Offences and Penalties
- Chapter V provides for Procedure
- Chapter VI provides for Miscellaneous

III. Overview Of The Act

The following headers provide an overview of the legislation;

- Describing the Legislated Terms
- Analysis of Emergence
- Powers of the Central Government and State Government
- Procedure Prescribed
- Penalty and its Features
- Forfeiture of Property

A. Describing the Legislated Terms

The legislation is concentrated to two important terms “narcotic drug” and “psychotropic substance”. The term ‘narcotic’ in the legal sense is quite different from that used in the medical context which denotes a sleep-inducing agent. Legally, a narcotic drug could be an opiate (a true narcotic), cannabis (a non-narcotic) or cocaine (the very antithesis of a narcotic, since it is a stimulant). The term

‘psychotropic substance’ denotes mind-altering drugs such as Lysergic Acid Diethylamide (LSD), Phencyclidine, Amphetamines, Barbiturates, Methaqualone, and designer drugs (MDMA, DMT, etc.). Under the NDPS Act, the terms narcotic drug and psychotropic substance are mentioned under the following sections;

- S.2(xiv) *Narcotic Drug*- means coca leaf, cannabis (hemp), opium, poppy straw and includes all manufactured drugs;
- S.2 (xxiii) *Psychotropic Substance* - means any substance, natural or synthetic, or any natural material or any salt or preparation of such substance or material included in the list of psychotropic substances specified in the Schedule

B. Analysis of Emergence

The reference for the formation of the legislation can be made to its Statement of Objects and Reasons. The key contributing factor is the deficiency in the previous legislations ⁴¹ to combat developments in the field of illicit drug traffic and drug abuse at national and international level. Other factors include;

- the scheme of penalties under the legislations were not sufficiently deterrent to meet the challenge of well-organized gangs of smugglers
- the legislations do not provide for investing the officers from a number of important Central enforcement agencies like Narcotics, Customs, Central Excise, etc., with the power of investigation of offences under the enactments
- Since the passing of the legislations, a vast body of international law in the field of narcotics control has emerged via various international treaties and protocols. The Government of India has been a signatory to these treaties and conventions, which impose several

⁴¹ The Opium Act, 1857, the Opium Act, 1878 and the Dangerous Drugs Act, 1930

obligations that are not or only partially covered by the current Acts.

- The emergence of psychotropic substances posed a serious problem for the government as they had no comprehensive law that allows for the exercise of control over them.

In view of the above stated reasons, there was an urgent need for the enactment of a comprehensive legislation on narcotic drugs and psychotropic substances which, inter-alia, was to consolidate and amend the existing laws relating to narcotic drugs, strengthen the existing controls over drug abuse, considerably enhance the penalties particularly for trafficking offences, make provisions for exercising effective control over psychotropic substances and make provisions for the implementation of international conventions relating to narcotic drugs and psychotropic substances to which India became a party.

C. Powers of the Central Government and State Government

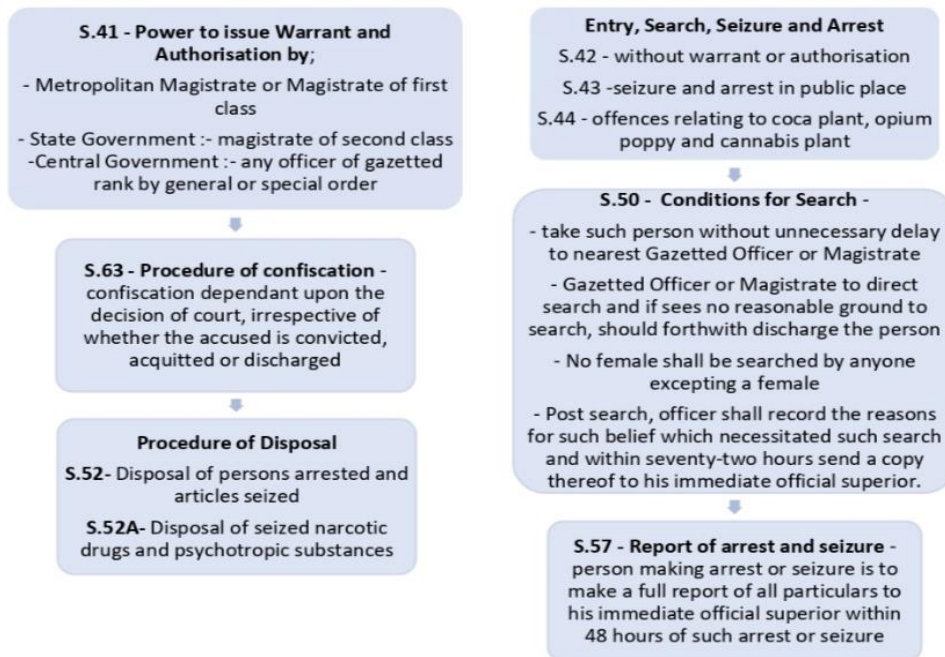
The table below compares and summarises the powers of Central and State government as provided by the legislation;

	of provisions of the Act	Government
S.75	Delegation	Central Government to the Board or any other authority or the Narcotics Commissioner State Government to any authority or officer
S.76 and S.78	To make rules for carrying out the purposes of the Act	Central and State Government
S.53	To invest officers of certain departments with powers of an officer-in-charge of a police station	Central and State Government
S.83	To remove difficulties arising from carrying out the provisions of this Act	Central Government

SECTION	POWER	AUTHORITY
S.3	add to or omit from the list of psychotropic substances	Central Government
S.9 and S.10	permit, control and regulate	Central and State Government
S.72	Recovery of Sums due to Government	Central and State Government
S.74A	Provide directions as to implementation	Central Government to State

D. PROCEDURE PRESCRIBED

The provision for procedure of investigation and prosecution is detailed under Chapter V of the enactment. The below chart shows a comprehensive overview of the chapter;



E. OFFENCES, PENALTIES AND ITS FEATURES

The table⁴² below the penalties for various offences under the NDPS Act;

Offences	Penalty	Sections of the Act
Cultivation of opium, cannabis or coca plants without license	Rigorous imprisonment-up to 10 years + fine up to Rs.1 lakh	Opium - 18(c) Cannabis - 20 Coca-16
Embezzlement of opium by licensed farmer	Rigorous imprisonment -10 to 20 years + fine Rs. 1 to 2 lakhs (regardless of the quantity)	19
Production, manufacture, possession, sale, purchase, transport, import inter-state, export inter-state or use of narcotic drugs and psychotropic substances	Small quantity - Rigorous imprisonment up to 6 months or fine up to Rs. 10,000 or both. More than small quantity but less than commercial quantity - Rigorous imprisonment. up to 10 years + fine up to Rs. 1 Lakhs. Commercial quantity - Rigorous imprisonment 10 to 20 years + fine Rs. 1 to 2 Lakhs	Prepared opium-17 Opium - 18 Cannabis - 20 Manufactured drugs or their preparations-21 Psychotropic substances -22
Import, export or transshipment of narcotic	Same as above	23

⁴² Obtained from Department of Revenue Website; refer <https://dor.gov.in/narcoticdrugspsychotropic/punishment-offences>

drugs and psychotropic substances		
External dealings in NDPS- i.e. engaging in or controlling trade whereby drugs are obtained from outside India and supplied to a person outside India	Rigorous imprisonment 10 to 20 years + fine of Rs. 1 to 2 lakhs (Regardless of the quantity)	24
Knowingly allowing one's premises to be used for committing an offence	Same as for the offence	25
Violations pertaining to controlled substances (precursors)	Rigorous imprisonment up to 10 years + fine Rs. 1 to 2 lakhs	25A
Financing traffic and harbouring offenders	Rigorous imprisonment 10 to 20 years + fine Rs. 1 to 2 lakhs	27A
Attempts, abetment and criminal conspiracy	Same as for the offence	Attempts-28 Abetment and criminal conspiracy - 29
Preparation to commit an offence	Half the punishment for the offence	30
Consumption of drugs	Cocaine, morphine, heroin - Rigorous imprisonment up to 1 year or fine up to Rs. 20,000 or both. Other drugs- Imprisonment up to 6 months or fine up to Rs. 10,000 or both. Addicts volunteering for treatment enjoy immunity from prosecution	27 Immunity - 64A

Features of Penalty

The enactment includes some special provisions for prescribing punishments, including;

31. Enhanced punishment for offences after previous conviction

The section provides that if any person who has been previously convicted for any of the offences under the Act and is subsequently convicted, such person is punished for the second and every subsequent offence with rigorous imprisonment for a term which may extend to one and one-half times of the maximum term of imprisonment, and also be

liable to fine which shall extend to one and one-half times of the maximum amount of fine.

31A. Death penalty for certain offences after previous conviction

The section provides that if any person who has been previously convicted for any of the offences punishable under sections 19, 24, 27A and for offences involving commercial quantity of any narcotic drug or psychotropic substance, is subsequently convicted for an offence related to - engagement in the production, manufacture, possession, transportation, import into India, export from India or transshipment, of the narcotic drugs or psychotropic substances or financing, directly or indirectly in any of these activities., such person is punished with death.

32. Punishment for offence for which no punishment is provided

The section provides that any person who contravenes the following provisions through offences for which no punishment is provided, such person is punished with imprisonment which may extend to six months or with fine or both;

- Provisions of the Act
- Any rule or order made
- Any condition of any licence, permit or authorisation issued

32A. No suspension, remission or commutation in any sentence awarded under this Act

The section provides⁴³ that no sentence awarded under this Act (other than section 27) shall be suspended, remitted, or commuted.

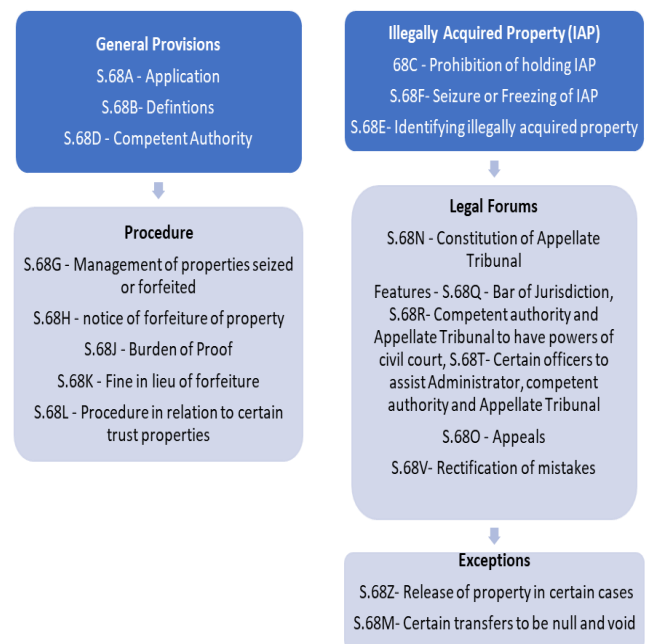
32B. Factors to be taken into account for imposing higher than the minimum punishment

The section provides for certain factors ⁴⁴to be taken into consideration by the court, for

imposition of a punishment greater than the minimum term of imprisonment or amount of fine wherein a minimum term of imprisonment or amount of fine is prescribed for any offence committed under the Act.

F. Forfeiture of Property

The flowchart below provides a glimpse of the provisions related to the forfeiture of the property detailed under Chapter V A of the legislation;



IV. Enacted Amendments

The NDPS Act 1985 was amended four times in 1988, 2001, 2014 and 2021.

A. The Narcotic Drugs and Psychotropic Substances (Amendment) Act 1988

The following changes were introduced in the amendment: -

- Amendment of Long Title
- Amendment of sections – 2, 8, 48, 59, 76
- New Insertions – Chapter IIA, S.9A, S.25A, 27A, 31A, 32A, 52A, 53A, Chapter V A, S.64A, S.74A
- Substitution of new sections for – 36, 37

⁴³ notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other law in force at the time
⁴⁴ in addition to other factors it may deem appropriate

- Omission of section 65

B. The Narcotic Drugs and Psychotropic Substances (Amendment) Act 2001

The following changes were introduced in the amendment: -

- Rationalisation of existing sentence structure so as to ensure that while drug traffickers who traffic in significant quantities are punished with deterrent sentences, the addicts and others who commit less serious offences are awarded less severe punishment.
- Amendment of sections – 1, 2, 7A, 20, 30, 31A, 37, 39, 44, 49, 50, 53, 60, 61, 62, 63, 68A, 6B, 68C, 68E, 68H, 68I, 68O, 76, 77
- Insertion of new sections – 8A, 32B, 50A, 68Z,
- Substitution of new sections for – 15-18, 21-23, 25, 27, 31, 36A, 36D, 41-43, 54, 64A

C. The Narcotic Drugs and Psychotropic Substances (Amendment) Act 2014

The following changes were introduced in the amendment: -

- Amendment of sections – 2, 4, 9, 10, 15, 17, 18, 20, 21, 22, 23, 31, 31A, 42, 52A, 68B, 68D, 68H, 68O, 71
- Insertion of new sections – 27B, 57A

D. The Narcotic Drugs and Psychotropic Substances (Amendment) Act 202

The following changes were introduced in the amendment: -

- Amendment of section 27A - the words, brackets, letters and figure "clause (viii) of section 2", the words, brackets, letters and figure "clause (viii) of section 2" shall be substituted.
- Repeal⁴⁵ of the Narcotic Drugs and Psychotropic Substances (Amendment) Ordinance 2021;

V. Statistical Data On Implementation Of The Act

The Crime in India 2021 report ⁴⁶ provides an overview of the conviction rate under the NDPS Act. The data are as follows;

- The conviction rate in the States and Union Territories is 77.9% and that of Metropolitan Cities are 80.1%.
- The following table constitutes conviction rate in separate categories;

Crime	State and UT's	Metropolitan Cities
Possession of drugs for personal use/consumption	3.4%	13.1%
Possession of drugs for trafficking	2.4%	3.0%
Total	5.7% (All India)	(Total cities) 16.1%

Conclusion

While the enactment appears to be a strict legislation with focus on criminalising drug trafficking, it also integrates the ingredient of social justice in its provision. A section of the legislation cited in a 2022 revised report ⁴⁷of the Ministry of Social Justice and Empowerment is used as the support for the above mentioned. The report says,

Section 71 of the NDPS Act, 1985 (Power of Government to establish centres for identification, treatment, etc., of addicts and for supply of narcotic drugs and psychotropic substances) states that "The Government may establish, recognize or approve as many centres as it thinks fit for identification,

due to their method of legislating through ordinances and bypassing parliamentary procedure; refer <https://theprint.in/politics/lok-sabha-passes-ndps-amendment-to-correct-clerical-errors-opposition-says-unconstitutional/781109/>

⁴⁶publication brought out by NCRB, containing comprehensive information on cases registered and their disposal and persons arrested and their disposal

⁴⁷ Scheme of National Action Plan for Drug Demand Reduction (NAPDDR)

⁴⁵ the ordinance was promulgated to correct a drafting error in the 2014 amendment act, but however faced vehement criticism from the opposition

treatment, management, education, after-care, rehabilitation, social re-integration of addicts and for supply, subject to such conditions and in such manner as may be prescribed, by the concerned Government of any narcotic drugs and psychotropic substances to the addicts registered with the Government and to others where such supply is a medical necessity."

The report also cited the legislation as part of the *setting up quality standards*⁴⁸. The activity to be undertaken is of persuading states to regulate Private De-addiction Centres by framing appropriate rules under the NDPS Act, 1985 and the relative activities are to lay down standards and guidelines for private de-addiction centres to follow and recognize such centres found to be meeting the standards and guidelines and to emphasizing human rights and dignity in the context of drug demand reduction efforts.

The observation made in the judgement of Madan Lama ⁴⁹provides a gist of the objective and scope of the legislation. The court stated that,

The harmful effects of drugs on an individual and on the society have been researched extensively and are well known. The menace of drug abuse is also on the rise in the country and the consequences of the same can be experienced across the board from causing economic issues to societal disintegration. The purpose of enacting the NDPS Act was to curb this menace. To conclude the commentary; as stated by the Supreme Court in the case of State of Punjab v. Baldev Singh: Anti-drug justice is a criminal dimension of social justice.

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⁴⁸ Refer appendix-I of the report; Activities to be undertaken under NAPDDR

⁴⁹ Madan Lama v. Narcotics Control Bureau, BAIL APPLN. 1812/2021



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