



## Drug trafficking and legislation

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### Abstract

For the last three decades India has become a transit hub as well as a destination for heroin and hashish produced in the 'Golden Triangle' and the 'Golden Crescent'. In addition, various psychotropic and pharmaceutical preparations and precursor chemicals produced domestically as well as in most parts of the world are also trafficked through Indian territory. The two-way illegal flow of these drugs and chemicals not only violates India's borders, but also poses a significant threat to national security. This is a very serious problem to combat with as soon as possible. Various policies have been made to control this problem such as Narcotics Drugs and Psychotropic Substances Act, 1985 based on Article 47 of the Constitution of India. The meaning of "Drug" which denotes any medicine, solid or liquid prescribed by a physician for the cure of a disease. Section 10 of the NDPS Act, 1985 read with section 8 of the Act empowers the State Governments to license cultivation of cannabis for medical and scientific purposes. In conclusion, although India has made many attempts to control the trafficking by adopting strategies of reduction of drug supply and demand, it needs to act on a much higher scale involving a 3 tier approach: firstly, strengthening of existing laws relating to drug and possibly creation of new ones, secondly increasing security at the borders; and lastly actively co-operating with neighboring countries and other members of the international communities.

**Keywords:** drugs, chemicals, NDPS act 1985, constitution of India, trafficking

### Introduction

For the last three decades India has become a transit hub as well as a destination for heroin and hashish produced in the 'Golden Triangle' and the 'Golden Crescent'. In addition, various psychotropic and pharmaceutical preparations and precursor chemicals produced domestically as well as in most parts of the world are also trafficked through Indian territory<sup>[1]</sup>. The two-way illegal flow of these drugs and chemicals not only violates India's borders, but also poses a significant threat to national security. This is a very serious problem to combat with as soon as possible. Various policies have been made to control this problem such as Narcotics Drugs and Psychotropic Substances Act, 1985 based on Article 47 of the Constitution of India. Various punishments have been provided section 15 onwards under NDPS Act.

### History of drug trafficking

India is a country which has land borders extending over more than 15000 kilometer and a coastal line of over 7000 kilometer. India's Narcotic problem needs to be visualized from its geographical situation<sup>[2]</sup>. Since the late seventies and eighties when the presence of heroin was felt in Indian market, the official stand has been to highlight the role of India as a transit country for the drugs that came from the bordering States close to the Pakistan and Afghanistan in the north and Myanmar in the North-East<sup>[3]</sup>. India is edged on either side by two regions, which are internationally acknowledged as major sources of illegal opiates namely, South-West Asia and South Eastern Asia. Additionally Nepal is a traditional producer of cannabis, both herbal and resinous, fringes the country in the North<sup>[4]</sup>. India's vulnerability to drugs has been aggravated by

the New Economic Policy (NEP) launched in 1991 by the Narasimha Rao Government which emphasized Liberalization, Privatization and Globalization and the membership in the World Trade Organization in April 1993. These initiatives made life easier for drug smugglers and money launderers<sup>[5]</sup>.

### Meaning

It is necessary first to know the meaning of "Drug" which denotes any medicine, solid or liquid prescribed by a physician for the cure of a disease. According to *Joseph Julian* "Drug is any chemical substance which affects bodily function, mood, perception or consciousness which has potential for misuse and which may be harmful to the individual or the society<sup>[6]</sup>." Drug has been defined under Section 3(b) it includes following:-

- i) all<sup>[7]</sup> medicines for internal or external use of human beings or animals and all substances intended to be used for or in the diagnosis, treatment, mitigation or prevention of any disease or disorder in human beings or animals, including preparations applied on human body for the purpose of repelling insects like mosquitoes;
- ii) such substances (other than food) intended to affect the structure or any function of the human body or intended to be used for the destruction of<sup>[8]</sup> [vermin] or insects which cause disease in human beings or animals, as may be specified from time to time by the Central Government by notification in the Official Gazette;
- iii) all substances intended for use as components of a drug including empty gelatin capsules; and
- iv) Such devices intended for internal or external use in the

diagnosis, treatment, mitigation or prevention of disease or disorder in human beings or animals, as may be specified from time to time by the Central Government by notification in the Official Gazette, after consultation with the Board.

Now the meaning of 'Trafficking' which is the commercial exchange of goods especially of an illicit or improper kind. Some of its type is drug dealing etc. Trafficking offenses may include production or cultivation; import & export; transporting; offering; selling and/or possession; with intent to distribute or supply, or the concept of acting 'for gain' or 'on a commercial basis'. With this we can say that drug trafficking means illicit exchange of drugs which are illegal. This includes narcotic drugs, heroin, cannabis etc.

### Constitutional provisions

In India, the National policy on Narcotic Drugs and Psychotropic Substances is based on the directive principles contained in Article 47 of the Indian Constitution which directs that the "State shall endeavor to bring about prohibition of the consumption, except for medicinal purposes, of intoxicating drugs injurious to health <sup>[9]</sup>." The government's policy flows from the above constitutional provision and is also guided by the three UN Conventions to which India is a signatory, namely, Single Convention in Narcotics drugs 1961 as amended by the 1972 Protocol, Convention on Psychotropic Substances, 1971 and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.

### National policies to combat

National drug control legislation is in keeping with the requirements of the United Nations drug control conventions. This led to criminalization of drug use in certain instances, in the background of longstanding cultural sanctions for drug use; particularly those involving psychoactive plant products such as cannabis and opium. Such sanctioned cultural use, produces a situation where in a drug's mind-altering properties are not the sole focus of drug use and related activities.

As a signatory to the UN 1961 Single Convention <sup>[10]</sup>, Indian delegation at the UN had long objected to a proposed policy of international cannabis prohibition, but had made little headway against the massive, predominantly western and US-led, "anti-cannabis bloc." Fortunately, for widespread acceptance, the final draft of the Single Convention included so called grace periods for phasing out traditional drug use. This meant that the "quasi-medical use" of opium had to be abolished within 15 years of the Convention coming into force. Similarly, the non-medical or non-scientific use of cannabis was to be discontinued as soon as possible, "but in any case within 25 years" from the date the convention came into force.

Prior to the present drug control legislation, the focus of Indian drug policies was control of the drug trade and the collection of revenues through licensed sales. Due to India's international commitments, the Narcotics Drugs and Psychotropic Substances Act (NDPS) act was instituted 1985. In political terms, it was difficult for the government to tamper with popular religious and cultural feelings concerning the use

of opium and cannabis. Mindful of international obligations regarding the UN grace period and the political sensitivity of the issue within the country, the NDPS Act was quietly put on to the statute books with little national debate.

Section 10 of the NDPS Act, 1985 read with section 8 of the Act empowers the State Governments to license cultivation of cannabis for medical and scientific purposes. Medicinal use of cannabis has so far been extremely limited and confined to alternate medicine such as homeopathy and ayurveda <sup>[11]</sup>. State Governments have actually not been licensing cultivation of cannabis. Of late, there has been growing international interest among scientists in exploring possible medical uses of cannabis. Cultivation of cannabis will not be permitted given its limited proven uses for medical purposes. Bhang is a preparation made from cannabis leaves consumed in parts of India on some festivals. As it is not made from cannabis resin or from flowering tops, it is not covered under the NDPS Act, 1985. Production and sale of Bhang is permitted by many State Governments. Section 14 of the NDPS Act empowers the Government to, by general or special order, permit cultivation of cannabis exclusively for horticultural and industrial purposes.

### Loopholes in NDPS act

In India, as per the Narcotic Drugs and Psychotropic Substances Act, 1985, cannabis and its various forms - hashish, ganja, charas, - are banned and their possession is deemed to be unlawful'. The cannabis, along with other narcotic and psychotropic substances, comes under the purview of Narcotic Drugs and Psychotropic Substances Act (NDPS Act), 1985. However, interestingly, bhang is the only preparation of cannabis that is not covered in this act, and hence, is beyond the purview of this act.

In short, it's down to a loophole in the drug laws that does not ban the consumption of cannabis leaves, only its buds and resin (i.e., hashish or hash oil, which typically contain a higher concentration of cannabis' active ingredient than the leaves).

As per the NDPS Act, 1985, cannabis is defined in Section 2 (iii) of the act. According to this section cannabis (hemp) is defined as: (a) Charas - a separated resin, in whatever form, whether crude or purified; obtained from the cannabis plant, which also includes the concentrated preparation and resin known as hashish oil or liquid hashish; (b) ganja - the flowering or fruiting tops of the cannabis plant, (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated; and (c) any mixture, with or without any natural material, of any of the above forms of cannabis or any drink prepared therefrom.

### Judicial interpretations

In case of *Arjun Singh v State of Haryana* <sup>[12]</sup>

As per the prosecution, 15/2 kilograms of hemp was recovered from the possession of the appellant when he was travelling in a train. For that recovery, the appellant was charged for the offence punishable under Section 20-B of the Act.

Counsel for the appellant at the very outset raised the contention that the hemp is not a narcotic or psychotropic drug as defined under the Act and hence its possession is not an offence. He submitted that cannabis plant and cannabis hemp

are two different contrabands under the Act. Cannabis (hemp) has been defined under Section 2(iii) of the Act which includes Charas, Ganja and also any mixture, with or without any neutral material of any of the above forms of cannabis or any drink prepared. He submitted that the bhang is the leaves of the cannabis plant and it has not been included in the definition of cannabis (hemp) as defined under Section 2(iii) of the Act.

After hearing the arguments of the learned counsel for the parties, the honourable judge said bhang (hemp) does not fall under the definition of cannabis (hemp) as defined under Section 2(iii) of the act. Thus, its possession does not constitute an offence punishable under the Act.

In case of *Samid v. State of U. P* <sup>[13]</sup>.

The Allahabad High Court summoned the officers dealing with the narcotic drugs and cases relating thereto to explain the Court whether bhang is a narcotic or psychotropic drug and the possession of which is punishable under the Act or not.

In response to that, the letter given by the Assistant Director, Narcotics Control Bureau, Varanasi was placed before the Court in which it was clearly stated that so far as the question of inclusion of 'bhang' under the Act is concerned, it is explicit in the Act itself that 'bhang' is not covered under the Act.

After considering the said letter and the definition of cannabis (hemp) as given under Section 2(iii) of the Act and the 'cannabis plant', as given in Section 2(iv) of the Act, the Court, came to the conclusion that 'bhang' is not covered under the Act. Therefore, no person can be punished for its possession under the Act.

Similarly in case of *Manjeet v. State of Rajasthan* <sup>[14]</sup> - the Rajasthan High Court has elaborated and analysed the various definitions given under the Act and then came to the conclusion that bhang does not fall under the definition of cannabis (hemp) as defined under Section 2(iii) of the Act.

Exclusion of bhang from the purview of NDPS Act, 1985, has remained a topic of discussion among medical and legal experts. Bhang remains one of the least studied preparations of cannabis. Technically and legally, bhang should not include any other part of the plant except the leaves. Addition of flowering tops or the resin produced from the cannabis plants is not permitted to bhang as per the National Policy on Narcotics and Psychotropic Substances, besides this such preparations are common in the festival of holi and shivratri. So accordingly consumption of THC (the principal psychoactive constituent of cannabis) through resins and fruits is illegal under NDPS, Act but it is legal to consume THC through the leaves of the same plant, which will produce the same mind-altering effects.

### International legislations

There are various legislations which United Nations (UN) have introduced to combat the drug related issues such as drug trafficking, drug addiction etc. In United Kingdom there is an act related to drug trafficking i.e. Drug Trafficking Offences Act 1986. The 1961 Single Convention (as amended by the 1972 Protocol) and the 1971 Convention were largely successful in their original goal of controlling the licit market and preventing the diversion of controlled substances for illicit purposes. The vast majority of psychoactive substances were

produced licitly at that time by the pharmaceutical industry, and the treaties were primarily designed to, and largely effective in, controlling "leakage" outside the system. However, illicit demand for psychoactive drugs started to increase (especially in the West), resulting in the expansion of illicit production and trafficking. Especially in the cases of the traditional plant-based drugs — cannabis, cocaine, and heroin — the markets became almost entirely illicit; cultivation, processing, international trade and street sales all turned into illegal business.

### Conclusions

In conclusion, although India has made many attempts to control the trafficking by adopting strategies of reduction of drug supply and demand, it needs to act on a much higher scale involving a 3 tier approach: firstly, strengthening of existing laws relating to drug and possibly creation of new ones, secondly increasing security at the borders; and lastly actively co-operating with neighboring countries and other members of the international communities. At the grassroots level it is of significant importance to address the social impact of drug addiction in an efficient manner, through ensuring that schools/college students are aware of the health and legal consequences, establishing proper rehabilitation centres in places that may lack them, such as certain regions in the North East which are affected directly but aren't properly equipped with treatment options. At last I would like to tell you that till now the word drug has not been defined in NDPS Act rather it has been given in The Drugs and Cosmetics Act 1940 which is a big problem but soon it will be amended and definition of drug will be added.

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