

Bhang, ganja, & criminality in the NDPS Act

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In news– Recently, the Karnataka High Court has granted bail to a man accused of possessing Bhang, holding that Bhang is not covered under the Narcotics Drugs and Psychotropic Substances(NDPS) Act.

What did the Court say?

- The Court has observed that nowhere in the NDPS Act is bhang referred to as a prohibited drink or prohibited drug.
- The single judge Bench **relied on two earlier judgments, Madhukar vs the State of Maharashtra, 2002 and Arjun Singh vs State of Haryana, 2004, where the courts had ruled that bhang is not ganja**, and is therefore not covered under the NDPS Act.

What is bhang?

- **Bhang is the edible preparation made from the leaves of the cannabis plant**, often incorporated into drinks such as **thandai and lassi**, along with various foods.
- Bhang has been consumed in the Indian subcontinent for centuries, and is frequently consumed during the festivals of Holi and Mahashivratri.
- Bhang is the least potent of the cannabis preparations used in India. It does not contain the flowering tops found in ganja.
- As a result, bhang contains only a small amount of resin (5 percent). It is either drunk or smoked.

NDPS Act & Bhang –

- **Enacted in 1985, the NDPS Act is the main legislation**

that deals with drugs and their trafficking.

- Various provisions of the Act punish production, manufacture, sale, possession, consumption, purchase, transport, and use of banned drugs, except for medical and scientific purposes.
- **The NDPS Act defines cannabis (hemp) as a narcotic drug based on the parts of the plant** that come under its purview. The Act lists these parts as:
 - **Charas**: “The separated resin, in whatever form, whether crude or purified, obtained from the cannabis plant and also includes concentrated preparation and resin known as hashish oil or liquid hashish.”
 - **Ganja**: “The flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they be known or designated.”
 - “Any mixture, with or without any neutral material, of any of the above forms of cannabis or any drink prepared therefrom.”
- **The Act, in its definition, excludes seeds and leaves** “when not accompanied by the tops”. Bhang, which is made with the leaves of the plant, is not mentioned in the NDPS Act.
- As a “**special provision**”, the Act states that the **government “may allow cultivation of any cannabis plant** for industrial purposes only of obtaining fibre or seed or for horticultural purposes”.
- **Section 20 of the NDPS Act** lays out the **punishment** for the production, **manufacture, sale, purchase, import and inter-state export of cannabis**, as defined in the Act. The prescribed punishment is based on the amount of drugs seized.
- Contravention that involves a small quantity (100 g of charas/hashish or 1 kg of ganja), will result in rigorous imprisonment for a term that may extend to one year and/or a fine which may extend to Rs 10,000.

- For a commercial quantity (1 kg charas/ hashish or 20 kg ganja), rigorous imprisonment of not less than 10 years, which may extend to 20 years, including a fine that is not less than Rs 1,00,000 but may extend to Rs 2,00,000.
- Where the contravention involves quantity less than commercial, but greater than small quantity, rigorous imprisonment up to 10 years is prescribed, along with a fine which may extend to Rs 1,00,000.

Further

reading:

<https://journalsofindia.com/narcotics-drugs-and-psychoactive-substances-ndpsact-1985/>