

A CRITICAL STUDY ON LAW ENFORCEMENT ON NARCOTIC AND PSYCHOTROPIC SUBSTANCE AND ITS ILLICIT TRAFFICING IN INDIA.

Rakesh Kumar

Student

Law College Dehradun, Uttranchal University.

ABSTRACT

This article talks about the impact of drugs over society and people. In this article we will discuss about the side effects of drugs and government made law over narcotic and psychotropic substance and its illicit trafficking in India. The Narcotic Drugs and Psychotropic Substance Act¹, 1985 authorize inflexible minimum punishment of harsh imprisonment of 10 years and fine of rupees one lakh, for almost all offences which relate with drugs. And the act was modified for the cause to impose death punishment for repeat offences. The Narcotic Drugs and Psychotropic substance Act came into force to detain persons involving in drugs trafficking. After all these measure taken by government, people are involving in all activities related with dugs offences.

"The harm from drugs is too large to contravene

We must proceed now to save our society."

Drug abuse is an age old phenomenon traditionally viewed as a form of victimless crime as drug abusers often face stigmatization from the society and the legal structures which is turn impacts their welfare and health. Therefore, the stigma, and the discriminations caused by it often lead to violations of human rights of the drug abuser which are rarely questioned.

A drug is any biological substance, synthetic or non-synthetic, that is taken primarily for non-dietary needs. It is usually synthesized outside an organism, but introduced into an organism to produce its action. That is, when taken into the organism's body, it will produce some effects or alter some bodily functions (such as relieving symptoms, curing diseases or used as preventive medicine or any other purposes).

The history of drugs illuminates the history of humanity and explores the long relationship between mankind and mind-altering substances. Use of drug is as old as the history of mankind. Almost all primitive and modern societies seem to have used some mood modifying drugs; and in some cases, it was only alcohol. Alcohol was made, drunk, and used to excess as far back as memory and records go. Tobacco(Nicotine),hemp(Cannabis Sativa),opium poppy(Papaver Somniferum) and other plants containing drugs have been chewed and smoked almost as long as alcohol and coffee has been served in the Middle East.

The use of the cannabis plant for a variety of purposes has long existed in India (Charles et al, 2004).

In India and Nepal, the use of cannabis appears to be linked to religious festivals like Shivratri, Krishna Asthami (birth of Lord Krishna) and participation in bhajan sessions. Indeed occasions like Holi (the festival of colors) are not complete without the sharing of bhang - a drink made with cannabis. Prior to smoking cannabis, the sadhu

praise their lord and take it in his name, a pattern of consumption seen also among lay followers.

Opium has also been used for socio-cultural reasons in different parts of the country (chopra et al,1990), with medicinal use being more prevalent than cultural use, like that seen among the Rajputs in Rajasthan and Gujarat.

The use of dependence producing drugs in India also has long traditional and social roots. Near the end of the nineteenth century, it was realized that cocaine was being used in certain parts of the states of Bengal and Bihar for its euphoric effects. The habit spread to large towns such as Calcutta and others. The habit appears to have spread along the main rail routes to northern India.

To avoid confusion caused by various contradictory definitions and to reflect more accurately the medical uses and mechanisms of action of this class of drugs, the term “narcotic” has largely been replaced in recent medical literature by the terms opiate (a preparation of opium or compounds derived from opium) and opioid (a non-opium compound with a mechanism of action similar to that of opium). A further uniformity of usage is being achieved through the tendency of researchers to use only opioid even where opiate would be technically correct.

Narcotics are clinically used in treatment of pain, cough and diarrhea. They produce a general sense of well being by reducing tension, anxiety and aggression. These effects which are useful therapeutically are also the reason for their abuse. Unwanted effects of use of the narcotics are drowsiness, apathy, inability to concentrate, lessened physical activity, dilation of subcutaneous blood vessels causing flushing of face and neck, constriction of the pupils, constipation, nausea, vomiting and respiratory depression. With repeated use of narcotic drugs, tolerance and dependence develops. Tolerance is characterized by a shortened duration and decreased intensity of analgesia, euphoria, sedation.

A “psychoactive drug” is a chemical substance that acts primarily upon the central nervous system where it alters brain functions, resulting in temporary changes in perception, mood, consciousness and behavior. This drug may be used recreationally to purposefully alter one’s consciousness; as entheogens for ritual or spiritual purposes; or as medication. The expression “psychotropic substance” is derived historically rather than pharmacologically in its connotation.

In India, Narcotic Drugs and Psychotropic Substance Act, (NDPS) 1985 criminalizes trafficking, storage and consumption of drugs making the drug abuser a victim to the drug making the drug abuser a victim to the drug and an offender against law. Like in case of any other offense, police are the first point of contact. After being booked under the NDPS Act, the victims (offender) are produced in court and are released on bail or with minimum imprisonment. The increase in prison population of drug abusers, the recidivism rates of people being booked under NDPS cases and the case load of cases on the police indicates the failure of criminalizing a drug abuser as a solution to the issue of drug addiction.

However recent neo-liberal criminologists are attempting to shift this view of drug abuse being a form of victimless crime by delving into the manifestations of neglect, death and killing associated with drug addiction to explain immediate, peripheral and secondary harm to not justify the shift. In the present scenario, the disorder of drug abuse has spread its barbell in almost every sphere of society and has large effect over the societies, which it has been most unrestrained. Reason behind the problem of drug abuse viewed most as comparison to other social problem because it is irretrievably related with other offences which are ordered crimes, human trafficking, money laundering, as well as health problem like, HIV-AIDS. In ancient time people used cannabis and opium for social, spiritual, or medical purpose. The seriousness of problem can be measure by the statistics released by the National Crime Record Bureau² which shows that the worth of narcotics is 19.50 crore in 2009 and 17.28 crore in 2010 seized by respected authorities. The problem becomes the weightier in the states of Punjab and Manipur

where users of narcotics are more as compare to other states , where approximate 19000 to 28000 drug user exist respectively.

An overview of law in India related with drug abuse

The origin of law related with drug control found back to the Opium Act 1857³. This law followed by Opium Act 1878 and the Dangerous Drugs Act of 1930. These laws were made to control and to detect the certain drugs in limited contexts, they were not establish on any well defined theory and did not hold any ubiquitous allocations to engage with the problem relating to drug abuse in universal way. At that time punishment of offence related with drugs or narcotics for first time offender was three years imprisonment and for repeat offender punishment was four years imprisonment. In the post world war 2 phase, countries started working jointly on sanctioning human rights implement that were made to permit individuals inhabit with nobility and recognition. The unambiguous deceleration of this general concept of conditions of health can be establish in Article 25 of the Universal Declaration of Human Rights ⁴ and Article 12 of the International Covenant on Economic , Social and Cultural Rights⁵ which search to encourage the highest achievable standards of physical and mental health . In classification of narcotics control law at international level to generate the target of all treaties, and the National Drugs Psychotropic Substance Act 1985, made by the Government of India. The Act is broadly regarded as forbidding law which found to engage with two kind of wrongdoing. The Act is broadly regarded as forbidding law which found to engage with two kind of wrongdoing. Smuggle of illegal material in other words, cultivation, manufacture, and sale as well as their consumption.

Evolution of Specialized Courts

When the NDPS Act was on its early stage, cases were involve to the crime were describe in the Act and allocated with by Conventional Sessions Court ⁶. However this further makes worse the problem of judicial exhaust which afflicted Indian courts for decades. In the series of this complication, the Government of India made an amendment in NDPS Act in 1989 cover the way in formation of specialized courts to deal with crime mentioned in this Act. Section 36 of the Act, empowers the government to setup as many specialized courts as it deems fit for the expeditious resolution of disputes ⁷. The special court include a single judge who may appointed with the simultaneity of the chief justice of concerned High Court and who must be sitting session judge or additional session judge at the time of his appointment. A special court has the same power as the same magistrate have when cases are forward to it. The special court authorized to lay hold of knowledge of any crime under the act on the ground of report submit by appropriate police authority or any complaint made by any officer in central or state who are authorize to make complaint under this act. And special court play important role in enactment of NDPS Act, they have not been able to succeed effective policy for struggling methodical challenges that came in front of many courts in India. For example, although Mumbai has 8 special court but cases come after 2 to 3 years for trial.

An overview of Crime index and legal sanctions

The allotment of punishment under NDPS Act depends on the quantity of drugs which can further divided into three categories are as following: minor use of drugs, below from commercial use of drugs and, commercial use of drugs. As consequence, the punishment can given by government depends on the quantity of drugs, imprisonment for one year when less amount of drugs used and imprisonment for twenty years when drugs may used for commercial use. And the quantity of drugs decides by the Central Government.

Section 8 of NDPS Act mainly forbid the cultivation of opium, poppy, cannabis, or coca plants and also production manufacture, distribution together with ware housing, purchasing, selling and transport of banned drugs by government and psychotropic material. It also deters their financing and consumption of drugs by

entertaining criminal under the Act. And according to section 19 of this Act, any farmer who plough opium on his land in compliance with a licence but misappropriate it shall be punished for imprisonment may extend 10 to 20 years and also liable to pay fine which may extend Rs. 1 to 2 lakh.

Procedural safeguards in NDPS Act

Although NDPS Act have many powers to law execution agencies to mute down the wrongdoer connected with drug abuse and it also have power to provide protection to innocent civilians from being harassed . Any officer who is making arrest or seizure, bound to make detailed report including all relevant information. Correspondingly in section 100 of CRPC states that any police officer who wants to search any person who is believed to be hiding something doubtful must to do so only in the presence of at least 2 respectable residents of that locality including the written statement along with the signature. Section 55 of NDPS act gives duty to officer to keep accused in safe custody. Section 50 of this act gives right to accused to search in presence of magistrate.

State of Punjab v. Balbir Singh 1994 AIR 1872 ⁸, in this case Supreme Court held that the police officer should inform the accused about his rights. And section 58 of this act obtrudes strict punishment on people who are making inconvenient or non serious complaints.

Access to medicinal drugs

Although Act deter the use of drugs but in exception, it may used on all relevant purposes like, medicinal or scientific purpose. But it allows the use of narcotic drug in health institution for the benefit of patients. The red-tapes involve in issuing licence for short period makes difficult for medical institution to removing the pain of patients. After the 2014 amendment, every hospital which wants to take licence to use narcotic drugs for benefit of patients would be grant the status of Recognized Medical Institution(RMI). It seeks to create a new category for narcotic drug which controlled by Central Government.

Rehabilitation of drug addicts

One more area where law got heavy criticism by society to the less attention towards drug users who need more care and special treatment. The law on focuses to deter the supply of drugs, but after 2014 amendment, it pursue to build up existing provisions concerning to the organization and treatment centres for addicts. The amendment basically concentrates on the way of certification of treatment centres by appropriate authority, i.e. Central Government. Treatment centre require acquiring Global best practices and harming reduction techniques in sequence to allocate with this problem in aggregate manner.

Conclusion

Government made many laws to deter the consumption of drugs but overcoming from addiction of drugs depends on the willpower of a person but addiction consider as disease where a person can do nothing about its craving. Government made many treatment centres but government cannot force someone for treatment. Retribution may not be the right way to deter any offence, may be person can stop himself for sometimes but , rehabilitation could effective to deter a person from wrong doing it works slowly but consequences remains for always. A person who consumed drugs or narcotics needs special care and treatment not any trepidation.

“Drugs habit cannot be rehabilitate,

If the trepidation of consuming,

Drugs is greater than the,

Desire to quit doing drugs.”

Footnote

1. The Narcotic Drugs and Psychotropic Substance Act, 1985.
2. National Crime Record Bureau
3. Opium Act, 1875
4. Article 25 of the Universal Declaration of Human Rights.
5. Article 12 of the International Covenant on Economic, Social, and Cultural Rights.
6. Conventional Sessions Court.
7. Section 36 of the Act, empowers the government to setup as many specialized courts as it deems fit for the expeditious resolution of disputes
8. State of Punjab v. Balbir Singh 1994 AIR 1872

