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# An Analysis of **Narcotic Drugs (Control) Act, 1976**



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## 1. Introduction

"A drug, which has a deteriorative effect upon the functioning of the human mind and body, is called a narcotic drug."<sup>45</sup> In recent years, the malaise of drug abuse has spread its tentacles in almost every sphere of public life and has had a large array of corrosive effects on the societies in which it has been most rampant. The reason why the problem of drug abuse is viewed as a far more serious problem than other social evils is because it is inextricably intertwined with other offences such as organized crimes, human trafficking and money laundering as well as health hazards such as HIV-AIDS.

In Nepal, drug control initiatives were started in 1960. The then His Majesty's Government of Nepal brought a Liquor Control Act, 1960. According to the Act it was compulsory to have license to produce and sell cannabis. In 1976, Narcotic Drugs Control Act, 2033 (1976) was promulgated. As Nepal is a party to the three United Nations drug conventions - the 1961 Single Convention on Narcotic Drugs (1961 Convention), the 1971 Convention on Psychotropic Substances (1971 Convention) and the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances

(1988 Convention), Nepal has shown its firm commitment to adhere to the obligations of these conventions to control the problem of drug abuse and drug trafficking.

## 2. Narcotic Drugs (Control) Act, 2033 (1976)

The basic drug law of Nepal is the Narcotic Drugs Control Act, 2033 (1976). The Act prohibits cultivation, production, possession, sale, purchase, trade, import, export, use and consumption of narcotic drugs and psychotropic substances except for medical and scientific purposes in accordance with the law. The Act covers three broad classes of substances:

- 1) Narcotic drugs, that is, those covered under the 1961 Convention;
- 2) Psychotropic substances or those covered under the 1971 Convention; and
- 3) 'Controlled substances' that are used to manufacture narcotic drugs or psychotropic substances, for example precursor chemicals such as acetic anhydride, ephedrine and pseudoephedrine.

Some of the basic tenets of the Act could be enlisted as below:

<sup>45</sup> B.R. Sharma, Forensic Science in Criminal Investigation and Trials, 2010 (Universal Law Publishing Co. Pvt. Ltd. Delhi), p. 819

## 2.1 Jurisdiction and Onus of Proof

The offence of narcotic drugs is an organized crime,<sup>46</sup> and has extra-territorial jurisdiction. The Act applies to Nepalese citizen or foreigner, who, while residing in a foreign country, conducts transaction of export or import of narcotic drugs from or into Nepal in contravention of this Act. Therefore, any person who commits an offence of narcotic drug can be prosecuted and punished according to this Act as if he/she had committed such act within Nepal.<sup>47</sup>

Due to the severity of the offence, the burden of proof has been put on the defendant. In case any narcotic drug is found to be in possession of any person or if any evidence is found that cannabis/marijuana, opium or coca is being cultivated or had been cultivated in any farm of a person or if any substance that has been partly processed for the manufacture or production of any narcotic drug or any residue left after such production is found to be in possession of any person, such person has burden of proof to the effect that he/she has obtained or possessed such substance under law. If he/she fails to do so, he/she is deemed to have committed an offence punishable under this Act.<sup>48</sup>

## 2.2 Key Offences and Punishments

Nepal faces all types of drug problems including wild growth and cultivation of cannabis, cultivation of poppy plant and production of opium, borders with countries and growth of addiction. Hence, the Act is basically restrictive, and the key restricted acts are -<sup>49</sup>

- (a) Cultivate, produce, prepare, purchase, sell, distribute, export or import, conduct any trafficking, store, or consume cannabis/ marijuana,
- (b) Cultivate opium or coca or produce

opium or coca leaves or other narcotic drugs,

- (c) Manufacture or prepare narcotic drugs,
- (d) Sell or distribute narcotic drugs,
- (e) Export or import narcotic drugs,
- (f) Purchase, store, possess, or conduct any trafficking narcotic drugs,
- (g) Consume narcotic drugs other than cannabis/ marijuana.

The quantum of punishment under the Act is based on two parameters: First, according to the gravity of crime on the basis of cultivation, production, possession, sale, store, purchase, trade, import, export, use and consumption; objective of the traffic in or export-import, the organization or gang of the accused, weapons used by the accused or use of force, involvement of minor made in the offence, transaction done through the medium of institution like education, social and cultural organization; and the transaction made on the basis of abuse of post by a person holding a public position. Second, according to the quantity of drugs found which may be classified into 3 categories: small, less than commercial and commercial. As a result, the punishment may be as low as up to one month imprisonment for consuming cannabis/ marijuana and as high as life imprisonment for transaction of the quantity of drugs more than one hundred grams.

Hence, gravity of offence and quantum of punishment are proportionately managed as below<sup>50</sup> :-

- (a) Anyone who consumes cannabis/ marijuana shall be punished with an imprisonment for a term up to one month or with a fine upto two thousand rupees.
- (b) Anyone who cultivates up to twenty five cannabis/ marijuana plants shall be

<sup>46</sup> Ronald F. Becker, Criminal Investigation, 2000 (An Aspen Publication: USA), p. 367

<sup>47</sup> Section 2

<sup>48</sup> Section 12

<sup>49</sup> Section 4

<sup>50</sup> Section 14

punished with an imprisonment for a term upto three months or with a fine upto three thousand rupees.

(c) Anyone who cultivates more than twenty five cannabis/ marijuana plants shall be punished with an imprisonment for a term of three year or with a fine from five thousand to twenty five thousand rupees.

(d) Anyone who produces, prepares, purchases, sells and distributes, exports or imports, traffics and stores, cannabis/ marijuana shall be punished as follows:-

(1) With an imprisonment for a term up to three months or with a fine up to rupees three thousand, if it is up to fifty grams.

(2) With an imprisonment for a term from one month to one year and with a fine from one thousand to five thousand rupees, if it is within fifty grams to five hundred grams.

(3) With an imprisonment for a term from six months to two years and with a fine from rupees two thousands to ten thousands, if it is within five hundred grams to two kilograms.

(4) With an imprisonment for a term from one year to three years and with a fine from rupees five thousands to twenty five thousands, if it is within two kilograms to ten kilograms.

(5) With an imprisonment for a term from two years to ten years and with a fine from fifteen thousands to rupees one hundred thousand, if it is ten kilograms or more than this.

(e) Anyone who consumes opium, coca or any other narcotic drugs made therefrom shall be punished with an imprisonment for a term of up to one year or with a fine up to ten thousand rupees.

(f) Anyone who cultivates opium poppy or coca bush shall be punished as follows:

(1) With an imprisonment for a term of one year to three years or with a fine

of five thousand rupees to ten thousand rupees, in case of cultivation of twenty five plants.

(2) With an imprisonment for a term from three years to ten years and with a fine from ten thousand rupees to two hundred thousand rupees in case of cultivation of more than twenty five plants.

(g) Anyone who commits any other prohibited acts other than consumption of opium, coca, or any other narcotic drugs made therefrom and cultivation of such plants shall be punished as follows:

(1) With an imprisonment for a term from five years to ten years and with a fine from five thousand rupees to twenty five thousand rupees for anyone doing transaction upto twenty five grams.

(2) With an imprisonment for a term from ten years to fifteen years and with a fine from seventy thousand rupees to two hundred thousand rupees for anyone doing transaction from twenty five grams to hundred grams.

(3) With an imprisonment for a term from fifteen years to life imprisonment and with a fine from five hundred thousand rupees to twenty five hundred thousand for anyone doing transaction of any quantity more than one hundred grams.

(h) Anyone who addicts any natural or synthetic narcotic drugs and psychotropic substances and their salt and other substances, as specified by Government of Nepal by a notification published in the Nepal Gazette, from time to time, shall be punished with an imprisonment for a term upto two months and with a fine upto two thousand rupees or both.

(i) Anyone who commits any other prohibited acts other than those

mentioned in Clause (h) above is punished with an imprisonment for a term from two years to ten years and with a fine from one hundred thousand rupees to twenty hundred thousand rupees.

### 2.3 Other Forms of Punishment

Drug dealers work in organized crime groups. Their activities are conspiratorial, and conducts are organized in a methodical, systematic and secret fashion. As "the organized crime can itself be viewed as a business"<sup>51</sup> the Act has extended the liabilities in various other forms.

- It punishes owner or possessor for permitting building, land or vehicle to carry drug offences from six months to five years or with a fine upto ten thousand rupees. And, such building, land or vehicles are confiscated.<sup>52</sup>
- A person who does repeated drug offence is punished for each subsequent offence, in addition with an imprisonment for a term which may extend up to five years and with a fine up to one hundred thousand rupees<sup>53</sup>
- A person who conspires or attempts to commit offence, or abets others to commit such offence or is an accomplice in such offence, he/she is liable to half of the punishment due to the actual offender.<sup>54</sup>
- A person or gang carrying out the acts of transaction including sell distribution, export, import, store, production of other substances giving belief as if it was narcotic drug, is liable to half of the punishment due to the actual offender.<sup>55</sup>
- A person including organization-institution or association, who does not

provide any particular or document to the Narcotic Drugs Control Officer asked for investigation, is liable to half of the punishment due to the actual offender.<sup>56</sup>

### 2.4 Immune from Liability

Narcotic drug offence is not an absolute liability offence. There are basically four criteria under which defendants have a defense. First, if the judicial authority does not punish; judicial authority has right not to punish the person if the authority or institution makes a bond against the defendant for his treatment in the treatment center and submitting the reports of that treatment fortnightly.<sup>57</sup> Second, for the works done in good faith or under licence; no case is instituted against any government employee in relation to any function performed or attempted to perform in good faith<sup>58</sup> or pursuant to licence<sup>59</sup> under this Act. Third, for the medical treatment; purchase and consumption of narcotic drug by any person in the recommended dose from any licensed shop on the recommendation of any recognized medical practitioner for the purpose of medical treatment is not liable<sup>60</sup>. And, Forth, for medicinal or scientific research; Government of Nepal or any institutions working under a special license in narcotic drugs for purposes of medicinal or scientific research are not made liable.

### 2.5 Plea Bargaining

A plea bargaining is a plea in criminal cases in which defendant agrees to accept the guilty in return from from the prosecutor or court for concession in charge or sentence. There are two such provisions in the Act:

- The Narcotic Drugs Control Officer can release the first time offender who,

<sup>51</sup> Ibid (no 2), p. 366

<sup>52</sup> Section 15

<sup>53</sup> Section 16

<sup>54</sup> Section 17

<sup>55</sup> Section 17A

<sup>56</sup> Section 17B

<sup>57</sup> Section 14(1)(a), (e), & (h) proviso

<sup>58</sup> Section 22B

<sup>59</sup> Section 4(f)(1)

<sup>60</sup> Section 5 and 19A

without commercial motive, purchase or possesses cannabis/ marijuana or medicinal opium in small quantity for his use and makes a plea of bond not to commit such offence again. If such case goes to the court, judge can do so by keeping a record of the person.<sup>61</sup>

- The judicial authority can remit in punishment full or partial pursuant to demand for remission in the charge-sheet for the defendant who helps in finding the principal offender and assists by providing the information and clue about gang in which he/she, him/herself engaged or other gang involved in the transaction of narcotic drug.<sup>62</sup>

### 3. Major Shortcomings of the Law

First of all, the Act, vide Sec. 12, puts the onus on the accused to prove that he/she is innocent. It states that, unless the contrary is proved, it will be believed that the accused intentionally held the illicit drugs that were found in his possession. This is in sharp contrast with the notion that an accused is innocent until proven guilty pursuant to Art 20(5) of Constitution of Nepal, 2072.

Second, the law focuses basically on reducing the supply of drugs; the focus on reducing the demand would be a more sustainable solution in the long run. In order to address this concern, the amendment requires strengthening existing provisions pertaining to the establishment and working of centers for the identification and treatment of addicts. Treatment centers need to adopt global best practices and harm reduction techniques in order to deal with this problem in a systematic and holistic manner.

Third, the Act does not make an adequate distinction between a casual drug user, a hard addict, a petty peddler and a seasoned drug

trafficker. Furthermore, it also does not make any meaningful distinctions between hard and soft drugs which is the reason why many drug users resort to hard drugs because, in most cases, the punishment that their use encompasses does not significantly differ from the punishment that is handed down to those who use soft drugs.

Forth, the Act is reluctant in keeping the law enforcement agencies and judiciary in the same canon in order to control the raising problem of drug in the specialized manner. Being the organized crime of typical nature, some inquisitorial capacities need to be enshrined to the court. On the other hand, the role of judiciary itself is slacking in guiding the law enforcement agencies to control it.

### 4. Conclusion

The long term objective of building a 'drug free society' mainly regards reduction in supply and demand through preventive and reduction campaigns; risk education through treatment and care and rehabilitation and reintegration of those who are addicted. However, the recent 'baseline survey report on crime, 2016'<sup>63</sup> indicates that many criminal gangs have exploited the law and shows the offence of narcotic drug in increasing order, which alarms to review the execution of the law by the concerned agencies.

To control the alarming problem of drug, all stakeholders must work in mutual collaborations in the country. There should be awareness program of laws and regulations regarding drug use. Better and quality services should be provided and alertness should be created at the grass root level. Law requires an amendment from this perspective to hold the distinct geo-politico-eco cause of crime in the country. It is never enough that the drug traffickers and abusers are caught and punished! ■

<sup>61</sup> Section 19

<sup>62</sup> Section 18C

<sup>63</sup> Baseline Survey Report on Crime, 2016 published by Ministry of Law, Justice and Parliamentary Affairs, Singhadarbar, Kathmandu.