



# TOPIC: ANALYSIS OF INDIA'S NARCOTIC CONTROL LAWS

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*Addiction is not a moral failing, but a complex condition that requires compassionate and evidence-based treatment”.*

*- Dr. Nora Volkow.*

## ABSTRACT

Drug misuse is widespread in India. India has a huge population of substance addicts, including drugs and alcohol. In recent years, India has encountered significant challenges related to illicit drug usage, drug trafficking, and drug consumption. High-profile and low-profile individuals have been viewed as equally responsible for drug misuse. Drug abusers, particularly in high-profile cases, are rarely tried and convicted, even though drug-related crimes are no longer bailable under the NDPS Act. This has major implications for morbidity and mortality. The Narcotic Drugs and Psychotropic Substances Act of 1985 (NDPS) establishes a framework for preventing drug usage. Many amendments have been made to rectify the anomalies of the Narcotic Drugs and Psychotropic Substances Act of 1985. From the viewpoints of the prosecutor and the offender, the authors of this study seek to highlight the unique challenges associated with implementing the Narcotics Drugs and Psychotropic Substances Act of 1985, as well as some suggestions to address them. The study uses a multifaceted framework that includes India's various methods of drug regulation, as well as its legislative structure, enforcement practices, and policy outcomes.

**KEYWORDS:** Drug policy, Opium, NDPS Act, Narcotics Control Bureau, Bail, Psychotropic substances, Drug Abuse.

## INTRODUCTION

India, also known as the land of <sup>1</sup>Shiva, has inherited cultural routes with the most mysterious and eccentric ways of worshiping lords. Among these is the celebration of the holy holiday Shivaratri with the use of bhang, a kind of cannabis. Since ancient times, narcotic substances have been employed as "soma ras" and have been mentioned in several literary works. The Sanskrit term "soma" also denotes intoxicating. <sup>2</sup>In addition to cannabis, opium is provided during the ceremony known as akha teej, which is observed to improve family ties. Unlike Western countries, India has a cultural tradition of utilizing natural forms of narcotics substances to celebrate religious festivals. <sup>3</sup>Thus, this cultural difference is important to consider when framing and forcing any drug laws in India.

*The Ministry of Health and Family Welfare (MOH & FW)* believes that at least 40 million people take drugs regularly worldwide. The issue is growing in India as well, where it is believed that 3 million people abuse alcohol and other drugs, of whom 5–6 lakh are dependent and in need of rehabilitation and medical care. The largest source of the legal demand for opium, which is mostly needed for medical purposes, is India. Besides this, India is located close to the major poppy-growing areas of the world, with "*Golden Crescent*" on the Northwest and "*Golden Triangle*" on the Northeast. Due to these factors, India is more susceptible to drug consumption, especially in regions where poppies are grown and along transit and trafficking routes. Among other things, the rapidly evolving social environment is mostly to blame for the rise in drug misuse, including

<sup>1</sup> Molly Charles, Dave Bewley-Taylor, Amanda Neidpath (2005) Drug Policy In India: Compounding Harm Briefing paper ten. The Beckley Foundation Drug Policy Programme.

<sup>2</sup> nil Malhotra, Ashwin Mohan (2000) National policies to meet the challenge of substance abuse: programs and implementation. Indian Journal of Psychiatry 42 (4): 370-377.

<sup>3</sup> Times of India, Ahmedabad (2012) High court shows mercy to 73-year-old drug peddler.

that of both new and old psychoactive chemicals. Particularly in the Northeastern areas of the nation, the advent of synthetic narcotics and intravenous drug use that results in HIV/AIDS has given the issue a new dimension.

## RESEARCH METHODOLOGY:

This research paper is doctrinal as well as non-doctrinal research by studying the various policies, acts, and conventions. All the resources used for this research are “secondary sources.” Important books, journals, and online research articles have been consulted for something very similar. It plans to delve into a portion of the causes/explanations behind criminal justice reforms and the hypothetical relational words by different research scholars to grasp the issue. It looks into the advancement of the Criminal justice reform in India, and important provisions in the Act.

## NATIONAL AND INTERNATIONAL DRUG CONTROL TREATIES AND CONVENTIONS

In all scenarios, we begin with the idea that, while the future is predictable, there are several uncertainties. As we all know, there is a constant increase in drug problems, not only in terms of drug abuse or consumption but also in drug-related issues such as crime committed while under the influence of drugs by criminals, which should be controlled by policies and programs rather than strictly following the legal procedures, which will not only provide a better outcome for the control of consumption but will also control over criminal activities. These treaties and conventions help Governments combat drug addiction or dependency by enacting laws that target both the demand and supply of drugs, as well as policies that reduce the harms of drugs. Voluntary treatment, rehabilitation, substitution therapy, overdose control, alternative prisons, prescription drugs, awareness campaigns, community social services, and family support are all examples of demand reduction initiatives. Establishing international regulations to curtail the production of plants used to make drugs is one example of a supply-side strategy. Government regulations pertaining to the control and regulation of psychoactive substances, commonly known as drugs, the seizure of drug traffickers, the enforcement of fines for drug violations, and the imprisonment of those found guilty of drug offenses are known as drug policies.

## NATIONAL POLICIES ON DRUG ABUSE

The objective of the National Drug Control Policy is to reduce the demand, availability, and significance of illegal drug usage. The present framework for drug misuse control in the country is provided by the Narcotic Drugs and Psychotropic Substances (NDPS) Act (1985). It superseded previous legislation on the issue.

## COMMON DRUGS UNDER NDPS ACT

Drugs	Small Quantity	Punishment	Commercial Quantity	Punishment	Intermediate (In between smaller & commercial quantity)
Heroin	5g		250g		
Opium	25g		2.5kg		
Morphine	5g		250g		
Ganja (Cannabis)	1kg		20kg		

Charas (Cannabis resin)	100g	Maximum of 1 year rigorous imprisonment or a fine up to Rs.10,000 or Both	1kg	Rigorous imprisonment from 10 years (Min) to 20 years (Max) and a fine from Rs 1 lakh to 2 lakhs	Rigorous imprisonment that may extend to 10 years & fine that may extend to Rs 1 lakh.
Coca Leaf	100g		2kg		
Cocaine	2g		100g		
Amphet – Amine	2g		50g		
LSD	2mg		100mg		

## EXTENT OF DRUG ABUSE IN INDIA

In the National Survey on *“The Extent, Pattern, and Trends of Drug Abuse in India”*, conducted by Ray R (2004) major findings were that alcohol, cannabis, opium, and heroin were <sup>4</sup>major drugs of abuse, The number of persons requiring treatment was large, drug abuse was seen in both rural and urban India and Injection Drug Use had been reported from various sites, including rural India. The duration of drug abuse was long with a significant time gap between onset of drug use and treatment seeking. Many drug users participated in risky sexual behaviors. Low treatment enrollment indicated a lack of congruence between the severity of the issue in a state and the desire for treatment.

## NARCOTIC CONTROL BUREAU

The Narcotics Control Bureau (NCB), a key law enforcement and intelligence agency, is housed inside the Ministry of Home Affairs, Government of India. The agency's duties under the Narcotic Drugs and Psychotropic Substances Act include combating drug trafficking and illicit substance use. It was established in 1986 and is in charge of implementing India's international commitments regarding drug trafficking, coordinating with state governments and other central ministries, and supporting foreign and international drug law enforcement organizations.

## MINISTRY OF HEALTH AND FAMILY WELFARE

By sponsoring many non-governmental organizations (NGOs) <sup>5</sup>across the country, the Ministry fostered the construction of counseling and de-addiction centers. Furthermore, public awareness campaigns, media coverage, and community-based action were carried out for diagnosis, treatment, and rehabilitation. The

<sup>4</sup> The Narcotic Drugs and Psychotropic Substances Act (Current Situation And Suggestion) available at: <https://lawfinderlive.com/Articles-1/Article184.htm?AspxAutoDetectCookieSupport=1> (last visited on Dec. 10, 2024).

<sup>5</sup> Ministry of Health and Family Welfare, India, available at <http://www.mit.gov.in/itbill.a> <https://mohfw.gov.in/sp> (last visited on Dec 9, 2024).

following activities were carried out to raise awareness: Audio-visual publicity, print material development, press advertisements, outdoor publicity, material distribution, and Traditional media advertising.

## **NATIONAL DRUG DEMAND REDUCTION ACTION PLAN**

The Ministry of<sup>6</sup> Social Justice and Empowerment's main program for lowering drug demand is the Scheme of Assistance for the Prevention of Alcoholism & Substance (Drugs) Abuse and Social Defence Services.

## **THE SINGLE CONVENTION ON NARCOTIC DRUGS, 1961 (SINGLE CONVENTION) AS AMENDED BY THE PROTOCOL AMENDING THE SINGLE CONVENTION ON NARCOTIC DRUGS, 1961**

The modern prohibitionist worldwide drug control regime was developed in large part because to the Single Convention. It extends and strengthens the legal framework put in place from 1909 to 1953. Although the attempt to consolidate earlier international drug control treaties into a single data started in 1948, a viable third draft was not ready for a plenipotentiary meeting until 1961. With representatives from 73 nations, each "having an agenda based on its domestic priorities," the meeting convened in New York on January 24, 1961." In addition, it was thought to be the most "desirable" for the Parties to "establish adequate facilities for the operative treatment of drug addicts," but only if the nation has "adequate facilities for the operative treatment of drug addicts." This is only possible if the nation has a significant problem with drug addiction and sufficient financial resources. The Single Convention's and worldwide drug control conventions' failure to recognize demand/harm reduction strategies like education-based prevention has been one of the primary grievances. While not as stringent as the United States had wanted, the Single Convention Protocol preserved the international drug control regime's brutal history, particularly against opium, and stepped up the more intense fight against illicit trafficking.

## **SALIENT FEATURES OF NDPS ACT, 1985:**

The NDPS Act is divided into V chapters, each of which addresses a certain aspect of the act. The first chapter covers the Preliminary Chapter, which introduces and defines the numerous narcotic drugs and psychotropic substances before illustrating that the Central Government has the right to delete or add new substances to the list under the NDPS Act. The second chapter discusses the relevant Authorities and Officers established under the NDPS Act. It also establishes criteria for the Central Government to appoint a Narcotics Commissioner, form a Narcotic Drugs and Psychotropic Substances Consultative Committee, and fund a National Fund for Drug Abuse Control. The third chapter lays out the Prohibition, Control, and Regulation of the previously mentioned substances.<sup>7</sup> It prohibits anybody from cultivating or producing the coca plant, opium poppy, or any cannabis plant while reserving these rights for both the central and state governments to exercise through

<sup>6</sup> The Ministry of Social Justice and Empowerment, Government of India, available at <https://socialjustice.gov.in/> (last visited on Dec 9, 2024).

<sup>7</sup> Aber's encyclopedic medical dictionary. 17th ed. Philadelphia: F.A. Davis Company; 1993. Drug; p.578.

Crime Prevention and Community Safety Learning Circles - Drug-related crime [Online]. [cited 2024 Oct 21]; Available at [http://www.crimeprevention.gov.au/informationresources/Documents/Drug\\_related\\_crime\\_Module.pdf](http://www.crimeprevention.gov.au/informationresources/Documents/Drug_related_crime_Module.pdf) (last accessed on 2/11/2024 )



subsequent legislation. Furthermore, any interstate and international smuggling of these substances is forbidden. Finally, this chapter discusses the regulation of other restricted substances that can be used to make narcotic drugs, as well as provisions outlining instances in which opium poppy, coca plant, and cannabis plant can be legitimately grown. The fourth chapter of the NDPS Act handles Offences and Penalties<sup>8</sup>. It outlines with sentence length the several possible crimes that this Act permits to be tried: possession of such drugs, for either commercial or recreational use, cultivation or manufacturing of such drugs, and smuggling of such drugs. The fifth chapter defines the policies for the officials endowed under this Act and examines the Procedure of how the matters are to be handled. The 2014 Amendment recognizes the government's vital role in providing pain alleviation. It establishes a new class of medications known as Essential Narcotic Drugs (ENDs). The power to legislate on ENDs has been passed from state governments to central governments, allowing the entire country to have a unified law covering these pain-relieving medications. In May 2015, the Indian government announced the NDPS guidelines, which would apply to all states and union territories. It also contains six drugs: morphine, fentanyl, methadone, oxycodone, codeine, and hydrocodone. According to these guidelines, only one entity, the state drug controller, can approve recognized medical institutions (RMI) for stocking and dispensing ENDs, and no other licenses are required. RMIs must provide sufficient documentation to submit annual consumption figures to the state's drug controller.

### **LEGISLATION ON DRUG TRAFFICKING IN INDIA:**

For several decades, our legislation has struggled to contain this scourge. In India, various government and state laws govern the use of narcotic drugs. The major key legislation, the Opium Act of 1857 and the Dangerous Drugs Act of 1930, were enacted, but as time passed and progressed in the sphere of illicit drug trafficking and drug misuse at the national and international levels, various flaws were discovered in the aforementioned acts. Finally, a collective primary act, known as the Narcotics and Psychotropic Substances Act of 1985, was drafted. Following that, it was revised in 1988, again in 2001, and finally in 2014.

### **LIST OF DRUGS INCLUDED UNDER THE ACT:**

The provided list includes roughly 237 substances that are listed as controlled substances under the NDPS Act, 1985.

### **ACTS PROHIBITED UNDER THE ACT:**

It is unlawful to cultivate, produce, manufacture, possess, sell, buy, transport, store, use, or distribute any of the substances, except for medical and scientific uses and under any applicable laws, regulations, or license requirements.

<sup>8</sup> Drug trafficking in India available at <https://iasnext.com/drug-trafficking-in-india-upsc-current-affairs/> (last visited on Nov 25, 2024).

## NDPS ACT POSITIVE ASPECTS

(1) One intriguing aspect of the act is the convenience with which psychotropic substances and manufactured drugs (narcotic drugs) can be added or removed from lists. No formal bill or amendment is required for the purpose, and the government has been empowered to make such changes through simple notifications in the official gazette based on available information or a decision under any international convention.

2) In terms of subsection 3 of <sup>9</sup>section 4, In 1986, the Central Government established the Narcotics Control Bureau (NCB) with the wide remit to coordinate drug law enforcement nationally. The NCB functions as national coordinator and international liaison and as the nodal point for the collection and dissemination of intelligence and assures coordinated implementation within the parameters of a broad national strategy.

(3) A national policy and strategy are shaped and developed in large part by the NDPS Consultative Committee and also in matters of amendments under sections 2. b and 3 for scheduling the addition or deletion of drugs and substances for legal regulation and control. The committee also provides valuable input for India's contribution to the molding of international policy and programs.

(4) A reconsideration of the Act in 2001 resulted in amendments concerning the period of imprisonment and the quantity and type of drug seized. This ensured that, in the case of traditional narcotics, only those with substantial amounts of cannabis could be apprehended for drug trafficking and imprisoned. Further changes in the law in 2002 created two categories Which are based on the quantity seized. These were defined as small quantities and commercial quantities.

(5) <sup>10</sup>Section 31A provides that any person convicted by a competent court of criminal jurisdiction outside India under any similar statute must be treated as if convicted by a court in India. Thus, international offenders are dealt with successfully.

(6) After signing a bond, with or without sureties, for detoxification or deaddiction from a hospital or other government-maintained or approved facility, an addict convicted under section 27 may be released on probation under section 39. The conviction would stand and the sentence remain in abeyance to enable him to report back on successful completion of deaddiction treatment within one year. The court may direct the release of the offender after successful completion of deaddiction treatment and abstaining from the commission of any offence under Chapter IV for three years. On failure to do so, he would have to serve the sentence.

(7) The power to issue search and arrest warrants, has in terms of Section 41 been vested both in Magistrates as well as in specially designated (Gazetted) officers of the Central and State Governments. This is designed to ensure both timely and effective action in response to any information and to obviate the need for judicial satisfaction each time a warrant is required to be issued.

<sup>9</sup> Section 4 in The Narcotic Drugs and Psychotropic Substances Act, 1985

<sup>10</sup> Section 31A in The Narcotic Drugs and Psychotropic Substances Act, 1985

(8) <sup>11</sup>According to section 64 A, any dependent who voluntarily seeks out medical treatment for de-addiction from a hospital or an institution run or recognized by the government or a local authority and receives such treatment will not be subject to prosecution under section 27 or any other section for offenses involving a small quantity of narcotic drugs and psychotropic substances. This is true even if the drug user is charged with an offense punishable under section 27 or with offenses involving a small quantity of these substances. If the addict does not receive the whole course of treatment for de-addiction, this immunity could be taken away.

(9) In order to facilitate the investigation, freezing, seizure, and forfeiture of property obtained from illegal trafficking in narcotic drugs and psychotropic substances, Chapter V-A was added to the Act in May 1989.

## **THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (AMENDMENT) BILL, 2011**

Some irregularities were discovered when implementing the NDPS Act. As a result, the Narcotic Drugs and Psychotropic Substances (Amendment) Bill, 2011, seeks to correct these errors while also making additional adjustments to reinforce the Act's provisions. Key Features of the Narcotic Drugs and Psychotropic Substances (Amendment) Bill, 2011.

**i. Defining “Central Government Factories” [new entry in Section 2]:** Even though the term “Central Government Factories” is mentioned in certain Sections of the Act, till now it has not been defined in the Act. It defines “Central Government Factories” on the lines of the definition of “Government Company” under the Companies Act, to allow the Central Government the flexibility to restructure the Government Opium and Alkaloid Works without diluting the control over them.

**ii. Changing the definition of “commercial quantity” and “small quantity” <sup>12</sup>[Section 2 (viia) & (xxiia)]:** The NDPS Act employs a graded penalty system, with the quantum of punishment varying depending on whether the quantity of drug involved in a case is "small" or "commercial," or more than "small" but less than "commercial". The Hon'ble Supreme Court has ruled that while determining whether the volume of drug involved in a given case is small/commercial, etc., the pure drug content, rather than the quantity of drug seized, must be considered. Because the drug is rarely recovered in its pure form, and "small" and "commercial" quantities for preparations have already been registered, it is requested that the government be given the authority to notify quantities for drug and psychotropic substance preparations.

**iii. Rationalizing the punishment for the consumption of morphine, cocaine, and heroin <sup>13</sup>[Section 27]:** Presently, the consumption of these drugs involves a maximum punishment of 1 year while trafficking of small quantities of the same attracts a maximum punishment of 6 months only. It is suggested that this anomaly be fixed by lowering the maximum penalty for drug use to six months.

<sup>11</sup> Section 64A in The Narcotic Drugs and Psychotropic Substances Act, 1985

<sup>12</sup> Section 2 (viia) & (xxiia) in The Narcotic Drugs and Psychotropic Substances Act, 1985

<sup>13</sup> Section 27 in The Narcotic Drugs and Psychotropic Substances Act, 1985



iv. Repeat offenses under the NDPS Act invite punishment of one and one-half times (1.5 times) the punishment for the first offense. However, this provision has been erroneously worded as “one-half” of the penalty for the first offence, instead of “one and one-half times”. This anomaly is proposed to be rectified.

v. Section <sup>14</sup>52A of the Act allows for the disposal of drugs during a trial following the proper certification of the inventories by the appropriate magistrate; however, this does not apply to "precursors" used in drug manufacturing, which are also subject to seizure under the Act, or to seized conveyances. The amendment suggests permitting the pre-trial disposal of conveyances and antecedents.

vi. There is now no deadline for the investigating officer to examine the illegally obtained trafficking properties and notify the Competent Authority of their findings. As a result, drug-related financial inquiries have been given little attention. It is suggested to require the investigating officer to notify the jurisdictional competent authority of the illegally obtained properties of the drug trafficking individual within 180 days of the arrest or seizure. [New entry Section <sup>15</sup>57A]

vii. The Hon'ble Supreme Court has interpreted the present provisions of Chapter VA (including Section <sup>16</sup>68B) and held that it is necessary to establish a direct nexus between the properties sought to be forfeited and the offence committed. It is nearly impossible to prove such a nexus as drug traffickers do not keep records of the drugs they sell and how they invest the sale proceeds. It is, therefore, proposed to define properties belonging to traffickers, their relatives, and associates, the source of which cannot be proved and the property of equivalent value, as illegally acquired properties by amending section 68B clause (g).

viii. **Insertion of Explanation to Section 68H regarding the validity of notice:** Section <sup>17</sup>68H deals with the issue of notice for forfeiture of property. As previously indicated, the Hon'ble Supreme Court has concluded that establishing a causal relationship between the properties sought to be forfeited and the offence committed is not practicable. To address this situation, it is proposed to insert an "Explanation" to section 68H stating that the notice for forfeiture would not be invalid simply based on failure to establish a nexus between the property sought to be forfeited and any activity in contravention of the provisions of this Act. drug trafficking activity).

ix. **Legal basis for measures to manage injecting drug users [Section 71]:** To reduce the danger of HIV, techniques including "needle-syringe exchange" and "oral substitution" are implemented. These procedures are intended to manage addicts and cannot be technically classified as "treatment". It is proposed to include the word “management” in the section<sup>18</sup> 71 to provide a firm legal basis for such measures.

## NDPS AMENDMENTS, 2014

On May 1, 2014, the NDPS Amendment 2014 went into effect. The NDPS Act's Section 71, which outlines guidelines for treatment facilities and how to handle drug-dependent situations, was added. Simultaneously, the

<sup>14</sup> Section 52A in The Narcotic Drugs and Psychotropic Substances Act, 1985

<sup>15</sup> Section 57A in The Narcotic Drugs and Psychotropic Substances Act, 1985

<sup>16</sup> Section 68B in The Narcotic Drugs and Psychotropic Substances Act, 1985

<sup>17</sup> Section 68H in The Narcotic Drugs and Psychotropic Substances Act, 1985

<sup>18</sup> Section 71 in The Narcotic Drugs and Psychotropic Substances Act, 1985

modifications strengthened the sanctions for small violations while maintaining the prohibition of drug usage. Unlike the old procedure, which needed many licenses with different validation periods, morphine producers just need to get a single license from their particular State Drugs Controller. By ensuring standard regulation nationwide, the amendment will address issues unique to each state. Essential narcotics used in pharmaceutical formulations, including methadone, fentanyl, and morphine, have been altered to make the therapies more easily accessible. For repeated convictions for large-scale drug trafficking, courts have lowered the death penalty to a single 30-year sentence. Following this change, the maximum penalty for "small quantity" offenses has been raised from six months to a year in prison.<sup>19</sup>

### OFFENCES AND PENALTIES:

- Cultivation of opium, cannabis, or coca plants without a license can lead to Rigorous imprisonment-up to 10 years + fine of up to Rs.1 lakh
- Embezzlement of opium by a licensed farmer for which the prescribed punishment is Rigorous imprisonment of 10 to 20 years +fine Rs. 1 to 2 lakhs (regardless of the quantity)
- Production, manufacture, possession, sale, purchase, transport, import, inter-state, export inter-state or use of drugs if it is in small quantity Rigorous imprisonment up to 6 months or fine up to Rs. 10,000 or both and in case quantity is more than small but less than for commercial purposes the punishment is Rigorous imprisonment up to 10 years + fine upto 1 lakh. In case of commercial quantity then R.I. is of 10 to 20 years + fine Rs. 1 to 2 Lakhs.
- Violations of controlled substances have a punishment of Rigorous imprisonment up to 10 years + fine of Rs. 1 to 2 lakhs
- Financing traffic and harboring such substances can lead to R.I. 10 to 20 years + fine of Rs. 1 to 2 lakhs
- Planning to commit a crime Half the punishment for the offense
- In case of a Repeat offence the provision is of One and a half times the punishment for the offence. Death penalty in some cases.
- Use of medications Cocaine, morphine, and heroin - Rigorous imprisonment up to one year or 27 fines up to Rs. 20,000, or both in case of usage of other narcotics.- Up to six months in prison or a fine of up to Rs. 10,000, or both. Addicts who volunteer for treatment are immune from prosecution.
- Punishment for violations not elsewhere specified there is provision of Imprisonment up to six months or fine or both

<sup>19</sup> Section 71 in The Narcotic Drugs and Psychotropic Substances Act, 1985

## LOOPHOLES IN THE NDPS ACT, 1985 WHICH WAS CREATED TO REGULATE AND CONTROL DRUGS IN INDIA:

### Draconian Provisions

Whenever a crime is committed in a democratic society, it becomes the duty of the prosecution to prove the commission of the offence as the burden lies to them only. But in this Act, Section <sup>20</sup>35 says that if there appears any question of mental intention, knowledge, or motive of the accused then it is presumed that he carried malafide intention, etc. hence it is the accused himself who will have to prove that he is innocent. In case an innocent person fails to prove innocence then he will be behind bars just because he failed to prove himself innocent.

#### ▪ Draconian Bail Rules

The NDPS Act contains draconian bail provisions. If a person is accused under <sup>21</sup>Section 19, 24, or 27A of the Act then the Court will not grant him the bail. The court is also barred from granting bail in case of commercial quantity. Refusal of bail in any matter puts a question mark in the mind of the magistrate during trial as well. Generally, bail shall be granted with precautions but shall not be barred in all cases. The principle of innocence until guilt is proven gets a jolt if bail provisions are draconian.

#### ▪ Delay in Trial

Another problem is that of delay in trial. Everyone knows that justice delayed is justice denied. It's a reality that presently the courts are overburdened. Although the Act talks about the special courts it does not bar States from conferring any other additional work to the special court which causes delays in trial. Sometimes innocent persons may become hardcore criminals just because of this delay in trial or their stay in jail.

#### ▪ Disproportionate Penalty

The other major loophole of the Act is the disproportionate penalty. Sometimes the criminals escape the larger punishment even though they deserve more severe punishment and similarly, sometimes the small offender is punished with higher punishment. For example, one kg of ganja falls within the category of small quantity.

#### ▪ Medicinal Use of Drugs

The white color criminals and other criminals escape the punishment in the name of supply of drugs such as morphine or opiates to the public. Hence the rules shall be too strict for issuance of license and permission for use of drugs as medicines.

#### ▪ Absence of Data

The other problem of present India is the absence of data pertaining to drug use, dependence, and attentiveness towards health implications. It has become difficult to research the drug abuse problem in the absence of proper data. In India, the majority of persons consume cannabis, ganja or heroin, etc. But there is no data on the same and the impact of the same.

<sup>20</sup> Section 35 in The Narcotic Drugs and Psychotropic Substances Act, 1985

<sup>21</sup> Section 19, 24, or 27A in The Narcotic Drugs and Psychotropic Substances Act, 1985

### ▪ Lack of Consultancy

The Act permits the Government to create a committee of 20 members for advice after preparing a social report. This number is very less especially in a huge and thickly populated country like India. Public opinion matters a lot in policy-making but such a small number of people in the consultancy process makes it useless.

### DIFFICULTY IN GETTING BAIL: GROUNDS FOR CANCELLATION OF BAIL

The Court must be convinced that there are sufficient reasons to think the accused is innocent of the crime and unlikely to commit another one while out on bail to determine whether or not the requirements stated in the aforementioned clause are fulfilled. This requires a thorough review of the allegations of the fact and the police report. A quick skim of these clauses would lead a court to the conclusion that it should take a negative stance and deny bail, but where the legislature has mandated that the court make a finding that it is satisfied with particular facts, the responsibility put on the court is in positive terms. Accordingly, Section 37 of the Act would be relevant when deciding whether or not to grant bail. However, after an accused person has been released on Bail, the standard provisions of criminal law would take effect, and Bail might be revoked only under the circumstances under which Bail is normally revoked. If the accused utilizes his freedom to engage in further criminal behavior, obstructs the investigation, tries to tamper with evidence or witnesses, shows signs of possible flight, etc., bail may be revoked. The Supreme Court in <sup>22</sup>*State of Kerala v. Rajesh* held that the phrase "**reasonable grounds**" refers to more than just prima facie grounds. It considers strong probable grounds to believe that the accused is not guilty of the alleged crime. According to the law, a reasonable belief is when some facts and circumstances are adequate to satisfy oneself that the accused is not guilty of the stated crime. According to the verdict in <sup>23</sup>*Municipal Corporation of Delhi v. M/s Jagan Nath Ashok Kumar*, the judgment reads, "Stroud's Judicial Dictionary, <sup>24</sup>Fourth Edition, page 2258 states that it is ridiculous to demand a precise definition of the term '**reasonable**'. The Reason's conclusions vary depending on the individual's idiosyncrasies, as well as the times and conditions under which he thinks. Today, the logic that underpinned the ancient scholastic logic sounds like a child's toy jingling. Additionally, it was said that the circumstances of the case ultimately determine whether or not a particular behavior is reasonable." <sup>25</sup>

### GUILTY UNTIL PROVEN INNOCENT:

SEC. 35<sup>26</sup> OF NDPS ACT talks about the presumption of culpable mental state. A key concept in criminal law is known as the "**Presumption of Innocence**", and it stipulates that an accused person is presumed innocent unless their guilt can be shown beyond a reasonable doubt. The maxim "**Semper necessitas probandi**"

<sup>22</sup>State of Kerala v. Rajesh SC 154 2020

<sup>23</sup>Municipal Corporation of Delhi vs Jagan Nath Ashok Kumar & Anr.1987 AIR 231

<sup>24</sup>Dharampal Singh vs State of Punjab 2010 AIR SCW 6828

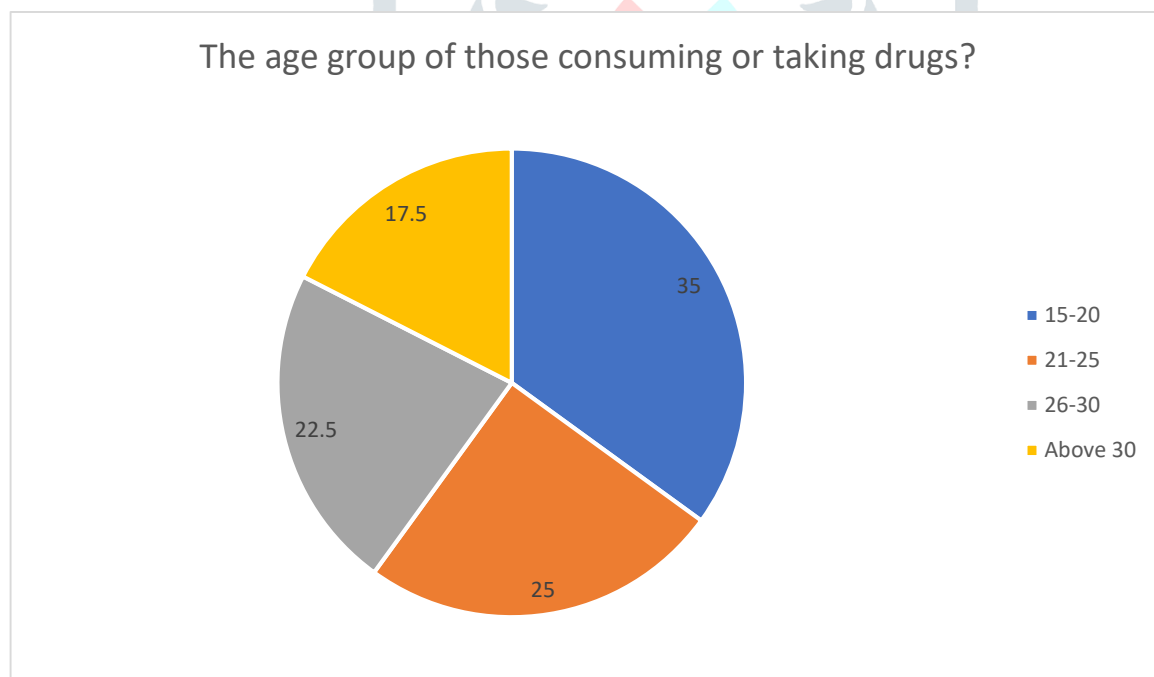
<sup>25</sup>Dharam Chand vs State Of H.P 2024

<sup>26</sup>Section 35 in The Narcotic Drugs and Psychotropic Substances Act, 1985

*incumbitei qui agit*" is the source of this essential concept that was formed from it. This indicates that the person who is accusing you of a crime has the responsibility of proving their case. The assumption of an accused's culpable mental condition is discussed in **Section 35** of the NDPS Act, which may be found here. This means that for the prosecution to proceed, the court will function under the assumption that the accused is in such a mental state. Following the NDPS Act Conduct, an individual who is suspected of committing an offense must disprove the presumption against them and show that they have not committed the offense. According to this subsection, it is believed that the accused was aware of what they were doing when they committed the offence. Therefore, the accused will be presumed guilty until they can demonstrate their innocence. The court will presume that the accused has a culpable mental state in any prosecution for an offence under this Act that requires such a mental state; however, the accused may use this as a defense by demonstrating that he did not have such a mental state at the time of the act that is being charged as an offence. On the other hand, the court cannot assume that such a mental state exists.

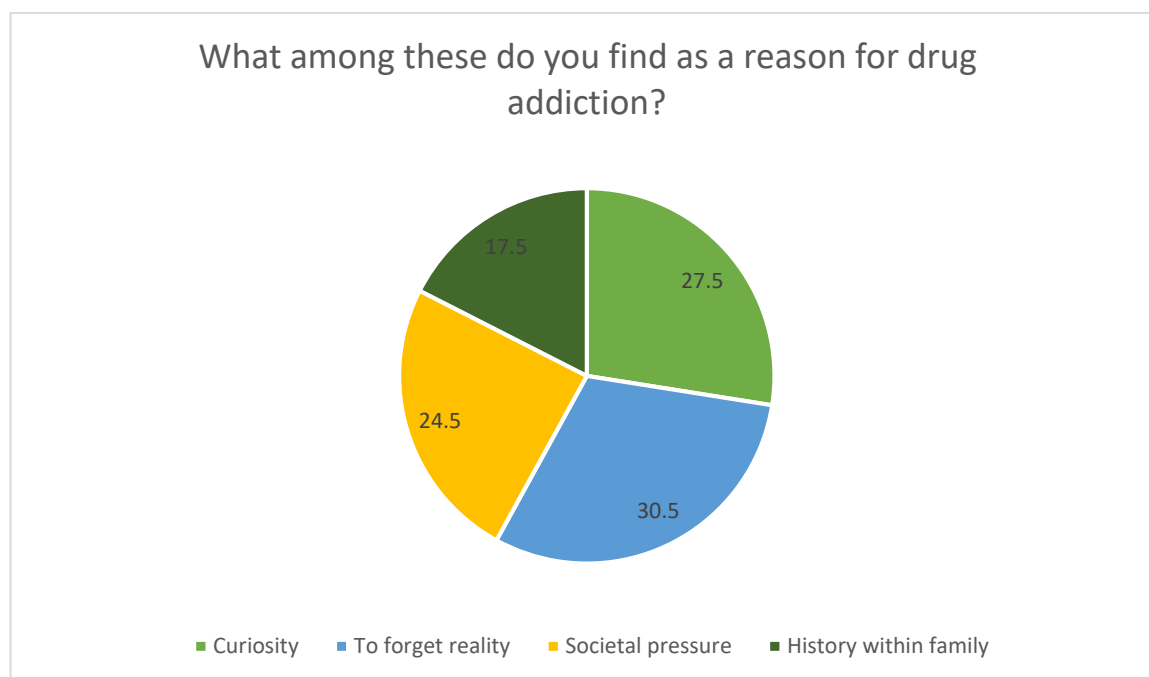
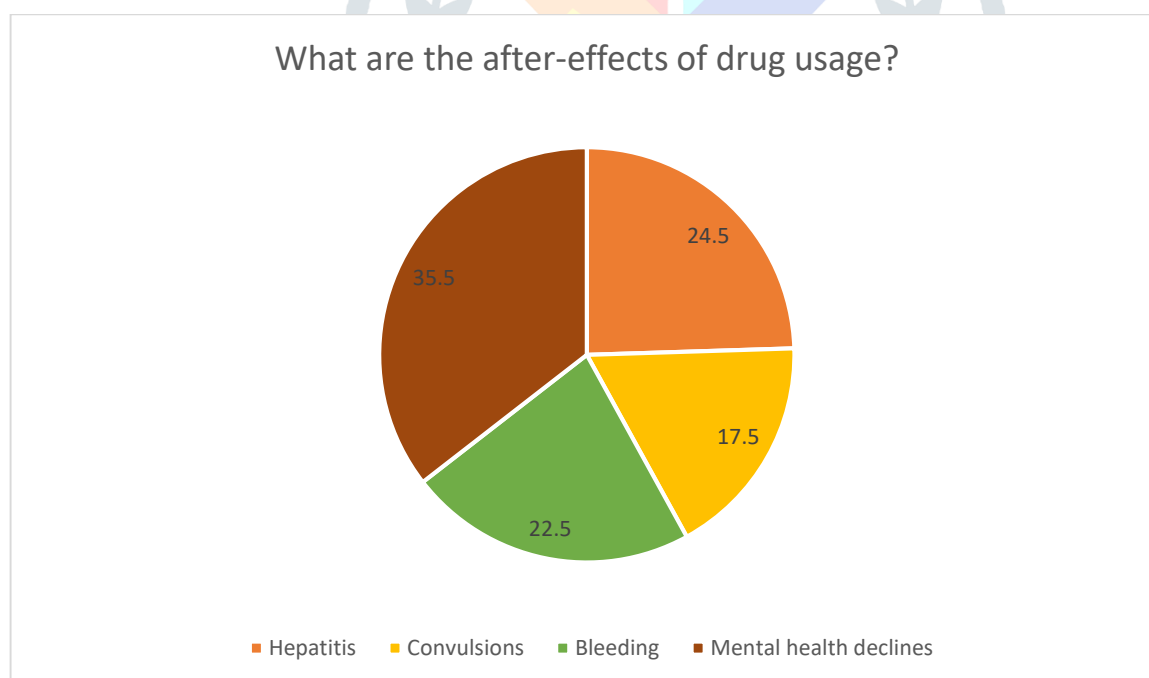
## ANALYSIS

**Figure 1:**



**Fig 1 shows the age group of those consuming drugs.**



**Figure 2:****Fig 2 shows the reason for drug addiction.****Figure 3:****Fig 3 shows the after-effects of drug usage**

## CONSIDERATIONS FOR FUTURE

The efficient implementation of the drug-regulation in the NDPS Act and its use in society must be monitored. Ensuring the quality of drugs used for medical purposes is an important aspect that should

be taken into consideration. Data on drug addicts should be well-maintained and regulated incorporating various organizations working in this area. Improvising coordination among states for investigation in cases related to drugs. Transparency of the policy can be a great advent for effectively solving crimes related to drugs. Understanding the drug patterns is an essential requirement for eliminating the problem of illegal drugs in our country. Bringing awareness and education can help eradicate the problem of drug addiction in our country. Rehabilitation centers should coordinate with the central and state governments to prevent the substance abuse of drugs and its practice in coming generations from the harms of substance abuse. Some considerations for the futures are:

1. Attract drug users to treatment.
2. Scale up peer-led interventions, community-based services
3. Develop programs for vulnerable groups like youth, street children, women, prisons, etc.
4. Enhance the skills of care providers.
5. Improve service delivery.
6. regular data gathering (using a variety of techniques, factors, and locations) to track advancement.
7. DAMS continuation through NGOs' training
8. Finance for actions based on evidence.
9. Enhance advocacy

## CONCLUSIONS AND SUGGESTIONS:

Ultimately, it may be said that despite our nation's Strong laws, which are frequently attacked for their severe penalties, we are unable to fully prevent or manage drug trafficking. The major reason is the improper implementation of the laws. Moreover, there is a need to channel both central and state machinery in such a way that they can bring out the desired results. It is also fundamental that the general public be made aware of the negative consequences of drug use, which can only result in the breakdown of families and subsequently entire societies. One such attempt in this direction is by making a film namely '*Uda Punjab*' over this issue. Instead of criticizing things, there is a need to take a joint effort in this direction as when the requirements or purchases are less obvious drug trafficking will reduce. Except this, there is a need for the judiciary also to decide such cases as fast as possible so that there will be fear in the minds of people as due to delay or pendency of the cases the effectiveness reduces. The development of a team of committed drug law enforcement officers who are well-trained and equipped with effective industry-related knowledge and abilities is vital to effectively combat this threat with flawless standard operating procedure. Operational measures should be established to process the cases for the preventive detention of typical lawbreakers by the NDPS Act's prohibition of illegal trafficking provisions. These cases will be handled. It is not enough to only understand the law's requirements; we also need to put them into practice. Similarly, wanting to punish the person who did wrong is not enough; we have to do it.

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