

RECENT TRENDS IN THE NDPS LAWS IN INDIA: BALANCING ENFORCEMENT AND HUMAN RIGHTS

Rupneet Kaur, Dr. Parminder Singh

Research Scholar, University School of Legal Studies, RIMT University, Mandi-Gobindgarh, Punjab, India.

Assistant Professor, University School of Legal Studies, RIMT University, Mandi-Gobindgarh, Punjab, India.

rupneet_81@yahoo.co.in, parminder.singh@rimt.ac.in

Abstract

India's Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985, has been the cornerstone of the country's drug control framework. However, its implementation has drawn significant criticism for conflating drug possession for personal use with trafficking, leading to human rights violations, legal uncertainty for healthcare professionals, and ineffective harm reduction strategies. This article examines recent trends in the interpretation and enforcement of the NDPS Act, highlighting the issues of overcriminalization, the ambiguous regulatory environment affecting pharmaceutical access, and the systemic barriers to harm reduction programs. It also explores the critical role played by NGOs in advocating for legal reform and providing essential support services. Moreover, it analyzes the judiciary's struggle to balance punitive mandates with the constitutional rights of individuals. The paper calls for a reorientation of India's drug policy towards a Human Rights and public health-centered framework, emphasizing the urgent need for legislative clarity, medical access, and compassionate care for drug-dependent individuals.

Key Words: Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985, Human rights, Drug possession, Pharmaceutical regulation, Harm reduction, Opioid substitution therapy, Criminalization, NGOs in drug policy, Legal reforms, Indian judiciary, Public health, Drug decriminalization, Medical access, Narcotic control, Policy advocacy

Introduction

India's Narcotic Drugs and Psychotropic Substances (NDPS) Act, enacted in 1985, serves as the principal legislation for combating drug trafficking and abuse in the country. Despite its stringent measures, the Act has been criticized for creating significant human rights concerns, ambiguous regulations that challenge pharmaceutical companies and healthcare professionals, and insufficient harm reduction policies. This article explores the recent trends in NDPS laws in India, focusing on these critical issues, the role of non-governmental organizations (NGOs), and the judiciary's struggle to balance enforcement with human rights.

According to the National Crime Records Bureau (NCRB), in 2021, over 78331 cases were registered under the NDPS Act, with a significant portion involving possession for personal

use¹. The increase in drug possession cases has raised concerns about the effectiveness of the current legal framework and its impact on individuals' rights and public health.

Human Rights and Drug Possession for Personal Use

One of the primary criticisms of the NDPS Act is its stringent punitive provisions, which do not adequately distinguish between drug traffickers and individuals possessing drugs for personal use. The Act mandates severe penalties, including long-term imprisonment and hefty fines, for drug possession, irrespective of the quantity. This approach often leads to the criminalization of drug users rather than addressing the root causes of addiction and providing necessary rehabilitation services.

The presumption of guilt under Section 35 and Section 54 of the NDPS Act further exacerbates human rights concerns. These sections place the burden of proof on the accused, undermining the principle of "innocent until proven guilty." The lack of differentiation between possession for personal use and trafficking has resulted in numerous cases of disproportionate sentencing and prolonged pre-trial detention.

Ambiguities Affecting Pharmaceutical Companies and Healthcare Professionals

The NDPS Act also poses significant challenges for pharmaceutical companies and healthcare professionals. The Act regulates the production, distribution, and use of various narcotic drugs and psychotropic substances, which are essential for medical purposes. However, the ambiguity in the regulations often leads to unintended legal complications for legitimate medical practitioners and pharmaceutical manufacturers².

Pharmaceutical companies and medical practitioners in India face significant challenges due to the ambiguous and stringent provisions of the NDPS Act. Certain essential medications, classified as psychotropic substances, fall under the Act's purview, leading to regulatory hurdles and legal uncertainties.

For example, morphine, a critical pain management drug for cancer patients, is heavily regulated under the NDPS Act. Strict documentation requirements and complex regulations delay its availability, causing accessibility issues for patients in need. Research by Rajagopal and Joranson (2007) highlights these challenges, noting that the stringent regulations around morphine have led to significant barriers in pain management for terminally ill patients in India³. Similarly, buprenorphine, used in opioid substitution therapy (OST) for treating opioid dependence, faces regulatory scrutiny. Doctors prescribing buprenorphine often encounter

¹ Government of India, "State/UT-Wise Cases Registered (CR) Under Narcotics Drugs and Psychotropic Act-1985 during 2019-2021" (National Crime Records Bureau (NCRB), Ministry of Home Affairs, 2023)

² Priyanka Sharma, "Pharma Department Seeks Report on Drug Misuse, Eyes NDPS Act Inclusion", *Mint*, June 14, 2024, available at: [ivemint.com/industry/pharma-department-seeks-report-on-drug-misuse-eyes-ndps-act-inclusion-11718356551743.html](https://www.livemint.com/industry/pharma-department-seeks-report-on-drug-misuse-eyes-ndps-act-inclusion-11718356551743.html) (last visited on July 22, 2024).

³ Rajagopal MR, Joranson DE. India: Opioid availability. An update. *J Pain Symptom Manage*. 2007 May;33(5):615-22. doi: 10.1016/j.jpainsymman.2007.02.028. PMID: 17482057.

legal hurdles due to the NDPS Act's stringent provisions, which require meticulous documentation and compliance with complex rules. This regulatory burden discourages many healthcare providers from prescribing these essential medications, leading to inadequate treatment for patients with substance use disorders⁴.

The classification of certain drugs under the NDPS Act can be unclear, resulting in difficulties for companies in ensuring compliance. Healthcare professionals, including doctors and pharmacists, may face legal Action for the possession of controlled substances, even when used for legitimate medical purposes. This regulatory uncertainty discourages the development and distribution of essential medications, ultimately impacting patient care.

Deficit in Harm Reduction Policy Implementation

Harm reduction policies, which focus on minimizing the negative health and social impacts of drug use, have not been adequately implemented in India. Despite evidence supporting the effectiveness of harm reduction strategies, such as needle exchange programs and opioid substitution therapy, these initiatives remain limited due to legal, social, and political barriers.

The NDPS Act has failed to meet its objectives and is slowly losing its battle on drug abuse because of various reasons. One of the main contributing factors is the intent and approach of the law that emphasizes total prohibition, which is idealistic but not pragmatic. The practical approach requires a paradigm shift from "prohibition" to "harm reduction" in the form of opioid substitution therapy (OST). Given the "public mental health impact" of opioid abuse, where the number of opioid users in the country is approximately two million and opioid dependence syndrome is approximately 0.5 million.⁵

The number of beds in public governed de-addiction centers is abysmally low. In addition, the number of psychiatrist or trained medical practitioners in OST are also few in number to face this humongous challenge.⁶

The criminalization of drug users creates a climate of fear and stigma, deterring individuals from seeking help⁷. Additionally, insufficient funding and resources, coupled with a lack of political will, have hindered the expansion of harm reduction programs.

⁴ National Academies of Sciences, Engineering, and Medicine; Health and Medicine Division; Board on Health Sciences Policy; Committee on Medication-Assisted Treatment for Opioid Use Disorder; Mancher M, Leshner AI, editors. Medications for Opioid Use Disorder Save Lives. Washington (DC): National Academies Press (US); 2019 Mar 30. 5, Barriers to Broader Use of Medications to Treat Opioid Use Disorder. Available from: <https://www.ncbi.nlm.nih.gov/books/NBK541389/>

⁵ Rao R. The journey of opioid substitution therapy in India: Achievements and challenges. *Indian J Psychiatry*. 2017;59:39–45.

⁶ Murthy P, Manjunatha N, Subodh BN. Guidelines for the psychosocially assisted pharmacological treatment of opioid dependence. *Indian J Med Res*. 2010;131:591–3.

⁷ Johns Hopkins University Bloomberg School of Public Health. "Making drug use a crime makes HIV prevention, treatment more difficult." ScienceDaily. ScienceDaily, 15 May 2017. Available at www.sciencedaily.com/releases/2017/05/170515101210.htm

The consequences of inadequate harm reduction policies are dire. The continued criminalization of drug users exacerbates public health issues, such as the spread of HIV/AIDS and hepatitis C, due to unsafe injecting practices. Furthermore, the lack of support services for drug-dependent individuals perpetuates cycles of addiction and marginalization.

Role of NGOs in Advocacy and Support

Various NGOs in India have been at the forefront of advocating for drug policy reform and providing support services for drug users. Organizations like the Lawyers Collective, the Indian Harm Reduction Network (IHRN), and the Human Rights Law Network (HRLN) play a crucial role in challenging unjust provisions of the NDPS Act and promoting harm reduction strategies. The Indian Harm Reduction Network focuses on promoting harm reduction policies and providing services such as needle exchange programs and opioid substitution therapy. The Human Rights Law Network offers legal assistance to individuals arrested under the NDPS Act and advocates for policy changes to protect the rights of drug users.

The Lawyers Collective, co-founded by Indira Jaising and Anand Grover, has been instrumental in providing legal aid and challenging the NDPS Act's harsh provisions through public interest litigation. Lawyers Collective presented its submissions before the Parliamentary Standing Committee on the provisions of the Narcotic Drugs and Psychotropic Substances Bill, 2011 on major issues related to quantities and purity of drug content, treatment facilities for addicts, availability of opiates for medical use, immunity provision on death penalty under Section 31(a) of NDPS Act, deterrent provisions for drug abuse among the youths, cultivations of poppy etc⁸.

To decriminalise poppy husk, opium and marijuana, Member Parliament, Dr Dharamvir Gandhi moved a Private Member's Bill⁹ in the Parliament to amend the Narcotic Drugs and Psychotropic Substances (NDPS) Act of 1985. The Bill seeking legalisation of the "non-synthetic" intoxicants to provide relief to common drug user through cheap, regulated and medically supervised supply of traditional and natural intoxicants like 'afeem' and 'bhukki' (opium) to get society rid of dangerous and killing medical and synthetic drugs¹⁰.

These NGOs have made significant strides in raising awareness about the human rights implications of punitive drug laws and advocating for more balanced and humane drug policies. However, their efforts are often met with resistance from policymakers and societal attitudes towards drug use.

⁸ Fiftieth Report Standing Committee On Finance (2011-2012) (Fifteenth Lok Sabha) Ministry Of Finance (Department Of Revenue) The Narcotic Drugs And Psychotropic Substances (Amendment) Bill, 2011 Presented To Lok Sabha On 21 March, 2012 Laid In Rajya Sabha On 21 March, 2012.

⁹ The Narcotic Drugs and Psychotropic Substances (Amendment) Bill, 2016 (Amendment of section 1, etc.)

¹⁰ "Legalise Opium, Marijuana": Dr Gandhi to Move Bill in Parliament to Change Law", *Hindustan Times*, July 16, 2016.

Judiciary's Challenge in Balancing Punitive Provisions and Human Rights

The judiciary in India faces significant challenges in balancing human rights with the stringent enforcement of the NDPS Act. Courts are often caught between upholding the law and ensuring the protection of fundamental rights. Several landmark cases have highlighted this tension, with the judiciary attempting to interpret the law in a manner that upholds justice and fairness.

In the case of *E. Michael Raj v. Intelligence Officer, Narcotic Control Bureau*¹¹, the Supreme Court ruled that only the pure drug content should be considered for sentencing, rather than the entire mixture. This decision was a significant step towards ensuring fairer judicial outcomes. However, such interpretations are later overruled and are not always sufficient to address the broader issues of human rights violations and the need for comprehensive legal reform.

Conclusion

The recent trends in the implementation of the NDPS Act in India reveal significant challenges in balancing drug control with human rights, healthcare provision, and harm reduction. The harsh penalties and strict liability provisions of the Act have led to numerous human rights violations, particularly for individuals caught with small quantities of drugs for personal use. Pharmaceutical companies and doctors face significant challenges due to the ambiguous and stringent regulations, impacting patient care and access to essential medications.

The inadequate implementation of harm reduction policies exacerbates the health and social impacts of drug use, while the continued criminalization of drug users drives them away from necessary health services. NGOs play a crucial role in advocating for humane drug policies and implementing harm reduction programs, but their efforts are often hampered by insufficient funding and political will.

The judiciary's efforts to balance human rights with the enforcement of the NDPS Act highlight the need for comprehensive legal reform. Integrating human rights principles into drug policy is crucial for creating a balanced and effective approach to drug control in India. Continued advocacy and reform efforts are essential to ensure that drug policies respect the dignity and rights of all individuals while effectively addressing the challenges posed by drug trafficking and abuse.

¹¹ 2008 (5) SCC 161