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ARTICLE

# Drug Policy in India: An Analysis

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**Abstract**
The Narcotic Drugs and Psychotropic Substances Act, or NDPS Act, was enacted to control addictive drugs and prohibit their possession, dispersion, sale, import, and trade in India. Psychotropic agents have the potential to change an individual's consciousness, while narcotic drugs relieve anxiety. The Indian Parliament passed the NDPS Act on November 14, 1985. Nonetheless, these types of drugs are important in the practice of medicine. Consequently, the Act contains provisions for the cultivation of cannabis, poppy, and coca seeds and the production of certain psychotropic medicines used for medical purposes. The Act's primary objective is to regulate the manufacturing, ownership, selling, and transportation of narcotics and psychotropic drugs. The Act forbids the selling of nearly 200 psychotropic medications, resulting in these drugs being inaccessible over the counter to the general public. These medications are only available for use with a prescription. Violations of this law can result in a sentence of incarceration or a fine, or both, depending on the offense's severity, which is determined by the severity of the situation at hand. If the drugs are being used for personal benefit, the penalty can be minimized. Furthermore, the legislation has been revised several times since its inception.

**Keywords** Narcotic Drugs and Psychotropic Substances Act; NDPS Act; narcotic drugs; psychotropic drugs; drug use penalties in India; drug addiction treatment programs in India

## INTRODUCTION

In India, the prevalence of drug abuse in the young generation has taken on disturbing proportions. Changing societal values, growing economic hardship, and weakening bonds of support contribute to drug use. According to the World Health Organization (WHO), substance misuse is chronic or irregular drug use inconsistent with or unrelated to appropriate medical practice. Around 269 million people used drugs worldwide in 2018, which is 30% more than in 2009. According to the latest World Drug Report, released by the United Nations Office on Drugs and Crime (UNODC), over 35 million people suffer from drug use disorders. The report analyses the impact of coronavirus disease 2019 (COVID-19) on the drug markets, and while its effects are not yet fully known, border and other restrictions

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linked to the pandemic have already caused shortages of drugs on the street, leading to increased prices and reduced purity (United Nations Office on Drugs and Crime (UNODC) 2020). Drug use induces tremendous human suffering, and crime and violence have been generated exponentially by the illicit manufacture and sale of drugs. June 26 is celebrated every year as the International Anti-Drug Exploitation and Illegal Trafficking Day (United Nations 2020). It is an exercise conducted by the international community to increase awareness of the danger of drugs to people in general and young people in particular.

There is no part of the world today that is spared from the curse of drug trafficking and drug dependency. Millions of opioid users are living wretched lives, between life and death, all over the world. India is now trapped in this vicious cycle of substance addiction, and day by day, the number of drug users is rising.

According to a United Nations (UN) survey (United Nations Office on Drugs and Crime (UNODC) 2010), one million heroin users are registered in India, and as many as five million are registered unofficially. All parts of society have been influenced by what began as recreational use among a tiny community of high-income youth groups in the region. Heroin inhalation itself, in conjunction with other sedatives and painkillers, has given way to intravenous substance usage. This has intensified the severity of the influence, hastened the addiction process, and complicated the rehabilitation process.

Drugs eliminate judgment of restraint and impairment and facilitate committing crimes. With drug abuse, the incidence of bullying, group clashes, attacks, and impulsive murders is rising. Apart from impacting financial security, addiction raises tensions and causes any family member untold emotional distress. The loss in terms of human potential is incalculable, with most drug consumers being in the active age range of 18–35 years. The harm to young people's physical, social, moral, and academic development is considerable.

## NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985

India is a party to the three drug conventions of the UN: the 1961 Single Convention on Narcotic Drugs (1961 Convention), the 1971 Convention on Psychotropic Substances (1971 Convention), and the 1988 Convention against Illegal Trade in Narcotic Drugs and Psychotropic Substances (1988 Convention) (United Nations Office on Drugs and Crime (UNODC) 2021). Only in the 1980s, after the "grace era" for the abolition of non-medical use of cannabis and morphine under the 1961 Convention ended, was domestic law enacted to add effect to these treaties. Exercising its rights to make rules for the government to enforce "any international conference treaty, agreement or convention or decision," the Indian Parliament hastily passed, without any discussion, the Narcotic Drugs and Psychotropic Medicines Act, 1985 (NDPS Act). On November 14, 1985, the NDPS Act came into effect, repealing the Morphine Acts and the Dangerous Drugs Act. However, the Narcotics and Cosmetics Act, 1940, continues to apply. Officially, the NDPS Act was passed to provide appropriate punishments for drug trafficking, improve regulatory forces, introduce international treaties to which India was a member, and impose restrictions on psychotropic drugs. Except for medicinal and research purposes, the NDPS Act bans the manufacture, ownership, selling, purchase, exchange,

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import, export, usage, and consumption of narcotic drugs and psychotropic substances. As an attempt, preparation to execute such crimes is punishable. The accessory offenses of aiding and promoting and criminal conspiracy are punished with the same sentence as the principal offense.

The Act protects three broad types of compounds: (1) narcotics, i.e. those covered by the 1961 Convention; (2) psychotropic drugs or substances protected by the 1971 Treaty and other psychoactive substances such as ketamine that are not yet classified by international conventions; and (3) "controlled substances" used in the manufacturing of narcotic medications or psychotropic substances, such as precursor chemicals like acetate anhydride, ephedrine, and pseudoephedrine (United Nations 1971).

Narcotic compounds include:

- Cannabis: herb; resin or charas and its hashish concentrated variant; dried flowering or fruiting tops of the plant, i.e. ganja, and some charas or ganja mixtures. Importantly, bhang or cannabis leaf is exempt and governed by state excise laws (in compliance with the 1961 Convention).
- Coca: plant: leaf; cocaine, and any formulations containing 0.1% cocaine in the derivatives.
- Opium.
- Poppy: concentrate of poppy plants, poppy straw; opium poppy juice; a combination of opium poppy juice; 0.2% opioid preparations; derivatives are heroin, morphine, codeine and others.

Narcotic products also come into the conflicting "manufactured drugs" group. Psycho-tropical drugs are not described, although they include all drugs reported as such by the government. Among others, amphetamines, methamphetamines, lysergic acid diethylamide (LSD), 3,4-methylenedioxy-methamphetamine (MDMA), and buprenorphine are on this list, which can be extended or limited by the government based on proof of real or possible "violence" or schedule changes under international conventions.

The NDPS Act specifies the protocol for searching, capturing, and detention of people in public and private areas. Safeguards have been strictly implemented by the courts, such as proper documentation of records, notifying a supervisor, restricting detention powers to designated agents, reminding the individual being searched of their rights, given the specific penalties specified by the Act. Around the same time, inquiry and testimony requirements are permissive and have been viewed in a way that prejudices the complainant. Although the NDPS Act is primarily draconian, it also includes drug enforcement clauses.[1]

The Act empowers central and state governments under the "medical and scientific purpose" rubric, a concept that is neither specified nor outlined in the Act, to frame rules and authorize drug-related practices. While certain operations are reserved strictly for the government, others can be conducted under license by private individuals. The legislative framework also requires morphine for medicinal

[1]"The Narcotic Drugs and Psychotropic Substances Act, 1985." Retrieved February 7, 2021 (https://www.indiacode.nic.in/handle/123456789/1791?view_type=browse&sam_handle=123456789/1362).

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advice to licensed opium-dependent users, a step similar to contemporary harm reduction techniques. While provided for in the legislation, the procedure has fallen into disuse, and less than 1,000 opium users have been registered in the entire country as of last year. The Prohibition of Criminal Trade of Narcotic Drugs and Psychotropic Medicines Act was replaced by the NDPS Act in 1988 to allow for preventive incarceration of persons convicted of involvement in drug trafficking.[2]

## NDPS AMENDMENTS, 1989 (Bhatia 2018)

The first set of changes was introduced to the NDPS Act in 1989 after a Cabinet Sub-Committee on Fighting Drug Trade and Violence proposed that the legislation be more strict. The "harsh rhetoric on drugs" led to the implementation of very harsh provisions such as statutory minimum terms of 10 years in jail, bail limits, suspension and commutation of sentences, deprivation of land, trial by special courts, and compulsory death sentences for some repeat criminals. The reforms that happened less than four years after the legislation was originally enacted seem to have been affected by economic, regional, and domestic trends like the signing of the 1988 Convention; discussions at the South Asian Association for Regional Cooperation (SAARC) on the increasing threat of drug trafficking; rising political opposition and "criminal" violence in northern states; and the belief that drug trafficking fuels terrorism.

Following these changes, long jail terms and large penalties were levied on people arrested with minor doses of drugs, unless they could show that the drug was meant for personal consumption (in that case, depending, the offender would be subjected to six months or one year in prison for that drug). With bleak chances of release on bail, many people arrested for possessing minor amounts of drugs intended for personal use languished in jail for over 10 years for a few milligrams of contraband.

## NDPS AMENDMENTS, 2001[3]

A demand for change was generated by criticism of this strict and unfair punishment structure. In 1998, Parliament passed the NDPS (Amendment) Bill, which the Parliamentary Standing Committee on Finance subsequently reviewed. Finally, the amendments were adopted in 2001 to grade the penalty based on the number of drugs involved, i.e. "light," "commercial," or "intermediate." By notification dated October 19, 2001, the thresholds were stated by the central government.

## NDPS AMENDMENTS, 2014[4]

The NDPS Act was revised for the third time in early 2014, and the new regulations came into effect on May 1, 2014. Primary characteristics include:

[2]"Law Commission of India Report No. 155. Narcotic Drugs and Psychotropic Substances Act, 1985." Retrieved February 7, 2021 (http://www.bareactslive.com/LCR/LC155.HTM).

[3]"The Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2001." Retrieved February 8, 2021 (https://indiankanoon.org/doc/1997854/).

[4]"The Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2014." Retrieved February 8, 2021 (http://www.cbn.nic.in/html/NDPS%20Amendment%20Act%202014.pdf).

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- Creation of a new category of "essential narcotic drugs" that can be universally identified and supervised by the central government throughout the world.
- Expanding the legislation's purpose from the illegal usage of narcotic drugs to promoting the medicinal and scientific use of narcotic drugs and psychotropic substances in line with the "balance" concept between the regulation and distribution of narcotic drugs underpinning the foreign drug control treaties.
- Including the terms "management" of drug dependency and "recognition and approval" of recovery facilities, thereby requiring legally binding criteria of treatment and evidence-based medical treatments to be developed.
- Having the death penalty discretionary under section 31A for the following offense containing a certain amount of drugs. The court would have the option of imposing incarceration under section 31 for 30 years.
- Increased penalties from a period of six months to one year in jail for small-scale crimes.
- Enabling participation in the cultivation of opium and concentrated poppy straw by the private sector.
- Raising officers' rank authorized to conduct searches and arrest the license holders for alleged NDPS violations.
- More elaborate provisions for forfeiture of property of persons arraigned on charges of drug trafficking.

## SIGNIFICANT ASPECTS OF THE NDPS ACT

### *Quantity-based sentencing*[5]

The length of punishments and fines vary greatly, as observed, based on the material and quantity contained. It is therefore important to decide the amount of narcotics used in an offense, and most litigation revolves around this subject, specifically around the words "mixture," "preparation," and "with or without neutral material" used in the statute. Since the NDPS Act does not offer quantity calculation guidelines, some courts have begun to rely on the legislative description of drugs to measure the quantity involved, especially those relating to a numerical percentage (e.g. morphine and opium derivatives).

This resulted in inconsistent interpretations and conflicting decisions not just between different classes of drugs but even for the same drug.

After the Supreme Court ruled that for products combined with "neutral ingredients," only the actual composition of the narcotic material is necessary to decide if it constitutes a limited or industrial amount, the "purity vs. total weight" debate persisted. A year later, the government announced that the total weight of the confiscated substance, and not the pure drug value, had to be considered when determining the amount. This move is dramatically detrimental for people who use cannabis and other low-level criminals who fear being sentenced for intermediate or industrial amount violations because illicit drugs are heavily "cut" and rarely ever confiscated in pure forms. However, the government insists that a narcotic crime is more dangerous

[5]"Punishment for Offences." Retrieved February 9, 2021 (https://dor.gov.in/narcoticdrugspsychotropic/punishment-offences).

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than murder, which only harms a person, while the former leaves a negative impact on society. The government also states that other Asian countries enforced the death penalty for crimes involving smaller amounts of drugs and that the International Narcotics Control Board (INCB) has never objected to it.

### Criminalization of People Who Use Drugs (Pandey 2017)

Amphetamine use is illegal and, depending on the substance taken, ends in a prison sentence of up to six months to one year and/or a fine. The use of opium and ecstasy will result in a lengthy jail term, while weed will result in a less harsh sentence. The category of "possession of small quantities intended for personal use" was abolished in 2001, and, at present, possession of small volumes, irrespective of intent, attracts universal punishment.

While it was reserved for violent prisoners, situations involving ingestion or possession of minor quantities of substances were often subject to bail issuance limitations.

Compared to "traffickers," government criminal figures do not indicate what percentage of drug enforcement arrests and sentences are carried out against consumers or low-level criminals (including minor numbers of offenses) (involving larger quantities of drugs). Since the statute itself does not differentiate between possession for personal use and possession to trade for benefit, it is impossible to authoritatively decide whether "users" or "traffickers" are pursued by regulation. For such a study, the only predictor is the amount of narcotics used in each case, which is often not discernible from drug crime statistics. Besides, as stated earlier, quantity alone is an unreliable factor to determine the form of drug-related activity; in many situations when significant amounts are confiscated, persons detained merely carried or shipped the material and did not regulate or administer the trade.

### Harsh and Disproportionate Penalties (Tandon 2015)

Like many other countries in Asia, India has also adopted harsh drug enforcement policies. Many facets of the NDPS Act, such as the criminalization of substance consumption, the imprisonment for distribution of narcotics for personal use, and the death penalty, are more stringent or extreme than those provided by the UN conventions on drug control. This occurs amid efforts by civil society to illustrate such laws' ineffectiveness and highlight their non-compulsory status under international drug conventions.

### Treatment for Drug Dependence[6]

The NDPS Act supports treatment for people who use drugs both as an "alternative" and independent of criminal measures. Several provisions stipulated under the Act de-penalize consumption and offenses involving small quantities of drugs and encourage treatment-seeking.

[6]"Special Provision for Addicts." Retrieved February 10, 2021 (https://dor.gov.in/narcoticdrugspsychotropic/special-provision-addicts).

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### *National Fund*[7]

In May 1989, the National Fund for the Prevention of Substance Addiction was created. However, its management guidelines were enacted only after almost twenty years, since 2006. The fund may collect donations from the central government, private donors, and proceeds from the selling of drug-trafficking forfeited properties. Applications are approved by a regulatory body composed of a senior officer and other government-appointed members. Non-governmental organizations (NGOs) and federal agencies are authorized to seek funding, for care, and for substance prevention programs. For financing, preventive education and knowledge of the "ills" of opioid dependency are prioritized.

### *Treatment centers*[8]

De-addiction centers are the centerpiece of the delivery of drug care. These centers can be set up by federal or state governments or charitable groups, according to the NDPS Act. Presently, opioid abuse programs are available through:

1. Government hospitals, which provide inpatient and outpatient treatment, mainly detoxification. Drug care is available in 122 government hospitals according to official figures. In several such hospitals, the central government has recently announced plans to open "drug treatment clinics" to provide opioid replacement therapy.
2. NGOs, which receive grants from the Ministry of Social Justice and Empowerment (MOSJE) and their state counterparts (Social Welfare Departments), run integrated rehabilitation centers to "make abusers drug-free, crime-free and productive." In 2013–14, six such NGO centers were sponsored.
3. Privately run psychiatric hospitals or nursing homes, under license from the Mental Health Act, 1987, which provide various medical facilities.
4. Private centers for de-addiction working without authorization or permission.

## CONCLUSION

In modern times, nearly all forms of illicit drugs are used by both men and women, and illicit drug use is more likely to result in emergency room visits or overdose deaths. "Illicit" includes the possession, like alcohol, of illegal substances and the abuse of prescription drugs. The NDPS Act of 1985 was formulated to curtail the illegal manufacturing, production, storage, procurement, and use of drugs that are forbidden under the legislation. The NDPS Act deems drug crimes to be very serious, and sentences are severe. The levels of imprisonment and fine vary for crimes and different offenses. The sentence depends on the amount of substance involved. India has taken early and decisive steps to deal with drug issues. While the government has an over-inclusive agenda, committed staff, and a range

[7]"Guidelines for Funding from Narcotic Drugs and Psychotropic Substances (National Fund for Control of Drug Abuse Rules -2006." Retrieved February 11, 2021 (https://dor.gov.in/sites/default/files/NFCDA-GUIDELINES.pdf).

[8]"Treatment and Rehabilitation." Retrieved February 11, 2021 (https://dor.gov.in/narcoticdrugspsychotropic/treatment-and-rehabilitation).

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of dedicated initiatives and policies at its disposal, there is a need to enhance existing programs, to make a concerted effort between departments, to achieve uniformity at the policy level, to make scientifically based decisions and to reinforce supply chain reductions.

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## TRANSLATED ABSTRACTS

**Abstracto**

La Ley de Estupefacientes y Sustancias Psicotrópicas, o Ley NDPS, fue promulgada para controlar las drogas adictivas y prohibir su posesión, dispersión, venta, importación y comercio en la India. Los agentes psicotrópicos tienen el potencial de cambiar la conciencia de un individuo, mientras que los narcóticos alivian la ansiedad. El Parlamento de la India aprobó la Ley NDPS el 14 de noviembre de 1985. No obstante, este tipo de medicamentos son importantes en la práctica de la medicina. En consecuencia, la ley contiene disposiciones para el cultivo de semillas de cannabis, amapola y coca y la producción de ciertos medicamentos psicotrópicos utilizados con fines médicos. El objetivo principal de la ley es regular la fabricación, propiedad, venta y transporte de estupefacientes y psicotrópicos. La ley prohíbe la venta de casi 200 medicamentos psicotrópicos, lo que hace que estos medicamentos sean inaccesibles sin receta para el público en general. Estos medicamentos solo están disponibles para su uso con receta médica. Las violaciones de esta ley pueden resultar en una sentencia de encarcelamiento o una multa, o ambas, dependiendo de la gravedad de la ofensa, que está determinada por la gravedad de la situación en cuestión. Si los medicamentos se utilizan para beneficio personal, la penalización se puede minimizar. Además, la legislación se ha revisado varias veces desde su creación.

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**Palabras clave** Ley de Estupefacientes y Sustancias Psicotrópicas; Ley NDPS; estupefacientes y psicofármacos; sanciones por consumo de drogas en India; programas de tratamiento de adicción a las drogas en India

**Abstrait**

La Loi sur les stupéfiants et les substances psychotropes, ou NDPS Act, a été adoptée pour contrôler les drogues de toxicomanie et interdire leur possession, leur dispersion, leur vente, leur importation et leur commerce en Inde. Les agents psychotropes ont le potentiel de changer la conscience d'un individu, tandis que les stupéfiants soulagent l'anxiété. Le Parlement indien a adopté la loi NDPS le 14 novembre 1985. Néanmoins, ces types de médicaments sont importants dans la pratique de la médecine. Par conséquent, la loi contient des dispositions relatives à la culture de graines de cannabis, de pavot et de coca et à la production de certains médicaments psychotropes à usage médical. L'objectif principal de la loi est de réglementer la fabrication, la propriété, la vente et le transport de stupéfiants et de drogues psychotropes. La loi interdit la vente de près de 200 médicaments psychotropes, ce qui rend ces médicaments inaccessibles en vente libre au grand public. Ces médicaments ne sont disponibles que sur ordonnance. Les violations de cette loi peuvent entraîner une peine d'emprisonnement ou une amende, ou les deux, selon la gravité de l'infraction, qui est déterminée par la gravité de la situation. Si les médicaments sont utilisés à des fins personnelles, la sanction peut être réduite au minimum. De plus, la législation a été révisée à plusieurs reprises depuis sa création.

**Mots clés** Loi sur les stupéfiants et les substances psychotropes; Loi NDPS; stupéfiants et drogues psychotropes; sanctions pour usage de drogues en Inde; programmes de traitement de la toxicomanie en Inde

**抽象的**

颁布了《麻醉药品和精神药物法》（NDPS Act），以控制成瘾药并禁止其在印度拥有，散布，销售，进口和贸易。精神药物有可能改变一个人的意识，而麻醉药物可以减轻焦虑。印度议会于1985年11月14日通过了《NDPS法》。尽管如此，这些类型的药物在医学实践中仍然很重要。因此，该法载有关于种植大麻，罂粟和古柯种子以及生产用于医疗目的的某些精神药物的规定。该法案的主要目标是规范麻醉药品和精神药物的制造，所有权，销售和运输。该法令禁止销售近200种精神药物，从而导致公众无法通过柜台购买这些药物。这些药物仅可用于处方。违反该法律可能会导致监禁或罚款，或两者兼而有之，具体取决于犯罪的严重程度，这取决于当前情况的严重程度。如果毒品是为了个人利益而使用，则可以将罚款降到最低。此外，该法规自制定以来已进行了数次修订。

**关键字** 《麻醉药品和精神药物法》；《NDPS法》；《麻醉药品和精神药物》；印度的药物使用处罚；印度的药物成瘾治疗计划

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**خلاصة**

للسيطرة على المخدرات وحظر ، NDPS تم سن قانون المخدرات والمؤثرات العقلية ، أو قانون حيازتها ، وتوزيعها ، وبيعها ، واستيرادها ، والاتجار بها في الهند. تمتلك المؤثرات العقلية القدرة على تغيير وعي الفرد ، بينما تخفف العقاقير المخدرة من القلق. أقر البرلمان في 14 نوفمبر 1985 . ومع ذلك ، فإن هذه الأنواع من الأدوية مهمة في NDPS الهندي قانون ممارسة الطب. وبالتالي ، يتضمن القانون أحكاما تتعلق بزراعة القنب ، والخشخاش، وبذور الكوكا ، وإنتاج بعض المؤثرات العقلية المستخدمة للأغراض الطبية. الهدف الأساسي للقانون هو تنظيم تصنيع المخدرات والمؤثرات العقلية وملكيتها وبيعها ونقلها. يحظر القانون بيع ما يقرب من 200 دواء من المؤثرات العقلية ، مما يؤدي إلى تعذر الوصول إلى هذه الأدوية بدون وصفة طبية لعامة الناس هذه الأدوية متاحة فقط للاستخدام بوصفة طبية. يمكن أن تؤدي انتهاكات هذا القانون إلى عقوبة الحبس أو الغرامة ، أو كليهما ، اعتمادا على خطورة المخالفة ، والتي تحددها خطورة الموقف المطروح. إذا تم استخدام الأدوية لمنفعة شخصية ، فيمكن تقليل العقوبة. علاوة على ذلك ، تمت مراجعة التشريع عدة مرات منذ إنشائه.صة.

**الكلمات الدالة:** المخدرات والمؤثرات ، NDPS قانون المخدرات والمؤثرات العقلية ، قانون العقلية ، عقوبات تعاطي المخدرات في الهند ، برامج علاج إدمان المخدرات في الهند

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**Neeru Mittal**, B.Com (Hons.) (gold medallist), LLB (gold medallist), LLM, UGC-Net, is pursuing a PhD from Guru Nanak Dev University. She is an Assistant Professor at the School of Law, Lovely Professional University and has a keen interest in research. Her focus areas for research are constitutional law, criminal law and business laws, with focus on gray areas of listed specialization.

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