

A Review: Narcotic Drugs and Psychotropic Substances Act (NDPS 1985)

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Abstract: *Narcotic Drugs and Psychotropic Substances Act also commonly termed as the NDPS Act, made with the purpose to control drugs of abuse, and prohibit its use, dissipation, distribution, manufacture, and trade of substance of abuse.*

Narcotic drugs are those which induce sleep while psychotropic substances can alter the mind of an individual. NDPS Act came into existence on 14 November 1985 by Parliament of India. Although, as these kinds of drugs have their importance in the practice of medicine. Thus, the act also has provisions for the cultivation of cannabis, poppy, or coca plants and manufacture of any psychotropic substances dealing with the medicinal practices. Main agenda of the act is to have a control on manufacture, possession, sale, and transport of such narcotic and psychotropic substances. The act bans around 200 psychotropic substances resultant upon these drugs are not available over the counter for any walk-in individual. These drugs are on sale only when prescription for the same is available. Violation of this law may result into punishment including rigorous imprisonment or fine or both. The degree of punishment is dependent upon the harshness of the case being dealt with. If the drugs are used for personal use, then the punishment may be lesser. Although since the establishment of the law, it has been amended time and again. But due to the availability of synthetic drugs and issues relating to street drugs and designer drugs, the problem in dealing with new drugs having the nature of substance of abuse is a difficult task. Besides NDPS also lacks in differentiating among users, drug peddler and hard-core criminals in this drug trade. The present study is an overview on the NDPS act and its competency

Keywords: Narcotics; Psychotropic substance; NDPS; Prohibition

I. INTRODUCTION

India also known as the land of Shiva, has inherited cultural routes with most mysterious and eccentric ways of worshipping lords. One of these is using bhang a form of cannabis for celebrating religious festival named as Shivaratri. “Soma” is a Sanskrit word which also means intoxicating, a property induced by narcotic drugs, which have been used as “soma Ras” since centuries described in many literatures too. Apart from cannabis, opium is also offered at akha teej, a ceremony, which is celebrated to strengthen family bonding [1].

Unlike western countries India has a cultural connection of adapting certain natural forms of narcotic substances for celebrating some religious festivals. Thus, this cultural difference is an important aspect to be considered while framing and forcing any drugs laws in India.

On the other hand, we cannot overlook the menace of substance abuse, which is on a rise in our country. We have many drug addicts in society. Substance abuse brings a lot of problems related to, health like mortality, and psychiatric disorders as well as economic issues like finances spent on developing services, drain on national resources, loss of productivity. It also leads to several social problems which can be defined under family disintegration that can also lead to criminal activities [2,3]. The war on drugs has resulted in more sensitive issues than in any other phenomenon in our history. It may be the cause of crimes ranging from white collar crimes to blue collar crimes. In the era of terrorism where drugs are a way of producing funds for terrorist activities it is a very important area which should be taken into consideration while framing and amending laws related to drugs. An act to reform and consolidate the laws pertaining to narcotic drugs and to establish

strict guidelines for the management and supervision of operations involving narcotic drugs and psychotropic substances [1], to stipulate the seizure of property obtained from or utilized in the illegal trafficking of psychotropic substances and narcotic drugs.

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Effective laws are a necessity to fight the nuisance associated with drugs. In a period of less than a year around 14, 564 people got arrested under the NDPS Act in Punjab with almost one third prisoners were arrested in criminal cases related to drugs. To compensate with the situation government came up with special drives aiming at discouraging drug abuse [4]. India is one of the members of three United Nations drug conventions -1961 Single Convention on Narcotic Drugs, 1971 Convention on Psychotropic Substances and 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic [1]. These treaties came in effect in 1980’s after a lot of debate on abolishing non-medical use of opium and cannabis.

Drug Policy in India



Figure 1: Map depicting route of opium trade from India to China in 1910.

Among the developing countries India was one of the first countries which devised National Drug Policy (NDP) to make drugs available to poor ones despite the leading brands of pharmaceuticals taking over through the prescription by medical practitioners. In 1963 Indian government passed a drug price control order (DPCO) to keep a check on the prices of drug in market.

While DPCO did not bring much difference, since many drug manufacturers withdrew from the country. Production of certain drugs shifted to China from India. The reformed DPCO came into existence in 2013. DPCO 2013 was found to be more favorable towards non-controlled products as no new investments were carried out. Drugs included in National List of Essential Medicines (NLEM) were only being regulated as per the provisions of DPCO 2013 [5,6] (Figure 1).

Major Shortcoming of the law

Table 1 : common drugs in NDPS ACT

Drugs	SmallQuantity	Punishment	Commercial Quantity	Punishment	Intermediate(In between smaller & commercial quantity)
Heroin	5g	Maximum of 1 year rigorous imprisonment or a fine up to Rs 10,000 or Both.	250g	Rigorous imprisonment from 10 years (min) to 20 years (max) and a fine from Rs 1 lakh to 2 lakhs.	Rigorous imprisonment that may extend to 10 years & fine that may extend to Rs 1 lakh.
Opium	25g		2.5kg		
Morphine	5g		250g		
Ganja (cannabis)	1kg		20kg		
Charas(cannabis resin)	100g		1kg		
Coca leaf	100g		2kg		
Cocaine	2g		100g		
Amphet-Amine	2g		50g		
LSD	2mg		100mg		

One of the major drawbacks of the act is that it presumes the guilt of the accused which brings complete responsibility of proving an individual.

innocence on him. Bails cannot be given to accused of offences which fall under Sections 19, 24 or 27A of the NDPS Act and those relating to commercial quantities of drugs [12]. Common drugs in NDPS Act [13], (Table 1). Although Indian judicial system considers each person innocent till proven otherwise.

“Justice Delayed is Justice Denied” despite availability of special courts assigned for specific cases under this act delayed judgments are too common. Certain times accused arrested for having small quantity of drugs are freed after long time in custody during the investigation period. One of the most important reasons for slackness of such drug laws is investigators are much concentrated on big players who are selling drugs on large scale than regular drug peddlers. Besides, corruption that is a parasite to any system has its effect in investigations relating to drugs. Few convictions are seen in drug cases while number of drugs in street gives a larger figure [14].

There is no difference between hard drugs and soft drugs for example heroine is a harder drug than opium in its natural form. Heroin can be easily delivered illegally since a very small quantity is required for the kick to an addict as compared to natural form of opium. Since somewhere selling heroine generates more profits, drug peddlers prefer it over opium. It is somehow increasing the circulation of synthetic drugs among drug users which have instantly stronger effect on the biological system. In section 54 of NDPS act it is stated that unless the contrary is proved it shall be presumed that the accused was had committed an offence related to drugs. Harsher punishment has been forced for repeated offences. According to an amendment in 1989, in section 31A mentions death penalty for repeated offences if the quantity of drug seized is more than the certain limits. Many times, it is debated that the NDPS Act.

does not distinctively differentiate between a casual drug user, a hard addict, a petty peddler, and a seasoned drug trafficker. Apart from the sections defined which might need some reforms it is a necessity that this act should be reviewed time to time, since every now and then a new drug or its derivative comes in existence as an addictive substance. For example, a new type of substance with basic similarities with amphetamine was seized in quite a large quantity in Maharashtra, India, about 2,640 bottles of Rescox cough syrup valuing for Rs.3lakh were seized [15].

In such new kind of drugs and derivatives it becomes difficult to justify it under NDPS Act. Inclusion of new precursors, drugs, and their derivatives with narcotic and psychotropic effect in act is required for increasing the effectiveness of the law. A study carried out by a group of researchers also suggests that opioids and alcohol be treated similarly. It reports the age of onset and pattern of dependence same in both alcohol and opioids. Rates of alcohol problems range from drunk driving to heinous crimes too. Therefore, certain legislations should be considered for use of alcohol and its dependence leading to social problems [16]. On an average 76 percent were prosecuted and 28 percent were convicted in cases related to drugs according to a study conducted in Tihar jail. Indicating the ratio of conviction being too low against the drug cases reported

FIGURE-1



Cannabis Plant



Charas



Ganja



Opium Poppy Seeds (Afim)



Coca Leaf



Cocaine



Lysergic acid diethylamide(LSD) Candy



Lysergic acid diethylamide(LSD) Stamps

NDPS Amendments, 2014

NDPS amendment 2014 came in force on 1 May 2014. Under section 71 of NDPS act which explains the management of drug dependents cases and the rules for treatment facilities was incorporated. At the same time, the amendments increased penalties for low-level offences and continued to criminalize the consumption of drugs [17]. Producers of morphine just need a single license from respective State Drugs Controller unlike the earlier procedure which had prolonged steps and multiple licenses of different validation period [18]. The amendment will ensure a uniform regulation for the whole country, eliminating state wise conflicts. Essential Narcotic Drugs which are used in medicinal

preparations also including Morphine, Fentanyl and Methadone, have been relaxed for easy accessibility among treatments provided. The death sentence for repeated conviction for trafficking large quantities of drugs has been diluted with giving courts to discretely sentence for 30 years. On the other hand, punishment has been increased for “small quantity” offences from a maximum of 6 months to 1 year imprisonment after this amendment [19].

Chapter II: Officers and authorities

The central government should take action to stop and fight drug misuse and illegal trafficking, among other things.

- Coordinating the actions of different officials, the State Government, and other authorities under this act or any other currently enacted law pertaining to the implementation of its provisions.
- The international convention's requirements.
- Support for the prevention and control of illegal trafficking in narcotic narcotics and psychotropic substances to relevant international organizations and authorities in other countries.
- For this act to be implemented effectively and to prevent and combat the abuse of narcotic drugs and psychotropic substances as well as their illicit trafficking, it is necessary to identify, treat, educate, aftercare, rehabilitate, and communicate with addicts and their social networks.

Central Government Officers

- The Central Government will designate a Narcotics Commissioner and may designate other officers with designations it deems appropriate for the purposes of this Act, subject to the provisions of sub-section (3) of section 4.
- The Central Government may designate the Narcotic Commissioner and any other officers it deems appropriate in accordance with the provisions of this act.
- carries out the duties associated with:
 1. Monitoring opium poppy cultivation
 2. Opium production
 3. Any additional duties that the Central Government may assign him.

Chapter II A: National Drug Abuse Control Fund

The Central Government may establish a fund known as the National Fund for Control of Drug Abuse by publishing a notice in the Official Gazette. The following will be credited to the fund:

1. An amount that the Central Government may provide after Parliament has made a lawful appropriation in this regard;
2. The proceeds from the sale of any property forfeited under Chapter VA;
3. Any grants that may be made by any individual or organization; and
4. Any investment income of the funds credited to the Fund under the aforementioned provisions.

The Central Government will use the Fund to cover the costs associated with the following measures: a.

Fighting illegal trafficking in narcotic drugs, psychotropic substances, or controlled substances;

- Controlling drug and psychotropic substance abuse;
- Recognizing, treating, and rehabilitating addicts;
- Preventing drug abuse;
- Educating the public about drug abuse; and
- Giving drugs to addicts when it is medically necessary.

Chapter III : Prohibition, Control And Regulation

prohibition of specific activities. No one is permitted to:

- grow any kind of coca plant or collect any part of one;
- grow cannabis or opium poppies; or

- manufacture, sell, buy, transport, store, use, consume, import, export, import into India, export from India, or tranship any psychotropic substance or narcotic drug.

Power of Central Government to permit, control and regulate Subject to the provisions of section 8, the Central Government may, by

A. Permit and regulate:

1. The cultivation, or gathering of any portion (such cultivation or gathering being only on account of the Central Government) of coca plant, or the production, possession, sale, purchase, transport, import inter- State, export inter-State, use or consumption of coca leaves;
2. Growing opium poppies (a practice solely due to the Central Government);
3. Producing and manufacturing opium and poppy straw;
4. Exporting opium and its derivatives from Central Government factories to other countries or selling them to State Governments or manufacturing chemists;
5. Manufacturing manufactured drugs (apart from prepared opium), excluding medicinal opium and preparations containing manufactured drugs, using materials that the manufacturer is legally permitted to have;
6. The production, ownership, transportation, importation, exportation, sale, acquisition, consumption, or use of psychotropic substances;
7. The transshipment of psychotropic substances and narcotic medicines into and out of India;

B. Specify any other matters necessary to give the Central Government effective authority over any of the issues listed in subsection (a).

1. Give the Central Government the authority to periodically set the parameters for granting permits to cultivate opium poppies;
2. Demand that growers submit all opium, or the product of land planted with opium poppies, to the officers designated by the Central Government in this regard;
3. Establish the terms and conditions of licenses for the production and manufacturing of opium as well as for the cultivation of the opium poppy;
4. Establish that opium must be weighed, inspected, and categorized based on its quality and consistency by the officers designated in this regard by the Central Government in the presence of the cultivator at the time of delivery;
5. Give the Central Government the authority to periodically determine the price that must be paid to the growers for the opium that is delivered;
6. Provide for the weighing, inspection, and classification of the opium that is received at the factory based on its quality and consistency;
7. Mandate that opium delivered by a grower be confiscated by the officers authorized in this regard if it is discovered to be adulterated after examination in the Central Government factory;
8. Establish guidelines for the types of permits that can be obtained for the production of manufactured medications, the authorities that can provide them, and the costs that can be assessed for them;
9. Specify the types of licenses or permits that can be obtained for the production, possession, transportation, importation, exportation, sale, purchase, consumption, or use of psychotropic substances, as well as the authorities that can grant them and the associated fees;
10. Establish restrictions on the ports and other locations where any type of psychotropic or narcotic medication may be transhipped, imported into India, or exported from India;

Without limiting the scope of the authority granted by subsection (1), an order made under this section may provide for the regulation, possession, transportation, import, export, sale, purchase, consumption, use, storage, distribution, disposal, or acquisition of any controlled substance through licenses, permits, or other means.

If the Central Government believes that it is necessary or expedient to do so in the public interest when it comes to the use of any controlled substance in the production or manufacture of any narcotic drug or psychotropic substance, it may,

by order, provide for the regulation or prohibition of its production, manufacture, supply, distribution, trade, and commerce.

State government authority to authorize, oversee, and regulate:

I. In accordance with section 8's provisions, the State Government may, by regulations

A. Authorize and control:

1. Poppy straw possession, transportation, interstate import and export, storage, sale, purchase, consumption, and usage.
2. The cultivation of any cannabis plant, as well as its production, manufacturing, possession, import, export, consumption, and use (apart from charas);
3. The possession, transportation, import, export, sale, purchase, consumption, and use of opium;
4. Manufacturing medicinal opium or any preparation containing a manufactured drug from materials that the maker is legally permitted to possess;
5. Having, transporting, buying, selling, importing, exporting, using, or consuming manufactured drugs other than prepared opium, as well as coca leaf and any preparation containing a manufactured drug;
6. Manufacturing and possessing prepared opium from opium that an addict registered with the State Government with a valid medical prescription for his own use:

II. Specifically, and without limiting the scope of the aforementioned authority, such regulations may:

1. stipulate that the State Government may, from time to time, set the parameters within which licenses may be granted for the cultivation of any cannabis plant;
2. stipulate that only cultivators licensed by the State Government's prescribed authority may cultivate any cannabis plant; and
3. mandate that all cannabis, or the products of land cultivated with cannabis plants, be delivered by the cultivators to the State Government officers authorized in this regard;
4. Give the State Government the authority to periodically set the price that must be paid to the growers for the cannabis that is delivered;
5. Establish the terms and conditions of licenses or permits for the uses listed in subclauses (i) to (vi) of clause (a) of subsection (1), as well as the authorities that may grant them and the associated fees.

OFFENCES AND PENALTIES UNDER THE ACT

CHAPTER IV, that is from Section 15 to 40, provides for various offences and punishments under the Act. It has identified certain activities that are against the acceptable social norms which have been included in the category of offences in the Act. These activities are forbidden by law because they harm the physical health of an individual. These substances have the potential to damage the mental abilities of an individual as well. Even if it relieves the person of any suffering for a short while, its side effects are on the display in the long run [21],

Section 15: Punishment for contravention in relation to poppy straw.

Section 15 of the Act provides for the act of production, possession, transportation, selling, purchasing or any other involvement that shall lead to an offence under the provisions of this Section. The punishments have been decided based on the quantity of poppy straw involved in the whole transaction [21].

Section 16: Punishment for contravention in relation to coca plant and coca leaves.

Section 16 of the Act provides for the provisions in contravention of the rules made under the Act regarding the cultivation, production, possession, selling, purchasing, transportation and any other activity with respect to the violation of the provisions of this Act. The punishment for the offence under the Section includes rigorous imprisonment up to a term of ten years along with a fine extending up to one lakh rupees [21].

Section 17: Punishment for contravention in relation to prepared opium.

Section 17 of the Act provides for the provisions dealing with activities in violation of the Act with respect to prepared opium. This Section bars the process of manufacturing, possession, selling, purchasing, transportation or usage of prepared opium. It has been identified as a substance with the capacity to harm an individual, physically, or mentally with its ingredients. The punishments for either of the restricted activities carried out by an individual are like that of poppy straw, listed under Section 15 [21].

Section 18: Punishment for contravention in relation to opium poppy and opium.

Section 18 of the Act provides for the process of manufacturing, purchasing, production, possession, transportation or selling of opium poppy and opium as an act being in contravention of the provisions under this Act [21]

Section 19: Punishment for embezzlement of opium by cultivator.

Section 19 of the Act provides for an act identified as embezzlement of opium, which is in violation of the provisions under the Act and hence, an offence characterized under Chapter IV. Any person who embezzles, himself or involved in the activity, or otherwise illegally disposes off the opium shall be held liable under this Section. The punishment for this offence includes rigorous imprisonment of a term not less than ten years with an extension of up to twenty years along with a fine, not being less than one lakh rupees but can be increased up to two lakh rupees [21].

Section 20: Punishment for contravention in relation to cannabis plant and cannabis.

Section 20 of the Act provides for the offence relating to the process of cultivation, production, manufacturing, possession, selling, purchasing or transportation of cannabis plant and cannabis. In case a person is caught cultivating cannabis, he/she stands punishable with rigorous imprisonment of a term extending up to ten years along with a fine which can be up to one lakh rupees. For any other act other than cultivation, the punishments are divided on the intensity/quantity of the object. The three punishments included in all the other Sections are followed in this Section as well.

Section 21: Punishment for contravention in relation to manufactured drugs and preparations.

Section 21 of the Act provides for an offence of manufacturing, possession, selling, purchasing, transportation, or usage of any manufactured drug or its preparation as an act in contravention of the provisions under the Act.

Section 25A: Punishment for contravention of orders made under Section 9A.

If any person contravenes an order made under Section 9A, he shall be punishable with rigorous imprisonment for a term which may extend to 10 years and shall also be liable to fine which may extend to ten years and shall also be liable to fine which may extend to one lakh rupees.

Section 27: Punishment for consumption of any narcotic drug or psychotropic substance.

Section 27 of the Act provides for the act of consuming any narcotic drugs and psychotropic substances which is an offence for the purpose of the Act. Any person consuming substances such as morphine, cocaine, diacetylmorphine and any other drug later specified as one by the central government under a notification shall lead to rigorous imprisonment for a term extending up to one year or fine up to twenty thousand rupees, or both [21].

Any narcotic drug or a psychotropic substance, other than those included in the list, shall lead to imprisonment up to six months or fine up to ten thousand rupees, or both.

Section 27A: Punishment for financing illicit traffic and harbouring offenders.

Section 27A of the Act provides for the offence of financing illicit trafficking and harbouring offenders in contravention of the provisions of the Act. Any person, financing, or harbouring, directly or indirectly, any illicit acts of trafficking, may arise criminal liability against himself. The punishment for the offence shall be imprisonment of not less than ten years but extending up to twenty years and a fine of not less than one lakh rupees which can be increased up to two lakh rupees.

Section 30: Preparation.

If any person makes preparation to do or omits to do anything which constitutes an offence punishable under any of the provisions of 1 [Sections 19, 24 and 27A and for offences involving commercial quantity of any narcotic drug or psychotropic substance and from the circumstances of the case] it may be reasonably inferred that he was determined to carry out his intention to commit the offence but had been prevented by circumstances independent of his will, he shall be punishable with rigorous imprisonment for a term which shall not be less than one-half of the minimum term (if any), but which may extend to one-half of the maximum term, of imprisonment with which he would have been punishable in the event of his having committed such offence, and also with fine which shall not be less than one-half of the minimum amount (if any), of fine with which he would have been punishable, but which may extend to one-half of the maximum amount of fine with which he would have ordinarily (that is to say in the absence of special reasons) been punishable, in the event aforesaid: Provided that the court may, for reasons to be recorded in the Judgment, impose a higher fine [21].

Section 32: Punishment for offence for which no punishment is provided.

Whoever contravenes any provision of this Act, or any rule or order made, or any condition of any license, permit or authorization issued thereunder for which no punishment is separately provided in this Chapter, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

Section 35: Presumption of culpable mental state.

According to Section 35 of the NDPS Act, the court shall presume the presence of the accused's culpable mental state, but it shall be a defense for the accused to establish that he did not have a guilty mental state.

Section 36A: Offences triable by Special Courts.

A clause in Section 36A of the NDPS Act called 'non-obstante' empowers the Special Court to hear cases punishable by imprisonment for more than three years. This provision is intended to ensure speedy trials. Following are some of the features:

Under the NDPS Act, the government can set up Special Courts to speed up the prosecution of offences.

Through a notification to the official gazette, it will be set up areas or areas. The Special Court shall be a Court of Session.

There shall be one judge of the Special Court, who will be appointed by the government with the concurrence of the Chief Justice of the High Court. To qualify for an appointment as a Special Court judge, a judge must first be a sessions judge or additional sessions judge.

Under the NDPS Act, all the offences punishable with a term of imprisonment over three years can be tried by a Special Court.

By reviewing a police report or a complaint made by a state official or a central official, a Special Court will determine whether there was an offence.

Besides the offenses under the NDPS Act, the Special Court has also been empowered with the authority to try an accused who has also been accused of other criminal offences under the Code of Criminal Procedure, 1973 (CrPC).

Proceedings before a Special Court will be governed by the provisions of the CrPC, including those pertaining to bail and bonds.

In the case of a Special Court, the person prosecuting the case shall be considered a public prosecutor.

Section 37: Offences to be cognizable and non-bailable.

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974):

Every offence punishable under this Act shall be cognizable; (b) no person accused of an offence punishable for 3 [offences under Section 19 or Section 24

or Section 27A and for offences involving commercial quantity] shall be released on bail or on his own bond unless:

The Public Prosecutor has been given an opportunity to oppose the application for such release, and Where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

The limitations on granting of bail specified in clause (b) of sub-Section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail [21].

CONSIDERATION FOR FUTURE

Effective implementation of NDPS act for regulating the drugs and its usage in the society needs to be kept under view. Ensuring the quality of drugs used for medical purposes is an important aspect which should be taken into consideration. Data of drug addicts should be well maintained and regulated incorporating various organizations working in this area. Improvising co- ordination among states for investigation in cases related to drugs.

Differentiating synthetic drugs from natural drugs can be helpful for clear lines of investigation. Transparency of the policy can be a great advent for effectively solving crimes related to drugs. Understanding the drug patterns is an essential requirement for eliminating the problem of illegal drugs from our country.

Bringing awareness and educating can help eradicate the problem of drug addiction in our country. Rehabilitation centers should co-ordinate with the central and state governments for preventing the substance abuse of drugs and its practice in coming generations from the harms of substance abuse.

II. CONCLUSION

Thus, even though the intention of the person is not mollified, there are many things taken into consideration. Many of the times seems that big suppliers escape, and small drug peddlers are caught. This act fails to provide an adequate difference between minor and serious offences relating to drugs in India. This becomes the business of big class by using needy people for the sack of money. But somehow provisions of the act are very important in our society as many of the people including youngsters taken and sale of drugs in a high quantity. Even took a better step to ban use of drugs like HANS, KHAINI etc. but then also many people of country use different drugs. So, this is the need of hours to participate by public in such issues. Public in their society will start awareness campaign like “SAY NO TO ALCHOL” “SAY NO TO DRUGS” etc and periodically inspect their areas and take various other actions to stop drug abuse in the nation as such drug related offences do not affect only individual who consumes it but effect society at large.

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