

Section 64A of the NDPS Act: Analysing the Immunity from Prosecution for Drug Addicts and Individuals Charged with Minor Offences

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Abstract:

Section 64A of the Narcotic Drugs and Psychotropic Substances (NDPS) Act of 1985 provides immunity from prosecution for drug users charged under Section 27 or involved in minor drug offences, as long as they willingly seek medical treatment for de-addiction at a government hospital. This provision signifies a shift towards prioritizing health rather than criminalization, emphasizing rehabilitative approaches over punitive measures. This paper examines the impact of Section 64A on reducing drug-related harm and the societal stigma of addiction, alongside its goals, challenges, and judicial interpretations. However, its effectiveness is compromised by inconsistent enforcement, insufficient rehabilitation resources, and widespread lack of awareness. Recommendations for enhancement involve elucidating unclear provisions of this regulation, fostering greater sensitivity among the public, law enforcement, and judicial officers, and broadening access to treatment. By bolstering India's harm reduction approaches, substantial advancements can be achieved in both the legal framework and public health, tackling crucial health challenges and easing the burden on overcrowded prisons, thereby promoting a more equitable and efficient justice system.

Keywords: Section 64A of the NDPS Act, immunity, rehabilitation, drug addiction, harm reduction, decriminalization, judicial interpretation, law enforcement.

1. Introduction:

Section 64A of the NDPS Act, 1985 provides legal immunity to individuals charged with offences under Section 27, or involving small amounts of narcotic drugs or psychotropic substances, if they voluntarily seek medical treatment for de-addiction at recognized government facilities. However, this protection can be revoked if the individual fails to complete the required treatment. This provision is essential in shielding individuals from legal consequences while encouraging those struggling with drug use to prioritize recovery over punishment. It represents a significant shift towards a rehabilitative approach in addressing drug addiction. This analysis aims to assess the objectives and effectiveness of Section 64A, while also addressing the challenges it faces and suggesting possible improvements for better implementation.



The Central Government has released a notification in accordance with clauses (vii a) and (xxiii a) of Section 2. This notification specifies the definitions of small and commercial quantities regarding various drugs and narcotic substances listed under the NDPS Act of 1985. The notification aims to clarify the regulatory framework surrounding these substances. Currently, the small quantity of Ganja is 1,000 grams, while the commercial quantity is set at 20 kilograms.

2. Legislative Purpose and Goals:

The addition of Section 64A to the NDPS Act marks a significant shift from a strictly punitive approach to one that emphasizes compassion and healthcare. This section's main objective is to encourage individuals struggling with addiction to seek treatment, free from the fear of legal repercussions. It reflects a harm reduction philosophy that views addiction as a public health issue rather than simply a criminal matter. By fostering a more supportive environment for those in need, Section 64A aims to reduce drug dependency, improve overall health outcomes in society, and lessen the strain on the criminal justice system. This transition not only aims to rehabilitate individuals but also seeks to create a more understanding and effective framework for addressing addiction, promoting the idea that recovery is both possible and preferable to incarceration. Through this initiative, the approach to drug-related issues becomes more humane and focused on well-being.

3. Criteria for Eligibility and Process:

Section 64A delineates specific criteria for securing immunity:

- The individual must qualify as an "addict," as defined by the NDPS Act, signifying a habitual user of narcotic or psychotropic substances.
- The person must voluntarily pursue treatment at an accredited rehabilitation facility.
- Immunity applies exclusively to minor offences related to drug consumption or possession for personal use, excluding serious crimes like trafficking or distribution.

- The procedural aspect necessitates that the addict approaches the court, providing proof of their voluntary admission to a de-addiction program. Once confirmed, the court may grant immunity, allowing the individual to concentrate on rehabilitation rather than legal prosecution.

4. Social Implications and Importance:

Section 64A's establishment recognizes addiction as a societal hurdle and promotes the de-stigmatization of substance dependence. This legal avenue enables addicts to seek help while addressing the public stigma associated with drug use, acknowledging that rehabilitation is often more effective than incarceration. This not only enhances reintegration opportunities by allowing individuals to reclaim their lives free from a criminal record but also has the potential to diminish drug-related violence and crime, as rehabilitated individuals are less likely to engage in illicit activities to fund their addiction.

5: Implementation Challenges:

Despite its forward-thinking intent, Section 64A confronts several practical challenges that could compromise its efficacy:

- **Ambiguity in Definitions:** The term "addict" lacks clear, universally accepted criteria, leaving the definition open to interpretation by law enforcement and judicial personnel. Consequently, occasional users who might not fit the strict "addict" label may be denied immunity, thus limiting the section's applicability.
- **Lack of Awareness:** Many potential beneficiaries, including addicts and law enforcement and judicial officials, are often unaware of the existence of this provision, resulting in a significant number of eligible individuals missing out on the opportunity for immunity.
- **Inadequate Rehabilitation Facilities:** The availability and quality of treatment facilities are vital to the success of Section 64A. Unfortunately, there are notable gaps in access to recognized de-addiction centres, especially in rural regions, which undermines the practical value of the provision.
- **Law Enforcement Reluctance:** Certain law enforcement agencies consider Section 64A to be a loophole that allows addicts to escape prosecution. This interpretation causes reluctance in its enforcement, which may ultimately discourage addicts from pursuing treatment options. As a result, the intended purpose of the section, which is to assist those in need, may be undermined by this prevailing viewpoint.

6. Legal and Judicial Interpretation:

Judicial interpretations of Section 64A have been inconsistent. While courts generally acknowledge the section's rehabilitative intent, they also stress the importance of preventing misuse. Courts tend to support granting immunity when addicts genuinely seek assistance; however, they may emphasize strict adherence to procedural requirements, such as enrolment in recognized treatment centres, which could result in the denial of immunity if not followed.

While this caution is warranted, it underscores the urgent need for comprehensive guidelines to facilitate the effective implementation of Section 64A. Courts have the opportunity to play an essential role by endorsing access to treatment facilities and establishing follow-up procedures to guarantee compliance rather than adhering strictly to procedural norms.

In the case of *Fardeen Feroz Khan v. Union of India & Anr.*, 2007, the Bombay High Court provided an important clarification regarding Section 64-A of the Narcotic Drugs and Psychotropic Substances

(NDPS) Act. This specific section offers a significant safeguard for individuals who are addicts and are found in possession of a small quantity of drugs. However, this immunity from prosecution is contingent upon the individual voluntarily seeking de-addiction treatment. The underlying intention of this provision is to prioritize treatment and rehabilitation for those struggling with addiction, rather than to impose punitive measures that could further marginalize these individuals.

To qualify for this immunity, it is essential that the individual fulfils several conditions. First and foremost, they must establish their status as an addict, which typically requires medical documentation or appropriate evidence. Additionally, they must actively engage in and complete a voluntary treatment program aimed at overcoming their addiction. It is crucial to note that failure to meet any of these stipulated requirements could result in the withdrawal of the immunity, thus leaving the individual susceptible to legal repercussions.

In a related case, *Shaji v. Kerala State*, 2003, the Kerala High Court echoed similar sentiments regarding the applicability of immunity under the NDPS Act. The court ruled that the protective immunity would only extend to cases involving small quantities of drugs, emphasizing that any applications requesting such immunity must be supported by substantial evidence. This decision underscores the importance of evidentiary support in claims of addiction, reinforcing the judicial system's commitment to balancing compassion for those battling addiction with the need for legal accountability. Together, these rulings reflect a judicial recognition of the complexities surrounding drug addiction and the treatment needs of affected individuals.

The Punjab and Haryana High Court has instructed the governments of Punjab, Haryana, and Chandigarh to develop a standard operating procedure (SOP) for the detoxification of drug addicts in accordance with the NDPS Act, as reported by Hindustan Times on August 13, 2024. The court noted that while Section 27 imposes penalties for drug use, Section 64-A grants immunity to addicts who are undergoing de-addiction treatment. To ensure these regulations remain effective, the court highlighted the importance of establishing an SOP. It ruled that trial judges have the authority to refer consenting addicts to approved de-addiction centres, with immunity from prosecution available upon successful treatment completion, contingent upon an application from the public prosecutor.

Furthermore, the court advocated for the training of investigators handling drug-related cases and acknowledged the role of recognized experts in tackling drug issues. The division bench, consisting of Justice Sureshwar Thakur and Justice Sudeepti Sharma, stated that if an accused is confirmed as a drug addict and agrees to treatment, the trial judge may send them to an approved de-addiction facility, with immunity from prosecution granted upon the treatment's completion, following the public prosecutor's application.

7. Critique and Limitations:

Section 64A of the NDPS Act is seldom utilized for several reasons. Primarily, it is challenging to establish that a defendant accused under Section 27 is genuinely an addict, as current legal provisions exclusively grant advantages to those recognized as addicts. Additionally, there is ambiguity in various High Court decisions regarding which authority is empowered to grant immunity under Section 64A. Frequently, defendants request relief from trial courts under this section, but such petitions are often denied due to insufficient evidence proving the individual's status as an addict or lack of completion of government-approved de-addiction programs. Consequently, many of these provisions remain merely theoretical. Some High Courts have begun to extend relief to offenders under Section 482 of the CrPC (now Section

528 of the Bharatiya Nagarik Suraksha Sanhita, 2023) utilizing Section 64A of the NDPS Act. Recently, the Punjab and Haryana High Court issued valuable guidelines aimed at state and police authorities addressing this topic. Meanwhile, in pursuit of fostering higher conviction rates in NDPS cases, law enforcement agencies tend to file charges under Section 27. To tackle this issue effectively, it is crucial to educate law enforcement personnel and conduct workshops focused on the application of Section 64A for the benefit of addicts. By supporting recovery and de-addiction initiatives, we can play a significant role in disrupting the cycle of drug trafficking.

Inconsistent application of Section 64A arises from varying interpretations by law enforcement and judicial bodies, leading to a lack of uniformity that may foster distrust among individuals struggling with addiction who might otherwise seek treatment and immunity. Additionally, there are concerns about potential misuse, as some individuals could falsely claim addiction to take advantage of the immunity, which could undermine the provision's credibility and prompt stricter judicial interpretations, ultimately reducing its effectiveness. Furthermore, while Section 64A is designed to assist first-time or occasional users who are pursuing voluntary treatment, it inadvertently excludes habitual addicts who experience relapses, despite the fact that recovery from addiction often requires multiple attempts. This exclusion restricts the act's reach, preventing support from reaching those who need it most.

8. Suggestions for Enhancement:

Enhanced Clarity and Guidelines: To mitigate subjective interpretations, the NDPS Act should include a more precise definition of “addict,” either within the legislation itself or through judicial guidelines. Furthermore, establishing clearer procedures and documentation guidelines for obtaining immunity under Section 64A could facilitate its implementation.

Awareness Initiatives: Implementing targeted awareness campaigns regarding Section 64A can motivate more individuals struggling with addiction to seek treatment voluntarily. Collaboration among government agencies, NGOs, and healthcare providers can effectively educate both addicts and law enforcement about the advantages and stipulations of this provision.

Improved Access to Rehabilitation Services: Increasing the availability of quality, accredited de-addiction facilities in both urban and rural regions is crucial to enhancing the accessibility of Section 64A. Investing in public health infrastructure, providing subsidies for treatment, and forming partnerships with private organizations can lead to a broader array of rehabilitation options.

Oversight and Follow-up: Courts should consider requiring follow-up monitoring for individuals granted immunity under Section 64A to verify their genuine commitment to rehabilitation. Establishing regular reporting obligations for rehabilitation centres to the courts can help deter misuse and ensure that addicts receive the necessary support.

9. Role of Police/Advocates/Public/Judiciary/Health Service Providers:

Section 64A of the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985, establishes a crucial legal framework designed to encourage individuals battling drug addiction to seek treatment voluntarily, free from the threat of prosecution. While this provision has the potential to aid rehabilitation and improve public health, its implementation by law enforcement has faced significant challenges that hinder its goals. A major concern is the widespread lack of awareness among both the general public, police and judiciary about the stipulations of Section 64A. Many individuals grappling with addiction may be unaware of their right to seek immunity from prosecution while pursuing treatment. This gap in knowledge often prevents

them from reaching out for help, as they fear legal consequences instead of feeling empowered to seek assistance. Additionally, the effectiveness of this provision is severely compromised in areas where law enforcement lacks adequate training to recognize and support those seeking rehabilitation.

Instances of police misconduct present further challenges, characterized by inconsistent enforcement and a preference for punitive actions over rehabilitation. Some officers prioritize making arrests instead of informing drug users about the options available to them under Section 64A, reflecting a broader systemic issue within law enforcement that tends to view drug addiction as primarily a criminal matter. This mindset creates an atmosphere of fear and stigma, further discouraging individuals from pursuing treatment.

Concerns about potential misuse of authority by police also emerge. In some situations, officers may pressure individuals to cooperate in investigations instead of giving them the chance to seek treatment. Such actions not only erode the trust between the community and law enforcement but also contradict the rehabilitative aims of Section 64A.

To improve the efficacy of Section 64A, it is essential to launch comprehensive awareness campaigns that educate the police, advocates, judiciary, public, judiciary, health service providers, and related agencies about the rights granted by this provision. Training programs for police officers should focus on prioritizing rehabilitation over punishment, ensuring they are equipped to facilitate access to treatment.

Furthermore, it is vital to invest in rehabilitation centres and support services. Without sufficient resources for treatment, the promise of immunity from prosecution lacks substance. By tackling these challenges through enhanced awareness, training, and infrastructure development, Section 64A can more effectively achieve its purpose, promoting a more compassionate and productive approach to drug addiction in India.

10. Loopholes in Section 64A of the NDPS Act:

Section 64A of the NDPS Act provides immunity from prosecution for addicts who voluntarily seek treatment, but it has several significant drawbacks and loopholes. The following are some critical concerns related to this provision:

Unclear Definition of “Addict”: The term “addict” is not clearly defined within the NDPS Act, leading to inconsistent interpretations. Individuals with occasional or moderate substance use may be denied immunity, while those with serious dependencies could be disregarded. The subjective interpretation of this term by law enforcement and judicial authorities can result in unequal treatment for those seeking assistance.

Withdrawal of Immunity: The immunity from prosecution may be withdrawn if the addict does not undergo the complete treatment for de-addiction. The main paragraph of the section restricts the immunity to “once in a lifetime”. Further the process provides for withdrawal of immunity if the treatment is stopped in the middle. The immunity from prosecution can be tendered at any stage of the investigation, inquiry or trial before judgment is passed by the trial court. However, the proviso is silent as to who will withdraw the immunity and what will be the process of withdrawal.

Narrow Scope of Immunity: Section 64A is limited to individuals apprehended with small quantities for personal use and does not extend to those involved in more serious crimes such as trafficking or distribution. It fails to consider repeat offenders or individuals experiencing multiple relapses, thereby diminishing its rehabilitative effectiveness for those needing ongoing support due to addiction.

Lack of Awareness and Accessibility: Many addicts, as well as law enforcement personnel, lack knowledge of the provisions under Section 64A, which hinders eligible individuals from accessing immunity. This

limited awareness, particularly in rural or isolated areas, means fewer people can voluntarily seek treatment and obtain protection from prosecution.

Insufficient Rehabilitation Facilities: There is a scarcity of de-addiction centres, especially in rural regions, making it difficult for addicts to access the necessary treatment. Those in underserved areas often struggle to find qualified facilities, which limits the efficacy of Section 64A. The high cost of private rehabilitation services also creates a barrier for those unable to pay.

Potential for Misuse as a Legal Loophole: Some individuals might falsely claim to be addicts or misuse Section 64A to evade penalties for possession offences. Without strong verification methods to substantiate an individual's addiction or commitment to treatment, this provision risks being exploited, undermining its intended purpose.

Inconsistent Enforcement by Law Enforcement: Law enforcement officials may hesitate to apply this provision, viewing it as a loophole that allows offenders to avoid legal repercussions. This reluctance can lead to inconsistent enforcement, resulting in some addicts being prosecuted despite their eligibility for immunity, which ultimately diminishes public trust in the legal system.

Judicial Discretion and Procedural Obstacles: While courts have the authority to grant immunity, they may impose strict procedural requirements - such as proof of enrolment in recognized de-addiction programs - that complicate the process for addicts. Consequently, individuals may be denied immunity over technicalities, even if they are genuinely seeking rehabilitation.

Absence of Follow-Up Mechanism for Treatment Compliance: There is no established system to ensure that individuals granted immunity actually complete their treatment programs. This lack of accountability may reduce motivation for successful rehabilitation and diminishes the provision's long-term effectiveness, as there is no assurance that addicts will achieve lasting recovery.

Neglect of Social Reintegration: Section 64A fails to address the reintegration of addicts into society following treatment, including access to employment and social support, which are essential for lowering the risk of relapse. In the absence of support structures, addicts may find it challenging to rebuild their lives, potentially leading to a return to substance use and undermining the provision's rehabilitative goals.

Exclusion of Certain Drug Users from Decriminalization Efforts: The provision has a limited scope and does not encompass broader decriminalization initiatives, especially in light of global trends that view drug addiction as a public health issue. By concentrating solely on cases of personal use, it overlooks the larger context of addressing drug addiction in a holistic manner, which is crucial for an effective harm reduction strategy.

Overall, these drawbacks highlight that although Section 64A aims for progressive outcomes, significant gaps persist in its implementation, accessibility, and scope. Addressing these issues through clearer definitions, improved treatment access, enhanced awareness, and better procedural support could significantly strengthen its effectiveness in facilitating the rehabilitation of addicts.

11. Punjab Police Initiative:

A report from the Hindustan Times on September 5, 2023, reveals that the Punjab Police are poised to implement Section 64A of the NDPS Act. This provision safeguards addicts who voluntarily seek treatment in government-approved facilities from prosecution, indicating a notable shift in the state's approach to drug addiction.

In a significant policy change, the Punjab government has decided not to penalize individuals found in possession of small quantities of drugs. Instead of facing punishment, these individuals will be directed

towards rehabilitation through de-addiction programs, prioritizing treatment over punitive action. Previously, addicts in Punjab were charged under Section 27 of the NDPS Act, which penalizes the use of narcotic substances. Failure to complete a de-addiction program could lead to the loss of immunity from prosecution. IG Dr. Sukhchain Singh Gill announced that the new implementation of Section 64A aims to give addicts the opportunity to seek voluntary treatment without the fear of legal repercussions. This initiative also aims to alleviate overcrowding in Punjab's jails, which currently house around 30,000 inmates, exceeding the capacity of 26,000. Approximately half of these individuals are undertrial inmates charged with personal drug use. The Punjab Police are now focusing on targeting drug suppliers, particularly emphasizing the abuse of pharmaceutical medications as a key factor contributing to the addiction crisis.

12. Literature Review:

As a health-focused approach to drug-related charges, immunity for drug addicts is becoming more widely accepted. It treats addiction as an illness that requires rehabilitation rather than criminal prosecution. The purpose of immunity laws, which are founded on harm-reduction concepts, is to lessen the strain on criminal justice systems and the societal and healthcare expenses related to addiction (Patel, 2021). Addicts who voluntarily seek treatment in India are protected from punishment under Section 64A of the NDPS Act. The immunity is distinct from rules that might cover more serious drug-related offences because it only applies in circumstances of personal consumption.

Many nations throughout the world are pursuing decriminalization and immunity clauses. For instance, Portugal decriminalized the possession of small amounts of all narcotics in 2001, emphasizing harm reduction and treatment. Portugal has seen notable drops in overdose deaths and drug-related HIV rates as a result of its approach to addiction, which focuses on rehabilitation rather than the criminal justice system (Jones & Reed, 2024). Drug court programs in the United States have similar immunity provisions that steer addicts from prosecution to treatment programs. These methods show that immunity can reduce recidivism and relapse rates in addition to helping with rehabilitation.

Although Section 64A's limited application and restrictive definitions have drawn criticism, it does represent a growing recognition of the therapeutic approach to drug use in India. The protection only applies when addicts willingly seek treatment; it does not apply to those found in possession of more narcotics than a specific amount. Critics contend that the lack of precise definitions and quantity requirements for "personal use" breeds uncertainty and frequently exposes users to police discretionary enforcement (Chaturvedi, 2022).

Indian courts play a vital role in interpreting Section 64A, often showing leniency towards addicts seeking protection under this clause. However, the lack of a uniform approach leads to inconsistent applications across cases. A 2023 judicial review suggests that standardizing possession thresholds and streamlining the process could enhance immunity provisions, enabling addicts to claim protection without fear of legal repercussions.

Addicts' immunity clauses may be legally guaranteed, but there are several obstacles to overcome in their actual application. Law enforcement officials frequently struggle to differentiate between addicts and traffickers, particularly in light of the absence of training and precise metrics to evaluate personal use possession. Due in part to the stigma associated with addiction in society and in part to the absence of precise norms regarding quantities and enforcement procedures, studies conducted in India have shown that officers frequently take a punitive stance toward addicts (Menon, 2022).

According to research, the societal stigma associated with drug use makes it even harder for addicts to get immunity-based treatment. Many addicts, even when they are eligible, choose not to get treatment because they distrust the police and are afraid of being charged. In order to manage immunity clauses tactfully and acknowledge drug addiction as a health issue rather than just a criminal one, law enforcement authorities need specialized training.

Portugal's decriminalization strategy reroutes users toward rehabilitation by offering protection from prosecution for possessing small amounts of drugs for personal use. According to studies, this has lessened the societal costs of addiction as well as drug-related mortality. Portugal's achievements show how immunity clauses can improve public health outcomes when combined with robust social support networks (WHO, 2023).

Addicts who finish treatment programs are eligible for immunity or reduced sentences under the paradigm used by drug courts in the United States. Low recidivism rates and long-term rehabilitation success are the outcome of the model's provisions for community reintegration, probation monitoring, and intensive therapy. According to the literature, the United States' combination of judicial leniency and community service greatly enhances the efficacy of immunity provisions; if adopted accordingly, this tactic might help India's Section 64A (Sharma & Rai, 2024).

Immunity provisions have been linked to successful rehabilitation outcomes, according to research. Programs based on immunity encourage addicts to get treatment without worrying about facing criminal consequences, which increases the likelihood that they will successfully complete treatment. Research indicates that voluntary participants in treatment programs have reduced rates of recidivism and relapse, which supports the effectiveness of immunity laws. Relapse risk could be decreased in India by combining Section 64A with post-treatment follow-ups and community-based support (Basu & Mukherjee, 2023).

According to studies, legislative frameworks need to define phrases like "personal use" precisely and set measurable levels in order for immunity provisions to be effective. More precise definitions would make immunity available to addicts who are sincerely trying to get well, lowering the possibility of abuse and misunderstanding by law enforcement (Kumar & Sharma, 2023). Furthermore, additional funding for addiction treatment facilities and anti-stigma initiatives may improve the efficacy of immunization programs and improve social outcomes.

An evolving, health-centred approach to addiction that acknowledges its complexity beyond criminal behaviour is reflected in immunity protections for drug addicts. Although Section 64A of the NDPS Act of India is a crucial step, policy changes that support treatment infrastructure, define legal terms more precisely, and lessen social stigma could increase its impact. A path for reforms in India and elsewhere is provided by lessons learned from Portugal and the United States, which indicate that for immunity provisions to achieve their rehabilitative potential, comprehensive support systems and clarity in law enforcement procedures are essential.

13. Conclusion:

Section 64A of the NDPS Act represents an important advancement towards a more empathetic and rehabilitative method of addressing drug addiction. It prioritizes treatment over punishment, viewing addiction as a health concern rather than merely a criminal issue. However, to fully leverage its benefits, several challenges must be tackled, such as ambiguous definitions, low levels of awareness among law enforcement, the public, and the judiciary, the indifference of healthcare providers, limited rehabilitation resources, and inconsistent application of the law. By enhancing Section 64A with clearer guidelines,

improving access to treatment, and boosting public awareness, its effectiveness in addressing drug addiction can be significantly improved. Overcoming these barriers will help this provision become a vital resource for individuals seeking to recover, while also reducing the strain on the prisons and the criminal justice system.

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