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Compassionate Rehabilitation for Drug Users and Strict Action against Traffickers: A Legal Analysis under the NDPS Act, 1985

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ABSTRACT

India's drug policy under the NDPS Act, 1985, balances strict enforcement against traffickers with rehabilitative measures for addicts. The legal framework evolved from the British-era Dangerous Drugs Act, 1930, to the proactive NDPS Act, 1985 integrates deterrence, public awareness, and rehabilitation efforts. Key provisions like Sections 39 and 64A allow probation and immunity, respectively, for addicts seeking de-addiction treatment, distinguishing punitive measures from rehabilitative approaches. Institutional support from the Ministry of Health & Family Welfare and the Ministry of Social Justice & Empowerment drives rehabilitation programs such as Nasha Mukh Bharat Abhiyaan. Despite these, challenges persist, including societal stigma, inadequate infrastructure, etc. The article advocates a balanced approach that strengthens rehabilitation while maintaining effective deterrence against illicit drug trade.

Introduction

1. India has transitioned from being a transit country to a consumer country, with youth increasingly falling prey to drug addiction. The NDPS Act, 1985, aims to tackle both drug trafficking and rehabilitation. But is the balance effective enough?" This article critically examines whether the NDPS Act, 1985 strikes an effective balance between enforcement and rehabilitation, exploring its evolution, challenges, and future directions." The aim and object of the NDPS Act, 1985 is reproduced as under:

"An Act to consolidate and amend the law relating to narcotic drugs, to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances to provide for the forfeiture of property derived from, or used in, illicit traffic in narcotic drugs and psychotropic substances, to implement the provisions of the International Conventions on

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Narcotic Drugs and Psychotropic Substances] and for matters connected therewith.”

Legal Evolution: From reactive enforcement to proactive enforcement.

2. The Dangerous Drug Act, 1930 was a British-era legislation and was in force until 1985 when the same was repealed by the Narcotic Drugs and Psychotropic Substances Act, 1985. The Dangerous Drugs Act, 1930 was largely reactive and it aimed at punishing offenders after the crime was committed and it lacked proactive mechanisms like rehabilitation or demand reduction. On the other hand, the NDPS Act, 1985, while enforcing strict penalties, incorporates proactive strategies like public awareness campaigns, rehabilitation programs, and monitoring drug supply chains to prevent addiction and trafficking before they escalate into a different zone. As a proactive legislation, it focusses more on intervention, education, and harm reduction.

2.1 Be that as it may, the Dangerous Drugs Act, 1930 did not keep pace with the changing nature of drug abuse and trafficking. By the 1980s, the global drug trade had become more sophisticated and connected, and the law failed to address these emerging challenges and the penalties were not deterrent to stop the growing illicit drug trafficking. The pushing of drugs, initially for being routed to other countries by unscrupulous passengers passing through the international airports, was centred largely around heroin. With a portion of the drug being siphoned off into the domestic market, trends changed and slowly from a transit country, India has become a consumer of drugs and has become youth-driven with primarily technology illicit business.

2.2 In the meantime, India being signatory to the Single Convention, 1961, it was felt necessary to align with the international obligation. The NDPS Act, 1985 was India's effort to comply with the Single Convention, 1961 and NDPS Act, 1985 was enacted to provide a more comprehensive, modern legal framework and meet the growing challenges of drug misuse than the Dangerous Drugs Act, 1930.

2.3 The NDPS Act, 1985 broadly criminalizes drug-related activities—from production and sale to interstate trafficking—except for medical or scientific use."

2.4 The NDPS Act, 1985 adopts a **strict penal framework**, with **graded punishments** based on the **quantity of drugs** involved — small and commercial, notified from time to time. The quantity greater than small and less than commercial has been christened as intermediate quantity by the Ld. Courts. While it treats **trafficking and large-scale operations** with zero tolerance, it makes a distinction in cases involving **personal consumption**, allowing for a

more **humane approach** under certain conditions. Over time, the NDPS Act has been **amended to keep with the changing times.**

Funding and Institutional Framework for Demand Reduction

3. Chapter IIA dealing with national fund for control of drug abuse was inserted into the Act by Act 2 of 1989 and came into effect with effect from 29.05.1989. The corpus for the Fund, in terms of section 7A of the Act would come from the following:

- “(a) an amount which the Central Government may, after due appropriation made by Parliament by law in this behalf, provide;
- (b) the sale proceeds of any property forfeited under Chapter VA;
- (c) any grants that may be made by any person or institution;
- (d) any income from investment of the amounts credited to the Fund under the aforesaid provisions”

and use the amounts available in the Fund, in terms of section 7A(2) of the Act, *inter alia*, for the following:

- “(a) ----
- (c) **identifying, treating, rehabilitating addicts;**
- (d) **preventing drug abuse;**
- (e) **educating public against drug abuse;**
- (f) ---”

We shall revert to the usage of funds at the appropriate place in the article.

Legal Provisions Supporting Rehabilitation: Sections 39 and 64A of the NDPS Act, 1985

4. The NDPS Act does not directly refer to the rehabilitation measures. Two sections in the NDPS Act, 1985 that are useful for the purpose of this article are section 39 and section 64A of the NDPS Act, 1985

4.1 In terms of section 39 of the NDPS Act, 1985, the Courts have been vested with the discretion to release drug addicts convicted under Section 27 or for offenses involving small quantities of narcotic drugs or psychotropic substances on probation instead of immediate imprisonment. The decision of the court is based on factors such as the offender's age, character, and health. If the offender consents, they **must undergo de-addiction treatment at a government-recognized facility and provide a report within a year.** If the treatment

proves effective, the court may release the offender after admonition and require them to abstain from drug-related offenses for up to three years, failing which they must appear for sentencing.

4.2 Similarly, under section 64A of the NDPS Act, 1985, **drug addicts** charged under Section 27 or for offenses involving small quantities of narcotics or psychotropic substances **can avoid prosecution if they voluntarily seek de-addiction treatment at a government-recognized hospital or institution and complete the treatment**. However, if they fail to complete the treatment, the immunity from prosecution may be withdrawn. These sections do not provide treatment directly, but they help move addicts from punishment to rehabilitation. They show that addiction is increasingly seen as a health problem rather than just a crime.

However, it is to be noted that in both the sections, under reference, they only deal with “addicts, which has been defined under section 2(i) of the Act as “*a person who has dependence on any narcotic drug or psychotropic substance;*”. This means that any person, who has been arrested on the charges of consumption, as envisaged under section 27 of the NDPS Act, 1985, is not entitle to the beneficial piece of legislation.

Article 47 of the Constitution of India

5. The Constitution of India, under Article 47, urges the state to work towards prohibiting the consumption of harmful intoxicants and drugs. Efforts to address drug-related issues in the country fall into two broad categories: **supply reduction** and **demand reduction**.

The Enforcement side: Deterrence, Trafficking, and Procedural Safeguards

6. Supply reduction focuses on limiting illicit drug availability, dealt with by the Narcotics Control Bureau (NCB) and by a host of empowered agencies/officers falling under Ministry of Finance, Ministry of Defence and various Police under State Governments. On the other hand, demand reduction, led by the Ministry of Social Justice and Empowerment and partly by the Ministry of Health & Family Welfare, involves awareness, treatment, and rehabilitation.

6.1 The Ministry of Health & Family Welfare runs the **Drug De-Addiction Programme (DDAP)**, offering financial support to strengthen treatment facilities in select government hospitals, particularly in the North-East. A **National Nodal Centre**, the National Drug Dependence Treatment Centre (NDDTC) in Ghaziabad (Uttar Pradesh), operates under AIIMS, New Delhi. Other major centres—PGIMER, Chandigarh, and NIMHANS, Bangalore—provide de-addiction and rehabilitation services, conduct research, and train medical professionals in drug treatment.

6.2 The Drug De-addiction Programme (DDAP), launched in 1988, aims to provide accessible, affordable, and evidence-based treatment for substance use disorders through government healthcare facilities while training medical staff in effective management. The Drug Treatment Clinics (DTC) scheme, coordinated by NDDTC, AIIMS, has expanded to 27 operational clinics across various states. Recently, DDAP and the National Programme for Tobacco Control (NTCP) were merged and renamed National Program for Tobacco Control and Drug Addiction Treatment (NPTCDAT).

6.3 The Drug Treatment Clinics (DTCs) under NDDTC, AIIMS, New Delhi under the "DTC Scheme – DDAP, MOH&FW¹ is as follows

Sl. No.	Name of Health facility	Name of the District	Name of the State
1	Civil Hospital Bhatinda Punjab	Bhatinda	Punjab
2	Civil Hospital	Kapurthala	
3	Community Clinic DTC, Kotla Mubarakpur, NDDTC	New Delhi	New Delhi
4	Post-Graduate Institute of Medical Sciences	Rohtak	Haryana
5	King George Medical College	Lucknow	Uttar Pradesh
6	Regional Institute of Medical Sciences	Imphal	Manipur
7	District Hospital	Thoubal	
8	District Hospital	Bishnupur	
9	District Hospital	Churachandpur	
10	King Edward Memorial Hospital	Mumbai	Maharashtra
11	GT Hospital	Mumbai	
12	Medical College	Dhule	
13	Medical College	Nagpur	
14	Civil Hospital	Osmanabad	
15	Peripheral Hospital	Mumbai	
16	Municipal De-Addiction Centre	Mumbai	
17	New Civil Hospital	Surat	Gujarat
18	North District Hospital	Mapusa	Goa
19	Naga Hospital	Kohima	Nagaland

20	Institute of Mental Health	Chennai	Tamil Nadu
21	Institute of Mental Health	Hyderabad	Telangana
22	Medical College	Dibrugarh	Assam
23	Community Health Centre Soibugh	Srinagar	J & K
24	Mental Hospital	Indore	Madhya Pradesh
25	Medical Hospital	Agartala	Tripura
26	District Hospital	Singtam	Sikkim
27	Government Medical College	Kota	Rajasthan

6.4 The **Ministry of Health & Family Welfare (MoHFW)** runs the **National Drug De-Addiction Programme (DDAP)** to provide accessible, affordable, and evidence-based treatment for substance use disorders. Implemented through six major health institutions, with **AIIMS New Delhi (NDDTC)** serving as the **National Nodal Centre**, the program focuses on treatment, research, and medical staff training. Over the last three years, **Rs. 45-51 crores** have been allocated for DDAP, treating over **38,786 new OPD patients, 167,841 follow-up cases, and 1,569 in-patients (2020-21)**. MoHFW has also released **Standard Treatment Guidelines** for managing substance use disorders.

6.5 Institutional Roles under NAPDDR

MoSJE's Strategic Interventions under NAPDDR:

- **Prevention & Education:** Supporting NGOs and state bodies in awareness and outreach.
- **Rehabilitation & Livelihood Support:**
 - 355 Integrated Rehabilitation Centres for Addicts (IRCA's)
 - 53 Community-based Peer-Led Intervention (CPLI) Centres
 - 78 Outreach and Drop-In Centres (ODICs)
 - 36 Addiction Treatment Facilities (ATFs)
- **Skill Development:** Implemented through PM-DAKSH for vocational training and societal reintegration.

Impact Statistics:

- Treated over 5.9 lakh beneficiaries in the last five years.
- Trained over 8,000 Master Volunteers.

The **Ministry of Social Justice and Empowerment (MoSJE)** oversees the **National Action Plan for Drug Demand Reduction (NAPDDR)**, supporting **state governments, NGOs, and voluntary organizations** in prevention, education, rehabilitation, and livelihood assistance. MoSJE also funds **District De-Addiction Centres (DDACs)** in underserved areas and has implemented the **Nasha Mukh Bharat Abhiyaan (NMBA)** in **272 vulnerable districts**, supporting:

- **355 Integrated Rehabilitation Centres for Addicts (IRCAs)**
- **53 Community-based Peer-Led Intervention (CPLI) centres**
- **78 Outreach and Drop-in Centres (ODICs)**
- **36 Addiction Treatment Facilities (ATFs)** in government hospitals

Additionally, **MoSJE, through NDDTC, AIIMS, runs a Capacity Building Mechanism for Addiction Treatment Facilities**, organizing **5-day training workshops** for medical staff across India, covering **induction, refresher, and specialized training** on substance use disorder management.²

Rehabilitation of Drug Addicts

Nasha Mukh Bharat Abhiyaan (NMBA)

6.7 NMBA operates in **272 vulnerable districts**, focusing on youth engagement and community involvement:

- **8,000 trained Master Volunteers** leading awareness activities.
- **2.2+ crore people reached**, including **86.4 lakh youth, 4,000+ Yuva Mandals**, and **29.67 lakh women** through Anganwadi, ASHA workers, and SHGs.
- **13+ lakh students engaged** in **55,400+ educational institutions** via events and competitions.
- **Social media & internships** used to amplify the outreach.
- **Android mobile app** developed for real-time activity tracking.
- Plan to declare **100 districts as 'Drug Sensitized'** (2021-22).

Rehabilitation & Treatment Facilities

- **355 Integrated Rehabilitation Centres for Addicts (IRCAs)** providing recovery services to **5,94,754 beneficiaries** in the past five years.
- **53 CPLI Centres** targeting vulnerable adolescents with peer-led interventions.

- **78 ODICs** offering safe spaces, screening, counselling, and referrals.
- **36 Addiction Treatment Facilities (ATFs)** supported in government hospitals, implemented via AIIMS, New Delhi.

6.8 Additionally, MoSJE runs PM-DAKSH, offering skill development, vocational training, and livelihood support to former drug users, helping them reintegrate into society. This holistic strategy ensures prevention, rehabilitation, and reintegration, strengthening India's fight against substance abuse.³

Drug Rehabilitation Centre

6.9 The **Ministry of Social Justice and Empowerment (MoSJE)** implements the **National Action Plan for Drug Demand Reduction (NAPDDR)**, providing financial support to:

- **State Governments/UT Administrations** for prevention, awareness, capacity building, skill development, vocational training, and rehabilitation of former drug users.
- **NGOs/Voluntary Organizations** to manage **Integrated Rehabilitation Centres for Addicts (IRCA)s**, **Community-Based Peer-Led Interventions (CPLI)** for youth, **Outreach and Drop**

The number of people received treatment at such centre during the last three years are as below:

SL. NO.	FINANCIAL YEAR	NO. OF PEROPLE RECEIVED TREATMENT
1	2018-19	77,479
2	2019-20	93,364
3	2020-21	2,08,415
4	2021-22 (till 14.03.2022)	2,72,314

- 355 Integrated Rehabilitation Centres for Addicts (IRCA)s are supported by the Ministry. These IRCA)s not only provide for treating the drug victims, but also give services of preventive education, awareness generation, motivational counselling, detoxification/de-addiction, after care and re-integration into the social mainstream. Ministry also provided support to special de-addiction centre for women and children.

ii. 53 Community based Peer led Intervention (CPLI) Centres are supported by the Ministry. These CPLIs focus on vulnerable and at risk children and adolescents. Under this, peer educators engage children for awareness generation and life skill activities.

iii. 78 Outreach and Drop In Centres (ODICs) are supported by the Ministry. These ODICs provide safe and secure space of treatment and rehabilitation for substance users, with provision of screening, assessment and counselling and thereafter provide referral and linkage to treatment and rehabilitation services for substance dependence.

iv. Ministry also supports setting up of 36 Addiction Treatment Facilities (ATFs) in some Government hospitals, which is being implemented through AIIMS, New Delhi.

v. The Ministry is also providing financial support for setting up of District De-Addiction Centre (DDAC) in various districts. These DDACs would provide comprehensive facilities hitherto being provided by IRCA, ODIC & CPLI together. The main focus of the DDAC is early prevention, education, demand reduction, identification, treatment and rehabilitation services of vulnerable individuals or individuals affected by substance use disorders.

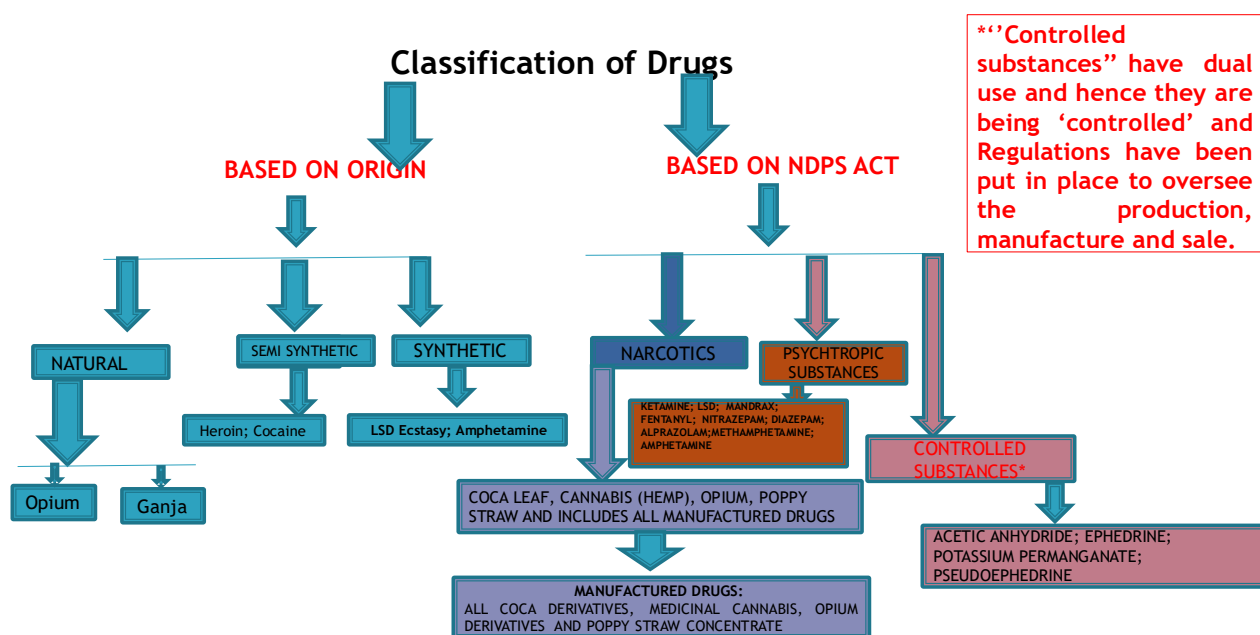
State-wise List of projects under NAPDDR⁴

Sr. No.	State	IRCA	CPLI	ODIC	SLCA	Grand Total
1	ANDHRA PRADESH	10	4	4	1	19
2	ARUNACHAL PRADESH	0	1	1	0	2
3	ANDAMAN & NICOBAR	0	0	0	0	0
4	ASSAM	18	3	3	1	25
5	BIHAR	9	0	0	1	10
6	CHANDIGARH	0	1	1	0	2
7	CHATTISGARH	3	1	3	1	8
8	DADAR & NAGAR HAVELI	0	0	0	0	0
9	DAMAN & DIU (ONLY DAMAN)	1	0	0	0	1
10	DELHI	10	6	8	1	25
11	GOA	0	0	0	0	0
12	GUJARAT	7	3	3	1	14
13	HARYANA	9	1	1	1	12

14	HIMACHAL PRADESH	6	1	0	1	8
15	JAMMU AND KASHMIR	1	2	3	1	7
16	JHARKHAND	1	0	0	0	1
17	KARNATAKA	33	0	0	1	34
18	KERALA	20	2	2	1	25
19	LAKSHADWEEP	0	0	0	0	0
20	LADAKH	0	0	0	0	0
21	MADHYA PRADESH	13	4	8	1	26
22	MAHARASHTRA	42	2	0	1	45
23	MANIPUR	26	2	6	1	35
24	MEGHALAYA	1	1	1	0	3
25	MIZORAM	11	0	2	1	14
26	NAGALAND	8	1	1	1	11
27	ORISSA	40	3	6	1	50
28	PUDUCHERRY	1	0	1	0	2
29	PUNJAB	5	1	2	0	8
30	RAJASTHAN	17	5	7	0	29
31	SIKKIM	2	0	0	0	2
32	TAMIL NADU	22	0	0	1	23
33	TRIPURA	0	0	0	0	0
34	TELANGANA	8	1	1	1	11
35	TRIPURA	0	0	2	0	2
36	UTTAR PRADESH	19	5	9	0	33
37	UTTARAKHAND	4	1	1	1	7
38	WEST BENGAL	8	2	2	1	13
	Grand Total	355	53	78	21	507

Drug Classification Overview

7. Drugs are classified by origin and under the NDPS Act, 1985 as under:



Offences under the NDPS Act, 1985

8. The offences prescribed for “dealing” with the substances under the NDPS Act, 1985 are tabulated as under:

Substance	Offence (NDPS section)	Small Quantity	Intermediate quantity	Commercial quantity
		Rigorous imprisonment (RI)		
Poppy Straw	15	Up to 1 year RI or Rs.10000 fine	RI for a term up to 10 years or 1 lakh fine	RI 10-20 years + 1-2 lakh fine
Prepared Opium	17	Up to 1 year RI or Rs.10000 fine	RI for a term up to 10 years or 1 lakh fine	RI 10-20 years + 1-2 lakh fine
Cannabis (Ganja)	20	Up to 1 year RI or Rs.10000 fine	RI for a term up to 10 years or 1 lakh fine	RI 10-20 years + 1-2 lakh fine
Manufactured	21	Up to 1 year RI	RI for a term up to	RI 10-20 years + 1-2

drugs and preparations		or Rs.10000 fine	10 years or 1 lakh fine	lakh fine
Psychotropic substances	22	Up to 1 year RI or Rs.10000 fine	RI for a term up to 10 years or 1 lakh fine	RI 10-20 years + 1-2 lakh fine

8.1 Under the NDPS Act 1985, drug trafficking is dealt with through a strict liability approach, particularly under Sections 19, 21, 23, 24, 27A. These provisions outline stringent penalties for offenders involved in manufacturing, distribution, or illegal trade of narcotic drugs and psychotropic substances.

8.2 As can be seen from the tabulation it is very clear that a graded punishment system based on the quantity of the substance involved is followed, which explicitly tells us that higher the quantity, higher would be the punishment. Repeat offenders are dealt with separately and are covered under section 31 of the NDPS Act, 1985.

Hierarchy of Courts under BNSS, 2023 for trying offences under the NDPS Act, 1985

9. The offences involving punishment in excess of three years are triable by a Special Court in terms of section 36A of the NDPS Act, 1985 and the Special Court, In terms of section 36 of the NDPS Act, 1985, to be eligible for appointment as a Judge of a Special Court, a person must have served as a Sessions Judge or an Additional Sessions Judge immediately prior to their appointment. The hierarchy of court for the offences booked under various provisions are tabulated as under:

HIERARCHY OF COURTS FOR OFFENCES UNDER THE NDPS ACT, 1985 WITH EFFECT FROM 01.07.2024		
OFFENCE AS PER TABLE II* OF BNSS, 2023	SECTIONS OF THE NDPS ACT, 1985	BY WHICH COURT TRIABLE AS PER TABLE II OF BNSS, 2023
If punishable with death, imprisonment for more than 7 years	Section 15(b) and (c), 16, 17(b) and (c), 18(b) and (C), 19, 20(i), 20(ii)(B) and (C), 21(b) and (c), 22(b) and (c), 23(b) and (c), 24, 25A, 27A, 30 and 59(2)	Court of Session

If punishable with imprisonment for less than 3 years or with fine only	Section 15(a), 17(a), 18(a), 20(ii)(A), 21(a), 22(a), 23(a), 26, 27(a), 27(b), 59(q), 58(2) and 59(1)	Any Magistrate
*Classification of offences against other laws		

9.1 Any empowered officer under section 53 of the NDPS Act, 1985 is authorised to investigate the case booked and that includes financial investigation. Apart from normal investigation, the empowered officer is also required to conduct an indepth investigation under Chapter VA of the NDPS Act, 1985, which deals with financial investigation. The need for a proper and through investigation along with financial investigation can be summarized for the following reasons:

- (i) **A targeting strategy to map** and study the criminal networks and identify and target the persons involved, including the financiers, and high-value backbone who play a crucial role in the network's activities.
- (ii) **In-depth and long-term investigations** for effective penetration of the networks, to corroborate intelligence and collect robust evidence of their criminal activities.
- (iii) **Use of special investigative techniques, including controlled delivery under section 50A of the NDPS Act, 1985 is to be deployed** to gather the details of large, complex cases and build an irrefutable brief of evidence for prosecution.
- (iv) **Post seizure investigations** under section 53 of the NDPS Act, 1985 is to be conducted to identify, arrest and prosecute those responsible for supplying the contraband, organizing shipments, human traffickers by way of body concealment, etc. and taking up with the respective authorities under BLAT and MLAT
- (v) **Chapter VA proceedings** for seizure of illegally acquired property (IAP) are also a powerful tool to deprive perpetrators of the proceeds of crime. This is essential to neutralize the money and muscle power.
- (vi) **Illicit drug trafficking is cross border crime** and hence international cooperation, intelligence sharing and joint investigations with countries connected to the criminal networks is essential unravel the conspiracy hatched, to tackle crimes, to dismantle the supply chain and to bring the perpetrators to justice.

- (vii) We have bilateral agreements with 24 countries and signed MoU with 8 countries. The involvement of any person with reference to “illegal import” or “illegal export” from/to any of these countries can be caused as elaborately as possible.

BILATERAL AGREEMENTS SIGNED BY INDIA



MEMORANDUM OF UNDERSTANDING SIGNED BY INDIA



Procedural safeguards under the NDPS Act, 1985

10. Be that as it may, apart from the Special Courts, procedural safeguards have been prescribed under the statute so that there is no falsification of case. At the outset, we notice that, the procedural safeguards can be traced to section 42, 50, 52A, 53, 57, 57A, 58 read with the Hon'ble Supreme Court judgments.

Detection of cases under NDPS Act, 1985

11. Though there are no categorisation laid down under the NDPS Act, 1985, based on the experience of the author, it can be safely concluded that the detection of cases under the NDPS Act, 1985 shall fall into one of the three categories, namely;

I	Based on prior/advance secret information received and converted into an actionable input from <ul style="list-style-type: none"> (i) professional informers; (ii) officers of sister empowered agencies; (iii) non-empowered officers of empowered departments[say a constable of say Delhi Police/Mumbai Police/Haryana Police, sepoy of Customs, constable posted in NCB, etc.]; (iv) officers of other non-empowered agencies [say Income Tax department, CPWD, Directorate of Enforcement, etc.]
II	Based on the empowered officer's prior personal knowledge
III	By chance/accidental detection of omission and commission of an offence, which is commonly referred to chance recovery.

Detection on based on prior/advance secret information converted into an actionable input

12. **Information** - May be received from any person (public, empowered officer/non-empowered officer (say Constable/Peon/Administrative Officer/Tax Assistant/Executive Assistant, etc.) of same agency/organisation or other empowered organisation or non-empowered organisation) by any of the following officers/officials: -

A. An authorised Gazetted Officer of any department empowered under section 41(2) of the Act;

Or

B. An authorised officer of any department empowered under section 42(1) of the Act;

Or

C. An officer/official of any empowered department who is not authorised either under section 41(2) or section 42(1) of the Act [for e.g. Gazetted Officer in administration/establishment of the empowered department, Tax Assistant/Executive Assistant in Customs/DRI/CGST formations, sepoy, constable, peon, Naik, in the Police, etc.

Or

D. An officer of any department which is **not** empowered either under section 41(2) or section 42(1) of the Act [for e.g. Income Tax, Central Public Works Department, Enforcement Directorate or Directorate of Printing/ Officers of Ministry of Home Affairs/Defence/Law and Justice, etc. of the Central Government; Bridge and Road Department, Public Works Department, State Electricity Board, Labour Office, PF Office, Forest department of the State Governments, etc.

Manner of disposal of the information received

13. Information received should be reduced to in writing by the officer receiving the said information. There can be no deviation from this. The information received by an empowered officer in any hierarchy must reduce the information himself. Irrespective of the designation of the empowered officer right from a Head Constable to the Head of the Department (DGP/IG/DIG, etc. in police set up; Assistant Sub-Inspector to DGP in BSF, Intelligence officer in DRI to DGRI, Gazetted Officers in Indian Coast Guard, etc.), it is incumbent upon the officer receiving the information to record the information and reduce it into writing. The difference between an empowered gazetted officer and non-gazetted empowered officer is that in respect of non-gazetted officer, apart from reducing the information into writing, they must submit the same to the immediate superior officers. In the case of gazetted officer, the information after being reduced into writing is sent to the subordinate officer for taking necessary action at their end. The empowered gazetted officer receiving the information shall make an entry of the said information report in official record/register before he proceeds himself for further action or order his subordinate to constitute a team and take necessary action. Though there is no prescribed register and format for this, it is essential that the details

are captured properly and accurately to lend authenticity to the search and seizure programme. It is mandated that the information received must be reduced into writing by documenting it well covering all the aspect of the information received and there is no delegation of power covering the aspect of allowing a subordinate to record an information received by a senior level officer. Needless to mention here that the actions are required to be done within the time limit prescribed under the NDPS Act, 1985.

14. Now we move core issue of the topic. Whether the drug users are victims or criminals.

Drug Use and Youth: A Public Health Crisis

14.1 India is sandwiched between “Death Crescent” and “Death Triangle” . India has transitioned from a transit country to being a consumer country. One of the major target group whom the illicit drugs is youth and the youth have been in forefront of consumption not only the traditional ganja, hashish/charas or heroin. They have graduated to next level of hard drugs consequent to the increase in the population falling under the middle income. The youth of the country being tech savvy, the substances of abuse do come into the country through various.

Prevalence of illicit drug use: comparison of global, Asian and national (India) estimates (in %)

15. The endeavour of the person conducting illicit drug trafficking right from the top to peddler at the grass root level is to make available substance of abuse or contraband. Illicit drug trafficking poses a severe threat to public health and safety, undermining socio-economic stability and leading to crimes like smuggling and money laundering. Terrorist groups involved in drug trafficking threaten national security. Globally, it devastates lives and productivity. As traffickers target vulnerable groups, especially youth, India's proximity to opium-growing regions worsens the issue, deeply affecting the country's youth. The dependence on substances of abuse, as has been brought out in a 2019 study by the Ministry of Social Empowerment and Justice is summarized by way of a tabulation:

Drug Category	World (15-64 years)	Asia (15-64 years)	India (10-75 years)
Cannabis	3.9	1.9	1.2
Opioids	0.70	0.46	2.06
Cocaine	0.37	0.03	0.11

ATS	0.70	0.59	0.18
Report on Magnitude of Substance Use, 2019 of the Ministry of Social Justice and Empowerment, Government of India			

15.1 The Magnitude of Substance Use released the data and the figures are based on 2018 population.

Substance use in India (10-75 years)*				
Drug Category	Prevalence of current use (in %)	Estimated number of users (in lakhs)	Prevalence of quantum of work (in %)	Estimated number of users (in lakhs)
Cannabis any form	2.83	310	0.66	72
Cannabis Bhang	2.02	221	0.36	40
Cannabis: Ganja/Charas	1.21	133	0.45	50
Opioid :Any form	2.06	226	0.55	60
Opioids: Opium	0.52	57	0.10	11
Opioids: Heroin	1.14	125	0.57	63
Opioids: Pharmaceuticals	0.96	105	0.23	25
Sedatives	1.08	119	0.11	11
Cocaine	0.10	11	0.02	3.2
Amphetamine Type Stimulants	0.18	19	0.02	7
Inhalants	0.70	70	0.21	22
Hallucinogens	0.12	13	0.03	3.4

*https://static.pib.gov.in/WriteReadData/userfiles/Exec-Sum_For%20Media.pdf

Note:

- About 2.1% of the country's population (2.26 crore individuals) use opioids which includes Opium (or its variants like poppy husk known as doda/phukki), Heroin (or its impure form — smack or brown sugar) and a variety of pharmaceutical opioids. Nationally, the most common opioid used is Heroin, (1.14%) followed by pharmaceutical opioids (0.96%) and Opium (0.52%).
- Sikkim, Arunachal Pradesh, Nagaland, Manipur and Mizoram have the highest prevalence of opioid use in the general population (More than 10%).

Flow of drugs into India

16. The flow of drugs into India is captured in the following diagram. For ease of understanding, we can conveniently divide the inflow into following major categories:

- Air route
- Cargo route
- Land route
- Drone route/floating objects route
- Maritime route
- Foreign Post Office route.

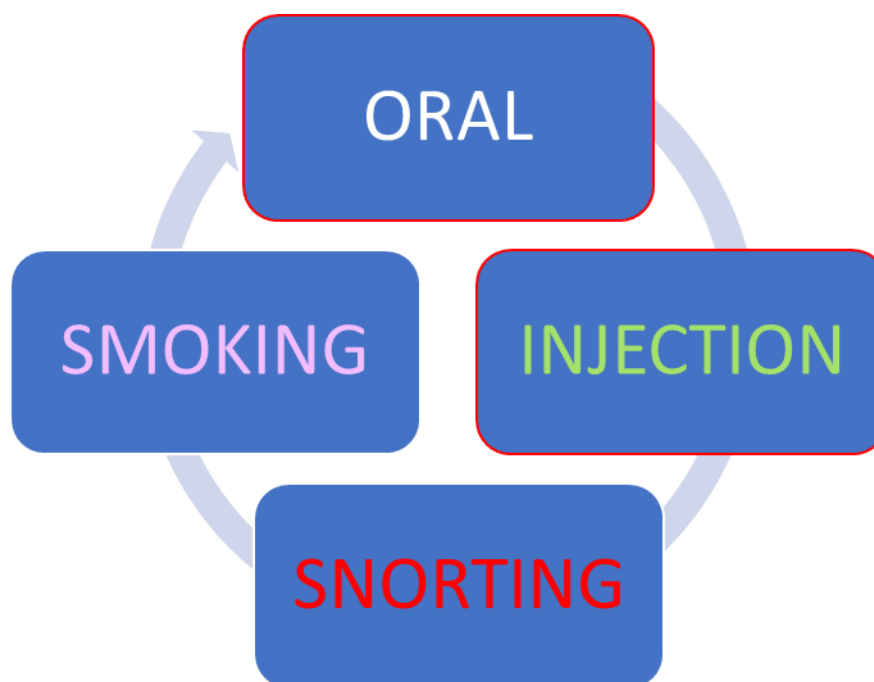
16.1 The diagram categorically brings out the sub-categorisation with respect to each of the category.



Use of drugs by youth – the propellers of demand

17. To understand further, it is essential to know that youth are often introduced to drugs by their peers, who may present it to cope with stress or as a social activity. The easy access to outlets for "rave parties" and the use of international courier services have made it easier for youth to obtain and consume a variety of substances, including heroin, cocaine, and synthetic drugs. The use of darknet, cryptocurrencies, and specialized apps have allowed young people to source and purchase drugs anonymously, further fuelling the problem. The educated youth has played a key role propelling the demand for drugs in a big manner in India, particularly through the Foreign Post Office which get triggered by placing orders via darknet and settled the transactions using cryptocurrencies. The following pictures brings out the flow of drugs into the country.

17.1 The consumers of substance of abuse consume drugs in various ways as depicted in the following picture:



List of different types of drugs ordered by youth and their involvement in use of social media apps for placing orders

18. A list of cases booked against various empowered agencies against youth is a clear pin pointer towards the types of drugs ordered and used by them:

S. No.	Case Title & Court	Age/Occupation	Nature of Offence	Type & Quantity of Drug
1	<i>Syed Afsar @ Syed Axsar vs. State of Karnataka</i> (Criminal Petition No. 101370/2021)	22 / Student	Transporting contraband in a car	Wet Ganja – 28.720 kg
2	<i>Rajini K. & Nelson Joise vs. State of Karnataka</i> (Criminal Petition No. 2976/2021)	23 & 24 / Students	Caught selling drugs, pleaded for exam permission	Ganja – 3.460 kg
3	<i>Bala Subramaniyan vs. DRI, Bangalore</i> (Criminal Petition No. 7669/2020)	31	Exporting drugs in kitchen utensils to Australia	Pseudoephedrine – 1.781 kg
4	<i>Intiyaz @ Imthiyaz vs. State of Karnataka</i> (Criminal Petition No. 101337/2021)	26	Arrested based on disclosure by co-accused	Ganja (quantity not specified)
5	<i>Anirudh Venkatachalam vs. State of Karnataka</i> (Criminal Petition No. 4612/2021)	23 / Student	Possession of ecstasy pills	MDMA – 30 pills
6	<i>Harsh Shah & Niraj Surana vs. State of Maharashtra</i> (Bail Applications No. 2471 & 2565/2021)	Not mentioned	Found with drugs at a private party	Cocaine, Ganja, Charas
7	<i>Jude Parera & Others vs. State of Karnataka</i> (Criminal Petition No. 3943/2021)	29–33	Rave party organizers; seized drugs on-site	Ganja – 106.48g, Charas – 33.09g

S. No.	Case Title & Court	Age/Occupation	Nature of Offence	Type & Quantity of Drug
8	<i>Anirudh V. Konnur vs. State of Karnataka</i> (Criminal Petition No. 5460/2021)	20 / Student	Seized at premises with narcotics	MDMA, LSD, Ganja
9	<i>Khalid Riyaz Momin vs. State of Karnataka</i> (Criminal Petition No. 101183/2021)	29	Seized from the petitioner	Ganja – 3.141 kg
10	<i>Aayush Ajit vs. Customs HPU, Bengaluru</i> (2020/2021 rulings)	Not specified	Ordered MDMA via Darknet; delivery from Netherlands	MDMA
11	<i>Arjav Deepak Mehta vs. State of Karnataka</i> (Criminal Petition No. 8065/2020)	Not specified	Ordered LSD via Darknet; parcel from Germany	LSD – 200 strips
12	<i>Royden Buthello vs. State of Chhattisgarh</i> (Criminal Revision No. 468/2021)	29	Part of cocaine & MDMA trafficking network	Cocaine – 7g & 10g
13	<i>Anjoom Rahaman K vs. Union of India (NCB)</i> (Criminal Petition No. 3952/2021)	Not specified	Parcel from Germany containing MDMA tablets	MDMA – 159g
14	<i>Nihaal S vs. Inspector of Customs, Bengaluru</i> (Criminal Petition No. 8285/2022)	Not specified	Parcel intercepted at FPO Bengaluru	LSD – 1120 strips (15g)

S. No.	Case Title & Court	Age/Occupation	Nature of Offence	Type & Quantity of Drug
15	<i>Indrajith S Kumar vs. NCB, Cochin</i> (Bail Application No. 6307/2023)	Not specified	LSD in parcels; arrested after confession	LSD – 200 blots (2.23g)
16	<i>Junaid Hussain Haveri & Others vs. NCB</i> (Criminal Petition Nos. 6853, 7039, 7344/2023)	Not specified	Intercepted parcel with LSD; dummy delivery used	LSD – 50 blots (0.560g)
17	<i>Himanshu Takura vs. State of Karnataka</i> (Criminal Petition No. 9942/2022)	Not specified	Drug trafficking via courier; party raids	MDMA – 10 pills, LSD – 20 strips, Ganja – 1.2 kg

Use of technology by youth for placing orders

19. What is noteworthy at this juncture, the type of drugs that has come into the country. The integration of technology into society has significantly influenced drug trafficking, making it more sophisticated and harder to trace. Platforms like the Darknet, social media, and encrypted messaging apps facilitate the anonymous sale of drugs, with cryptocurrencies, especially Bitcoin, used for transactions. Despite law enforcement shutting down markets, new ones emerge, maintaining the trade. Online games have also become a medium for discreet drug transactions through symbolic communication. Encrypted communication apps such as Telegram, Signal, and Wickr enable secure drug deals, preventing third-party access. Contactless deliveries, including postal services & courier and dead drops in public spaces, further conceal operations. The Darknet thrives on customer reviews, ensuring quality and reliability for continued trade. These advancements make it increasingly challenging for authorities to intervene, as anonymity and technology-driven drug markets evolve rapidly. The youth has certainly fallen prey to it. It is in this context, the applicability of section 39 and section 64A of the NDPS Act, 1985 becomes relevant.

Even doctors are affected by drug addiction:

20. Hyderabad hospital CEO caught buying cocaine worth ₹5 lakh, arrested ran the

headlines in respect of a case booked by Raidurgam police in the state of Telangana on 11th May 2025 against Dr Namrata Chigurupati, Chief Executive Officer of Hyderabad's Omega Hospital⁵. She was arrested after she was allegedly caught buying cocaine from a Mumbai-based supplier. She and the deliveryman allegedly possessed 53 grams of cocaine at the time of the arrest.

Not so far, in the year 2023 Kastruba Medical College-Mangaluru had terminated the services of **two medical doctors**, who were arrested on 10th January 2023 on the charges of drug peddling and consumption.⁶

Involvement of medical doctor pushing psychotropic substances in the name of medication

20.1 In CRM-M-28547-2016 (O&M) decided on 09.05.2023 by the Hon'ble High Court of Punjab and Haryana in the case of **Dr. Sudha Vasudev v. State of Punjab and Another**[**Neutral Citation 2023:PHHC:066581**], the petitioner, a medical doctor by profession, sought quashing of abovementioned FIR and all consequential proceedings emanating therefrom. The facts of the case are that on 19.12.2014, Sub Inspector Harjinder Singh and his team received information from a drug addict, Rupwinder Singh, alleging that Dr. Sudha Vasudev, was illegally selling prohibited narcotic and psychotropic medicines at her clinic in Mullanpur. Acting on this tip-off, the police conducted a sting operation, wherein Dr. Sudha Vasudev was caught red-handed selling prohibited medicines to a decoy customer in exchange for Rs. 2,550. A subsequent search of her premises led to the recovery of 22 different types of restricted drugs, categorized under 'Schedule - H/H-1' of the Drugs & Cosmetics Rules, 1945, falling under the NDPS Act, 1985 [for e.g. **Clonax-0.25, Clonax-1, Copax-0.25, Lorax-1, Clox-2MD, Sezam-10, Nicare-10;** all falling under NDPS Act, 1985 etc.] The Hon'ble High Court, while rejecting the praying for quashing of the FIR, held as under”

*“15. As far as the contention of the petition regarding Rule 66 of NDPS Rules is concerned, a perusal of the same would show that certain exceptions have been carved out therein in cases where such drugs are possessed for medical, scientific and training purposes. **However, the case of the petitioner does not fall in any of these categories so as to be extended benefit of Rule 66 of NDPS Rules.** No other argument has been raised or addressed before this Court. As such, this Court does not find any ground for quashing of the FIR. The petition is sans merit and*

is hereby dismissed.”

Emphasis applied.

This case underscores concerns regarding unauthorized sales of psychotropic substances and their impact on drug abuse. But for the drug addict, the case would not have come to light.

Use of narcotic drugs by the elite and the educated

20.2 In Writ Petition No. 10295 of 2024 (GM-RES) clubbed with Writ Petition No. 10881 of 2024 (GM-RES) and Writ Petition No. 17325 of 2024 (GM-RES) all decided by the Hon'ble High Court of Karnataka on 22nd July 2024 [Neutral Citation 2024:KHC:28608] involving **Dr. Nadiya Siraj of Pune, Dr. Ira Bhasin of Mangalore and Dr. Varshini Prathi of Hyderabad**, were proceeded by the City Crime Branch, Mangalore City, who were accused Nos.4, 5 and 12, and faced charges under Section 27(b) (for consumption of ganja) of the NDPS Act, 1985. It is another thing that the case fell on account of non-compliance. What is highlighted is the fact of consumption being amongst the most literate and educated citizen of the country.

20.3 Having understood the gravity of the drug abuse amongst the various segments of the Indian population, we now revert to the rehabilitation provisions available to drug addicts under the NDPS Act.

20.4 It is in the context of the youth being the biggest consumer of substances of abuse, we have to focus more on rehabilitation measures.

20.5 Section 39 - Probation Instead of Imprisonment:

- Applicable to drug addicts convicted under Section 27 or small quantity offenses.
- Allows release on probation if the offender:
 - Is of a certain age/character/health profile
 - Consents to undergo de-addiction treatment and provides a progress report

Section 64A - Immunity from Prosecution:

- Applicable if the addict:
 - Is charged under Section 27 or small quantity offense
 - Voluntarily seeks treatment
- Immunity may be revoked upon non-compliance.

Broader Legal Context:

- Section 64 allows governments to grant immunity in exchange for cooperation in investigations.

20.6 Now we examine some cases with reference relevant to the issue in hand.

Rehabilitation-Oriented Cases (Section 64A)

Description of the case	Name of the Court and year of ruling	Key Ruling
Shaji vs. State of Keala	Kerala High Court; 2004	Since the quantity involved was larger than small quantity, Section 64A does not have any application in this case.
Fardeen Khan vs. UOI	Bombay High Court; 2007	Immunity denied as the petitioner failed to qualify under “addict” criteria under section 64A
Sanjiv Bhatnagar vs. UOI through NCB, CZU	Madras High Court; 2016	Directed rehabilitation instead of prosecution; applying section 64A at the earliest opportunity
Vaibhav Gupta vs. Union of India through NCB, BZU	Karnataka High Court; 2022	Immunity granted as the petitioner underwent successful de-addiction treatment. Involved commercial quantity[See the extracts of the judgment below]
Vegesna Chaitanya Kumar @ Vegeshna Chaitanya Kumar vs. State of Telangana and	Telangana High Court; 2023	Proceedings quashed after successful completion of de-

Another		addiction.
Machunuru Veerendra Kumar Reddy vs. State of Telangana and Another		

20.6.1 In Bail Application Nos. 1660, 1736 and 1787 of 2003 in the case of **Shaji v. State of Kerala** decided on 18.11.2003 by the Hon'ble High Court of Kerala [2004 (3) KLT 270], the issue of whether a person is entitled to the immunity provided in Section 64A of the NDPS Act, 1985, it was held as under:

“...In this case, we have already found that the quantity involved is larger than small quantity. Hence, Section 64A does not have any application in this case.”

20.6.2 The aforesaid decision did echo in the case of Fardeen Khan v. Union of India. The Hon'ble High Court of Bombay had an occasion to deal with section 64A of the NDPS Act, 1985 in the case of film actor Fardeen Khan. A Revision Application challenging an order dated 22.9.2006 passed in Misc. Application No. 237 of 2006 in NDPS Spl. Case No. 97 of 2001 came to be preferred by applicant in the subject case titled **Fardeen Khan vs. Union of India - 2007(109) BOM.L.R.358: 2007CRILJ1758**. The thrust of the submission was that he was eligible for immunity under section 64A of the NDPS Act, 1985. Repelling the argument, the Hon'ble High Court observed as under:

“27. A bare perusal of the same would demonstrate that the same has been inserted to ensure that the addicts who are charged with small quantity offences and volunteering for treatment get the benefit of immunity from prosecution. Upon a plain reading of the provision it is apparent that the requirement herein is that the person applying for immunity must be an addict. An addict has been defined in the NDPS Act to mean a person who is dependent on any narcotic drug or psychotropic substance. The word dependent on any narcotic drug or psychotropic substance is crucial in the definition. The element of dependability on the narcotic drug or psychotropic substance is something which the legislature thought it fit to take care of by granting immunity. The long title to Section 64-A would indicate that the intent is to grant immunity to addict who is charged with offences as enumerated in Section 64-A and who voluntarily seeks to undergo

medical treatment for de-addiction from a hospital and undergoes such treatment. The immunity is not absolute and is capable of being withdrawn. *Therefore, unless and until immunity is claimed on the basis that all prerequisites stipulated by Section 64-A are fulfilled their cannot be any question of immunity from prosecution.”*

Emphasis applied.

20.6.3 In Criminal Revision Case No.1278 of 2015 and M.P.Nos.1 and 2 of 2015 decided on 27.01.2016 by the Hon’ble High court of Madras in the case of **Sanjiv Bhatnagar vs. State represented by its Intelligence Officer Narcotics Control Bureau Chennai Zonal Unit**, the petitioner was charged for offence under Section 8(c) read with Sections 21(b), 28 and 29 of NDPS Act, 1985*. In this case, it was observed by the Hon’ble High Court in para 11 as under:

“11. Given the attendant facts and circumstances, the prosecution in the instant case may at best be able to make out an offence under Section 27 of NDPS Act. The question that arises for consideration would be whether the accused should be required to undergo trial towards his conviction for offence under Section 27 of NDPS Act and would he only thereafter be entitled to seek the benefit of Section 64(A) of NDPS Act. Simply put, Section 64(A) of NDPS Act is one intended to rid an user of drugs from the evil thereof and towards his rehabilitation, the end object being to facilitate a life free of drugs. This Court is of the view that when the material gathered by the prosecution itself informs the petitioner to be an user of drugs and not in too large a quantity the provision for rehabilitation should be given effect to at the earliest. It is to be noted that in offence under Section 27 of NDPS Act, no distinction is made between small and commercial quantity. This Court may hasten to add that a decision in each case is to be arrived at on the particular facts thereof. Petitioner presently has filed an application dated 21.12.2015 before this Court.....

*Note the accused was charged under section 27 of the NDPS Act, 1985

12. Exercising powers under Section 482 Cr.P.C, this Court presently would pass the following order

(i) Charge in case pending in C.C.No.46 of 2015 on the file of learned II

Additional Special Judge under NDPS Act, Chennai, shall be altered to one for offence under Section 27 of the NDPS Act. Further proceedings in the case shall be stayed pending further orders of this Court

. (ii) Petitioner shall be required to undergo treatment towards de-addiction at T.T. Ranganathan Clinical Research Foundation (TTK Hospital), Chennai, which is informed, to be recognized by Government as a hospital for treating and rehabilitating persons addicted to alcohol and other drugs.

(iii) Upon completion of treatment and related programmes, T.T. Ranganathan Clinical Research Foundation (TTK Hospital), Chennai, is required to file a report regarding the success or otherwise of the treatment afforded to the petitioner and the state of health (mental and physical) as on the date of such report. Such report may be filed before this Court not later than on 10.06.2016."

20.6.4 In Writ Petition No.11193 of 2021(GM-RES) decided on 24.01.2022 by the Hon'ble High Court of Karnataka in the case of **Vaibhav Gupta vs. Union of India through NCB, BZU**, the facts as culled out from the judgment is as under:

Case Facts:

- Vaibhav Gupta, a company director, became addicted to cocaine after being introduced by a friend.
- Allegedly transferred over Rs. 1.14 crore to a supplier.
- NCB charged him under Sections 21 and 27A.

Court's Reasoning:

- The High Court found no clear evidence that Gupta financed trafficking with intent. Payments were for personal use.
- Section 64A was deemed applicable despite large amounts consumed, as Section 27 is not quantity-specific.

Outcome:

- The court quashed proceedings, citing Gupta's successful de-addiction and viewing him as a recovering addict eligible for immunity.

Legal Principle Established:

- Immunity under Section 64A applies not just to small-quantity users but also to those under Section 27 who seek and complete de-addiction treatment.

20.6.5 In Criminal Petition No.233 of 2023 decided on 11.03.2023 by the Hon'ble High Court of Telangana in the case of **Vegesna Chaitanya Kumar @ Vegeshna Chaitanya Kumar vs. State of Telangana and Another**, the impugned Criminal Petition came to filed to quash the proceedings against the petitioner-accused No.3 in SC NDPS No. 17 of 2022 on the file of I Additional District and Sessions Judge, Bhongir for offences under section 8(c) read with section 21(b) read with section 22(b) read with section 29 of the NDPS Act, 1985. The Hon'ble High Court relying on the decisions Sanjiv Bhatnagar vs. State, represented by the Intelligence Office - 2016 SCC Online Mad 33796) and Anish Kumar Dundoo vs State of Telangana -2021 SCC Online TS 2195 quashed the proceedings under section 482 of the Cr. P.C., 1973 on account of petitioner-accused No.3 having undergone the undergone counselling and the therapy sessions, the Hope Trust Hospital authorities and had tested negative for the substance abuse

20.6.6 In Criminal Petition No.906 of 2023 decided on 09.03.2023 by the Hon'ble High Court of Telangana in the case of **Machunuru Veerendra Kumar Reddy vs. State of Telangana and Another**, Criminal Petition came to be filed to quash the proceedings against the petitioner/Accused No.16 in S.C.NDPS.No.222 of 2022 on the file of I Additional Metropolitan Sessions Judge, Hyderabad. During the course of investigation, it transpired that the petitioner herein was a "consumer" who purchased MDMA for the purpose of consumption and was accordingly arrayed as an accused for the offences under Sections 8(c) read with section 22(c) and 27 of the NDPS Act, 1985. The Hon'ble High Court following the ration of the decisions in Sanjiv Bhatnagar and Anish Kumar Dundoo (see para *supra*) and in an identical order to that of Vegesna, the proceedings against the petitioner in S.C.NDPS.No.222 of 2022 on the file of I Additional Metropolitan Sessions Judge, Hyderabad, were quashed.

Dissection of Section 64A of the NDPS Act, 1985

21. The substituted section 64A came to be inserted vide Act 9 of 2001. Earlier section 64A of the NDPS Act was inserted by Act 2 of 1989

Analysis of section 64A for the eligibility for immunity:

- ❖ This section applies to individuals **addicted**

- ❖ to narcotic drugs or psychotropic substances who are charged under Section 27 of the NDPS Act, or
- ❖ with offences involving small quantity of narcotic drugs or psychotropic substances
- ❖ the addict must voluntarily seek de-addiction treatment from a hospital or institution recognized by the government or a local authority.

Expanse of Immunity:

21.1 Immunity under Section 64A protects addicts from prosecution for offenses related to

- ❖ Section 27 of the NDPS Act, 1985, prescribed punishment for consumption. The same has been divided into two clauses and deals with consumption of narcotic drugs or psychotropic drugs
 - Under clause (a) of section 27 of the NDPS Act, 1985, the substances covered are cocaine, morphine, diacetylmorphine or any other narcotic drug or any psychotropic substance as may be specified in this behalf by the Central Government by notification in the Official Gazette &
 - Under clause (b), where the narcotic drug or psychotropic substance consumed is other than those specified in or under clause (a).
- ❖ Clause (a) of section 27 of the NDPS Act, 1985 prescribes a rigorous imprisonment for a term which may extend to one year, or with fine which may extend to twenty thousand rupees; or with both. On the contrary, clause (b) of section 27 of the NDPS Act, 1985 prescribes imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.
- ❖ The difference in the punishment is significant and brings out the severity of the situation. For the consumption of cocaine, heroin, morphine (or any other narcotic drugs or psychotropic substances notified for this clause), the punishment is rigorous imprisonment in contradistinction to imprisonment for the balance narcotic drugs or psychotropic substances covered under clause (b) of section 27 of the NDPS Act, 1985.
- ❖ If an addict seeks treatment for his addiction and undergoes the full treatment and the attending doctors/hospitals certifies that the addict has tested negative for drugs, he can claim immunity from **prosecuted** for the offences charged. The offences an addict is charged falls under two broad categories:

Under section 64A of the NDPS Act, 1985, it covers cases falling

- (i) Section 27 of the NDPS Act, 1985. While there are two clauses in section 27 of the NDPS Act, 1985, this section does not differentiate the consumption based on small quantity or commercial quantity

OR

- (ii) with offences involving small quantity of narcotic drugs or psychotropic substances,

Condition precedent to grant of immunity

21.2 The addict voluntarily seeks to undergo medical treatment for de-addiction from a hospital or an institution maintained or recognised by the Government or a local authority and undergoes such treatment shall not be liable to prosecution under section 27 or under any other section for offences involving small quantity of narcotic drugs or psychotropic substances:

Withdrawal of immunity

21.3 If the addict fails to complete the prescribed de-addiction treatment, the immunity can be revoked, leaving the addict liable for prosecution. Meaning thereby, the prosecution is stayed till such time of the de-addiction process is completed and in the event of the addiction is successful, the prosecution proceedings are quashed.

Illustrations based on case laws discussed herein

21.4 An individual addicted to heroin (diacetylmorphine) is caught with commercial quantity and charged under Section 27 of the NDPS Act, 1985. Heroin falls under clause (a) of section 27 of the NDPS Act, 1985. And section 27 finds mention in section 64A of the NDPS Act, 1985 too. If he voluntarily enters a government-approved rehabilitation centre [for e.g. Hope Trust Hospital, T.T. Ranganathan Clinical Research Foundation (TTK Hospital), Chennai, etc.] and successfully undergoes the full therapy and is certified to be de-addicted by the said hospital, the said addict shall not be prosecuted. If the addict undergoes the therapy and withdraws himself half-way through the de-addiction program, the immunity shall be withdrawn.

Quick Reference for Section 64A Eligibility & Conditions

Factor	Eligibility for immunity under section 64A of the NDPS Act, 1985
Addict	Yes, qualifies for immunity.

Charged under section 27 of the NDPS Act, 1985	Yes, qualifies for immunity, if de-addiction treatment/therapy is successfully completed and the concerned recognized hospital issues a certificate to this effect
Possession of small quantity	Yes, qualifies for immunity.
Possession for commercial quantity	Yes, qualifies for immunity. [see Vaibhav Gupta's decision]
Voluntary participation in de-addiction	Yes, mandatory for claiming immunity
Failure to complete de-addiction	Immunity granted is revoked.
Financing of illicit drug trafficking	Not eligible

Challenges in implementation: stigma, infrastructure, awareness

21.5 The use of section 64A of the NDPS Act, 1985 has been extremely restrictive in nature by the drug addicts for many reasons. They can be categorised into the following sub-topics

1. Stigma:

- Drug addiction is often viewed as a moral failing rather than a medical condition, discouraging addicts from seeking rehabilitation. They are mocked upon by the society and feel dejected and live an isolated life
- Fear of social rejection and discrimination makes individuals hesitant to disclose their addiction and seek help. We can easily correlate with the Vaibhav Gupta's case (para supra) where the parents came to know of his conditions when he had seizure attack and fell. The parents would not be privy to the conditions prevailing but for the voluntary disclosure

2. Infrastructure Limitations:

- Inadequate number of government-recognized rehabilitation centres and treatment facilities, especially in rural areas. The situation in urban and rural areas are different and it requires constant monitoring by de-addiction centres and the addicts who undergo such treatment are not willing to undergo.
- Overcrowding and lack of proper resources in existing de-addiction centres affect the quality of treatment.

3. Addicts are trouble to deal with.

- The persons who are addicted to alcohol or drugs turn violent and their behaviour cannot be predicted. We can cite the example of Dr. Vandana Das, who was stabbed with medical scissors and ultimately, she succumbed to her injuries⁷. Such violent behaviour cannot be ruled out

4. Lack of Awareness:

- Many addicts are unaware of Section 64A of the NDPS Act, 1985 and the immunity it offers if they seek treatment.
- Limited outreach programs and public campaigns fail to educate affected individuals about their legal rights and available rehabilitation options. The prosecution does not make it known at the time of filing of charge sheet or complaint, as it is not part of their mandate. The prosecution should share the details of the cases booked, at least with the Government Institutions/agencies, which are dealing with rehabilitation measures, to create a synergy amongst stake holders.

Balancing the Two Approaches: Legal and Ethical Analysis of Section 64A of the NDPS Act, 1985

India's dual approach theory

22. Addiction to substance abuse or alcohol etc are issues that are being faced in India. To strike a balance between addiction as a health issue and a violation under the NDPS Act, 1985, the Parliament in its wisdom has inserted the provisions of section 64A in the NDPS Act, 1985. The legal violation would continue remain on the records of the court until and unless the addict seeks the benefit of section 64A charged under section 27 or with offences involving small quantity of narcotic drugs or psychotropic substances. It is always an endeavour to bring the addicts to mainstream and make them useful to the family, in turn to the society and the Nation. A harmony is created between punitive measures *vis a vis*

rehabilitative measure via section 64A of the NDPS Act, 1985

Best Practices & Comparison

Portugal⁸	Adopted a decriminalization model in 2001, treating drug addiction as a health issue rather than a criminal offense. Possession of small quantities results in rehabilitation recommendations rather than prosecution.
Canada⁹	Implements harm reduction strategies, including supervised consumption sites and opioid substitution therapy, emphasizing treatment over punishment.

Comparison to India: While Section 64A offers immunity for rehabilitation, India's broader drug policy remains punitive, contrasting with the cited examples.

Human Rights & Proportionality in Sentencing

The NDPS Act, 1985 clearly demarcates the action of addiction driven personal consumption vis a vis illegal drug trafficking and hence we see the difference in the punishments between the two spheres. It is but fair that a illicit drug trafficker should be sentenced to a higher punishment vis a vis an addict, who consumes drugs. Hence, the strict demarcation of an addict vis a vis illicit drug trafficker has been rightly carved out.

Potential for Misuse & Overreach

- Even though, there is a risk of the immunity being exploited by drug traffickers posing as addicts cannot be ruled out yet the empowered officer in the agencies notified by the Central Government/State Government should be in a position to distinguish between occasional user & addicts, on one hand, vis a vis the persons who are pumping drugs into the country via any of the routes described herein in this article.
- It is essential to strengthen monitoring systems to curb misuse while ensuring that legitimate cases receive the necessary support for rehabilitation.

Use of funds under section 7A of the NDPS Act, 1985

- A sum of Rs. 37,98,93,813/- as balance under National Fund for Control of Drug Abuse in terms of Notification No. 01/2024-Narcotics Control-1 published vide G.S.R. 603(E) dated 30.09.2024. In terms of clauses (c), (d) and (e) of section 7A(2), the Central Government can effectively apply to the measures which deals with identifying, treating, rehabilitation addicts; preventing drug abuse; and educating public against drug abuse by a Governing Body to advise and to sanction money out of the said Fund.

- The Governing Body may be constituted in terms of section 7A(3) of the NDPS Act, 1985 and the said GB may be tasked to carry out the functions as envisaged under sub-sections (3), (4) and (5) of section 7A of the NDPS Act, 1985.
- The major areas where the drugs cases have been made by various empowered agencies can be targeted in the first instance. This can be supplemented and complimented by targeting the college-going, school-going, student community in general and other vulnerable groups
- Campaigns through social media, TV, print media should be the area of focus.
- Roping of celebrities along with the successful addicts who have been rehabilitated can also be effectively used.
- Step up collaboration with NGOs, healthcare providers, and grassroots organizations to strengthen the outreach.
- Carry out impact analysis of the efforts vis a vis the cases made out by enforcement made out with reference to the number of persons arrested and the quantum of seizures.
- Furthermore, while doing so, a track has to be kept on the drugs that are coming into the country to pass on the conclusions to the empowered agencies.
- Categorization of audience is to be done to achieve the goal:

Heavy/Chronic Users	Focus on intensive rehabilitation programs, counselling, and long-term support structures.
Occasional Users/Recreational Consumers	Address awareness campaigns highlighting the risks and potential consequences.
Vulnerable Groups (students, at-risk youth)	Implement preventive measures like educational programs and peer influence strategies.
New Entrants/First-time Users:	Strengthen early intervention techniques to stop them before addiction takes hold.

- To find out the pattern of consumption in areas without the support of the public, **waste water analysis (WWA)** can be conducted to know the pattern of consumption in specific areas and suitable action can be initiated accordingly. This will enable us to have

Utility of WWA	real-time consumption trends to guide enforcement and rehabilitation priorities.
	precise geographic targeting for awareness programs, focusing on high-risk zones.
	effective measures of drug control policies by tracking changes in substance of abuse level and to bridge the gap between the users and knowledge sharing with the enforcement agencies.

Conclusion

Requirement of Empathy Without Compromising Law Enforcement

23. A compassionate legal framework has been put in place in the shape of section 64A of the NDPS Act, 1985. The addicts who have successfully gone through the de-addiction program, should be roped in to advertise on a massive scale the potential harm the drug causes on the human body. The accused facing trials should be categorically told at the time of filing of charge sheet or complaint that they have the right to seek rehabilitation by complying with the provisions of section 64A of the NDPS Act, 1985. While undertaking rehabilitative measures, it should not be forgot that strict enforcement is necessary to dismantle organized drug networks.

Vision for a Humane and Effective Drug Control Framework

24. It is said that prevention is better than cure. What is the need of the hour is a strategy that an ideal strategy that prioritizes harm reduction, expand rehabilitation infrastructure, and increase public awareness of treatment options by the concerned agencies with the empowered departments engaged in booking cases. A balanced approach between the addicts being asked to go in for rehabilitation and strict punishment for the drug traffickers is the need of hours and so it be.

References

1. **Ministry of Health & Family Welfare, Government of India, *Drugs Deaddiction Programme*,**
<https://mohfw.gov.in/sites/default/files/drugs%20deaddiction%20programme.pdf> (last visited May 25, 2025).
2. **Press Release, Ministry of Health & Family Welfare, Government of India, *Drug De-addiction Facilities at AIIMS and Government Hospitals*** (Mar. 22, 2022),
<https://www.pib.gov.in/PressReleasePage.aspx?PRID=1808223>.
3. **Press Release, Ministry of Health & Family Welfare, Government of India, *Strengthening of Drug De-addiction Centres*** (Mar. 22, 2022),
<https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1808240>.
4. **Press Release, Ministry of Health & Family Welfare, Government of India, *Measures to Curb Drug Abuse*** (Mar. 22, 2022),
<https://pib.gov.in/PressReleasePage.aspx?PRID=1808231>.
5. **Hyderabad: Omega Hospital CEO Namrata Chigurupati Caught Buying Cocaine Worth Rs 5 Lakh, Arrested**, HINDUSTAN TIMES (Dec. 31, 2024),
<https://www.hindustantimes.com/india-news/hyderabad-omega-hospital-ceo-namrata-chigurupati-caught-buying-cocaine-worth-rs-5-lakh-arrested-101746942318043.html>.
6. **KMC Mangaluru Sacks Two Doctors Arrested in Drug Abuse Case**, THE HINDU (Nov. 12, 2022), <https://www.thehindu.com/news/cities/Mangalore/kmc-mangaluru-sacks-two-doctors-arrested-in-drug-abuse-case/article66412598.ece>.
7. **Kerala: Kottarakkara Woman Doctor Stabbed to Death by Accused in Hospital**, INDIAN EXPRESS (May 10, 2023),
<https://indianexpress.com/article/cities/thiruvananthapuram/kerala-kottarakkara-woman-doctor-stabbed-to-death-by-accused-in-hospital-8601345>.
8. **Drug Policy of Portugal**, WIKIPEDIA,
https://en.wikipedia.org/wiki/Drug_policy_of_Portugal (last visited May 25, 2025).
9. **Health Canada, *Substance Use and Addiction Treatment***,
<https://www.canada.ca/en/health-canada/services/substance-use/treatment.html> (last visited May 25, 2025).*****