



SUGGESTIONS FOR CHANGES IN THE NDPS ACT 1985

(October 2021)

A discussion paper developed by the Executive Council of the Addiction Psychiatry Society of India (APSI)

Summary

- Despite the reformative intent of the NDPS Act (1985), many provisions do not allow implementation the reformative provisions which seek to control and punish the drug traffickers while providing health and welfare services for drug users. The law enforcement sector spends inordinate amount of time and resources punishing drug users.
- While the NDPS Act is aimed at ensuring the availability of narcotic drugs and psychotropic substances for medical and scientific use, medications belonging to this group remain inadequately accessible to the patients. The health care sector remains at the risk of harassment at the hands of law enforcement authorities.
- The NDPS Act recognizes drug dependence as a treatable medical condition and provides for treatment centres to be established or recognized by the government for the same. However, the Mental Health Care Act (2017) provides a framework for delivery of treatment services for all mental health conditions, including drug dependence and hence the rules under the NDPS Act for the treatment facilities need to be consistent with the MHCA 2017.

1. Major concerns with the NDPS Act 1985:

A. The NDPS Act 1985 came into existence for ‘control and regulation of operations relating to narcotic drugs and psychotropic substances’ and to ‘implement the provisions of the International Conventions on Narcotic Drugs and Psychotropic Substances’. Thus, the broader aim of the Act is to protect the people of India from the risks and harms associated with the narcotic drugs and psychotropic substances. However, besides being a signatory to the three UN Drug Conventions, India is also a party to the UN Convention on the Rights of Persons with Disabilities (UNCRPD) and hence has enacted the Mental Health Care Act (2017). Some existing provisions of the NDPS Act (1985) may appear to be not in consonance with the principles of Human Rights of the individuals who are affected by drug/substance use. It is crucial



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that all the legislations aimed primarily at protecting and promoting the health, welfare and rights of individuals are aligned with each other.

- B. Under the NDPS Act 1985, all the activities related to the controlled narcotic drugs and psychotropic substances – from production and trafficking to consumption – have been made a criminal offence. However, vide amendment in 2001, through a distinction between ‘small quantity’ and ‘commercial quantity’ (specified for every substance), the Act recognized a distinction between drug users and drug traffickers. Unfortunately, many other provisions of the Act do not allow implementing the full intent and scope of the spirit behind the 2001 amendment (i.e. making a distinction between drug user and drug trafficker)¹.
- C. On a related note, the Act employs certain stigmatizing and scientifically inappropriate terms to describe people who use drugs. This contributes to increasing the stigma which in turn hinders the effective implementation of the Act in its true spirit. The law regards a person who consumes a narcotic drug or psychotropic substance as a criminal, even though substance use disorders are universally recognized as mental health conditions².
- D. From the very beginning the NDPS Act – rightly – recognized that the narcotic drugs and psychotropic substances are not just ‘harmful substances which need to be controlled’ but they may have important medical and pharmaceutical use as well. The 2014 amendment to the Act sought to further reinforce this recognition aimed at improving the access to the controlled medications. Till 2014, the Act was largely aimed at controlling and curbing the supply of narcotic drugs and psychotropic substances. The 2014 amendment included the phrase in the aim of the Act - “...to ensure the availability of narcotic drugs and psychotropic substances for medical and scientific use.” A category of Essential Narcotic Drugs (ENDs) was introduced in 2014 and provisions related to regulation of ENDs were reformed to facilitate their

¹ The statement of the objective of the 2001 amendment to the NDPS Act stated, “While the Act envisages severe punishments for drug traffickers, it envisages reformative approach towards addicts.” Currently the Act does not realistically allow adopting a ‘reformative approach’.

² The International Classification of Diseases (ICD) of World Health Organization (WHO) categorizes disorders related to substance use as mental and behavioural disorders. In India the Mental Health Care Act (2017) defines “mental conditions associated with the abuse of drugs” as ‘mental illness.’



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medical use. In practice however, it has been noted that many other provisions of the Act do not allow full implementation of the Act with respect to the spirit of the 2014 amendments. Patients continue to find it difficult to access narcotic and psychotropic medications.³ A major reason is that at all the levels in the health care sector, people involved in usage of these medicines continue to work under severe restrictions (and are sometimes treated at par with drug traffickers by the law enforcement agencies)⁴.

2. Suggestions for modifications and amendments:

a. General / overarching suggestions

1. Currently, the term used in the NDPS Act is ‘addict’, which is a term devoid of any specific meaning and which is universally considered by the scientific community as a stigmatizing term which should be avoided⁵. Importantly, all the provisions in the Act for ‘addicts’ are equally applicable to those people who consume narcotic drugs and psychotropic substances without suffering from addiction. Thus, **the term ‘addict’ needs to be replaced with generic terms such as ‘people affected by drug / substance use disorder’ and ‘drug / substance user(s)’**. This will enable effective utilization of all the well-intentioned, reformative provisions in the Act aimed at providing help and care to people affected by drug use.
2. The 2014 amendment recognizes use of narcotic drugs and psychotropic substances for medical and scientific use. In line with this amendment, **the Act needs to provide**

³ Poor access to opioid pain medications which are controlled under the NDPS Act 1985 to all patients, especially those suffering from terminal stages of care is well recognized in India. Example: Rajagopal MR (2015). THE CURRENT STATUS OF PALLIATIVE CARE IN INDIA, *Cancer Control* 2015 Pg 57-62

⁴ Since 2014, at least three doctors have been jailed and many others have undergone harassment on the alleged violation of the NDPS Act (by providing controlled medication to their patients). Since the implementation of the NDPS Act creates an atmosphere of fear, many doctors are scared to provide effective treatment to their patients using controlled medications. This is one of the major reasons behind poor availability of treatment for opioid dependence in India. Example: Ambekar A, Murthy P, Basu D, Rao GP & Mohan A. (2017) Challenges in the scale-up of Opioid Substitution Treatment (OST) in India (Guest Editorial). *Indian Journal of Psychiatry*; 59:6-9

⁵ Wakeman S. E. (2013). Language and addiction: choosing words wisely. *American journal of public health*, 103(4), e1–e2. <https://doi.org/10.2105/AJPH.2012.301191>



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specific recognition to the persons who deal in narcotic drugs and psychotropic substances for medical and scientific use. For the purpose, the Act should define and include a separate category of ‘licit entities’. The licit entities would include: *doctors, other healthcare providers, individuals engaged in production, distribution and trade of pharmaceutical products, scientists and research personnel etc.*, as well as the *caregivers and family members of patients who use such medications* for treatment of health conditions. After defining the ‘licit entity’ following kinds of amendments are required:

- a. The legal procedures for investigation and prosecution of ‘licit entities’ need to be different from that of suspected traffickers of narcotic drugs and psychotropic substances. **While dealing with the ‘licit entities’, higher levels of diligence and accountability should be demanded on the part of the law enforcement authorities** (as opposed to while dealing with the suspected illicit drug traffickers). This may include procedural safeguards like prior authorisation by a magistrate / production of evidence before issuance of an arrest warrant etc. Such safeguards must be made necessary before arresting or searching the premises of an individual who is a licit entity. For the licit entities, the authorizations may be issued after conferring, recording the reasons, and obtaining permission in written from the authority that has issued a license, permit, authorization or recognition, or registration to the licit entity.
 - b. There should be a **provision for compounding of offences** for minor contraventions of rules and procedures (related to documentation etc.) not amounting to diversion, by the licit entities. It is important that, the rules, procedures (and the offences under them) under the NDPS Act need to be specifically defined; any minor contravention or omission of the Drugs and Cosmetic Act/Rules by the licit entities involving medicines which are narcotic drugs and psychotropic substances should not be allowed to be seen as contravention of the NDPS Act. The composition of an offence under this section must have the effect of an acquittal of the accused with whom the offence has been compounded.
3. Currently the NDPS Act defines consumption and possession of a narcotic drug or psychotropic substance as a criminal offence, irrespective of the purpose of the



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possession (i.e. for personal consumption or for trafficking). The 2001 amendment rightly made a distinction between possession of small quantity (can be justified as meant for personal consumption) and commercial quantity (can be argued as being meant for trafficking). This distinction, however, applies largely in the context of deciding the quantum of the punishment for the offence. Consumption and Possession (irrespective of the quantity or purpose) of narcotic drugs and psychotropic substances continues to be an offence under the Act (except for medical and scientific use). Consequently, even though the Act provides for a reformatory approach (such as referral for treatment in lieu of jail), such provisions are hardly ever utilized. A person accused of consumption or possession in small quantities (for personal consumption) still needs to go through the long-drawn process of arrest, custody, and trial (for getting the benefit of the provision of ‘treatment in lieu of punishment in the form of a jail term’). During the trial, the ‘accused’ needs to confess that (a) he was guilty of possessing the substance and (b) he is an ‘addict’, before the court can refer the individual for treatment in lieu of jail term. The prosecution in such cases contests the claim of accused and seeks to establish that the substance was meant for trafficking. Thus, this well-intentioned reformatory provision remains unutilized. The onus is on the accused to prove himself to be an addict and not a trafficker. If the accused is just an occasional or first-time user and not a frequent or habitual user, it is not possible for him to argue that he is an addict. However even such individuals also not to be provided the opportunity of the reformatory approach of the law. As an amendment, **an individual accused of possession of small quantity of a substance and / or who admits to the investigating officer of substance being meant for personal consumption and / or who admits that he is a drug / substance user or consumer, need not be booked under any offence. Considering that drug / substance use is a health issue, such a person need to be referred directly to the nearest health facility from the police station / field** (preferably a health facility which has mental healthcare / addiction treatment services available). It is important to recognize that drug use disorders are chronic relapsing mental health conditions⁶. Hence patients may need multiple

⁶ Parliament of India has recognised drug dependence as a mental health condition under the Mental Healthcare Act, 2017. Section 27 of the NDPS Act, which criminalises the use of drugs by a person suffering from a substance use disorder, is incompatible with the letter and spirit of the Mental Healthcare Act, 2017.



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episodes of treatment before achieving sustained recovery. Consequently, there should be no specific time duration or type of treatment prescribed under the law. Decisions regarding treatment or interventions must be left at the discretion and expert opinion of the healthcare professionals.

4. This reform, i.e., not booking personal consumption and / or possession of small quantities as an offence, will result in many benefits:
 - a. Drug / substance users, particularly the youth, will escape the stigma of being labelled a criminal and the life-destroying experience of a jail term. Instead, they will have better access to mental health support and an opportunity to undergo reform. For persons with drug / substance use disorders, imprisonment does not cure addiction; rather it worsens the underlying health and social conditions associated with drug use, increases stigma and impedes recovery and reintegration in society
 - b. Since currently, a disproportionate amount of time and resources of law enforcement agencies are spent prosecuting and punishing drug users, the agencies will be able to utilize their resources more efficiently in investigating and prosecuting the drug traffickers. This is borne out by many reports suggesting that the majority of arrests are of small-time consumers.
 - c. Removing the necessity to prosecute and punish people who use drugs, will markedly reduce the unnecessary burden on the criminal justice system (putting large number of drug users on trial / punishment).
 - d. An argument is often made that the ‘fear of punishment act as a deterrent’ and hence provisions of punishment under the law is a strategy for preventing drug use. Similarly, it is also argued that not punishing drug consumption, will encourage more people to take drugs. The fact is, there is overwhelming scientific evidence that
 - i. provision of punishment as a deterrent does not prevent drug use⁷

⁷ European Monitoring Centre for Drugs and Drug Addiction (2015), *Alternatives to punishment for drug-using offenders*, EMCDDA Papers. Luxembourg: EMCDDA available at <https://www.emcdda.europa.eu/system/files/publications/1020/TDAU14007ENN.pdf> .



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- ii. countries where criminal sanctions for drug consumption have been removed, have seen a reduction in drug use (and not increase).
 - iii. removal of criminal sanctions and penal provisions results in reduction of stigma and enables young drug-using people to fearlessly come forward to get help⁸.
5. Another argument often made is that “India has international obligation to provide punishments / jail term to people who use drugs being a signatory to the three UN Drug conventions”. This is incorrect. It must be noted that the United Nations, the International Narcotics Control Board and various other international agencies have:
- a. clarified that the international treaties including the UN Drug Conventions do not compel member states to criminalize drug consumption and provide severe punishments (like jail terms).⁹
 - b. strongly advised all the countries to remove the penal provisions for people who consume drugs (and involved in no other drug offence)¹⁰.
6. Section 71 is a very significant provision of the NDPS Act, as it relates to the treatment, rehabilitation and social reintegration of persons affected by drug / substance problems. However, even this laudable provision is not free of certain ambiguities and areas of concerns:
- a. Most of the States in India do not have in place the State NDPS Rules or other legal instruments to grant ‘recognition’ or ‘approval’ to facilities for treatment of drug addiction;
 - b. There is an unnecessary and irrational overlap, and distinction between ‘de-addiction centres’ under section 71 of the NDPS Act and ‘mental health establishments’ under section 2(1)(p) of the Mental Healthcare Act, 2017 and the

⁸ Cabral TS (2017). The 15th anniversary of the Portuguese drug policy: Its history, its success and its future. *Drug Science, Policy and Law*, 2017; doi.org/10.1177/2050324516683640

⁹ INCB (2017), Annual Report 2017; Chapter 1 Treatment, rehabilitation and social reintegration for drug use disorders: essential components of drug demand reduction. Vienna: INCB

¹⁰ The UN System promotes “...alternatives to conviction and punishment, including the decriminalization of drug possession for personal use,” and “...changes in laws, policies and practices that threaten the health and human rights of people”. See United Nations (2019). *United Nations system common position supporting the implementation of the international drug control policy through effective inter-agency collaboration*. Available at https://unsceb.org/sites/default/files/imported_files/CEB-2018-2-SoD.pdf



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need for multiple registrations and approvals from multiple authorities under the two legislations.

- c. The De-addiction ‘centre’ is often understood as a facility where in-patient treatment of addiction (hospitalisation) takes place. The fact is, advances in the field of addiction sciences have allowed substance use disorders to be managed and treated primarily in the ‘out-patient’ (‘OPD’) settings like clinics, without the need for hospitalisation in ‘centres’. In-patient centres cater to a very small number of patients, are resource-intensive and cannot be (and need not be) established at the scale currently required in the country. Besides, the in-patient treatment is indicated only for a few, select patients, based on clinical judgment and patient need. Consequently, the addiction treatment experts universally recognize the role and importance of outpatient, clinic-based, long-term treatment of drug dependence.¹¹ In India, the existence of Drug Treatment Clinics (DTC) of Ministry of Health and Family Welfare¹², Addiction Treatment Facilities (ATF) of Ministry of Social Justice and Empowerment¹³, Outpatient Opioid Agonist Treatment clinics (OOAT) of Government of Punjab¹⁴, OST clinics of NACO are testimony to the changing landscape of treatment. The NDPS (Amendment) Rules dated 5th May 2015, introduced the concept of ‘Recognised Medical institutions’ (‘RMIs), which can register patients with opioid dependence and dispense essential narcotics drugs (in the outpatient setting). **Thus, it is important that the section 71 of the NDPS Act is reviewed in the light of these advances.**

Some specific suggestions for amendment in the NDPS Act (1985) follow.

¹¹ WHO and UNODC (2020). *International Standards for the Treatment of Drug Use Disorders*. Available at <https://www.who.int/publications/i/item/international-standards-for-the-treatment-of-drug-use-disorders>

¹² Scheme for Strengthening of Drug De-Addiction Services, Drug De-Addiction Programme (DDAP), Ministry of Health and Family Welfare, Government of India: <http://www.dtc-scheme.in/>

¹³ National Action Plan for Drug Demand Reduction, Ministry of Social Justice and Empowerment, Government of India: <http://socialjustice.nic.in/writereaddata/UploadFile/Scheme%20for%20NAPDDR.pdf>

¹⁴ Government of Punjab, OOAT CLINICS TO BE SET UP IN ALL COMMUNITY HEALTH CENTRES: <http://www.diprpunjab.gov.in/?q=content/now-ooat-clinics-be-set-all-community-health-centres>



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b. Suggestions for specific amendments

Existing text	Suggested amendment	Comments
Definitions "addict" means a person who has dependence on any narcotic drug or psychotropic substance	"addict" means a person who has dependence on any narcotic drug or psychotropic substance "drug user" means a person who uses or consumes any narcotic drug or psychotropic substance "Person with drug use disorder" means a person who uses or consumes any narcotic drug or psychotropic substance in a harmful pattern or has dependence, as diagnosed by a mental health professional	Removal of the term 'addict' is important since it is stigmatizing and is not scientifically appropriate. Instead, two new definitions are required of 'drug user' and 'person(s) with drug use disorder' It is necessary that the Act makes a distinction between 'drug users' and those with 'drug use disorder.'
[(xxviiiia) "use", in relation to narcotic drugs and psychotropic substances, means any kind of use except personal consumption;]	[(xxviiiia) "use", in relation to narcotic drugs and psychotropic substances, means any kind of use except personal consumption;]	Considering that a definition of 'drug user' is being introduced, retaining a separate definition of "use" (which excludes personal consumption) will create confusion.
[(viiiib)] "illicit traffic", in relation to narcotic drugs and psychotropic substances, means-- (i) cultivating any coca plant or gathering any portion of coca plant;	[(viiiib)] "illicit traffic", in relation to narcotic drugs and psychotropic substances, means-- (i) cultivating any coca plant or gathering any portion of coca plant;	Putting use or consumption in the list of activities defining 'illicit traffic' is incorrect. Thus, while all other listed activities amount to trafficking, Personal consumption of substance cannot be equated with trafficking. Further, while recognizing that drug use



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(ii) cultivating the opium poppy or any cannabis plant;	(ii) cultivating the opium poppy or any cannabis plant;	disorder is a mental health condition, this amounts to criminalizing the symptom of a health condition.
(iii) engaging in the production, manufacture, possession, sale, purchase, transportation, warehousing, concealment, use or consumption, import inter-State, export inter-State, import into India, export from India or transshipment, of narcotic drugs or psychotropic substances;	(iii) engaging in the production, manufacture, possession, sale, purchase, transportation, warehousing, concealment, use or consumption , import inter-State, export inter-State, import into India, export from India or transshipment, of narcotic drugs or psychotropic substances;	Moreover, considering that “harbouring persons engaged in any of the aforementioned activities” is also listed as an offence, the family members of a drug user are potentially liable to be criminalized for ‘harbouring a drug consumer’. This would make seeking and receiving health support difficult. This anomaly needs to be corrected.
(iv) dealing in any activities in narcotic drugs or psychotropic substances other than those referred to in sub-clauses (i) to (iii); or	(iv)	
(v) handling or letting out any premises for the carrying on of any of the activities referred to in sub-clauses (i) to (iv), other than those permitted under this Act, or any rule or order made, or any condition of any licence, term or authorisation issued, thereunder, and includes--	(v)	
(1) financing, directly or indirectly, any of the aforementioned activities;	(1)	
	(2)	
	(3)	



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(2) abetting or conspiring in the furtherance of or in support of doing any of the aforementioned activities; and (3) harbouring persons engaged in any of the afore-mentioned activities;]		
(iii) "cannabis (hemp)" means-- (a) <i>charas</i> , that is, the separated resin, in whatever form, whether crude or purified, obtained from the cannabis plant and also includes concentrated preparation and resin known as hashish oil or liquid hashish; (b) <i>ganja</i> , that is, 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 neutral material, of any of the above forms of cannabis or any drink prepared therefrom;	(iii) "cannabis (hemp)" means-- (a) <i>charas</i> , that is, the separated resin, in whatever form, whether crude or purified, obtained from the cannabis plant and also includes concentrated preparation and resin known as hashish oil or liquid hashish; (b) <i>ganja</i> , that is, 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 neutral material, of any of the above forms of cannabis or any drink prepared therefrom; but does not include any preparation containing not more than 0.2 percent of THC; or any other such approved preparation of cannabis for medical purposes	Specifying the THC content will be important to facilitate medical usage of cannabis preparations which are low in THC (i.e. with low psychoactive properties) but have potential medical usages on account of their CBD content.



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Proposed new definition Licit entity	Licit entity means Any person or entity involved in activities related to the narcotic drugs and psychotropic substances for medical and scientific purpose and in the manner and to the extent provided by the Act, the rules or orders made thereunder or any other act for the time being in force and the rules or orders made thereunder including any person involved in treatment and care of a patient using narcotic drugs or psychotropic substances.	<p>It is necessary that the Act makes a distinction between illicit drug traffickers and those involved in the legitimate business of narcotic drugs and psychotropic substances for medical and scientific purpose. This definition purports to include people involved in the supply chain of pharmaceutical products at all the stages – manufacturing, distribution, marketing, sale, prescription, dispensing etc. More importantly it also includes those involved in health care delivery such as medical practitioners and other health care workers, those involved in the treatment of persons with substance use disorders such as NGOs and even the care givers of the patients. Thus, family member of a patient who needs controlled medications is a licit entity would be a licit entity.</p> <p>This definition is vital considering it is being proposed that the licit entities as defined here are not at risk of arbitrary arrest and prosecution.</p>
Section 8. Prohibition of certain operations	Section 8. Prohibition of certain operations	Possession has already been listed as an act which is prohibited under the Act. Prohibiting 'use' and 'consumption' carries the risk of



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<p>No person shall--</p> <p>(a) cultivate any coca plant or gather any portion of coca plant; or</p> <p>(b) cultivate the opium poppy or any cannabis plant; or</p> <p>(c) produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into India, export from India or tranship any narcotic drug or psychotropic substance, except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the rules or orders made thereunder and in a case where any such provision, imposes any requirement by way of licence, permit or authorisation also in accordance with the terms and conditions of such licence, permit or authorisation:</p>	<p>No person shall--</p> <p>(a) cultivate any coca plant or gather any portion of coca plant; or</p> <p>(b) cultivate the opium poppy or any cannabis plant; or</p> <p>(c) produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into India, export from India or tranship any narcotic drug or psychotropic substance, except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the rules or orders made thereunder and in a case where any such provision, imposes any requirement by way of licence, permit or authorisation also in accordance with the terms and conditions of such licence, permit or authorisation:</p>	<p>those people being criminalized who on account of their drug use, volunteer for accessing health and welfare services. Possession for legitimate purposes and by licit entities as described above need to be permitted for the said purposes.</p>
<p>Section 27. Punishment for consumption of any narcotic drug or psychotropic substance.</p> <p>Whoever, consumes any narcotic drug or psychotropic substance shall be punishable,</p>	<p>Section 27. Punishment Provision of treatment for consumption of any narcotic drug or psychotropic substance.</p> <p>Whoever, consumes any narcotic drug or psychotropic substance shall be referred to</p>	<p>The intent of the legislature has been to distinguish people engaged in drug trafficking from those affected by drug dependence (as evident from the provisions of (i) quantity-based penal provisions, (ii) Section 64(A) for immunity for 'addicts' and (iii) section 71 for</p>



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<p>(a) where the narcotic drug or psychotropic substance consumed is cocaine, morphine, diacetylmorphine or any other narcotic drug or any psychotropic substance as may be specified in this behalf by the Central Government by notification in the Official Gazette, with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to twenty thousand rupees; or with both; and</p> <p>(b) where the narcotic drug or psychotropic substance consumed is other than those specified in or under clause (a), with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.]</p>	<p>the nearest health facility for assessment and treatment, rehabilitation, and other support services punishable,</p> <p>provided the person is not found contravening any other provision under the Act or committing any other offence.</p> <p>(a) where the narcotic drug or psychotropic substance consumed is cocaine, morphine, diacetylmorphine or any other narcotic drug or any psychotropic substance as may be specified in this behalf by the Central Government by notification in the Official Gazette, with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to twenty thousand rupees; or with both; and</p> <p>(b) where the narcotic drug or psychotropic substance consumed is other than those specified in or under clause (a), with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.]</p>	<p>establishing treatment centres). Since drug use is a mental health condition, any person consuming a prohibited narcotic drug or psychotropic substance needs health and welfare services. Existing provision under Section 64 (A), 'immunity for addicts seeking treatment' remains unutilized since consumption is a criminal and punishable act. Even if the court decides to refer the drug dependent person for treatment at the stage of trial, it is too late. Full realization of the intent and spirit of the law is possible only when people who are 'guilty' of only drug consumption (and not trafficking) are referred for health and welfare services from the field itself, without any intervention of the criminal justice system.</p>



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<p>Section 35. Presumption of culpable mental state.</p> <p>(1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.</p> <p><i>Explanation.--</i> In this section "culpable mental state" includes intention motive, knowledge of a fact and belief in, or reason to believe, a fact.</p> <p>(2) For the purpose of this section , a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability.</p>	<p>Section 35. Presumption of culpable mental state.</p> <p>(1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.</p> <p>Provided that (a) in a case involving prosecution against a licit entity, the burden to prove that the contravention amounts to illicit trafficking shall be on the prosecution and (b) in a case involving prosecution of a drug user involving small quantities meant for personal consumption, the burden to prove that the contravention amounts to illicit trafficking and not personal consumption, shall be on the prosecution.</p> <p><i>Explanation.--</i> In this section "culpable mental state" includes intention motive, knowledge of a fact and belief in, or reason to</p>	<p>The established principle of jurisprudence is presumption of innocence till the guilt is established. In the NDPS Act however, there is presumption of guilt, and the burden is on the accused to prove his innocence. There may be a justification of this approach for the effective control of illicit trafficking. However, in case of the health care sector (the 'licit' entities) and drug users, such presumption goes against the spirit of the Act. For these two exceptions (licit entities and drug users), the burden should be on the prosecution to establish the guilt.</p>



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	<p>believe, a fact.</p> <p>(2) For the purpose of this section , a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability.</p>	
<p>Section 64A. Immunity from prosecution to addicts volunteering for treatment.</p> <p>Any addict, who is charged with an offence punishable under section 27 or with offences involving small quantity of narcotic drugs or psychotropic substances, who voluntarily seeks to undergo medical treatment for de-addiction from a hospital or an institution maintained or recognised by the Government or a local authority and undergoes such treatment shall not be liable to prosecution under section 27 or under any other section for offences involving small quantity of narcotic drugs or psychotropic substances:</p>	<p>Section 64A. Immunity from prosecution to drug or substance addicts-users or people with drug or substance use disorders volunteering for treatment.</p> <p>Any addicts, person who is charged with an offence punishable under section 27 or with offences involving small quantity of narcotic drugs or psychotropic substances, and / or who voluntarily seeks to undergo medical treatment for drug / substance use disorder de-addiction from a hospital or an institution maintained or recognised by the Government or a local authority or any other such health facility that offers treatment and undergoes such treatment shall not be liable to prosecution under section 27 or under any other section for offences involving small quantity of narcotic drugs or</p>	<p>People who are drug users (and not necessarily those affected by drug use disorders) can also benefit from interventions which are aimed at reducing the drug use and preventing the progression of drug use to drug use disorders. The legislative intent of “reformatory approach towards drug users” will be best materialized when every person who uses drugs (and not just drug ‘addicts’) receives an opportunity to undergo reforms and rehabilitation. Such opportunities need to be provided at the earliest (after an encounter with a law enforcement officer) and need not wait for the judicial intervention.</p>



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<p>Provided that the said immunity from prosecution may be withdrawn if the addict does not undergo the complete treatment for de-addiction.]</p>	<p>psychotropic substances:</p> <p>Provided that the said immunity from prosecution may be withdrawn if the drug / substance user addict does not undergo the treatment for drug / substance use disorder.]</p> <p>Explanation: Section 64A shall be ordinarily invoked together with (amended) section 27. While applying Section 64A, provisions of Mental Health Care Act (2017) shall also be applicable.</p>	
<p>Section 42. Power of entry, search, seizure and arrest without warrant or authorisation.</p> <p>(l) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments ofmay between sunrise and sunset,-</p> <p>(a)... (b) ... (c) ... (d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence</p>	<p>Section 42. Power of entry, search, seizure and arrest without warrant or authorisation.</p> <p>(l) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments ofmay between sunrise and sunset,-</p> <p>(a)... (b) ... (c) ... (d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence</p>	<p>All the licit entities – especially those dealing with pharmaceutical products – remain at risk of harassment by the drug law enforcement authorities. This fear has resulted in inadequate provision of health care involving narcotic and psychotropic medications to the affected citizens. In order to ensure that the Act which purports to facilitate availability of narcotic drugs and psychotropic substances for medical and scientific purpose, it is necessary that due diligence is observed in applying the provisions of the NDPS Act to the licit entities.</p>



SUGGESTIONS FOR CHANGES IN THE NDPS ACT 1985

(October 2021)

Existing text	Suggested amendment	Comments
<p>punishable under this Act: [Provided that in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub-inspector: Provided further that....</p>	<p>punishable under this Act: [Provided that in respect of a licit entity holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub-inspector and only after obtaining a warrant from a Metropolitan Magistrate or a Magistrate of the first class or any Magistrate of the second class specially empowered by the State Government in this behalf or after conferring, recording the reasons and obtaining permission in written from the authority that has issued a license, permit, authorization or recognition, or registration to such entity under the provisions of the Act, rules or orders made thereunder, or any other Act for the time being in force and the [Rules made there under]. Provided further that....</p>	
<p>(Proposed new Section, 42A)</p>	<p>Section 42 A: Power to refer a drug user or a person with drug use disorder for treatment</p>	<p>All the officers who have been provided the power under section 42 for entry, search, seizure and arrest, need to be provided the</p>



SUGGESTIONS FOR CHANGES IN THE NDPS ACT 1985

(October 2021)

Existing text	Suggested amendment	Comments
	<p>Any such officer (being an officer superior in rank to a peon, sepoy or constable) as defined in Section 42, upon coming in contact with a person who claims to be a drug user or a person with drug use disorder, can refer the person to a health facility for assessment and treatment, rehabilitation, and other support services under section 27, provided the person is not found contravening any other provision under the Act.</p>	<p>power under (amended) section 27 as well so that drug users can be referred to health services without involvement of the criminal justice system. It should not be the case that arrest can be made by almost anyone but the decision to not arrest but refer the person to health services requires judicial intervention (which will inevitably involve delay, remaining in custody, and the risk of unnecessary harassment).</p>
<p>Section 71 Power of Government to establish centres for identification, treatment, etc., of addicts and for supply of narcotic drug and psychotropic substances.</p> <p>(1) The Government may establish, recognise or approve as many centres as it thinks fit for identification, treatment, management, education, after-care, rehabilitation, social re-integration of addicts and for supply, subject to such conditions and in such manner as may be prescribed, by the concerned Government of any narcotic drugs and psychotropic</p>	<p>Section 71 Power of Government to establish centres Healthcare facilities for identification, treatment, etc., of addicts drug / substance users and people with drug / substance use disorders and for supply of narcotic drug and psychotropic substances.</p> <p>(1) The Government may establish, recognise or approve as many healthcare facilities as it thinks fit for identification, treatment, management, education, after-care, rehabilitation, social re-integration of addicts drug / substance users and people with</p>	<p>Considering that health and welfare services are required not just for people with drug use disorders (formerly, ‘addicts’) but also for all drug users, the required changes in the text are necessary.</p> <p>The clause, ‘registered with the government’ may create confusion and needs to be deleted. “Registered with the government” may have been relevant for the purpose of opium registry, a system, which is now discontinued. Under the Mental Health Care Act (MHCA 2017), all the substance use disorders (whether involving narcotic drugs and psychotropic substances or other ‘legal’</p>



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<p>substances to the addicts registered with the Government and to others where such supply is a medical necessity.</p> <p>(2) The Government may make rules consistent with this Act providing for the establishment, appointment, maintenance, management and superintendence of, and for supply of narcotic drugs and psychotropic substances from, the centres referred to in sub-section and for the appointment, training, powers, duties and persons employed in such centres.</p>	<p>drug / substance use disorders and for supply, subject to such conditions and in such manner as may be prescribed, by the concerned Government of any narcotic drugs and psychotropic substances to the drug / substance users and people with drug / substance use disorders, who seek treatment, management, education, after-care, rehabilitation, social re-integration services registered with the Government and to others where such supply is a medical necessity.</p> <p>(2) The Government may make rules consistent with this Act providing for the establishment, appointment, maintenance, management and superintendence of, and for supply of narcotic drugs and psychotropic substances from, the centres healthcare facilities referred to in sub-section and for the appointment, training, powers, duties and persons employed in such healthcare facilities centres, provided that such rules are consistent with the provision of the Mental Health Care Act (2017) for Mental Health Establishments.</p> <p><i>Explanation: For the purpose of this clause,</i></p>	<p>substances) are mental health conditions and the facilities where these patients are provided treatment are defined as Mental health establishments. Consequently, the rules under Section 71 of the NDPS Act need to be consistent with the pertinent rules under the MHCA 2017.</p>



SUGGESTIONS FOR CHANGES IN THE NDPS ACT 1985

(October 2021)

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	<i>notwithstanding anything contained in the Act or any notification issued thereunder, the Government recognises the existence of different facilities, that may provide treatment to people who use drugs / substances or have drug / substance use disorders and that such facilities may supply narcotic drugs and psychotropic substances as a medical necessity.</i>	

Developed by: Addiction Psychiatry Society of India (APSI)

Available on: <https://addictionpsychiatry.in/>

Contact: addictionpsychiatry.india@gmail.com

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