

DRUG ABUSE LAWS IN INDIA AND USA– A COMPARATIVE ANALYSIS

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Introduction

Drug abuse is a severe communal problem that is growing and an ever increasing number of youth becoming addicted by it. The smuggling and illegal trafficking of narcotic drugs and psychotropic substances into India have led to drug addiction among a large section of the community, particularly the adolescents has assumed serious and alarming magnitudes in the recent years. Drugs have numerous impacts as it may control the body and mind of individual consumers, the drug crop and drug cartels may control farmers, illicit trafficking and related crime may control communities thus undermining sustainable human development. *Drugs affect all sectors of society; in particular, the young people.*¹ Physically the most major impact of drug abuse is on the communication system of the human brain, which inevitably affects every other aspect of life of the person addicted. They disturb the ways in which nerve cells send, process and receive information. In light of this statutory control over narcotic drugs are exercised in form of international as well as national regulations.

Defining Drug Abuse

According to the plain dictionary meaning drug abuse means “the habitual taking of illegal drugs”². In other words it refers to the habit of regular intake of illegal drugs characterized by misuse of drugs. There is a thin-line of difference between Drug abuse and addiction. In case of drug abuse, the person may or may not be addicted to these harmful drugs. However, in case of drug addiction, the person is severely addicted to these drugs. Thus, drug abuse may often lead to drug addiction.³

The World Health Organization refers drug abuse as, “*Substance abuse*” that refers to the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs. Such Psychoactive substance use leads to dependence syndrome - a cluster of behavioral, cognitive, and physiological phenomena that develop after repeated substance use and that typically include a strong desire to take the drug, difficulties in controlling its use, persisting in its use despite harmful consequences, a higher priority given to drug use than to other activities and obligations, increased tolerance, and sometimes a physical withdrawal state.⁴

International law on the issue:

A vast body of international law in the field of narcotics control has evolved. For e.g. the Universal Declaration of Human Rights, 1948⁵ and the International Covenant on Economic, Social and Cultural Rights 1966,⁶ reflect the concern of the international community for the protection of the individual's right to the enjoyment of the highest attainable standards of physical and mental health. The other International Conventions which prompted the legislation were the Single Convention on the Narcotic Drugs 1953, the Protocol amending the said Convention and the Convention on Psychotropic Substances 1971. The Government of India being party to these treaties and conventions which entail several obligations which are not covered or are only partly covered by these Acts. Since most of the countries around the globe are a part of the present international drug control mechanism, it can be declared that the international efforts in controlling the drug menace have paved the way. The international mechanisms have acted like a catalyst, in the sense that they have been helpful in the formation of national level policy and regulatory frameworks. There is now a certain degree of uniformity around the globe regarding how various nations look at and approach the problems related to narcotic drugs and psychoactive substances.

Drug related Legislations in India and USA

The history of statutory rulings regarding controlling the misuse of drug began in 1930 with the adoption of Dangerous Drugs Act to control and regulate drugs derived from poppies, hemp, and coca. The Act intended to regulate cultivation, sale, possession, manufacture, and trade of drugs obtained through these products and unlicensed activities were penalized.⁷The Drugs and Cosmetics Act of 1940⁸was also introduced for regulating the medical use of drugs such as cannabis and opium, however, the Dangerous Drugs Act stood strong. Post-independence, with the adoption of Constitution of India in 1950, all laws came under its purview, though the anti-drugs laws posed as problematic on the grounds of being against the freedom of trade and occupation of the cultivators. Nevertheless, the Courts supported India's international anti-drugs commitments as justified by the restrictions laid down under the constitutional provision.⁹ Also provision under Article 47 of the Constitution implies that the State shall endeavor to prohibit the use of drugs except for medicinal purposes.

The Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 prohibits, except for medical or scientific purposes, the manufacture, production, trade, use, etc. of narcotic drugs and psychotropic substances. This Act consolidates the former Acts, viz. the Opium Act 1857, the Opium Act 1878 and the Dangerous Drugs Act, 1930. The NDPS Act lays down the procedure to be followed in case any search or seizure is to be done. Procedure for arresting a person in relation to an offense In the NDPS Act is also provided for.¹⁰But the norms of investigation and permissibility of evidence are interpreted in such a way that they are prejudicial to the cause of the accused.¹¹The NDPS Act also incorporates provisions designed to implement India's obligations under various International Conventions.¹² In order to give effect to the statutory provisions relating to these substances, an order, namely the N.D.P.S. (Regulation of Controlled Substances) Order, was promulgated by the Government of India in 1993 to control, regulate and monitor the manufacture, distribution, import, export, transportation etc., of any substance which the Government may declare to be a 'controlled substance' under the Act. It can be said that the NDPS Act is essentially a punitive and punishing statute, it also contains a regulatory framework. The Act gives authority to the Central and the State government to frame rules in relation to drug-use activities.¹³ The regulatory framework also paves a way for supply of opium, to registered users, for medicative purposes.¹⁴

Thus Indian statutory regime covers drug trafficking, drug related assets as well as substances which can be used, in the manufacture of narcotic drugs and psychotropic substances. Some further amendments were incorporated in the NDPS Act in 2001, mainly to introduce a graded punishment.¹⁵ The threshold was provided through a Central Government notification in October 2001.¹⁶ The recent 2014 amendment included new category of essential narcotic drugs¹⁷. Under the provisions of NDPS Act the Courts can award death sentence in the case of certain repeated offense involving large quantities of drugs.¹⁸ The death penalty was made mandatory through the 1989 amendment, but the range of offenses in which death penalty could be awarded was narrowed down in 2001. And through the 2014 amendment, the death penalty was made discretionary and an alternative punishment of 30 years of imprisonment was introduced. Also Drug traffickers can be detained to prevent their illicit traffic through an executive order issue under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.

The other administration regarding controlling of drugs and related aspects are dealt by various other institutions such as the matters pertaining to Prevention of Alcohol and Substance Abuse are

handled by the Ministry of Social Justice & Empowerment (MSJE). It has also been implementing a Scheme for Prohibition and Drug Abuse Prevention since the year 1985-86. The Ministry of Health, which is responsible for all health issues, runs several drug de-addiction centres in the Government hospitals across the country. The Narcotics Control Bureau, under the Ministry of Home Affairs, coordinates actions by various functionaries (Central and State) under the NDPS Act. The State Governments also have their own Health Departments and Social Welfare Departments each of which has its own set of activities relating to Drug Demand Reduction.¹⁹

Other laws include which indirectly have a control on drugs are the Poisons Act, 1919, the Drugs and Cosmetics Act, 1940, Pharmacy Act, 1948, the Drugs and Magic Remedies Act, 1954, the Prevention of Cruelty to Animals Act etc. Also India is party to three United Nations Conventions viz. Convention on Narcotic Drugs, 1961; Convention on Psychotropic Substances, 1971 and Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.

The regime of drug control in the US begins with the Pure Food and Drug Act, 1906, which regulated labeling of products containing certain drugs including cocaine and heroin. This was further extended with the Harrison Narcotics Tax Act, 1914, for regulating opiates and cocaine. Then came the Marijuana Tax Act in 1937, providing taxation of marijuana; Convention on Narcotics Treaty, 1961, to control marijuana; and Controlled Substances Act, 1970, for scheduling list for drugs. The Controlled Substances Act, 1978 of US follows the Single Convention's lead in granting a public health authority a central role in drug scheduling decisions, including a provision mandating that federal authorities control all drugs of abuse at least as strictly as required by the Single Convention. The U.S. Psychotropic Substances Act, 1978 provides various classifications of psychotropic substances. The Anti-Drug Abuse Act, 1988 established the Office of National Drug Control Policy in the United States.

Enforcement agencies in US and India:

The US Bureau of International Narcotics and Law Enforcement Affairs (INL) was established to reduce the entry of illegal drugs into US and to minimize the impact of international crime on the States and its citizens. It manages the Department of State's Narcotics Rewards Program in close coordination with the Department of Justice, Department of Homeland Security, Immigration and Customs Enforcement (ICE), the Drug Enforcement Administration (DEA), Federal Bureau of Investigation (FBI), and other interested U.S. agencies. The Drug Enforcement Administration (DEA)²⁰ acts as a single federal agency to enforce the federal drug laws and to coordinate with the government's drug control activities.²¹ The DEA is headed by an Administrator of Drug Enforcement appointed by the President of the United States and confirmed by the U.S. Senate. The Administrator is assisted by a Deputy Administrator, the Chief of Operations, the Chief Inspector, and three Assistant Administrators. The other empowered agencies in US are the U.S. Coast Guard, U.S. Customs and Border Protection, U.S. Department of Homeland Security, U.S. Department of Agriculture, U.S. Department of Defense, U.S. Department of Justice, U.S. Marshals Service, U.S. Secret Service and World Justice Information Network.

Various institutions and services of the Government including the Narcotics Affairs Section (NAS), U.S. Embassy in Guatemala and other stations, National Criminal Justice Reference Service (NCJRS), National Institute on Drug Abuse (NIDA), National Institutes of Health, Substance Abuse and Mental Health Services Administration (SAMHSA), U.S. Department of Health and Human Services. They play a vital role in the drug control. For example, the National Institute on Drug

Abusefulfills the function of limitation on production and distribution. NIDA administers a contract with the University of Mississippi to grow a 1.5 acre (6,000 m²) crop of cannabis every other year; that supply comprises the only licit source of cannabis for medical and research purposes in the United States. The US laws and enforcement agencies are well equipped and developed with the proactive stages of combat.

Whereas in India the administration in this regarding lays with the Department of Revenue; the Ministry of Finance and the Ministry of Home Affairs. Various enforcement agencies under the Central Government namely the Border Security Force (BSF), Customs & Central Excise, Revenue Intelligence, Central Bureau of Narcotics and the central Economic Intelligence Bureau are involved in the administration of the NDPS Act. The agencies formed under the NDPS Act to effect seizures of drugs are Narcotics Control Bureau,²² Directorate of Revenue Intelligence, Directorate of Revenue Intelligence, State Police, State Excise and Central Bureau of Investigations. And the other empowered agencies under the Customs Act, 1962 to prohibit drugs include Coast Guard, Border Security Force, Indo-Tibetan Border Police, and Central Reserve Police Force.

Further in India the National Academy of Customs Excise & Narcotic (NACEN) is the apex institute of Government of India for capacity building in the field of indirect taxation. The Government of India has entrusted NACEN the responsibility of knowledge exchange, experience sharing and training with various countries of the world. It imparts training to officers of various countries in the field of customs, drug laws and environment protection. In collaboration with United Nations Office on Drugs & Crime (UNODC), NACEN is imparting training on drug law enforcement to various Asian nations

Conclusion

The societal cost of drug abuse is gradually increasing in India as it has been a country with long-standing, culturally-ingrained practices of using plant-based psychoactive substances (like opium and cannabis products). Also India is the single largest producers of licit opium in the world and is surrounded by the regions with the large illicit production and use of opium.

Though India being a signatory to international conventions related to drugs abuse and control, there has not been enough gains in terms of reducing the negative health, social and economic consequences of drugs. On the aspect of rehabilitation, the apathy and redundancy of the NDPS Act has been writ large. The inadequacy of accompanying institutional mechanisms – in terms of training of the judiciary, essential rehabilitation systems, etc. has rendered the reformatory objective of the statute nugatory. This, coupled with the problematic implementation of the legislation by multiple authorities and the absence of government established rehab programmes, has hindered effective implementation of the statute. The Act has not only been excessive and abusive, but has also cast a huge burden on the criminal justice system because of its structural defects. If the government is serious about reforming the criminal justice system, reform of the NDPS Act is a necessary first step.²³

On the other hand US being one of the most developed countries in the world, has a deep rooted approach towards the hazards of drug. Unlike India, it has numerous agencies entrusted with the control with a detailed plan and outlook over the abuse. US provide institutional level control at higher efficient methods of control. In India, the control is exercise mainly by the Bureau and no other institution is directly involved or created. Hence, India needs to understand the implications made by the US Agencies in its society through its actions and policies and opt for a better administration and control over the drug abuse.

(Endnotes)

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- 1 Note on the Theme for 'International Day Against Drug Abuse and Illicit Trafficking' 26 June 2009 Narcotics Control Bureau Govt. of India available at <http://narcoticsindia.nic.in/demand-reduction.php?id=1> last seen on 07/12/2016
 - 2 Definition of drug abuse in English, Available at https://en.oxforddictionaries.com/definition/drug_abuse last seen on 28/11/2016
 - 3 Aditi Chopra, *Drug Abuse and Addiction in India (Causes and Remedial Measures)*, On April 22, 2015 Available at <http://www.importantindia.com/15493/drug-abuse-and-addiction-in-india/> last seen 26/11/2016
 - 4 WHO, *Substance abuse* Available at www.who.int/topics/substance_abuse/en/ last seen on 01/12/2016
 - 5 Article 25 of the Universal Declaration of Human Rights, 1948 available at <http://www.un.org/en/universal-declaration-human-rights/> last seen 05/12/2016
 - 6 Article 12 of the International Covenant on Economic, Social and Cultural Rights, 1966 Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 available at <http://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf> last seen 06/12/2016
 - 7 The Dangerous Drugs Act, 1930 (Act 2 of 1930). See sections 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 available at <http://lawmin.nic.in/legislative/textofcentralacts/1930.pdf> last seen 05/12/2016
 - 8 The Drugs and Cosmetics Act, 1940 (Act 23 of 1940) available at <http://www.cdsco.nic.in/writereaddata/drugs&cosmeticact.pdf> and http://www.prsindia.org/uploads/media/1188536330/bill145_20080430145_THE_DRUGS_AND_COSMETICS_ACT_1940_with_2005_amendments.pdf last seen 05/12/2016
 - 9 **Balley Singh v State of Uttar Pradesh and Ors AIR 1967 AI 341**, where the Allahabad High Court cites a decision of the Supreme Court of India dated 17/2/1956, where a challenge to the Opium Acts and the Dangerous Drugs Act on the grounds of Article 14 (right to equality before law) and Article 19(1)(g) (right to freedom of trade and occupation) was rejected.
 - 10 Sections 41, 42, 43 and 50, NDPS Act, 1985 available at <http://cbn.nic.in/html/ndpsact1985.pdf> last seen 03/12/2016
 - 11 **Raj Kumar Karwal v Union of India (1990) 2 SCC 409 and Kanhaiyalal v Union of India (2008) 4 SCC 668**. In both the cases, the Indian Supreme Court, in a departure from the settled position on the law on evidence, made confessions to drug law enforcement officers admissible as evidence
 - 12 Certain significant amendments were made in the Act in 1989 to provide for the forfeiture of property derived from drug trafficking and for control over chemicals and substances used in the manufacture of narcotic drugs and psychotropic substances.
 - 13 Subjects on which the central government can make rules are delineated in sections 9 and 76 while the state governments' powers are laid down in section 10 and 78 of the NDPS Act, 1985
 - 14 Section 10 (1)(a)(vi), NDPS Act., 1985
 - 15 See Section 2(xxiii), NDPS Act, 1985
 - 16 Notification S.O 1055(E), dated 19th October 2001 published in the Gazette of India, Extra., Pt II, Sec 3(ii), dated 19 October 2001 available at <http://www.cbn.nic.in/html/qtynotif.PDF> last seen 01/12/2016
 - 17 Section 2 (viii), NDPS Act, 1985
 - 18 Section 31A, NDPS Act, 1985
 - 19 Constitutional and Legal Provisions in India against Drug addiction, December 22, 2014 <http://www.gktoday.in/constitutional-and-legal-provisions-in-india-against-drug-addiction/> last seen 28/11/2016
 - 20 The DEA was established on July 1, 1973, by Reorganization Plan No. 2 of 1973.
 - 21 The Bureau of Narcotics and Dangerous Drugs (BNDD), the Office of Drug Abuse Law Enforcement (ODALE), and other federal offices merged to create the DEA.
 - 22 In order to achieve the coordination of the multiple disciplines, Narcotics Control Bureau was created under the authority the NDPS Act, by a Government notification of 17.3.1986.
 - 23 NehaSinghal and Sakshi, *India's Anti-Narcotics Law is in Urgent Need of Rehab*, on 26/01/2016, The Wire available at <http://thewire.in/19907/indias-anti-narcotics-law-is-in-urgent-need-of-rehab> last seen on 05/12/2016