

NO DRUGS  
OR  
NUCLEAR WEAPONS  
ALLOWED INSIDE

# Monthly BULLETIN

OCTOBER - NOVEMBER 2021 | Issue 05 |

## *Announcement*

Call for Articles, Op-eds, cartoons, book reviews and other submissions on recent matters related to the theme of social justice.

Call for contributions for 'The Social Justice Blog'

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# COVER STORY

## REHAB OR JAILS FOR DRUG ABUSE VICTIMS ?

### ANALYZING THE PERSPECTIVE OF MINISTRY OF SOCIAL JUSTICE ON NDPS ACT, 1985

-Shruti Sinha\*



#### INTRODUCTION: WHAT IS NDPS ACT, 1985?-

Our country is committed towards the goal of reducing the use of narcotic drugs or Psychotropic Substances for scientific and medical usage. Furthermore, we aim at preventing drug abuse in our country. In order to achieve the aforementioned objectives the Government of India has legislated Narcotics Drugs and Psychotropic Substances (NDPS) Act, 1985.

This legislative step for preventing and controlling all forms of drug abuse is in accordance with the guidelines of UN Conventions related to drug abuse control. Few prominent conventions of which India is a signatory are Convention on Psychotropic Substances, 1971, UN Single Convention on Narcotics Drugs 1961 and the Convention on Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.

*\*The author is a third year law student at Institute of Law, Nirma University. All views are personal.*

## The Extent of Drug Abuse in India :

As per the crime report of National Crime Records Bureau in 2020, there were approximately 57,600 crimes reported under the legislation of NDPS Act, 1985. To further understand the drug abuse in India let us look at the key findings of ‘Magnitude of Substance Abuse In India, 2019 Report’ published by Ministry of Social Justice and Empowerment:

- The illegal drug markets of India have extremely high number of opioids and cannabis users.
- Alcohol abuse tops the chart in India.
- Use of opioid in India is triple the worldwide average.
- Only form of legal cannabis in India is bhang. The other forms of cannabis namely- marijuana and hashish are illegal.
- India has approximately 2 crores of opioid users by 2018 which was calculated to be approximately five times the usage recorded fourteen years back. Furthermore, there is record of maximum growth in heroin drug consumption.
- India has approximately more than 1 crore users of sedatives. The maximum sedative users are in the following states- Uttar Pradesh, Maharashtra, Punjab and Andhra Pradesh (in the following order).
- There is a limited population of drug users which uses psychoactive drugs and inhalational route. While, inhalants being the only drug category consumed among children.
- Cocaine is an elitist drug because it is usually used by the well off people due to its high cost. Consequently, the usage of the drug is limited to 10 lakh users in India. Furthermore, even hallucinogens, is used by limited number of approximately 12 lakh users and one –third of them are of highly dependent on it.

## The Role of NDPS Act, 1985 in curbing Drug Abuse :

**Control and Stringent Regulation:** The NDPS Act lays down stringent provisions for the control and regulation of activities connected to psychotropic substances and narcotic drugs.

- The offences under the Act attract jail terms ranging from one year to 20 years and fine depending on the crime.
- Preparation to commit an offence listed under this act attracts half jail time than commission of actual offence.
- All the offences listed under the Act are non-bailable offences.
- There is no scope to get termination, remission, and commutation of sentences awarded to the convicts of drug related offences listed under this Act..
- Criminal conspiracy, abetment or attempt to commit an offence listed under this Act will lead to the same punishment as it would be for commission of that offence itself.

**Related Property:** The Act also provides for forfeiture, seizing and freezing any property derived or used in illegal drug traffic of narcotic drugs and psychotropic substances.

**Repetitive Offender:** In general cases repetitive offenders are awarded one and half times higher penalty than usual. In exceptional cases, the repetitive offender might be awarded death penalty too.

## Perspective of Ministry of Social Justice on NDPS Act, 1985:

The Ministry of Social Justice and Empowerment in light of the recent drug abuse trends in our country has suggested a more solution centric approach for the implementation of NDPS Act. The Ministry has pointed out that how the Act in reality is only focusing on policing activities and

consequently any sort of de-addiction measure are sidelined. This trend makes it difficult to control the increasing drug abuse in real sense. Hence, the ministry recommends usage of National Fund to Control Drug Abuse with higher emphasis on de-addiction steps rather than merely focusing on policing activities by the authorities.

Furthermore, to increase the effectiveness of the legislation there must be adoption of provisions which decriminalizes the possession of narcotic drugs in smaller quantitative or for personal purposes. The rationale behind this suggestion of the Ministry is that a person carrying drugs in such small quantities or using it for personal purposes is a victim of drug abuse rather than a offender who must be jailed. According to them, these victims should be sent to rehabilitation centre. Also, these suggestions of the ministry are in tandem with recommendations of International Narcotic Control board. Thus, these suggestions of ministry are targeted to equally balance the two functions of the legislation that is to control as well as prevent drug abuse.

#### **Critical Analysis and Suggestions for NDPS Act, 1985:**

- There is immediate need of a ground level analysis that why and how people are being addicted to drugs in our country. Following which, there needs to be a solution centric approach to those problems rather than mere policing or administrative steps.
- The above recommendations of Ministry have two basic presumptions which might not be true in practice. They are as follows:
  - Decriminalization of consumption of drugs in smaller quantities will not exact have a deterring effect on

the end users. Instead, there are high chances that there will be proliferation in drug consumption because of no restrictions on its consumption in smaller quantities. Thus, this might eventually increase the cases of drug addiction.

- Also, though the ministry suggests rehabilitation centers for drug users rather than jails, we do not have enough centers to cater the needs of all the end users.

Though the suggestions of the ministry might face certain difficulties in its application it is principally correct. Hence, they must be taken seriously and active steps must be taken to overcome the challenges in its implementation.

#### **Conclusion - A Way Ahead :**

The stringency of the Act must be decided from cases to case basis and the end goal of reducing drug related offences must always be kept in mind. In order to achieve the desired results there needs to be a shift in approach of the Act by giving more emphasis on increasing its effectiveness. A clear demarcation between drug dealers and end users is the first step towards such goal. The latter must be considered as a victim or patient who needs assistance and not jail time like any other offender. Thus, the principles of restorative justice must be equally applied to tackle the issues of drug menace in our country.

## 1) **Vipan Kumar Dhir v. The State of Punjab (4 th October 2021)**

In this case, the court talked about the cancellation of bail. Bail once granted should not be cancelled in a mechanical manner unless there have been supervening circumstances that have no longer rendered it conducive to a fair trial to allow the accused to retain their freedom through bail during their trial. For cancellation of bail ‘cogent and overwhelming reasons’ must be present. The gravity of the offence, conduct of the accused and societal impact of an undue indulgence by the court when the investigation is going on are among a few situations where a superior court can interfere in an order of bail to prevent the miscarriage of justice and to bolster the administration of criminal justice system. Each case has its unique factual scenario based on which the matters of bail and its cancellation thereof is dealt with.

## 2) **Ashok Kumar v. Raj Gupta & Ors (1 st October 2021)**

The appellant Ashok Kumar filed an appeal seeking a declaration of ownership of property left behind by late Trilok Chand Gupta and late Sona Devi. The defendants (daughters of the couple) denied that the plaintiff is the son of their parents and they filed an application seeking a direction of the court to conduct a DNA test of the plaintiff.

The Supreme Court held that the plaintiff cannot be forced to provide a sample for a DNA test as it would violate their personal liberty and right to privacy. Whether a person can be compelled to do so can be determined through the test of proportionality laid down in *K.S. Puttaswamy v. Union of India*. If other evidence is available to prove the relationship then DNA tests should not be ordered as they can also have societal consequences.



### **3) Ekta Dhadhich v. Rajendra Prasad Sharma (Civil Transfer Application – 30th September 2021)**

The petitioner wife filed a transfer petition under Section 24 of the Civil Procedure Code, 1908 seeking a transfer of divorce petition filed by the respondent husband from the court of Additional District Judge, Kekri district Ajmer to the Family Court situated at Kota.

The court observed that while going into the merits of a transfer application more weightage should be given to the convenience of female litigants keeping in mind that the female litigants do not face undue hardships. In matters as in the present case, preference has to be given to the convenience of wife over that of the husband.

### **4) Writ Petition No. 24850 of 2021 –**

Delivered by Justice B. Vijaysen Reddy, this petition was filed in the Telangana High Court by a minor girl (through her guardian) seeking direction for termination of her 26-week long pregnancy. The court, in this case, held that even if a pregnancy exceeds 24 weeks a girl/woman is not out of remedies and can approach the court for the termination of the pregnancy. Further, the court held that in abortion cases, the life of the mother has to be given primacy over

the life of the foetus. Article 21 includes the right of a woman to make a choice of pregnancy and terminate it even in situations of unplanned pregnancy. Therefore, the High Court stood by the mother's autonomy and reproductive rights.

### **5) “Denial of reasonable accommodation to the disabled is discrimination”**

In the case of **Avni Prakash v. National Testing Agency (NTA) & Ors.** (Writ Petition (L) No.21578 of 2021), the Supreme court called upon the relevant authorities to grant relief to a disabled student who was denied extra writing timing in NEET as mandated in the Rights of Persons with Disabilities Act, 2016 .

Avni Kumar, a PWD student who suffers from dysgraphia was not allowed an hour's compensatory time to complete her NEET paper, without any fault on her part.

The Supreme Court, while deciding on the lines of the previous Vikash Kumar judgement, held the testing agency accountable and asked them to come up with an adequate solution for the same. The right to education

includes the right to inclusive education. An inclusive education cannot be realised without reasonable accommodation of the varying needs and interests of the various people.

#### **6) Forced Oral sex with minor not to be treated as aggravated penetrative assault**

In the case of **Sonu Kushwaha v State of UP** (Criminal Appeal No. - 5415 of 2018) , the High Court of Allahabad convicted a man of sexually assaulting a 10 year child under section 4 of the POCSO act and further held that forced oral sex wouldn't count as aggravated sexual assault under the POCSO act. Previously, the trial court had convicted the man under section 6 of the POCSO act for aggravated sexual assault and had rewarded 10 years imprisonment. This judgement, however, was reversed by the High court.

It is to be noted here, that the incident and the registration of the complaint happened in 2016. The judgement was therefore based on the POCSO act 2012 and not the recent POCSO (amendment) act of 2019.

This is because those provisions do not apply retrospectively. Section 6 of the 2012 act states -

“Whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine. “

The High Court in its extremely narrow interpretation of the law held that section 6 wouldn't include in its ambit oral sex, considering it to be a “lesser offence” and reduced the offender's punishment to only 7 years. Thus setting an extremely dangerous precedent.

#### **7) “Most important ingredient of sexual assault is sexual intent not skin to skin contact” - - Attorney general for India versus Satish and another**

**Attorney General for India v. Satish** (2021 SCC OnLine SC 1076) was brought to the Supreme Court by the Attorney General for India K. K. Venugopal , following the Bombay High Court's judgement dated 19/01/21 wherein the court had acquitted the accused of sexual assault under section 7 of the POCSO Act, 2012 on the ground that there was no direct “skin to skin contact.” In the said case, the accused groped a 12 year old girl child while she was fully clothed and was only stopped when the mother of the child entered his house. The Nagpur bench of the Bombay High court decided that this act would not amount to sexual assault

under the POCSO act, as section 7 of the act involves only touch or direct physical contact with sexual intent and convicted him under section 354 of the IPC, for outraging the modesty of a woman.

The Bombay High court's judgement set a "dangerous precedent" and was therefore reversed by the Supreme Court. The court held the accused punishable under section 8 of the act and further emphasized the importance of "sexual intent" over 'direct' physical contact in cases of sexual assault. The act of touching a sexual part body part with a sexual intent should itself amount to sexual assault. Whether the victim was clothed or not, or whether the physical contact was direct or not, should be immaterial. Narrow interpretations of provisions may destroy the main aim behind the act.

### 8) "Sometimes we have to rise above the law and take a humanitarian approach"

In the case of **Prince Jaibir Singh V. Union Of India & Ors**, (Writ Petition (L) No.26135 of 2021) the Supreme court came to the aid of a Dalit student who was denied admission to the admission to the Indian Institute of Technology Bombay, due to non-payment of fees. The petitioner, Prince Jalbir Singh, was a meritorious Dalit student who was unable to pay the fee due to a technical glitch. The appellants had earlier approached the Bombay high court, where their plea was rejected. According to the petition, the petitioner had logged into Authority's website uploaded the requisite documents. However, he fell short of money that day and couldn't make the payment. The petitioner tried to make the payment after collecting the required amount, in the next round. However he faced a server error and was unable to do so. Despite repeatedly reaching out to the Institute authorities, he was denied access.

While addressing the issue, the bench led by Justices Chandrachud and A S Bopanna, held that such a denial of admission would be a "great travesty of justice". People belonging to the lower castes of our society go through great difficulties and such technical issues only add to their obstacles. The court exercised its power under article 142 of the constitution and asked the institute to look at the student's situation from a humanitarian perspective and accommodate the student pursuant to the allocation of the seat to him.

Article 142 of the Constitution allows the Supreme Court to issue decrees and orders for doing complete justice in certain cases before it. It further elaborated that while technology is a great enabler, it also creates a digital divide among the various classes of people in society. Marginalised and underprivileged people are often left behind, because of their lack of access to efficient resources and therefore the application of the court's power under article 142 was absolutely necessary.



# NEWS & DEVELOPMENTS

- Rishi Chouksey  
& Suchetna Chakraborty

## 1) Centre set to rationalize 3 cr scholarships for SC/ST/OBC and minorities.

The government is set to rationalise all scholarships given to meritorious students belonging to Scheduled Castes, Scheduled Tribes, Other Backward Classes and minorities to award equal amounts to students of the same class. This is likely to impact over 3 crore students, a majority belonging to OBCs. According to sources, the move comes after a directive from Prime Minister's Office (PMO) to rationalise all scholarships. "There has been an observation that children belonging to different castes studying in the same class get different amounts as scholarships.

## 2) Ayushman Bharat to cover sex change of transgenders:

Secretary (social justice and empowerment) R Subrahmanyam told ET, "There are five components of the new scheme - education, health, skill development, rehabilitation and economic linkages. For health, packages are being worked out under Ayushman Bharat for transgenders. This will cover surgeries and medical support required by transgender persons."

Ayushman Bharat, the Centre's flagship health insurance scheme for the poorest of the poor, will now provide medical cover to transgenders and support medical intervention like sex change operations.

Pradhan Mantri Jan Arogya Yojana (PM-JAY) provides a medical cover of Rs 5 lakh per family per year for free treatment at all public and empanelled private hospitals. This benefit will now be extended to transgenders under the government's new scheme, Support for Marginalised Individuals for Livelihood and Enterprise (SMILE). The health cover will include medical support and medical intervention.

3) **Over half the world's population, four billion, doesn't have any social security, says ILO**

More than four billion people or 53% of the global population do not have any kind of social security despite the unprecedented worldwide expansion of social protection during the COVID-19 crisis, the International Labour Organization (ILO) said, suggesting countries should enhance their expenditure on social protection to guarantee at least basic social protection coverage.

Social protection includes access to health care and income security, particularly in relation to old age, unemployment, sickness, disability, work injury, maternity or loss of a main income earner, as well as for families with children. Currently, only 47% of the global population are effectively covered by at least one social protection benefit.

4) **845 kids orphaned during pandemic approved for benefits of PM-CARES for Children scheme: Official.**

A top official stated Wednesday that a total of 845 children who were orphaned during the pandemic had been certified as eligible for payments under the PM-CARES for Children initiative. According to a Women and Child Development Ministry official, of the 3,915 applications received for assistance under the 'PM-CARES for Children' scheme, 845 children's applications have been granted.

The government has issued rules for the plan, which define obligations at all levels. The Ministry of Women and Child Development will be the key Ministry for the scheme's implementation at the central level.

5) In the background of the Aryan Khan Case, **the Social Justice and Empowerment Ministry has recommended decriminalization of possessing small quantities of drugs for personal use** in its review of The narcotic drugs and psychotropic substances act submitted to the Revenue Department.

**6) Centre justifies in SC limit of Rs 8 lakh annual income fixed for determining EWS category for reservation in NEET**

The Centre explained its decision to impose the maximum of Rs 8 lakh yearly income for defining the Economically Weaker Sections (EWS) category for quota in NEET admissions for medical courses before the Supreme Court on Tuesday. The Ministry of Social Justice and Empowerment stated in an affidavit submitted before the Supreme Court that the methodology of determining the amount is reasonable and in accordance with Articles 14, 15, and 16 of the Constitution."The exercise conducted to determine the creamy layer for the purpose of OBC reservation would be equally applicable for determining the EWS category because the fundamental premise is that if a person/his family has a significant economic standing, he/she may not require the benefits of reservation at the expense of others."

"It is emphasised that even the Major General Sinho Commission stated that "expanding the current criteria to identify 'creamy layer' within OBCs might well serve as to select the top limit or as a criterion for recognising EBC families among General Category also," according to the affidavit.

**7) Valayanchirangara government Lower Primary School, near Perumbavoor in Ernakulam district, which has a strength of 754 students has taken the first step towards gender neutrality and introduced a new uniform for their students-- a 3/4th shorts and shirt, irrespective of the gender.**

The new dress code was planned way back in 2018 and was introduced in the lower primary section of the school and this academic year, when the schools were reopened after the pandemic induced lockdown, it has been extended to all students. Vivek V, the current president of the PTA, who was also part of the executive committee of the PTA in 2018 which took the decision, told PTI that they wanted all the children to enjoy the same level of freedom.

8) In an official memorandum issued on 30th November, **the Social Justice and Empowerment Ministry said the government constituted the committee in accordance with the commitment given to the Supreme Court to revisit the criteria for determining the economically weaker sections (EWS) in terms of the provisions of the explanation to Article 15 of the Constitution.**

The committee will revisit the criterion in determining EWS category keeping in view the observations of the Supreme Court. It will also examine various approaches so far followed in the country for identifying economically weaker sections, and recommend criteria that may be adopted for identifying EWS category in future.

The committee members are former finance secretary Ajay Bhushan Pandey, member secretary of Indian Council of Social Science Research (ICSSR) V K Malhotra and principal economic advisor to the government Sanjay Sanyal. The committee had a deadline to complete its work within November.

9) **The ministry of ministry for children and women's welfare has approved the scheme to provide benefits from the PM cares fund to 845 children** orphaned during the pandemic. Of the 3,915 applications received for support under the '**PM-CARES for Children**' scheme, applications of 845 children have been approved, the Women and Child Development Ministry official said.

Additional Chief Secretary/ Principal Secretary/ Secretary of the department is to be the State Nodal Officer for implementation of PM CARES for Children Scheme. Currently, a monthly stipend of Rs 2000 is being given which would be increased to Rs 4,000 from December, 2021. According to the guidelines, the lump sum amount will be transferred directly to the post office account of beneficiaries upon opening and validation of the account of the beneficiaries. A pro-rata amount is to be credited upfront in the account of each identified beneficiary such that the corpus for each beneficiary becomes Rs. 10 lakh at the time of attaining 18 years of age.

**10) The state higher education department of Kerala launched a gender justice campaign named 'Sam Bhavanayude Sadkalasalakal' (Virtuous Campuses of Equality) on the campuses of various educational institutes in the second week of November.**

The minister said the campaign is the beginning of the efforts to ensure women-friendly campuses and gender equality awareness throughout the higher education sector. It would help to ensure that gender justice forums are functional on all campuses. Steps would also be taken to make timely changes in curriculum and syllabus, the minister said.

**11) The Union ministry of social justice notified the decision of the Centre to celebrate November 26 as Constitution Day to promote constitutional values among citizens.** The fundamental rights as enumerated in the Constitution of India is an indispensable tool for achieving social justice. Thus, awareness on rights is an essential component necessary to create among people a sense of seeking justice where rights have been violated.

**12) NCERT's Gender Studies Department in November published a teacher-training manual titled 'Inclusion of Transgender Children in School Education: Concerns and Roadmap' on its website,** with the goal of educating and sensitising teachers about the practices and strategies to make schools more sensitive and inclusive for transgender and gender-nonconforming students.

The teacher's training manual advocated for gender-neutral toilets and uniforms, the elimination of practises that separate children for various school activities based on their gender, and the invitation of members of the transgender community to speak on campus, among other things. **However, on November 2, the manual was withdrawn from the website of NCERT.** NCPCR wrote to NCERT, stating that it had received complaints about the teaching manual's content and had taken suo moto cognizance of the matter in relation to deprivation and violation of child rights.



# National Commission for Scheduled Tribes

- *Samridhi Shrimali*

National Commission for Scheduled Tribes was formed on the 89th Amendment of the Constitution coming into force from 19 February 2004, under Article 338A on bifurcation of former National Commission for Scheduled Castes and Scheduled Tribes to supervise the implementation of various safeguards provided to Scheduled Tribes under the Constitution. Article 338 A of the constitution provides for the establishment of a Commission for the Scheduled Tribes, known as the National Commission for the Scheduled Tribes.

Article 366 (25) of the Indian Constitution defines Scheduled Tribes as those groups that have been scheduled in compliance with Article 342(1) and 343(2), as well as the various presidential orders issued from time to time. Individuals/petitioners/Associations and other outlets for inclusion/exclusion of STs Groups are represented to the NCST. It is the constitutional duty of the Commission to monitor the implementation of safeguards and rights of the Scheduled Tribes.

The **functions of the commission** are as follows :

- To investigate and monitor issues related to the constitutional safeguards for SC/STs, as well as to assess how well they are functioning.
- To look at concrete concerns about SC/ST rights and safeguards.
- Participate in and advise on the Planning Process for the Socioeconomic Development of SC/STs
- Assess the progress of their development under the Union and any State.
- To give annually report to the president upon the working of the safeguard.



## **CSJ ILNU MONTHLY BULLETIN**

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