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Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985

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ABSTRACT

This article is focuses on Narcotic Drugs and Psychotropic Substances in India which is commonly known as NDPS. Narcotic drugs mean those drugs which induce sleep while Psychotropic drugs are those who impact on the mind and alter the ability of mind of the people. NDPS act was enacted by parliament which came into existence on 14th November,1985 in India. Its aim or purpose is to control the drugs of abuse prohibit its use, dissipation, distribution, manufacturing, trade etc. As we know the number of the offences relating to NDPS increasing day by day. We have to control it in very effective manner. As we also know that these drugs are used in medicines also. Thus the act also have a provision to cultivate drugs like cannabis, poppy, coca plants etc for the medical purpose . This acts aim is to prohibit illegal practices of drugs. The punishment for the offence under this given on the harshness of crime. In case of drugs are used for his personal use it may be lesser punishment in comparison with the punishment given for the use of drugs for supply to other people.

Keywords: *Narcotic, Psychotropic substance, NDPS, Prohibition.*

I. INTRODUCTION

In India the cultivation of the drugs are going on from early times as India also known as the land of Shiva, where people worship God and the people of India cultivated “bhang” as a form of cannabis for celebrating religious festival named Shivaratri. “Soma” is the Sanskrit word which means intoxication, a property induces by narcotic drugs. India also use some other kind of drugs to celebrate different festivals in the nation. This act was introduced in Lok Sabha on 23rd august, 1985 and was passed by both the house of parliament and then received assent from president on 16th September, 1985 and came into force on 14th November,1985 and such amended twice in the year 1988, 2001, 2014. Hence the cultural difference is very important subject while implementing laws related to drugs in India. We have a large number of drugs takers in the society which cannot be ignored and cannot be lineant about drug abuse only due to cultural aspect in the society. Drugs abuse brings a lot of problem in the society like health,

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wealth, morality, psychiatric disorder, brain damage etc. it can also lead to criminal activities due to habit of taking drugs and lack of finance to purchase the drugs. More it is done by big class of people which is known as white collar crime and sometimes it converted into blue collar crime. In the way of terrorism drugs is one the way to produce funds as well people ready to do any crime because of consume drugs. It is very important aspect to taken into mind while framing and amending any kind of laws on the issue of drugs. Effective laws are very necessary to control and management of drug system in India. In less than 1 year nearby 15000 people got arrested due to the drug abuse. For the control of drug abuse, India becomes the member of the united nation drug conventions 1961, single convention on narcotic drugs,1971 and convention on Psychotropic Substances Drugs and 1998 convention against llicit traffic in narcotic drugs and psychotropic. These treaties came in effect in 1980's after a long debate on non-medical use of opium and cannabis.

II. MEANING OF “NDPS”

NDPS generally refers to the Narcotic Drugs and Psychotropic substances. It comes from the Greek word “Narkos” which means rest. Subsequently narcotics are drugs that instigate rest. It the act of which is enacted by parliament of India for the prohibition of person using, producing, manufacturing, cultivation, sale, buy, transport etc of the drugs.

According to section.2 of narcotic drugs and psychotropic act, 1985:

Section2(xiv). NARCOTIC DRUGS” means coca leaf, Cannabis, opium, popot straw and include all other manufacturing drugs.

Section2(xxiii). “PSYCHOTROPIC SUBSTANCE” means any substance, natural or synthetic, or any natural or salt or preparation of such substance or material included in the list of psychoropic substance specified in the schedule.

Some other important definitions are:

Section2(i). “ADDICT” means a person which has dependence on any narcotic drug or psychotropic substance.

Section2(iii). “CANNABIS” means

- (a) Charas, in any form weather crude or purified.
- (b) Ganja,
- (c) Any mixture weather with or without neutral material, of any cannabis or drink material.

Section 2 (iv). “CANNABIS” plant means any plant of genus cannabis.

Section 2 (v). “COCA DERIVATIVE” means-

- (a) crude cocaine,
- (b) ecgonine,
- (c) cocaine that is methyl ester and its salt,
- (d) all preparations more than 0.1% of cocaine.

Section 2(vi). “COCO LEAF” means-

- (a) the life of the coca plant except a leaf from which all ecgonine, cocaine and any other ecgonine alkaloids have been removed;
- (b) any mixture with or without any neutral material but does not include any preparation more than 0.1% of cocaine.

Section 2 (viii). “ESSENTIAL NARCOTIC DRUGS” means a narcotic drugs notified by central government for medical and scientific use.

Objectives of Narcotic and Substances Psychotropic Substance Act, 1985

The NDPS act has been passed by parliament with the aim to:

1. Prohibit drug abuse in India.
2. Prohibit a person from manufacturing, sale, transfer, cultivation, buy, storage of drugs
3. Prohibit the consumption of drugs.
4. To management of the drugs system in India.
5. For prohibition of illegal use of narcotic and psychotropic substances at public as well as at international level.
6. To punish drug abusers in India.

III. LEGISLATIVE PROVISIONS TAKEN FOR NDPS IN INDIA

NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985

The NDPS act was passed by the parliament for the prohibition of drugs abuse as well as manufacturing, sale, buy, storage, cultivation, transport, collection, consumption of drugs in India. This act was passed by both house on 16th September, 1985 and came into force on 14th November, 1985. This act consist of total 83 sections which talks about the provisions related to use of drugs in India. Some important sections of this act we discussed as:-

Section 4. central government having power to take measures for prevention and combating abuse and illicit traffic in narcotic drugs, etc.

According to sec.4 The central government shall take all measures as it deems fit for the purpose to combating and abuse if narcotic drugs and psychotropic substances and illicit traffic in drugs abuse.

Section 5. officers of the central government.

According to sec.5 central government shall appoint a **Narcotic commissioner** and may appoint such other officers as it thinks fit for the control of drug abuse.

Section 6. The Narcotic drugs and Psychotropic substances consultative **committee**

The central government may constitute, by notification in the official gazette as advisory committee which is called as The Narcotic Drugs and Psychotropic Substance consultative committee. It considered of chairman and other members not exceed twelve.

Section 7. **officers** of state government

State government may appoint as much as officers for the control of the drug abuse in state as it thinks fit.

ESTABLISHMENT OF SPECIAL COURT

This provision is given in sec.36 of the NDPS act, 1985. This provision was added later in the act by the amendment of 1989 as this section empowers the government to establish special courts as deems fit for the resolution of problems related to drug abuse. A special court consist of single judge bench who is appointed with the consent of chief justice of concerned high court and who much be a sitting session judge or additional session judge at the time of his appointment. A special judge having same powers like magistrate in drug disputes.

UN CONVENTION 1988

Compliance of **Article 12** of UN convention 1988, Section 9A of NDPS act,1985 provide the power to control and regulate chemical substances contravention of any provision of this act be punishable upto ten years and fine. Central bureau of narcotic drugs and psychotropical substances is the competent authority of regulating and control of import and export of notified dealers and implementation of PEN regime to check the diversion of control substances.

REGULAR REVIEW OF CONTROL

Name of the chemical

Types of control

1. Acetic Anhydride(1993)

Import/Export/ RCS order

2. Ephedrine	RCS order
3. N-Acetylanthranilic Acide(94)	Export/ RCS order
4. Pseudoephedrine	Export/ RCS order
5. Antranilic permanganate	Export
6. Ergometrine	Import
7. Ergotamine	Import
8. 3,4 methylendioxyphenyl-2 propanone	Export
9. 1-pheny-2-propanone	Export
10. Pimpernel	Import
11. Methyl ethyl ketone	Export

CRIMILISATION OF OFFENCE

Violation of the any act which is regulating by controlled authority of substances is an offence punishable under NDPS act with imprisonment upto 10 years. The illicit manufacture and all other offences relating to drug abuse shall be punishable under NDPS act,1985.

GOVERNMENT- VOLUNTARILY CODE OF CONDUCT

The voluntarily code of conduct has been developed by government associations of manufacturing acetic anhydride, ephedrine and pseudoephedrine. Such manufacturing has involved three mechanisms to solve problems related to drug abuse namely:-

1. Special fabricated sealing system, which makes it almost impossible to tamper with the inlets and outlets of the tankers.
2. End-users certificate from the buyers.
3. Special unique identity cards for drivers driving tankers containing acetic anhydride.

REPORTING SYSTEM

1. Timely reporting of statistics to INCB
2. Statistics as well as changes in the legislation are intimated to INCB in appropriate formats from time to time.
3. Exchange of information for the verification of transaction in international trade.
4. setting up multi-lateral forums for exchanging information.

CODE OF CRIMINAL PROCEDURE

As the offence under NDPS act is cognizable and non-bailable offence and cognizable offence is defined under sec.2(c) of crpc which defines as an offence police having power to arrest without order of the magistrate in accordance with the first schedule. And also such offence is non-bailable one. But in case of *Mathew v. State of Kerala* – Kerala high court said that even sec.37 of

NDPS act says that offence under act is non-Bailable since crpc has also provisions with granting of bail in non-bailable offences under sec.437.

It is the discretion of the court that to grant bail under sec.437 if satisfy that the offence done under NDPS act is of serious nature. As according to sec.37 of NDPS act – accused is not released on bail unless court is satisfied that there are reasonable ground for grant of bail to the accused and accused has not guilty of such offence for which bail is not granted, this has been defined by supreme court in the case of *Union of India v. Thamisharasi and others*.

IV. LOOPHOLES OF NDPS IN INDIA

Drugs and substances use brings very huge problem for the society as well individual like mental, disorder, Health, Psychological disorder as well as economical problems.

There are some loopholes of NDPS discussed as:

1. Delay in trial

Many of the person arrested on drug abuse sends years to jail before their family members come for hearing. sometimes innocent person suffering from the delay in trial. Due to slow judicial system of India special courts has been setup under NDPS act but states can given them additional responsibility with drug abuse cases which further result in delay of proceedings. Sometimes innocent people face injustice with them in jail convert into criminals.

2. Stringent bail rules

Court cannot empowered to grant bail to those accused comes under section.19, 24, 27A of NDPS act and for offences include commercial quantities. The general rule is that law presumes innocent unless found guilty but this act says that the person become culprit unless found innocent. Section.35 of the act deemed that accused has intend, motive, knowledge unless contrary is proved. So the provisions of bail for NDPS act is very stringent and sometimes results in injustice with the people.

3. Absence of data

One of the major loopholes of the act is to absence of proper data in Indian policies as nature and extends to drug use, dependence and attentiveness towards health implications. According to the latest survey of drug users nearby 80% people consume mini-grid in India, 9.5 million consume cannabis and also many of people consume ganja, herion etc. but this data is not proper and accurate.

4. Disproportionate penalty.

Penalties are not proper for the person guilty of the offence under act.

5. Access to Medicine

NDPS act allow to use the drugs in case of medical purpose like morphine, opiates etc. there is no strict provisions for the use of drugs and license for use of drugs for medical purpose. Due to this many of the people specially who indulges in white collar crime can use this as supply of drugs to the public. So, government has to take strict action ad rules for the grant of license and use if drugs for medical purpose.

6. Lack of consultancy in policy making

NDPS act allow government to make 20 member committee as a advisory policy such committee has prepare a social report with only themselves and advice the govt, to make rules on the drug abuse in India. So, here 20 members are very less in number which results in lack of consultancy for making of rules for drug abuse in India.

V. JUDICIAL APPROACH/INTERPRETATION

RAJU V. STATE OF KERALA AIR 1999 SC 2139

In this case the appellant has store 100mg heroine worth Rs.25 and court held guilty and impose an rigorous imprisonment of 10 years and fine of Rs.1 lakh but with the consideration of evidences it was found that appellant was not a drug supplier and consume heroin for his personal use. Here supreme court later held that such a small quantity could not meant for sale and reduce the punishment of the accused as it is for personal use and not for sale.

HARM REDUCTION NETWORK V. UNION OF INDIA

It is the landmark case of NDPS act as in this case Bombay high court held that capital punishment in drug trafficking is unconstitutional but the same time did not struck down section 37A of the act.

MICHAEL RAJ V. INTELLIGENCE OFFICER NARCOTIC CONTROL BUREAU

In this case supreme court held that drug is mixed with a neutral substance while giving punishment only the original quantity of drugs must be taken in account.

REA CHAKRABORTY V. STATE OF MUMBAI

It is a recent case in which accused charged under section 27, 19, 14, 37, 8(c) of NDPS act and plea for granting bail. Court not satisfy at primary stage and order for CBI investigation and later court satisfy and grant bail where the offence in the act is non-bailable then also court having power to grant bail in non-bailable offences under sec.437 of crpc if satisfied to grant bail in non-bailable offences.

VI. CONCLUSION

Thus even though the intention of the person is not mala fide, there are many things taken into consideration. Many of the times seem that big suppliers escape and small drug peddlers are caught. This act fails to provide an adequate difference between minor and serious offences relating to drugs in India. This becomes the business of big class by using needy people for the sake of money. But somehow provisions of the act is very important in our society as many of the people including youngsters taken and sale of drugs in a high quantity. Even took a better step to ban use of drugs like HANS, KHAINI etc. but then also many people of country use different drugs. So, this is the need of hour to participate by public in such issues. Public in their society will start awareness campaign like “SAY NO TO ALCOHOL” “SAY NO TO DRUGS” etc and also periodically inspect their areas and take various other actions to stop drug abuse in the nation as such drug related offences do not effect only individual who consumes it but effect society at large.
