

HOW EFFECTIVE IS THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT 1985

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The UN Single Convention on Narcotic Drugs, 1961 and the Convention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, are the first ever such international treaties which have imposed an obligation on the States to deal with the use /abuse/activities relating to the Narcotic and Psychotropic Substances in such manner that these people are not harmed by the abuse and also that these substances which are declared to be the controlled substances are used under the regulations of the State. India passed The Narcotic and Psychotropic Substances Act in 1985, which has so far been amended three times, in 1989, 2001 and lately in 2014. With each amendment more strengthening provisions are brought in the Act so that its objectives are not infiltrated. In this paper I will discuss the various issues related to drug abuse in India and the effect of the amendments in meeting out the requirement of stringent punishment. I have also tried to analyse if the strict punishment given in the Act is able to curb the ratio of drug abuse, if not, what other remedies can be provided to deal the issue of drug abuse.

THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT 1985

The Narcotic Drugs and Psychotropic Substances Act 1985 came into force on November 14, 1985, and has become the statute under which all cases relating to possession, consumption, and sale of 'Narcotic drugs' are prosecuted. However it is necessary to understand that this act has evolved over the years and has been amended thrice (1989, 2001 and 2014) which has strengthened the provisions of this act with every amendment. The Prevention of Illicit Trafficking in Narcotic Drugs and Psychotropic Substances Act was passed in 1988 in order to bring modalities to the subsisting N.D.P.S. Act.

It is pertinent to note that before the passing of N.D.P.S. Act, there was no law to criminalise the possession and use of drugs and as such the conventional methodologies prevailed throughout the state. The Single Convention on Narcotic Drugs was drafted in 1961 and that being the first of its kind, started creating a pressure on the international level upon the countries producing or dealing with the controlled substances. India for a period of almost 25 years remained intact and had no law regulating these substances. It was only after the economical contingencies of the Rajiv Gandhi Government that the Nation had to pave the way to legislate on the issue and NDPS Bill was introduced on August 23, 1985 and received the assent of the President on September 16, 1985.

The Act comprises of five chapters, the first introducing the definition of various Narcotic drugs and Psychotropic substances, with delegating a power on the Center Government to add or omit the other Substances under the act.

The second chapter describes the various instrumentalities, authorities and officers to be created under the Act to execute the Act.

The third chapter deals about the prohibition, regulation and the control of the Narcotic Drugs and Psychotropic Substances given under chapter one.

Chapter four describes the offences and penalties, and the fifth chapter deals with the procedure to be used for the cases falling under the Act.

MAJOR SHORTCOMINGS OF THE NDPS ACT

The NDPS Act was made in 1985 and even after 24 years this regulation has failed to meet the expected result. The Act have been amended thrice and considering the substance of the amendment, it can be said that the first draft of the Act itself lacked foresight, and hence it has been criticised to be a hasty piece of legislation.

The delays in trial, mostly result in loss of memory of the witnesses and doubts on the accuracy, thereby acquitting the criminals. During the long period of trials, the charged accused often gets recruited by hardened criminals inside the jails.

The drug users mostly from the socially and economically backward areas, being ignorant and poor often fail to comply with the elaborate provisions of bail and end up their trial as an undertrial prisoner.

A vague understanding of the addiction and dependency of the victim of drug abuse, do not let the correctional agencies estimate the grievance of the problem. Very often the addicts relapses and the whole process of stabilisation wastes.

Keeping in view the abovementioned shortcomings a few legislative endeavours were made in the forthcoming years, to revive the NDPS Act. Following is the details of the amendments made in the act in the subsequent years and the outcome of the changes.

Amendment Act of 1989

During the initial years of the NDPS Act, cases pertaining to the offences delineated in the Act were dealt with by conventional Sessions Courts. However, this further exacerbated the problem of judicial overburden which has plagued Indian courts for decades. In order to remedy this problem, the Government of India vide an amendment to the NDPS Act in 1989 paved the way for the establishment of specialized courts to deal with offences set out in the Act. Sec. 36 of the Act empowers the government to set up as many Special Courts as it deems fit for the expeditious resolution of disputes. Even though Special Courts have played a pivotal role in the effective implementation of the NDPS Act, they have not been able to develop efficacious strategies for grappling with the systematic challenges that are faced by courts across the country.

Another aspect which is taken care by the amendment act of 1989 is uniformity on the regulations. There shall be uniform national policy for the selected medicines and o

nly the Central Governemnt has a right to deal with its amendments, unlike the situation before, where the states were given the rights to have their own regulations regarding these drugs and medicines.

Instead of multiple agencies being involved in the process of licensing, there shall now be only one drugs controller.

Amendment Act of 2001

The NDPS Act 1985 originally had six chapters with 83 sections but two new chapters i.e. chapter II-A and Chapter V-A were inserted later by the Narcotic Drugs and Psychotropic Substances (Amendment) Act 1988 with effect from 29th May, 1989. By introducing new Chapter II-A a National Fund was constituted namely "National Fund for Control of Drug Abuse". The sale proceed of any property forfeited under ChapterVA are to be credited to that fund.ⁱ The fund is to be utilised by the Central Government to meet the expenditure in combating drug abuse and illicit trafficking.

Chapter IV dealing with the penalties originally had stringent punishment like rigorous imprisonment for a minimum of ten years, was overhauled by the amendment Act of 2001. Prior to 2001 amendment, only one category of sentence was prescribed for each kind of offences. Now all the offences have been divided into three categoies i.e. Small Quantity, in between small quantity and Commercial Quantity (may be called Medium Quantity) and Commercial Quantity.The Amendment Act of 2001 grades punishments in following three categories depending on the quantity of drugs seized.

- (a) Where the contravention involves small quantity, attracts rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees or with both.
- (b) Where the contravention involves quantity lesser than commercial but greater than small quantity, is punishable with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees.
- (c) Where the contravention involves commercial quantity, is punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one Lakh Rupees but which may extend to Two Lakh Rupees. The court has power to impose a fine exceeding two Lakh Rupees by recording reasons in its judgement.
- (d) Small and Commercial quantities for various drugs have been notified by the Central Governemtn vide Notification No.77/2001 dated 19/10/2001/s.o. 1055 9E) dated 19/10.2001.ⁱⁱ

Amendment Act of 2014

The Narcotic Drugs and Psychotropic Substances Amendment act 2014 amended The NDPS Act to relax restrictions placed by the Act on Essential Narcotic Drugs, Morphine, Fentanyl, and Methadone, making them more easily accessible for use in pain relief and palliative care.ⁱⁱⁱ The Amendment also contained measures to improve treatment and care for people dependent on drugs, opened up the processing of opium and concentrated poppy straw to the private sector, and strengthened provisions related to the

forfeiture of property of persons arraigned on charge of drug trafficking. The amendment also removed the NDPS Act's imposition of a mandatory death sentence in case of a repeat conviction for trafficking large quantities of drugs, giving courts the discretion to use the alternative sentence of 30 years imprisonment for repeat offences. However the Amendment increased the punishment for "small quantity" offences from a maximum of six months to 1 year imprisonment.^{iv}

The effects of Amendments on effectiveness of the NDPS Act 1985

While summarising the finding of the effects on the effectiveness of the NDPS Act 1985 it can be concluded that the legislative efforts in meeting out the scientific and other recreational uses of Drugs and the abuse of the substances have to be meted out differently and with reasonable classifications. The Law on drug abuse has been evolved over the period of more than 25 years and the punishments being made more harsh and stringent, the only efficacious remedy is to work upon the legislation giving definitive interpretations to the underlining objectives behind the provisions at the hands of the executive officers. There have been ample cases of overlapping provisions and jurisdictions but only a clear and precise understanding of the objective clause can streamline the difference of opinion. The scarcity of available data regarding the substance abuse has proved to be a great hinderance in accomplishing the aim of the act, it is therefore required that the Data collection and statistical reports be made the primary force for implementation of any new averment in the course of policy making.

ⁱ Section 7-A of the NDPS Act 1985.

ⁱⁱ <http://www.cbn.nic.in/html/qtynotif.PDF>

ⁱⁱⁱ www.thehindu.com/todays-paper/tp-national/passing-of-ndps-act-amendment-bill-will-make-morphine-more-accessible

^{iv} www.lawyerscollective.org