

UNIT – IV: LAW OF CRIMES

Drug trafficking and counterfeiting

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DRUG TRAFFICKING

Drug trafficking is a global illicit trade involving the cultivation, manufacture, distribution and sale of substances which are subject to drug prohibition laws. In the Declaration on the Rule of Law, Member States recognized the importance of strengthened international cooperation in countering the world drug problem. The National Crime Records Bureau's information, as distributed in 2014, revealed that India witnesses almost 10 suicides once a day because of substance addiction.

India passed the Narcotic Drugs and Psychotropic Substances Act, (NDPS Act) in 1985 which was consequently amended in 1989, 2001 and recently, in 2014. Surrounded with the purpose to battle drug trafficking, it denies and criminalizes the production, cultivation, possession, sale, use, purchase, import and export, and consumption of narcotic drugs and psychotropic substances. It gives immunity in circumstances where the medications are used for scientific or medical purposes.

With a specific end goal to supplement the NDPS Act, the Prevention of Illicit Trafficking in Narcotic Drugs and Psychotropic Substances Act came into existence in 1988. It contains provisions relating to the preventive detention of any and each person who is associated with or accused of drug trafficking.

The legislative policies which deals with the issue relating to drugs are mentioned as under:

Narcotic Drugs and Psychotropic Substances Act, 1985

The official record expresses that the NDPS Act was instituted with a specific end goal to give adequate penalties for strengthened enforcement powers, drug trafficking, and to execute international conventions to which India is a member, and uphold controls over psychotropic

substances. Three times amendment was made in this Act i.e. in 1989, 2001 and currently, in 2014.

This Act basically covers three categories of substance, namely, *Psychotropic Substances, Narcotic Drugs and Controlled Substances.*

NDPS Amendments, 2014

The NDPS Act was amended in early 2014 for the 3rd time and some new provisions come into force from on 1 May 2014. The principal highlights include:

- *Creation of another class of “essential narcotic drugs”, which the central government can regulate and determine consistently throughout the country.*
- *Widening the goal of the law from containing unlawful use to promoting the scientific and medical use of psychotropic substances and narcotic drugs.⁴¹ with regards to the rule of “balance” amongst control and accessibility of narcotic drugs that supports the international drug control treaties.*
- *Including the expressions “recognition and approval” of the treatment center and “management” of drug dependence, in this manner permitting for the foundation of lawfully binding treatment standards and proof/evidence based medical interventions.*
- *Making capital punishment optional for a subsequent offense including a specific amount of drugs U/S 31A. The court will have some other alternatives to impose detainment/imprisonment for a term of 30 years under this section.*
- *Increased punishment from a maximum of 6 months imprisonment to 1-year imprisonment for small quantity offenses.*
- *Authorizing private sector inclusion in the processing concentrated poppy straw and opium.*
- *Raising the rank of officers approved to conduct arrest and search permit holders for affirmed NDPS violations.*
- *More detailed provisions for relinquishment of the property of people summoned on charges of drug trafficking.*

NDPS Act considers drug offenses as very grave and serious in nature and so, punishments for them are very severe. Under NDPS Act, criminal conspiracy, abetment and even attempt to carry out an offense pull in the same punishment as the offense itself. Habitual or repeat offenses attracts 1 and half times the punishment and capital punishment in some cases.

Offences and Penalties

Cultivation of coca plants or opium, cannabis without license	Punishment is-Rigorous imprisonment-up to 10 years + fine up to Rs.1 lakh
Embezzlement of opium by licensed farmer	Rigorous imprisonment -10 to 20 years + fine Rs. 1 to 2 lakhs (regardless of the quantity)
Manufacture, production, sale, possession, transport, purchase, import/export inter- state, or use of psychotropic substances and narcotic drugs.	For small quantity of drugs, the punishment is rigorous imprisonment up to 6 months or fine of Rs. 10,000 or both. More than little quantity but less than business quantity – Rigorous imprisonment. up to 10 years + fine up to Rs. 1 Lakhs. Commercial/Business quantity – Rigorous imprisonment 10 to 20 years + fine Rs. 1 to 2 Lakhs
Import/export or transshipment of psychotropic substances narcotic drugs.	for small quantity of drugs, the punishment is rigorous imprisonment up to 6 months or fine of Rs. 10,000 or both. More than little quantity but less than business quantity – Rigorous imprisonment. up to 10 years + fine up to Rs. 1 Lakhs. Commercial/Business quantity – Rigorous imprisonment 10 to 20 years + fine Rs. 1 to 2 Lakhs
External dealings in NDPS-i.e. Controlling and engaging in trade whereby drugs are	Rigorous imprisonment 10 to 20 years + fine of Rs. 1 to 2 lakhs (Regardless of the

supplied to an individual outside India and also drugs are obtained from outside India.	quantity)
Knowingly allowing one's premises to be used for committing an offense	Same as for the offense
Violations pertaining to controlled substances (precursors)	Rigorous imprisonment up to 10 years + fine Rs. 1 to 2 lakhs
Financing traffic and harboring offenders	Rigorous imprisonment 10 to 20 years + fine Rs. 1 to 2 lakhs
Attempts, abetment and criminal conspiracy	Same as for the offense
Preparation to commit an offense	Half the punishment for the offense
Repeat offense	In most of the cases, the punishment is One and half times the penalty for the offense. And death penalty in some cases.
Consumption of drugs	Morphine, cocaine, heroin -Punishment is Rigorous imprisonment up to 1 year or fine up to Rs. 20,000 or both. And for consumption of some other drugs- Imprisonment up to 6 months or fine up to Rs. 10,000 or both. And there is immunity from the legal proceedings provided to addicts if he/she volunteering for treatment.
Punishment for violations not elsewhere specified	Imprisonment up to six months or fine or both

In unfortunate case of *Nigerian Obodo Uzomo Simeon's* death in Goa in 2013 is still afresh in the public memory. Things turned ugly when Goan BJP MLA Michael Lobo justified his murder saying that "98 per cent Nigerians, African nationals in Goa are involved in drugs". The allegations of involvement of Russian drug mafia in the murder of British teen Scarlette in Goa in 2008 was a growing indication of Goa slipping into the hands drug mafias.

Exceptions in Drug Cases as provided under the Act

1. Officers acting in the discharge of their duties in good faith under the Act are exempted from legal proceedings, suits and other prosecution (Section 69).
2. Addicts accused with consumption of drugs under section 27 or with offenses including little quantities will be exempted or protected from any prosecution if they volunteer for dead-diction. This exception might be withdrawn if the addict does not undertake complete treatment (Section 64 A). It is important to note that it is not obligatory that the drug, if any, found with the addict in little quantity, require not be for personal use.
3. Offenders State or Central governments can delicate immunity to a wrongdoer in order to get his evidence in the case. This immunity is allowed by the government and not by the court (Section 64).
4. Minors, offenses committed under any law by individual less than 18 years old will be secured by the Juvenile Persons (Care and Protection) Act. This Act seeks to ameliorate such juveniles instead of punishing them under the respective Acts. It prevails over any other Act in regard to people underneath the age of 18. Subsequently, such persons cannot be prosecuted under the NDPS Act too.

Legal Bodies of Government that enforces Drugs regulations

Drug abuse is getting momentum nowadays and also the youth is dropping this addiction, thinking this as trend is their biggest mistake because it is not affecting themselves rather staking the lives of their dependents and family. The Government of India is taking very active decisions regarding the restrain of Drugs trafficking and also to improve the physical and mental strength, so that it will return in the good contribution for the development of the Indian Society. Following are the legal bodies governing the drug abuse in the society:

- Narcotics Control Division
- Central Bureau of Narcotics (CBN)
- The Narcotic Control Bureau (NCB)

- Other Agencies- Directorate of Revenue Intelligence, Central Bureau of Investigation, Customs Commission, Border Security Force

COUNTERFEITING

It is defined under section 28 of the IPC as “A person is said to “counterfeit” who causes one thing to resemble another thing, intending by means of that resemblance to practice deception, or knowing it to be likely that deception will thereby be practiced.”

Counterfeiting of Coins

Counterfeiting of coins is an offence as incorporated under Section 231 of Indian Penal Code, 1860 in which a person commits the offence intending to practice deception or knowing it to be likely that deception will happen or even if he is a part of the process of counterfeiting coins will be entitled for the imprisonment which will depend upon the circumstances and facts of the case and it can extend up to imprisonment for seven years and will also be liable for fine. But the problem is that even if it is a punishable offence its impact is more harmful because these counterfeit coins and currencies will lead to inflation in the market because excess liquidity will be there in the market and RBI can regulate only the accounted money and therefore will impact the economy of our country. Recently, in May 2019, a racket printing the fake coins and currency was captured in Delhi- NCR region primarily in the industrial belt near Faridabad and also police captured some toll booths of the national highways where the printing of Rs.5 and Rs.10 denominations were done.

The liquidation of these fake coins is easy because it can start from the very lower level because they can be made individually and also the instruments that are needed in making these coins are sold by the mint company's form which they get in return the great profits.

However, making or selling the instruments for fake coins is an offence under Section 233 of IPC in which the imprisonment up to three years can be given. Also, another way of liquidating

these coins is by importing .In 2017, there was the biggest amount of Rs. 50 crores in the form of fake coins were imported in India by the famous gang of Upkar Luthra and Sweekar Luthra.

Section 235 of IPC states about the extent upto ten years of imprisonment whoever is in possession of any instrument or material used for making the counterfeit coins. But if we look practically, this provision is very difficult to implement because again the chances of punishing the innocent are high and any person can be struck in this process. It was therefore held in the case of *Shahid Sultan Khan vs State of Maharashtra* where the police raided the Kaniz Apartment in Mumbra found the denominations of Rs.5 notes and coins of Rs.1,Rs.2,Rs.5 and the instrument which were used for making those coins but not in their active state but the appellant was arrested for keeping possession of the instruments and materials used for counterfeiting and was convicted by the trial court but the High Court reversed the decision and said held that mere possession of the materials or instruments for making the fake coins is not enough to be as evidence that counterfeiting is done under Section 232 and Section 235 of the IPC but it has to fulfill the requirement of Section 28 of IPC which says that intention to deception is necessary or mens rea plays the important role and the appellant was held not liable.

Counterfeiting the government stamps

Section 255 of IPC states about counterfeiting the government stamps and imposes the imprisonment of life or it can be extended up to seven years depending upon the facts and circumstances of the case.