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ANALYSIS OF THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985

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ABSTRACT

The Narcotic Drugs and Psychotropic Substances Act is a comprehensive legal framework enacted in India to tackle issues such as increased drug usage and presence of large crime syndicates. It has strict provisions, aimed at acting as an effective deterrent mechanism. However, it is often seen that harsh punishments and rigid procedures harm small time users over major traffickers. This research paper critically examines the key features of the NDPS Act and gaps in implementation. It goes on to observe judicial efforts to balance the severity of the Act with constitutional safeguards. With the help of comparison with other jurisdictions, the paper argues that India must shift towards a more humane approach.

INTRODUCTION

Drug abuse has long been recognised as an all-pervading social evil that corrodes the fabric of a nation. India is particularly vulnerable to this global menace owing to its geographical position between the Golden Crescent (Afghanistan, Pakistan and Eastern Iran) and the Golden Triangle (Myanmar, Laos and Thailand) which are two of the world's largest illicit opium-producing regions¹. Impact of the same reverberates not only through rising addiction rates but also by way of organised crime, corruption, narcoterrorism and an overburdened criminal justice system.

¹ U.N. Office on Drugs & Crime, *Amphetamine-Type Stimulants: A Global Review* 14 (1998), available at https://www.unodc.org/pdf/technical_series_1998-01-01_1.pdf.

Amidst these myriad challenges, India enacted the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the “NDPS Act” or “Act”), aiming to create a comprehensive legal framework for the purposes of controlling and regulating operations relating to the same. Four decades since its enactment, the NDPS Act has been subjected to intense criticism and scrutiny, resulting from its stringent bail provisions and harsh punishments. Ensuing human rights concerns and ineffective enforcement, coupled with procedural shortcomings are as problematic as the issue at hand itself.

Recent high-profile controversies ranging from celebrity arrests to misuse by state authorities have reignited debate on the prohibitionist and punitive approach that has been adopted. Demands for treatment of addiction as a public health matter rather than a crime are on the rise in light of several jurisdictions moving away from such an approach to harm reduction and decriminalisation of small-scale possession.

This paper seeks to critically analyse key provisions of the NDPS Act, challenges in implementation, significant judicial commentary and the continuing controversies surrounding its use and misuse. This research paper adopts a doctrinal research methodology. By way of examination, the author hopes to answer the following research questions:

1. Does the NDPS Act, 1985, effectively balance the objectives of controlling drug trafficking and protecting individual rights under the Constitution of India?
2. How does the judiciary interpret and assess the procedural safeguards under the NDPS Act?
3. What reforms are necessary to make our approach to narcotic drugs more humane and proportionate?

Historical Background

Prior to the enactment of the NDPS Act, India’s legislative framework concerning narcotics was fragmented and extremely outdated. The statutes governing the same were the Opium Act of 1857, later followed by the Opium Act of 1878, the Sea Customs Act of 1878 and the Dangerous Drugs

Act of 1930². These colonial-era acts were enacted in order to regulate, control and monitor the use of certain specific drugs. Emphasis was laid on regulating the cultivation of opium poppy and penalising unauthorised possession. Its scope was curtailed, there were no clear principles from which it drew inspiration and drug abuse was not considered an issue that had to be dealt with holistically.

In the latter half of the twentieth century, countries began to take a different approach with respect to drug abuse and trafficking. In light of India's rising role in international drug trade and the emergence of synthetic drugs, these fragmented laws were inadequate in addressing the complex and dynamic nature of narcotics trafficking. International instruments such as the Single Convention on Narcotic Drugs, 1961³, Convention on Psychotropic Substances, 1971⁴ and Convention on Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988⁵ were laid down under the auspices of the United Nations. The Government of India, owing to its status as a signatory to these conventions, and feeling the need to bring its laws on par with international standards, proceeded to enact the NDPS Act in 1985. Article 47 of the Constitution of India also played a significant role as the duty to improve public health was particularly focused on prohibition of consumption of drugs for any reasons other than medical⁶.

India has a deep historical as well as religious associated with cannabis. Bhang, ganja and charas have cultural roots in India. References to cannabis appear in some of the oldest texts such as the Atharva Veda which describes it to be a sacred plant, one of five, and calls it a "liberator" and a "source of happiness"⁷. Bhang, in particular, is traditionally consumed during festivals such as Holi and Maha Shivratri. Lord Shiva is mythologically depicted as an ascetic who consumed cannabis in his spiritual pursuit. Among certain sects of sadhus, the ritualistic use of cannabis is

² U.N. Office on Drugs & Crime, *Cannabis and India* (1957), available at https://www.unodc.org/unodc/en/data-and-analysis/bulletin/bulletin_1957-01-01_3_page002.html.

³ Single Convention on Narcotic Drugs art. 36, Mar. 30, 1961, 520 U.N.T.S. 151, available at https://www.unodc.org/pdf/convention_1961_en.pdf.

⁴ Convention on Psychotropic Substances, Feb. 21, 1971, 1019 U.N.T.S. 175, available at https://www.unodc.org/pdf/convention_1971_en.pdf.

⁵ United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances art. 3, Dec. 20, 1988, 1582 U.N.T.S. 95, available at <https://www.unodc.org/unodc/en/treaties/illicit-traffic.html>.

⁶ *India Const.* art. 47.

⁷ Thomas Swahn et al., *Peak-Experience and the Entheogenic Use of Cannabis in World Religions*, 4 *J. Psychedelic Stud.* 179 (2019), available at <https://akjournals.com/view/journals/2054/4/3/article-p179.xml>.

not merely tolerated, but culturally encouraged. Such longstanding acceptance clashes with the blanket prohibition outlined in the NDPS Act as no distinction has been made for the purposes of traditional or ritualistic use. Although bhang which is made from the leaves of the cannabis plant is not covered under the NDPS Act, use of charas which is the resin and ganja which is the flowering top has been criminalised.

Furthermore, opium and morphine have been historically used for medical preparation during wars, particularly World War I, leading to addiction. This phenomenon, which is termed the soldier's disease, added to significant public opposition⁸. Bearing in mind the rising dissent, India initially opposed the Single Convention on Narcotic Drugs, stating the reasons aforementioned. A grace period of 25 years was then awarded in order to make cannabis available solely for scientific and medicinal purposes. Consequently, the NDPS Act was enacted in 1985 with little opposition.

Key Provisions of the NDPS Act

The NDPS Act lays down a comprehensive legal framework for the prohibition, control and regulation of narcotics. Its preamble sets out the object which is to consolidate and amend existing laws in order to ensure that India fulfills its obligations under various international conventions and more importantly, to prevent the illicit production and trafficking of narcotics⁹. The Act is divided into six chapters, each of which cover different aspects. Its scope is broad, covering all steps in the process such as cultivation, production, manufacture, possession, consumption, sale, purchase, transport, warehousing, import, export and transshipment. It is intentionally broad so as to include all possible activities. The NDPS Act is considered to be groundbreaking insofar as establishment of a proper mechanism for implementation is concerned.

It is famously lauded for providing clear definitions of narcotic drugs and psychotropic substances. Section 2 of the Act defines a narcotic drug to include coca leaf, cannabis, opium, poppy stems and all manufactured synthetic drugs¹⁰. To define narcotics in a legal context was considered to be quite difficult, seeing as the definition's medical counterpart is anything that is a "sleep-inducing agent". Psychotropic substances are defined to be any substance which is specified in the Schedule

⁸ John T. Wing, *The Irish "War on Drugs": Ideology, Evidence, and Strategy*, **29 Crime, L. & Soc. Change** 295 (2018), available at <https://journals.sagepub.com/doi/abs/10.1177/0968344513504724>.

⁹ Narcotic Drugs and Psychotropic Substances Act, 1985, Preamble.

¹⁰ Narcotic Drugs and Psychotropic Substances Act, 1985, § 2.

to the Act, such as amphetamine, methaqualone, diazepam and ketamine¹¹. It is generally accepted to be any substance that is mind-altering. Notably, the procedure for adding or removing a particular narcotic or psychotropic substance is considerably easy; simple publication in the Official Gazette will do, as opposed to passing of formal bills or amendments.

The NDPS Act lays out some of the harshest punishments among all criminal statutes in India. The primary factor for determining severity of the punishment is the quantity of substance involved. The same is classified into small quantity, commercial quantity and a middle ground of more than small but less than commercial quantity. The Act follows a strict liability approach with little to no judicial discretion in sentencing. It seeks to deter all forms of drug related offences.

Section 20 prescribes the punishment for offences involving cannabis¹². For small quantity, the punishment can extend up to one year of rigorous imprisonment or a fine of INR ten thousand or both. If the quantity is more than small but less than commercial, imprisonment can extend to ten years with a fine up to INR one lakh. In cases of commercial quantity, the punishment is rigorous imprisonment for not less than ten years but may extend to twenty years or a fine not less than INR one lakh but which may extend to INR two lakhs. Section 21 provides similar graded punishment for offences involving manufactured drugs¹³. Section 22 covers punishment for psychotropic substances with the same graded scale¹⁴. Section 27 lays down the punishment to be rigorous imprisonment which may extend to one year or fine which may extend to INR twenty thousand or both where consumption of any narcotic drug or psychotropic substance is concerned. In *Gaunter Edwin Kircher v. State of Goa, Secretariat Panaji, Goa*¹⁵, the court laid down certain requirements to be met in order to satisfy Section 27¹⁶. Repeat offenders face harder consequences. Section 31 of the Act allows for enhanced punishment for a second or subsequent conviction¹⁷.

Section 35, along with Section 54, inverts the general principle of criminal law by shifting the burden of proof of lack of culpable mental state onto the accused¹⁸. The Act presumes mens rea

¹¹ Narcotic Drugs and Psychotropic Substances Act, 1985, Sch.

¹² Narcotic Drugs and Psychotropic Substances Act, 1985, § 20.

¹³ Narcotic Drugs and Psychotropic Substances Act, 1985, § 21.

¹⁴ Narcotic Drugs and Psychotropic Substances Act, 1985, § 22.

¹⁵ *Gaunter Edwin Kircher v. State of Goa*, (1993) 3 SCC 145 (India).

¹⁶ Narcotic Drugs and Psychotropic Substances Act, 1985, § 27.

¹⁷ Narcotic Drugs and Psychotropic Substances Act, 1985, § 31.

¹⁸ Narcotic Drugs and Psychotropic Substances Act, 1985, § 35.

and possession, unless it can be proven otherwise by the accused. In the landmark case of *Abdul Rashid Ibrahim Mansuri v. State of Gujarat*, there was deliberation as to whether this reversal of burden was constitutionally valid¹⁹. It was subsequently held that it is constitutionally valid for the purposes of compelling state interest in controlling drug trafficking. These Sections are criticised for undermining the presumption of innocence, which is considered implicit within the framework of Article 20 and 21 of the Constitution of India²⁰.

Section 37 is widely considered the most controversial aspect of the Act as it imposes extremely strict conditions for the grant of bail. The Section provides that bail shall not be granted unless the court is satisfied that the accused is neither guilty nor likely to commit any offence while on bail. Coupled with Section 35, Section 37 makes it nearly impossible for bail to be granted to undertrials²¹. It was held by the Supreme Court in the case of *Union of India v. Ram Samujh and Ors.*²² that those persons accused under the NDPS Act are a “hazard to society” and will in all possibility, “continue their nefarious activities”. Section 37 also receives the status of being non-obstante as a result of which it is not merely bound by the conditions imposed in the Bharatiya Nagarik Suraksha Sanhita, 2023. The ruling of the Supreme Court in *State of Punjab v. Baldev Singh*²³ has since not been overruled and hence, all offences under the NDPS Act continue to remain non-bailable.

Critical Issues in Implementation

While the NDPS Act has been enacted with the clear objective of combating India’s growing drug abuse and trafficking issues, its practical implementation has consistently revealed deep structural flaws. The stringent provisions and overarching powers granted to enforcement agencies have resulted in the creation of an environment where misuse is frequent, procedural rights are violated and the weakest sections of society are affected more disproportionately.

The gap between the procedural safeguards and their actual enforcement is widely regarded as one of the most striking issues in the implementation of the NDPS Act. Safeguards such as strict

¹⁹ *Abdul Rashid Ibrahim Mansuri v. State of Gujarat*, (2000) 2 S.C.C. 513 (India)

²⁰ *India Const.* arts. 20–21.

²¹ Narcotic Drugs and Psychotropic Substances Act, 1985, § 37.

²² *Union of India v. Ram Samujh*, (1999) 9 S.C.C. 429 (India).

²³ *State of Punjab v. Baldev Singh*, (1999) 6 S.C.C. 172 (India).

conditions for search, seizure and arrest under Sections 41-43 as well as an individual's right to be informed, prior to being searched, in front of a gazetted officer or a magistrate under Section 50 are crucial²⁴. It is seen as imperative given that offences under the Act often carry minimum sentences of ten to twenty years. Ideally, these procedural safeguards exist because any lapse in following these would result in a gross miscarriage of justice. However, in practice, these safeguards are frequently ignored.

Repeated judicial commentary and case studies show how the protections set out only exist on paper. Innumerable cases show how rules about search and seizure are meant to prevent arbitrary arrests and fabricated recovery but are instead, violated with impunity. The legal standard that has been envisioned routinely clashes with how enforcement officers operate on the ground, such as in cases of informing an accused of his rights or the manner in which evidence is allegedly 'recovered'. The judicial system in India is continually and ceaselessly trying to plug these loopholes. In the case of *Tofan Singh v. State of Tamil Nadu*, the Supreme Court held that confessions given directly to officers under the NDPS Act are inadmissible²⁵. As forced shortcuts are a common shortcut to secure convictions where evidence is lacking, this judgement is considered to be particularly pertinent.

Arguably the most punishing feature of the Act for the general public is the bail regime. The bail provisions set out in the NDPS Act set out an extraordinarily high threshold. Furthermore, the presumption of innocence is turned upside down. It is an impossible burden for the accused to prove their innocence upfront to qualify for bail. The issue at hand is further exacerbated as the majority of the undertrials under the Act are poor and illiterate. The ensuing effect is such that thousands languish in jails for years while an already overburdened criminal justice system crawls towards their trials. Even if they are eventually acquitted, they have already served punishment by way of losing so many years behind bars. Families and communities at the margins of society are devastated by the Act while organised trafficking networks have merely been inconvenienced. It may be argued that the NDPS Act is only as harsh as it needs to be in its function as a vital deterrent. The question that must be posed is who the Act actually deters. Indisputable evidence proves that addicts themselves and not the trafficking syndicates are those most affected. High-

²⁴ Narcotic Drugs and Psychotropic Substances Act, 1985, §§ 41–43, 50.

²⁵ *Tofan Singh v. State of Tamil Nadu*, (2020) 3 S.C.C. 637 (India).

level traffickers, as opposed to small-time carriers and peddlers, are better positioned to exploit procedural gaps, hire skilled lawyers and manipulate corrupt networks within the criminal justice system. Jails in India are overcrowded with petty drug offenders who remain locked up under a law that was originally intended to fight large scale organised crime.

The wide powers granted to enforcement agencies are a breeding ground for misuse and extortion. Repeated allegations, later backed by investigative reports and scattered judicial observations, that planted evidence and forced confessions are an entrenched practice in many states are ever-increasing. States which face a severe drug crisis have had multiple scandals exposed with respect to the involvement of police officials in the drug trade, the very same one they have pledged to fight against. Unchecked powers granted by the NDPS Act may very well fuel the evil it claims to eradicate from society.

The Act's stated objective of rehabilitating addicts remains in the shadows while harsh punishments take the spotlight. Although there exist provisions for de-addiction and immunity for those seeking treatment, it is observed that the same are rarely implemented in practice. Most addicts end up criminalised and untreated, leading to a cycle of petty crime, incarceration and relapse yet again. Public de-addiction facilities are always underfunded, understaffed and poorly regulated. Private de-addiction facilities remain out of the poor's reach. India continues to punish addiction as a crime instead of treating it as the public health issue it actually is.

Judicial Response & Landmark Cases

The Indian judiciary has played a vital role in striving to uphold individual rights amid the draconian provisions of the NDPS Act. It is the duty of the courts to ensure that the enforcement of the Act is subject to constitutional safeguards like due process, fair trial and personal liberty. More importantly, the trust of the general public in the judiciary and the criminal justice system is restored.

In the case of *Abdul Rashid Ibrahim Mansuri v. State of Gujarat*, supra note 19, the Supreme Court deliberated on the reverse burden provision, Section 35, in great length. The reverse burden of proof was upheld, stating that a strong deterrent mechanism and its valued role could justify parting from the general principle of presumption of innocence. The Apex Court, however, did not stop

there; it clarified that the prosecution must first establish certain foundational facts in order to shift the burden. This is a concession aimed at limiting the overreach of the reverse burden provision.

An issue that is deeply entrenched in our criminal justice system - forced admissions of guilt - was addressed in the case of *Tofan Singh v. State of Tamil Nadu*, supra note 25. The Supreme Court in this case held that any custodial confession given to NDPS officers, who essentially function as police, is inadmissible. This landmark judgement is instrumental in shutting down coercive investigatory shortcuts that had become routine.

The case of *Baldev Singh v. State of Punjab*, supra note 23, made adherence to procedural safeguards, particularly Section 50, non-negotiable. It was held that an illicit article seized from the person of an accused, during search conducted in violation of the safeguards provided in Section 50 of the Act, cannot by itself be used as admissible evidence of proof of unlawful possession of the contraband on the accused.

These judgements, which show how the judiciary protects the general public against misuse, are sadly not systemic. These courts can only intervene when procedural breaches are brought up by defence lawyers. In the absence of institutional checks, judgements often come too late.

Comparative Perspective

Prioritising criminalisation and harsh penalties have created more problems, such as crowded prisons, overburdened legal systems and human rights violations, than it has solved.²⁶ This dilemma has pushed countries to reimagine drug policy. While India's approach to narcotics and psychotropic substances remains overwhelmingly punitive, various jurisdictions across the world have adopted more nuanced models that balance prohibition with harm reduction and public health. Decades of research and global evidence are irrefutable proof for the argument that public health and rehabilitation must be placed at the core. Regulated legal markets and harm reduction strategies provide real-world examples of how law can evolve. Although these examples do not present a readymade solution for India, they highlight that flexibility can achieve what blanket prohibition cannot.

²⁶ Elena Vaccari, *Overcriminalization and Prison Overcrowding: In Search for Effective Solutions* (Ph.D. thesis, Università degli Studi di Parma, 2013), <https://www.repository.unipr.it/bitstream/1889/2561/1/PhD%20Thesis.pdf>.

Portugal's experimentation with respect to narcotics is hailed to be one of the best successes. The possession and use of all drugs for personal consumption was decriminalised in 2001 as part of a larger reorientation of policy to a health-led approach. Possession and use did not result in prosecution, users were diverted to dissuasion commissions which were panels that recommended treatment, counselling or at the worst, administrative fines. As opposed to early fears that there would have been a spike in drug use, there was a significant decline in overdose deaths, HIV infections and drug related petty crime. In a legal context, such a decriminalisation policy freed up law enforcement officers and courts to instead focus on large-scale traffickers²⁷.

In 2013, Uruguay legalised recreational use of cannabis²⁸. Adults were permitted to purchase cannabis from pharmacies as well as grow their own. Following this successful example, Canada legalised recreational cannabis as well in 2018²⁹. These countries both introduced highly regulated markets with clear rules on production, distribution, age limits and advertising. The objective was to undercut organised crime and generate tax revenue that can fund health and education programmes. In Uruguay, the strain of cannabis sold and its potency are controlled by the government. Similarly, Canada's Cannabis Act provides a robust compliance framework. This goes to show that a legal market which is regulated is much safer than an entirely underground one.

The United States of America has a curiously complicated lesson. Cannabis remains illegal at the federal level and is classified as a Schedule I controlled substance under the Controlled Substances Act³⁰. However, more than twenty states such as California, Colorado and New York have legalised it for recreational use. The number of states which allow cannabis for medicinal purposes is nearly twofold. This state level legalisation has created a thriving industry that generates billions of dollars in tax revenue. The coexistence of state legalisation and federal prohibition has caused much confusion. The example showcases the potential benefits as well as risks of partial reform.

²⁷ Caitlin Elizabeth Hughes & Alex Stevens, *The Effects of the Decriminalization of Drug Use in Portugal*, BFDPP BP 14 (2007), <https://kar.kent.ac.uk/13325/>

²⁸ Rosario Queirolo, Uruguay, in *The Regulation of Cannabis in the Americas* [page numbers if available] (David J. Bewley-Taylor & Michael J. O'Malley eds., Routledge 2020).

²⁹ Benedikt Fischer et al., *The Canadian Cannabis Act Legalizes and Regulates Recreational Cannabis Consumption*, 64 *International Journal of Drug Policy* 9 (2019), <https://doi.org/10.1016/j.drugpo.2018.01.001>.

³⁰ Mead Alice, *Legal and Regulatory Issues Governing Cannabis and Cannabis-Derived Products in the United States*, 10 *Frontiers in Plant Science* 697 (2019), <https://doi.org/10.3389/fpls.2019.00697>.

India, a country that is vulnerable to cross-border trafficking and organised crime, must design a calibrated approach such that major traffickers and petty users are distinguished.

Way Forward & Recommendations

The NDPS Act, born out of legitimate concerns over drug trafficking and narcoterrorism, has over time revealed serious gaps in how it balances control with individual rights. The rigid, prohibitive and harshly punitive framework demands urgent attention. Blanket criminalisation has failed to meaningfully address issues of supply and has instead produced devastating social costs. Leading studies such as the National Survey on Extent and Pattern of Substance Use in India by the Ministry of Social Justice has consistently stated that addiction is more a health and social issue than a purely criminal one³¹. Various academicians argue that the bail provisions, reverse burden of proof and procedural lapses disproportionately impact those belonging to poor and marginalised communities. It is in stark contrast to the stated aims of the National Drug Demand Reduction Policy.

The most urgent of the reforms that must follow is decriminalisation of small-quantity possession for personal use. Such a reform would be vital as the most used drug in India is cannabis. The Transform Drug Policy Foundation has advocated for the same and its Global Drug Survey shows significant drops in HIV, overdose deaths and petty crime when drug use is treated as a health issue³². Punishment merely pushes users further deep underground and away from treatment. The limited decriminalisation proposed would follow the Portugal model; there would be counselling, community service or small civil fines but no imprisonment.

Numerous reports, from Commonwealth Human Rights Initiative to Amnesty International, reiterate that compliance to procedural safeguards is often cosmetic. Independent oversight is widely recommended to fix this issue. This involves mandatory video recording of searches and seizures, proper chain-of-custody audits in the process of sample collection and witness panels that cannot be chosen by the same investigating officers. Violations must carry real penalties for police, case dismissals are not solely effective. Confessions must only be given before a magistrate and

³¹ Ministry of Social Justice and Empowerment, *National Survey on Extent and Pattern of Substance Use in India* (2019), <https://socialjustice.gov.in/writereaddata/UploadFile/Survey%20Report.pdf>.

³² Transform Drug Policy Foundation, *Global Drug Survey 2023: Health-Focused Drug Policy Reduces HIV, Overdose Deaths, and Petty Crime* (2023)

not to NDPS officers. Planting evidence, forced confessions and procedural abuses persist partly because enforcement officers are rarely held accountable. There must be NDPS-specific training on human rights and independent complaint bodies. The benefit is twofold as accountability will uphold individual rights as well as improve conviction quality, helping genuine cases against traffickers stand up in court.

The twin conditions imposed under Section 37 make bail impossible even for non-violent first-time users. A working paper by Vidhi Centre highlighted that over 70% of NDPS prisoners are undertrials, a large majority of whom do not possess the financial means to fight strict bail standards³³. India must introduce a tiered bail system wherein first-time users with small quantities should have bail as the norm. Bail must be granted where prolonged custody serves no public or personal purpose.

Although the National Action Plan for Drug Demand Reduction promises rehabilitation, delivery of the same by the government remains patchy and highly underfunded³⁴. Robust community treatment centres, halfway homes and detox units are vital. Court oversight must be coupled with mandatory treatment by way of drug courts, an idea that is already taking root in parts of Punjab and Gujarat. Expanding opioid substitution therapy, needle exchanges and education would align India's harm reduction norms with those seen in Canada and Portugal³⁵. The need of the hour is for the NDPS Act to grow from being a blunt prohibition tool to a balanced legal instrument that is tough on traffickers and humane for those battling addiction.

Conclusion

This research paper set out to critically analyse the Narcotic Drugs and Psychotropic Substances Act, 1985, by way of its initial legislative intent, implementation and judicial response. It has also been situated in the wider global debate on drug policy. Nearly half a century after its enactment, the NDPS Act is seen to be notorious for procedural lapses and an approach that criminalises

³³ Vidhi Centre for Legal Policy, *The Case for Decriminalising Cannabis Use in India*, <https://vidhilegalpolicy.in/blog/case-for-decriminalising-cannabis-use-in-india/>.

³⁴ Ministry of Social Justice and Empowerment, *National Action Plan for Drug Demand Reduction (NAPDDR)*, <https://socialjustice.gov.in/schemes/42>.

³⁵ Seye Omiyefa, *Comprehensive Harm Reduction Strategies in Substance Use Disorders: Evaluating Policy, Treatment, and Public Health Outcomes*, 6 *Int'l J. Eng'g Tech. Research & Mgmt.* 1 (2022), <https://ijetrm.com/issues/files/Mar-2022-02-1740918345-SEP06.pdf>.

addiction instead of treating it as a public health concern. Judicial interventions have offered vital correctives, but these remain reactive. Routine violations persist on the ground despite the judiciary's repeated reminders to respect Article 21 of the Constitution and its guarantee of fair procedure and individual liberty. Alternative approaches can reduce harm, undercut illegal markets and ease the burden.

The core objective of the NDPS Act has always been curbing trafficking and protecting society. While this is appreciated and lauded, the harshest aspects must be tempered with proportionality and actual reform. The way forward demands that India's war on drugs does not become a war on its people.