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## Sentencing Policy under Ndps Act & Comparison of Use of Death Penalty for Drug Trafficking In South – East Asian Nations

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### ABSTRACT

*This article assesses the use of capital punishment for drug trafficking. Domestic narcotics legislation in four Southeast Asian Nations (Singapore, Malaysia, Indonesia, and Thailand) are examined in-depth and compared to India which plays an important role in eradicating global drug-related problems. In this paper, an attempt is being made to analyze the sentencing policy under the NDPS Act, 1985 and the use of capital punishment for drug trafficking offences in Singapore, Indonesia, Malaysia. This article highlights that the use of capital punishment is disproportionate to the gravity of drug-related offences and the international drug control and enforcement treaties never suggested using such sanctions to deter crime.*

**Keywords:** NDPS, Drugs, Trafficking, Offence, Death Penalty.

### INTRODUCTION

The NDPS Act was enacted with the objective, that stringent punishments like rigorous imprisonment for minimum of ten years for the drug offences that would effectively deter those indulging in illicit trafficking of drugs. This Act

provides penalties for drug offences. These offences are related to violations of the various prohibitions imposed under the Act on the cultivation, production, manufacture, distribution, sale, import and export etc, of narcotic drugs and psychotropic substances. All these offences are cognizable and non bailable and are triable by Special Courts and very stringent punishments are provided ranging from six months minimum to maximum twenty years imprisonment depending upon the nature of offences and the imprisonment shall be based on the “quantity involved”. The sentencing structure underwent a drastic change with the enactment of the Amendment Act, in 2001. The Act introduced the concept of “commercial quantity” in relation to narcotic drugs or psychotropic substances (Dass, 1993).

### OFFENCES AND THEIR PENALTIES AS PER SECTIONS UNDER NDPS ACT

For the sake of convenience and proper appreciation of the sentencing policy, the major penal provisions may be grouped in to seven different categories as under framework,

including the sentencing policy, to the prevailing situation.

**A. Offences In Relation To Poppy Straw, Prepared Opium, Opium, Cannabis Plant, Manufactured Drugs and Preparations, Psychotropic Substances etc. (Sections 15, 17, 18, 20(Ii), 21 & 22)**

Any person who cultivates, produces, manufactures, possesses, sells, purchases, transports, uses imports inter-state or exports inter-state any of these plants, drugs, preparations or the substances, contrary to the provisions of the Act or the Rules, is liable to be punished with imprisonment or fine depending upon the quantity of drugs-

- Small quantity - Rigorous imprisonment up to one year and fine up to Rs. ten thousand or both.
- More than small quantity but less than commercial quantity - Rigorous imprisonment up to ten years and fine up to Rs. one lakh.
- Commercial quantity - Rigorous imprisonment of ten to twenty years and fine of Rs. one to two lakh.

The court has power to impose, for reasons to be recorded in the judgment, impose a fine of two lakh rupees. However, the court is not empowered to impose a sentence lesser than the statutory minimum imprisonment under any

circumstances. There is no grading of penalties in India with reference to the seriousness or nature of the offence involved, the penalties are generally graded in two or more categories, depending upon the gravity of offence.

**B. Offences In relation To Coca Plant, Coca Leaves and Cannabis Plant (Section 16 & 20)**

Any person who cultivates, produces, possesses, sells, purchases, transports, uses imports interstate or exports interstate any of these plants, contrary to the provisions of the Act or the Rules, shall be liable to punish with an imprisonment up to ten years or with fine up to one lakh rupees.

**C. Offences In Relation To Embezzlement of Opium by Cultivator (Section 19)**

Any cultivator who cultivate the opium poppy on account of Central Government or who embezzles or otherwise illegally disposes of the opium produced or any part shall be liable to punished with rigorous imprisonment of ten to twenty years and a fine of Rs one to two lakhs.

The court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

**D. Offences In Relation To Illegal Import Into, Export From India, External Dealings Of Narcotic Drugs & Psychotropic Substances, Allowing Use Of Premises Etc For**

### **Commission Of Offence, Financing Of Illicit Traffic Or Harboring Of Offenders (Sections 23, 24, 25, 27a)**

Any person who in contravention of the provisions of the Act or the Rules, imports in to India or exports from India or tranships any narcotic drug or psychotropic substance (Sec. 23)

- i. engages in or controls any trade whereby a narcotic drug or psychotropic substance is obtained outside India and supplied to any person outside India (Sec. 24)
- ii. knowingly permits any premises, animal or conveyance in his control to be used for commission of an offence under the Act by another person (Sec. 25)
- iii. finances, directly or indirectly, illicit traffic or harbours any person engaged in such traffic (Sec. 27A) is liable to be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend up to twenty years.

In addition, such a person is liable to a fine of not less than Rs. one lakh which may extend to Rs. two lakh. The Court is at a liberty to impose, for reasons to be recorded in the judgment, a fine exceeding two lakh rupees.

It is a known fact that large scale smuggling activities are financed by the affluent persons for

a share in the profits. The aim of Sec. 27 A is to penalize such financiers.

It is a notable feature of the Act that, even if a person engages in or controls an illicit drug transaction which has taken place completely outside India i.e. the drug has been procured outside India and also sold outside India, such person is still liable to be punished under Sec. 24 of the NDPS Act, 1985.

### **E. Possession In Relation To Consumption of Any Narcotic Drug or Psychotropic Substance (Sec. 27)**

Sec. 27 of the NDPS Act stipulates that any person, who, contrary to the provisions of the Act or the Rules, consumes any narcotic drug or psychotropic substance, is punishable with:

- a) imprisonment for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both, where the narcotic drug or psychotropic substance consumed is cocaine, morphine, diacety- morphine (heroin) or any other narcotic drug or psychotropic substance specified in this regard by the Central Government.
- b) imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees or with both, where the narcotic drug or

psychotropic substance consumed is other than those covered by a) above.

#### **F. Attempt, Abetment and Criminal Conspiracy or Preparation to Commit an Offence (Secs. 28, 29 And 30)**

Any person who:

- i. Attempts to commit an offence under the Act or to cause such offence to be committed, and
- ii. In such attempt does any act towards the commission of the offence, is punishable with the same punishment which is provided for that offence, by virtue of Sec. 28.

Abetment to commit an offence or being a party to criminal conspiracy to commit an offence, whether the offence be or be not committed in consequence of such abetment or in pursuance of such conspiracy, is an independent offence punishable with the same punishment which is provided for the main offence. The abetment or criminal conspiracy to commit an offence outside India is also similarly punishable under Sec. 29. A person who makes preparation to commit an offence is punishable with half of the sentence with which he would have been punishable in the event of his having committed the offence, If he had not been prevented by circumstances independent of his will.

**Note:** For several offences under the NDPS Act, the punishment depends on whether the quantity of drug involved is small, is more than small but less than commercial or is commercial.

#### **G. Enhanced Punishment, Including Death Penalty, For Certain Offences after Previous Conviction (Secs.31 and 31a)**

Any person who has been convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit any of the offences punishable under this Act is subsequently convicted of the same offence is liable to punish with the rigorous imprisonment for a term which may extend to one and one-half times of the maximum term of imprisonment and also liable to fine which shall extend to one and one-half times of the maximum amount of fine. If a person is liable to be punished with a minimum term of imprisonment and to a minimum amount of fine, the minimum punishment for such person shall be one and one-half times of the minimum amount of fine under the Sec. 31.

If a previously convicted person again commits an offence falling under Sections 15 to 25 or Sections 19, 24 and 27A, or with offence related to attempt to commit, or abetment of, or criminal conspiracy, which involve the specified quantities of the specified drugs under Sec.31A,

he shall be punishable with death penalty by virtue of Sec. 31A.

For the purpose of imposition of enhanced penalties, it is not necessary that the person should have been previously convicted in India only. Even if the previous conviction was in a foreign country under any corresponding law, the person will be dealt with for the above purposes as if he had been convicted by a court in India.

**Table-1 presents the quantity of drugs or above that quantity death penalty is provided.**

There was a moratorium on executions in India between 1995 and 2004, and again between 2005 and 2011. Since 2011, three executions have taken place in India, all for terrorism-related charges. In a landmark decision in June 2011, the Bombay High Court ruled in the case of *India Harm Reduction Network v. union of India* that the mandatory death penalty for drug offences was “unconstitutional” and this court became first in the world to overturn the mandatory death penalty. The High Court’s verdict came in response to a petition filed by the Indian Harm Reduction Network (IHRN), a consortium of NGOs working for humane drug policies, who assailed mandatory capital punishment as arbitrary, excessive and disproportionate to the crime of dealing in drugs. Although the Court did rule that mandatory death sentences under this

law were not to be imposed, it did not completely strike down article 31 of the NDPS Act that prescribes the death penalty for certain repeat drug convictions, leaving Courts with the option to decide whether or not to hand down the death penalty.

Narcotic drugs/ Psychotropic substances	Quantity
Opium	10 Kgs
Morphine	1 Kg
Heroin	1 Kg
Codeine	1 Kg
Thebaine	1 Kg
Cocaine	500 gms
Hashish	20 gms
Any mixture with or without any natural material of any of the above drugs	20 Kgs
Methamphetamine	1,500 gms
Methaqualone	1,500 gms
Amphetamine	1,500 gms
LSD, LSD-25()-N, N Diethyllysergamide(d-lysergic acid diethylamide)	500 gms

**Table 1- Quantity of Narcotic Drugs/Psychotropic Substances Punishable Under Sec.31<sup>1</sup>**

<sup>1</sup>(The Narcotic Drugs and Psychotropic Substances Act, 1985)

## FACTORS TO BE CONSIDERED FOR IMPOSING HIGHER PUNISHMENTS

While imposing higher punishments than the minimum punishment, the court may, consider the following factors-

- a) The use or threat of use of violence or arms by the offender.
- b) The fact that the offender holds a public office and that he has taken advantage of that office in committing the offence.
- c) The fact that the minors are affected by the offence or the minors are used for the commission of an offence.
- d) The fact that the offence is committed in an educational institution or social service facility or in the immediate vicinity of such institution, or in other place to which the school children and students resort for educational, sports and social activities
- e) The fact that the offender belongs to organized international or any other criminal group which is involved in the commission of the offence, and
- f) The fact that the offender is involved in other illegal activities facilitated by commission of the offence for repeat drug offenders.<sup>2</sup>

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<sup>2</sup> Ibid

## COUNTRIES WHICH HAVE HARSH PUNISHMENT FOR DRUG TRAFFICKING

In certain countries illegal importing, exporting, sale, or possession of drugs constitute capital offences that may result in the death penalty. The article of [Lawyers Collective](#), 2011, an [NGO in India](#), says that "32 countries impose [capital punishment](#) for offences involving narcotic drugs and psychotropic substances. A report of [Harm Reduction International](#), 2015, documents that the 33 countries and territories that retain death penalty for drug offences, including 10 in which [the sentence is mandatory](#)." A 2015 article by The Economist says 32

Countries have the death penalty for drug smuggling, but only 6 really carry it out ("Capital punishment for drug trafficking", 2017).

In 2014, if the estimates for China are accurate and remained constant then there would have been at least 600 executions for drugs. As of 2015, there are believed to be almost 900 people on death row for drugs in Malaysia, Indonesia, Thailand and Pakistan, and many hundreds more in China, Iran and Vietnam. The number of people killed for drug-related offences is high and China, Iran and Saudi Arabia are aggressive executioners (Gallahue & Lines, 2015).

Death is the only legal punishment allowed for certain drug offences in several countries,

including Iran, Malaysia and Singapore. In these countries, judges can't take the accused's personal circumstances or anything else into consideration when making a decision. For e.g in

Malaysia, 2003, 19-year-old Shahrul Izani was convicted of drug trafficking, as he was found with 620 grams of cannabis and given the death penalty (Pinto, 2015).

### COMPARISON OF USE OF DEATH PENALTY FOR DRUG TRAFFICKING IN DIFFERENT SOUTHEAST ASIAN COUNTRIES

Drugs	Countries						
	India	Singapore	Malaysia	Thailand	Indonesia	Iran	China
Cocaine	500gms	30gms	40gms	100gms	5gms	30gms	50gms
Heroin	1kg	15gms	15gms	100gms	5gms	30gms	50gms
Opium	10kgs	1200gms	1kg	-	5gms	5kgs	1kg
Morphine	1kg	30gms	15gms	100gms	5gms	30gms	-
Cannabis	-	500gms	200gms	-	-	-	50gms
Hashish	20kgs	200gms	-	-	-	5kgs	-
Marijuana	-	-	-	10gms	1kg	-	-
Methamphetamine	1500gms	250gms	30gms	100gms	5gms	-	-

**Table 2 Comparison of quantity of main narcotics or above that quantity death penalty is provided across seven countries**

Country	Having the Death Penalty for Drug-related Offenses	Having Mandatory Death Penalty	Drug Scheduling System	The presumption of possession for the purpose of trafficking
India	No, After being	Yes (In	Yes, 3	Section 31 A of



	convicted of the commission of, attempt to commit, abatement of, or criminal conspiracy to commit a drug crime, illegal import export of drugs over the limit prescribed under act	second conviction)	Categories	NDPS Act
Singapore	Yes, possessing narcotics over the limit prescribed under MDA	Yes	Yes, 3 classes	Article 28 of Misuse of Drug Act
Malaysia	Yes, possessing narcotics over the limit prescribed under DDA	Yes	Yes, 5 parts of first schedule	Article 37 of Dangerous Drugs Act
Thailand	No, import, export, or possess the narcotics of category I (over 100 grams) for the purpose of disposal	No	Yes, 5 categories	Article 15, 17 & 26 of Narcotic Act B.E. 2552
Indonesia	No, import, export, offer for sale, distribute, sell, buy, deliver, act as broker or exchange	No	Yes, 3 categories	No

	category I narcotics			
Iran	Yes, Import, export, manufacture, keeping storing, concealing, possession of narcotics over the limit prescribed in law	Yes	No	Article 8 of Iran's Anti-Narcotics Law
China	No, Smuggle, traffic, transport, manufacture of narcotics over the limit prescribed in law	No	No	No

**Table 3 Comparison of narcotics legislation across the seven countries**

### CONCLUSION

In India, under NDPS Act there is minimum mandatory punishment of 10 years for the offences related to production, manufacture, possession, transportation, import and export of the poppy straw, opium, prepared opium, manufactured drugs and psychotropic substances. NDPS Act became harsh by the inclusion of the

death penalty for certain repeat offences involving a large quantity of drugs. In India, drug offences are not considered *India Harm Reduction Network vs. union of India*, to be the 'most serious crimes' for which the death penalty is provided and only death penalty is not only the solution to deter drug trafficking, as in the case of Bombay High Court ruled that the mandatory death penalty for drug offences was

‘Unconstitutional’ and this court become first in the world to overturn the mandatory death penalty. While in other countries like Malaysia, Singapore, Iran, drug offences are considered to be the ‘most serious crimes’ for which mandatory capital punishment may be invoked and it is only the solution to deter drug trafficking. Many argues by the government and NGO’s, against the imposition of the mandatory death penalty for drug trafficking offenders in these countries, since they consider such sanction to be in violation of international human rights laws. So it is concluded that death penalty should be provided for the most serious crimes which involves intentional taking of life. Drug offences do not involve killing or taking of life. Though serious, drug dependence can be addressed with counseling, treatment, rehabilitation and aftercare. Laws must be stricter in India to deter this crime and the decision of pending cases must be within time. So in the end, we can say the use of capital punishment is disproportionate to the gravity of drug-related offenses and that international drug control and enforcement treaties never suggested using such sanctions to deter crime.

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