

Full Length Research Paper**Illicit Drug Promotion: Legal Responses in Global and Inland Domain****Gaurav Kataria***Assistant Professor, School of Law, WU, Nekemte, Ethiopia***Abstract**

Today drug abuse problem has started spreading in an epidemic form. The entire community is facing the problem of drug abuse and is fighting the menace in a gigantic form without a proper shield to protect itself. If this epidemic has to be disintegrated, it must be counteracted immediately. To avoid the misery and devastating effects of drug abuse and drug-addiction the problem should be uprooted completely.

Keywords: *Narcotic Drug, Illicit drug trafficking, NDPS Act, Drug abuse, Drug conventions*

Introduction

“Drugs are not child’s play” and even it’s not a play for adults. It cannot be playful for any human being. But unfortunately the abuse of dangerous Drugs has become a vital problem of this era. India and other Asian countries like Pakistan, Afghanistan, and Bangladesh have become transit point of illicit drug trafficking (www.indopia.in/India-usa-uk-news/latest-news/476591/Editorial/18/20/J). Abuse of drugs is a social evil, which destroys not only our society but also adversely affects the economic growth of the country. Illicit trafficking of drugs is increasing in south Asian countries day by day. The generated money is used for various anti-social, anti national and terrorist activities. Drugs, which are mostly abused, are cannabis, opium, cocaine, nicotine, caffeine, alcohol, etc. (South Asia Drug Demand Reduction Report, Revised Edition 2000 UNDCPROSA). Swanson have quoted drug trafficking as a demographic disaster. Niklas Swanson, Director, Contemporary Silk Road Studies, Sweden’s Uppsala University said “It is a demographic disaster, or at least has the potential of being a demographic disaster, since it affects mostly young people, We don’t see any new economic trades coming out because why should you start focusing on something that would earn you \$100 when you can get \$1,000 for smuggling drugs?” (<http://www.rferl.org/content/article/1053454.html> as visited on 4 April, 2014). Contemporary international drug policy seeks to control both the demand and supply of drugs through the criminalization of production, trafficking and use. Furthermore, adherence to the United Nations drug control conventions ensures that most nation states adopt a similar prohibition-oriented approach when formulating national drug control legislation. All these drugs have been used since ancient period in India these are associated with social ritual, religious beliefs and socio-economic conditions. The intoxicating properties of certain cannabis preparations were known in India more than 2000 years ago .the reference to this fact can be read atharva veda, a religious text (2000-14000BC). A number of Hindu saints took cannabis to overcome hunger and thirst that help concentration during meditation, cannabis in the form of drink is offered in some Hindu temples. Large quantities of drugs are consumed in the holy cities of India such as Haridwar, Varanasi, Puri, Mathura and Vrindaban. Habitual uses of opium became popular during the Mughal period (16th century). Later opium eating replace by smoking as a habit. India’s independence brought total prohibition of the open sale of opium. Other acts like customs Act, 1962, NDPS Act, 1985 had been passed to control narcotic drug abuse. The lead NDPS Act was amended in 2001 and after 13 years the act is again amended recently in March 2014. In spite of these Acts and other legal provisions in India and neighbor countries, the system is unable to prevent the drug abuse and illicit trafficking. Historical evidences revealed that until the end of 19th Century, the question of narcotic drug was not widely regarded as an international problem, calling for concentrative action on the world-wise scale. The worldwide control of narcotic drug and psychotropic substances rests upon the multilateral treaties concluded between 1911 and 1987. The operation of the international system is based on national control by individual, states within the limits of their jurisdiction. The compliance with the stipulation of the narcotics treaties, the states are bound to adopt appropriate legislation, introduced necessary administrative and enforcement measures and cooperate with international control organs as well as with other countries

Drugs are pharmaceutical preparations. The nature of drug is very important key factor to increase the drug abuse. The reason is that the chemical nature of drug is very much responsible for drug addiction. Therefore, classification of drugs on the basis of chemical nature of drug is essential to discuss here. Furthermore, it is appropriate to mention that when use of drug is treated as abuse and how abuse is converted into drug addiction. A drug is a pharmaceutical preparation or naturally occurring substance which is used primarily to bring about a change in physiological and psychological and bio-chemical properties of the body that alter the physical and mental functioning of an individual. A drug may or may not have medical uses. Its use may or may not have medical uses when used to cure an illness, prevent a disease or improve health condition. It can be termed as proper use of drug. Drug medically

prescribed includes anti-biotic, tranquilizers and painkillers. When a drug is taken for reasons other than medical in such quantity, strength, frequency or manner, which damages physical or mental functioning of an individual, it becomes its 'abuse'. Drug abuse is

- (i) Taking drug without medical reasons,
- (ii) The method, quantity and frequency, in which, it is taken, leads to physical, emotional and sociological problems.

Drugs with medical uses can be abused when it is taken in too much quantity, too often than required, for too long a period, for wrong use like taking cardiac, an anti-epileptic, for seductive effect, or in wrong combination like taking barbiturates with alcohol to get more kicks (R. Thilagaraj and S. Latha, "Drug Abuse in India: An overview", 2003). Illegal drugs like brown-sugar and Ganja have no medical use and their use is there for recreational as drug abuse. Many drugs, which are legitimately used for medical purposes, are also used some times for purposes not really legitimate or proper. The drugs with which we are concern here are the substance, which have psychoactive as mind-altering properties. (Abelson H. and Fishburne, P., 1976).

The international convention on drugs to which India is a signatory has classified drugs under two categories (Ray R. Extent, 2004) and the first category is Narcotic drugs. Narcotic drugs are inclusive of (i) Opium and its derivatives like brown sugar, heroin and codeine (ii) Coca-leaf, cocaine (iii) Cannabis, Cannabis resin, extracts (iv) Methadone, pethidine, leivane and the second category is Psychotropic substances and Psychotropic substances are Valium, Daizepam, Tildesie, Morphine etc. Many people are addict of using such drugs. Now the question is what the drug addiction is? Addiction means a person has no control over whether he or she uses a drug or drink. Drug addiction is a chronic, relapsing disease, characterized by compulsive drug seeking changes in the brain. Drug addiction is becoming a major health problem in India with some estimates indicating that as many as sixteen million people in India could become addicts by the end of 2008. WHO provides a good working definition of addiction or dependence, "Drug addiction or dependence is a state, psychic or some time also physical resulting from the interaction between a leaving organ and a drug, characterized by a behavioral and other responses that always include a compulsion to take the drugs on a continuous or periodic basis in order to avoid the discomfort of its absence. Tolerance may or may not be present. A person may be dependent on more than one drug" (WHO Expert Committee on Addiction-Producing Drugs, 13th report, Geneva, World Health Organization, 1964, WHO Technical Report Series, No.273).

Abused drug can be assorted by the following ways (as per Madan C. Paul):

A. Stimulant: These drugs increase the activity of the central nervous system. Examples are amphetamines like Benzedrine, Dexedrine and Methadone, Cocaine, Nicotine etc.

B. Depressants: These drugs slow down the activity of the brain. Examples are alcohol, barbiturates like secondly, hembutal and garbanol, tranquilizers like Valium and Librium.

C. Narcotics and Analgesic: These are obtained from opium as artificial substitutes that produce opium like effects. Examples are opium, morphine, codeine, heroin, brown sugar, synthetic drugs- methadone, pethidine and mepradine.

D. Cannabis: Drugs like Ganja, Hasis and Bhang are the examples of this kind of drugs. E. Hallucinogens: Drugs that distort our normal visual, hearing and senses functions are LSD (Lysergic Acid Diethylamide) PCP (Phencyclidine), mescaline and psilocybin.

The use and abuse of narcotic drug was wide spread in epoch of 20th century first attempt at international control was made in 1909 and opium abuse had its center of gravity. Reports by the UNDCP have shown that there has been a global increase in the production, transportation and consumption of opioids, mainly heroin. The worldwide production of heroin has more than doubled or even tripled since 1985. Globally, it is estimated that 13.5 million people take opioids, including 9.2 million who use heroin. In Europe heroin injectors who regularly consume large amounts of different drugs, face a risk of death, which may be 20 to 30 times higher than non-drug users in the same age range. (http://www.who.int/substance_abuse/facts/opiates/en/index.html).

Chronological Global Crusades against Drug Abuse

United Nations International Drug Control Program:

"...Let us resolve that at this special session of the General Assembly, words lead to action and that this action leads to success. Drug abuse is a time bomb ticking away in the heart of our civilization. We must now find measures to deal with it before it explodes and destroys us."

- Javier Pérez De Cuéllar under Report on Special Session of the General Assembly of UN, 1990

In 1906 a big step forward was taken with the passing of an edict in china which prohibited the cultivation of the opium poppy this was the first move toward the unlimited goal of a total ban on opium smoking. At first this met a with some success and in 1908, Great British where public feeling ran high, agree to a reduction in opium exports from India to china over an experimental period of three years provided that china reduced domestic production and imports from other countries proportionally. In 1908 also, the united state Government prohibited the use of opium in the Philippines for other than medicals purpose. The worldwide control of narcotic drugs Psychotropic Substance rests upon the multilateral treaties concluded between 1912 to 1987. The operation of the international system is based on national control by individual state within the limits of their jurisdiction. In Compliance with the stipulation of the narcotic treaties, the states are bound to adopt appropriate legislation, introduce necessary administrative and

enforcement measures and cooperate with international control organs as well as without countries. (UN and Drug Abuse Control Board of 1980, UN, New York, 1980)

The important multilateral treaties

Shanghai Opium Commission was an International commission on Opium and convened in 1909 in Shanghai. The stage was set for the first international conference on narcotic drug. This led to the signing of the first treaty three years later. Upon the initiative of the United States government under President Theodore Roosevelt, thirteen powers with interests in the Far East appointed an opium commission which met at Shanghai in 1909. The commission adopted nine resolutions dealing with various aspects of the opium problem, it urged gradual suppression of opium smoking and recommended measures intended to stop smuggling and narcotic. Especially by profiling their export to territories which did not legally admit them. Appeal was also made to the government controlling foreign concessions and settlement in China to take various measures to cooperate with Government of China, Government were also strongly urged to take drastic steps to control the manufacture and distribution of morphine and other derivatives of opium. After that in year 1912 the International Opium Hague Convention was the first International Narcotic Convention was concluded at Hague. It established international co-operation in the control of narcotic drugs as a matter of international law and the principles laid down in it have remained the basis of international narcotic control. The convention stipulated that the production and distribution of raw opium were to be controlled by law that opium smoking was to be gradually suppressed and that the manufacture sale and use of manufactured narcotic drugs i.e. of morphine other opiates and were to be limited by law exclusively to medical and "legitimate" needs; manufacturer of and traders in such drugs were also subjected to a system of permits and recording. "The members of the league should "entrust the league with the general supervision over agreements with regard to the traffic in opium and other dangerous drugs." (Article 23, the League of Nation). The first league assembly created an advisory committee on traffic in opium and leagues council in these tasks. The Geneva International Opium Convention of 19th February 1925 was a major step forward in the control of narcotic drugs. Governments were required to submit to the newly created permanent central board annual statistics concerning production of opium and coca leaves the manufacture consumption and stocks of narcotic drugs and quarterly reports on the import and export of such drugs including opium and coca leaves. It also established the system of import certificates and export authorization requiring governmental approval of each import and export. The permanent central board was established to supervise the statistical system introduced by the convention. It was composed of eight independent experts serving in their personal capacity and not as representatives of their government. The Geneva Narcotics Manufacturing and Distribution Limitation Convention 1931 The aim of convention signed at Geneva on 13th July 1931 was to limit world manufacture of drugs to the world's medical and scientific needs. It contains provisions to restrict the quantities of drugs available in each country and territory. Countries find themselves not to exceed in their manufacture and imports based on estimates of their narcotic requirements. The 1936 Geneva Convention for the Suppression of the Illicit Traffic in Dangerous Drugs The convention for the suppression of the illicit traffic in dangerous drugs which was signed at Geneva on 26th June 1936 and came into force in October 1939 calls for severe punishment of illicit traffickers. The parties to the convention undertook to enact measures to prevent offenders from escaping prosecutions for technical reasons and to facilitate extradition for drug offences. The 1936 convention was the last treaty in the field of narcotics under the auspices of the League of Nations. The commission on narcotic drug was originally composed of 15 members of the United Nations, but in 1961 the membership was increased to 21 states and in 1967, 24 were elected from among the members of the United Nations and of the specialized agencies and the parties of the single convention of the Narcotic Drug 1961.

A protocol of 1946 signed on 11th Dec 1946 transferred to the United Nations the function previously exercised by the League of Nations under the various narcotic treaties concluded before the Second World War. Paris Protocol was signed in 1948 When the pre-war international treaties on narcotics were being drawn up, the number of products, which it was necessary to control, was relatively small viz. all products of opium poppy, coca bush, and cannabis plants and those belonging to chemical groups.

Single Convention of 1961

On 30th March 1961 the conference adopted and opened for signature the single convention on Narcotic drug 1961. This convention, which entered into force on 13 December 1964, marks a major, milestone in the history of international narcotic control (See, e.g., The United Nations Convention Against Illicit Traffic in Narcotics Drugs and Psychotropic Substances, UN doc. E/CONF. 82/15, reprinted in 28 I.L.M. 493 (1989) [hereinafter Vienna Convention]. The Vienna Convention represents an international response to the awakened need for "concerted and more effective action" to harness money laundering.). The international control system, developed by a succession of conventions, agreement and protocol, had become complicated (David P. Stewart, "Internationalizing the War on Drugs: The UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances", *Denv. J. Int'l L. & Pol'y* 18, (1990) 387). The Economic and social council authorized the commission on Narcotic Drugs to draw up a new instrument commission on Narcotic Drug to draw up a new instrument which, if adopted would:

- (a) Replace the existing nine treaties;
- (b) Extend control to the cultivation of plant from which the natural drug are obtained namely opium cannabis and coca leaves; and

(c) Simplify the international control machinery (Conference for the adoption of the single convention on Narcotic drug 1961, United Headquarters, 24th January to 25th March 1961: On the basis of the third draft of this instrument drawn up by the commission, a plenipotentiary met at the united headquarters.)

Some of the provisions of the custom the single convention, such as those dealing specifically with the medical treatment and rehabilitation of addict, are quit new treaty obligation, while other such as the convention of 1925 and 1931 which had worked effectively have been continued virtually without changes. Therefore, as a result of the single convention opium smoking, opium eating, coca-leaf chewing hashish (cannabis) smoking, or the use of the cannabis plant for non-medical purposes were prohibited (Art 21A, 24, and 26 of The Single Convention on Narcotic drug, 1961).

Conventions on Psychotropic Substances, 1971

The convention on Psychotropic Substance is a major step in the extension of international drug control. The conference had resolved the difficulties arising from the heterogeneity of the Psychotropic Substance. The difficulties in the risk connected with the abuse and drug dependence producing properties of these substances and the substantial differences in their therapeutic validity have necessitated the introduction of greatly varying measures of control to be applied in the case of the different groups of psychotropic substances.

Other Drug Control Program of UNO

United National International Drug Control Programme controls illicit trafficking of drugs. The Organisation was established in 1990. The Commission is the main policy-making body concerned with international drug control within the UN System. The provisions of the international treaties on narcotic drugs and psychotropic substances attribute the specific functions to it. By virtue of the same treaties the treaties also entrust specific functions in the implementation of the international conventions to the UN Secretary General. It plays an important role in complementing the international treaty systems by financing programmes and projects aimed at supporting international and national drug control, which are executed by the Division of Narcotic Drugs and the specialized agencies of the UN family (Dr. M. C. Paul, 2003). It looks after the social reintegration of drug addicts. UNODC World Drug Report, 2008 United Nations Office on Drugs and Crime, Vienna presents a comprehensive overview of the global illicit drug situation. It provides detailed estimates and trends on production, trafficking and consumption in the opium/heroin, coca/cocaine, cannabis and amphetamine-type stimulants markets. The drug problem is being contained but there are warning signs that the stabilisation, which has occurred over the last few years, could be in danger. Notable amongst these is the increase in opium poppy and coca cultivation in 2007, some growth in consumption in developing countries and some development of new trafficking patterns. There have also been encouraging contractions in some of the main consumer markets. This year, almost one hundred years since the Shanghai Opium Commission in 1909, the Report presents an historical review of the development of the international drug control system.

UNO and Indian drug control policies

UNDCP has been active in the last few years in India supporting drug demand reduction, law enforcement activities and working with NGO's in communicating the message of drug control and prevention of drug abuse. In order to provide for better graining and qualified personnel amongst the service providers, United Nations International Drug Control Programme (UNDCP), and ILO, has taken up a number of projects, which include Community Drug Rehabilitation and Work Place Prevention Programme. Under this programme, 20 NGOs have been identified in different parts of the country with an objective to train at least 4000 service providers in rehabilitation of drugs (Chengappa, R.,1998).

The Government has also launched two major projects to be implemented in collaboration with UNDCP and ILO during the year viz. Community wide Drug Demand Reduction in India and Community wide Demand Reduction in the North-East States of India. The project has been designed specially keeping in mind the felt needs of the North-East States of the country, the border regions, the high-risk groups and the disadvantaged sections of the society. The Government has embarked upon the first ever initiative in collaboration with the UNDCP for carrying out a national survey to asses the extent, trend and pattern of alcohol and drug abuse in the country. The survey conducted by UNODC in 14 sites: Amritsar, Jamshedpur, Dimapur, Shillong & Jowai, Hyderabad, Bangalore, Thiruvananthpuram, Goa, Ahmedabad, Delhi, Imphal, Kolkata, Chennai & Mumbai. The overall objective was to describe an action plan aimed at reducing drug use and related harms (See Figure-1).

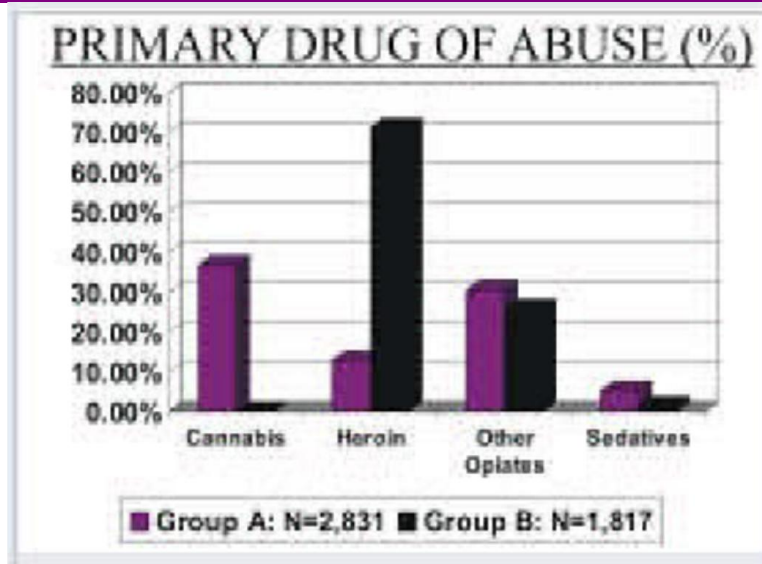


Figure-1. Rapid Assessment Survey of Drug Abuse in India (http://www.unodc.org/india/issues_glance.html as visited on 1 February 2009).

This survey provides authentic information on the actual dimension of the problem and facilitates appropriate need based interventions to address the problem of alcoholism and drug abuse in the country. Narcotics Control Division in the Department of Revenue facilitates and coordinates the functioning of Narcotics Control Bureau (Narcotics Control Bureau (NCB) acts as the nodal agency for intelligence collection, dissemination, enforcement and coordination with various Central and State enforcement organizations and international, regional and foreign enforcement agencies.) Central Bureau of Narcotics (CBN) and the Chief Controller of Factories (CCF). Department of Revenue is the nodal Department responsible for the administration of the Narcotic Drugs and Psychotropic Substances Act, 1986 (NDPS Act, 1985) and implementation of international conventions, treaties, bilateral agreements and MoUs. CBN has been primarily given the responsibility of licensing and supervising opium cultivation and thereafter, procuring opium from the cultivators. Operations against illicit ganja growth/wild growth resulted in the destruction of ganja plants over an area of 44 acres during the year 2007. During the year 2007 illicit poppy cultivation spread over 613 acres was destroyed. NCB's contribution to prevent drug trafficking and diversion of precursor chemicals into illicit channels has also been internationally acclaimed. Central Bureau of Narcotics arranged two UNDCP-funded training workshops on precursors at Colombo for operational staff from Central Excise, Custom, and State Police. CBN also organised UNDCP-funded informal consultations on precursor at Male in which Customs authorities from sensitive ports in the Southern States participated and exchanged information with Maldivian authorities.

Legal and administrative measure in India

The narcotic drug and psychotropic substances Act, (NDPS) 1985 come in to being as both the central govt. and parliament felt the need for comprehensive drug related laws prior to the passing of the NDPS statutory control over narcotic was exercised through three central enactment i.e. Opium Act, 1857, Opium Act, 1878 and the Dangerous Drug Act, 1930. A number of state laws co-existed, particularly related to cannabis. The Opium Act, 1857 was an attempt to consolidate and amend the law relating to cultivation of poppy and the manufacturing of opium (The Act provided the procedure for the cultivation of opium poppy, manufacturing of opium and matter connected there with. The stated aimed at the control of poppy cultivation by directing that all cultivators tender their opium produce to the government limits where fixed for cultivation and licenses issued. Violation or failure to comply with the provisions of the statute resulted in penalties). Opium Act, 1878 on the other hand, aims at the regulation of the possession, sale, purchase, transport, and import and export of opium providing for punishment for infringement of these provisions, with imprisonment of up to one year and a fine of Rs.1000. Power to seize opium possessed unlawfully was vested with the police and in addition with excise, revenue and other authorities. Both the Opium Acts operated simultaneously. These two Acts were mainly designed to reinforce the regulatory measures relating to cultivation of opium poppy, possession etc of opium and were the important tools in the hand of British seers to support their policies on opium. The advent of the 20th century brought with it an increased awareness of the danger of drug usage. International attention focused on the need for restricting the use of narcotic to medical and scientific purposes alone and even so within permissible limits the international movement culminated in the Opium Convention, 1925 which was implemented in India through the Dangerous Drug Act, 1930 (The preamble of the act read as follows: An Act to centralize and vest in the central government the control over certain operation relating to dangerous drug and to increase and render uniform penalties for offences relating to such operations). The enactment centralized the control of the offences and operation of the e drug like cocaine and cannabis besides opium. The private export or import was banned although licensed cultivation of poppy continued. Use, sale, possession or transportation without license was made an offence with two years imprisonment and enhanced sentence with fine on repetition of the offence equal punishment was prescribed for the use of pace, premises, vessel or vehicle. An attempt or

abatement of an offence was also punishable, the act created a presumption that an offence under the Act was also punishable. The Act created a presumption that an offence under the Act had indeed been committed and it was up to the accused to satisfactorily account for possession of any drugs. The act aimed at suppressing the contraband traffic in drug as well as putting an end to the abuse of these drugs. Penalties were increased and made uniform. The Dangerous Drugs Act 1930 made a ridicule departure in approach from the earlier Opium Acts. After independence in 1947 the control of narcotic drug becomes the responsibility of the central government. The Opium and Revenue Laws (Extension of Application) Act 1950 extended the scope of central enactments i.e. Opium Act, 1857, Opium Act, 1878, Dangerous Drug Act, 1930 to the whole of India. However due to increased drug related activity, globalization and commercialization of drug, the central enactments were found to be inadequate. The areas in which the law was found lacking are as follows:

1. The penalties under the old Act were grossly inadequate. Maximum penalties were only up to 4-year imprisonment.
2. There were no provisions or law to restrict the application of psychotropic substances
3. There was a lack of clear definition of offences.
4. There was no provision related to and specifically for drug addicts.

The penalties, offences and sanction were not deterring enough to meet the levels of organization and efficiency of drug traffickers and smugglers. The Dangerous Drug Act, 1930 prescribed no minimum mandatory sentence (Section 9 prescribes a punishment, which could extend up to 3 year, with or without fine for the commission of an offence). Since the Dangerous Drug Act 1930 a numbers of developments took place internationally, and pressure was put on India to stamp out illicit drug production, and trafficking particularly from the United States. In addition India was a signatory to various international conventions such as the Single Convention on the Narcotic Drug 1961, Convention on Psychotropic Substance 1971 and The 1972 Protocol Amending the Single Convention on Psychotropic Substances, 1988. Hence India was obliged to translate the conventions in to law. Further, an increase in addiction and changing patterns of drug use (heroin and synthetic drugs) and importance of India as leading transit point for drug syndicates (<http://www.indopia.in/India-usa-uk-news/latest-news/476591/Editorial/18/20/J> as visited on Jan. 13, 2009) Golden Triangle and Golden Crescent posed a serious threat. India did not have any kind of legislative framework to combat and control these substances.

The NDPS Act, 1985

The Narcotic Drug and Psychotropic Substances (NDPS) Act was passed in 1985 (enacted by parliament on 16th September 1985 and brought in to forces on 14th November 1985). The salient feature of this Act was its criminological approach and deterrence through stringent provisions. The Act repealed all earlier enactments and served as a clear departure from all the previous Acts. It covered the entire range of narcotic drug and psychotropic substances. It prohibited the use of the same for medicinal and scientific purpose. The Preamble of the NDPS Act makes it very clear by its verbatim as “*An Act to consolidated and amend the law relating to narcotic drugs, to makes stringent provision for control and regulation of operational relation to narcotic drug and psychotropic substances to provide for forfeiture of property derived from, or used in illicit traffic in narcotic drug and psychotropic substances, to implement the provision of the international convention on narcotic drug and psychotropic substances and the matter connected therewith*”. The NDPS act, 1985 as per section 1(2) applies to the whole of India. The NDPS Act, 1985, provides for a minimum punishment plus a fine of Rs. 100,000 extendable to 20 years rigorous imprisonment and a fine of Rs. 2, 00,000 with respect to repeated offences. The Act provides for death sentence in certain circumstances and in remaining cases, a minimum punishment of 15 years rigorous imprisonment and a fine of Rs1,50, 000, which extendable to 30 years imprisonment and a fine of Rs. 300,000.while providing for deterrent punishments for trafficking offences the act envisages leniency toward drug addictions. The person found to have illegal possession of drug in small quantity are liable to punishment up to 6 month imprisonment fine or both, which in respect of hard drug like heroin would be up to one year’s imprisonment or fine or both. However, the court is empowered to, instead of straightaway sentencing the addict convict to imprisonment, release him for undergoing medical treatment for addiction on his executing a necessary bound prescribed under the Act. The Act does not specify the term “small quantity” but it is specified by central Government vide G.O. NO.827 (E) dated November 14, 1985 as follows: (Heroin\Brown sugar\smack- 250 mgs) (Hashish or Charas 05Gms) (Opium 05 Gms) (Cocaine- 05 Gms) (Ganja-500Gms). Differentiation between a trafficker and an addict is based on a fixed quantity. If one is found in possession of a quantity less then the prescribed amount and if one is able to prove that such quantity is for personal usage then one is an addict in the eyes of the law. Offences and penalties have been created in a structured manner leaving almost no loopholes. The offences range from possession to allowing ones promise to be used for commission of an offence. The burden of proof is lies on the accused to show that he is innocent. Various provision deals with forfeiture of property derived form or used in illicit traffic. It gives the Government these powers to establish centers for identification treatment etc. of addicts. It set up a national fund for control of drug abuse.

The NDPS (Amendment) Act, 1988

On the recommendation of the cabinet committee constituted for combating drug trafficking and preventing drug abuse the NDPS Act, 1985 was amended by the NDPS (Amendment) Act, 1988 (2 of 89). The NDPS (Amendment) Act was enacted by the Parliament on 6th January 1989. The salient features of the NDPS (Amendment) Act, 1988 can be briefly stated as follows. It expands the preamble, provides for forfeiture of property derived from or used in illicit traffic in narcotic drug and psychotropic substances and for implementation of the provisions of the international convention on narcotic drug and psychotropic substances. It provides for the

constitution of a national fund for control of drug abuse which shall be a governing body and for the publication of an annual report on these activities financed by such amount by law, the sale proceeds of any property forfeited under the Act, any grants that may be made by any person or institution etc. as per Section 31-A of the NDPS (Amendment) Act, 1988. The Act provides for death penalty on second conviction in respect of specified offenders involving specific quantity of certain drugs. A new section 37 which substitutes three old sections of the principal Act provides that every offence punishable under this act shall be cognizable and non-bailable. There is another provision Section 59(2) for pre-trial disposal of seized narcotic drug and psychotropic substances which provides that any officer on whom any duty has been imposed under the act or any person who has been given the custody of any addict or any person charged with an offence under the act and who willfully aids in or connives at the contravention of any provision of the act, shall be punishable with the same punishment as that awardable to drug trafficking offenders. It provides immunity from the prosecution to an addict volunteering for treatment for deaddiction or detoxification once in lifetime. The immunity may be withdrawn if the addict does not undergo the complete treatment for the purpose. A new chapter has been provided to cover all aspects relating to forfeiture of property derived from or used in illicit traffic. This chapter inter alia prohibits holding of illegal acquired property which has been defined as property acquired from illicit traffic in narcotic drug and psychotropic substances. It provides for identification, seizure, of freezing of illegal acquired property. It further provides for setting up of offices of competent authority to deal with all aspects relating to forfeiture, to appoint officers as administrators for the management of properties seized or forfeited and an appellate tribunal for such property.

The Prevention of Illicit Trafficking in Narcotic Drug and Psychotropic Substances (PITNDPS) Act, 1988

The cabinet committee constituted for combating drug trafficking and preventing drug abuse recommended that additional legislative measures could be provided in the form of preventing detention scheme including all aspects of drug trafficking. Apart from cultivation, production, manufacture, sale, distribution, of poppy, cannabis, and coca plants, the illicit traffic would also include the abatement and conspiracy toward commission of the offences under the new Act. Cases of embezzlement of the opium produce under silence would also be covered under internal traffic. With this backdrop these provisions of the Prevention of Illicit Trafficking in Narcotic Drug and Psychotropic Substances Act (PITNDPS) 1988 have been passed in 1988. The officers specially empowered by the central and state government shall be vested with power of issue order of detention of any person with a view to issue order to detention of any person with a view to prevent him/her from any kind of drug trafficking. With a view to provide legal protection to an order to detention issued for a person invoking two or more grounds for the detention. The detention order would not be held invalid or inoperative merely by reason that the person to be detained is outside the limits of the territorial jurisdiction of the Government. Suitable provisions have also been made for apprehending and detention of the absconders or whose whereabouts are not traceable. In the case of person absconding, the Government may, by order, notify in the official or in daily national news paper, direct such person to appear before such officer at such place and time, as may be specified and if he fails to do without sufficient and reasonable cause he shall be punishable with imprisonment up to 1 year or with fine or both. All such offences under new law have been made cognizable. The law also provides for the constitution of advisor board by both the Central and State Governments.

The NDPS (Amendment) Act, 2001

The NDPS Act 1985 has again been amended with effect from 2nd October 2001. The amendment now incorporated has brought about significant change in the penal structure (*E. Michael Raj v. Intelligence Officer, Narcotic Control Bureau*, MANU/SC/7405/2008: Held that actual drugs seized will decide penalty) under the NDPS act 1985 and have made financial investigation and forfeiture of illegally acquired property more purposeful. In addition, provisions for new investigation techniques have been introduced. The amended Act provides for three categories of punishment depending on the quantity of drugs seized. Sec.2 (xxiii) defines "small quantity", in relation to narcotic drugs and psychotropic substances, means any quantity lesser than the quantity specified by the Central Government by notification in the Official Gazette. The amended Act also provides for the judicial discretion with respect to severity of punishment (*Ratan Kumar Vishwas v. State of U.P. and Anr.* MANU/SC/8237/2008). For violations relating to small quantities now imprisonment is up to six months or fine or both. Violations in respect of commercial quantities continue to attract a minimum prison sentence of 10 years, which may extend to 20 years. It shall also involve a fine of Rs. 100, 000 that may extend to Rs.200, 000. Any violations involving quantities of drugs which is more than small quantity but less than commercial quantity shall be punishable with rigorous imprisonment for a term, which may extend to 10 years and with fine (*Sami Ullaha v. Superintendent, Narcotic Central Bureau* MANU/SC/4761/2008). The property of a drug offender can be frozen at the time of his arrest without waiting for conviction or completion of period of preventive detention. The laundering of illegally acquired property has also been made an offence. The provisions of Section 50 of the NDPS Act, non-compliance of which has resulted in a large number of acquittals, have been made more flexible to cater to the real life situations where it is not practicable to take the person to be searched to the nearest Gazette Officer or Magistrate without the possibilities of the suspect parting with the drugs. Further to facilitate complete investigations and to neutralize the entire syndicate involved in drug trafficking, a provision has been made for the movement of seized drugs from one place to another within and outside the country under controlled conditions. The provisions of search, seizure etc. under sections 41 & 42 shall now be applicable for cases relating to financial investigations and controlled substance as well.

NDPS (Amendment) Act, 2014

The NDPS Act, 1985 was enacted for the control and regulation of operations relating to narcotic drugs and psychotropic substances. The Act was amended first time in 2001 and over again recently it is amended in March 2014. Apparently it is shown that the Judiciary and legislation are minimizing the distressfulness of the punishment. The NDPS Act of 1985 imposes mandatory death penalty for certain repeat crimes involving a large quantity of drugs. The Bombay High Court had read the expression “shall be punishable with death” as “may be punishable with death” in a judgment given in June 2011. The Parliamentary Standing Committee (The Department Related Parliamentary Standing Committee on Finance submitted its 50th Report on ‘The Narcotic Drugs and Psychotropic Substances (Amendment) Bill, 2011’ on March 21, 2012) on Finance recommended that the Act should be amended for the same. Section 31A of NDPS act 2014 was amended and in section 15 of amendment Act 2014 the words “shall be punishable with death”, are amended with “shall be punished with punishment which shall not be less than the punishment specified in section 31 or with death”. Though the Amendment Act 2014 enhances the penalty for offences committed after previous convictions. A person’s term of imprisonment shall be extended to one and a half times the term he can be convicted for. Similar enhancement is specified for the amount of fine.

Conclusion

“Despite the stringent provisions of the NDPS Act, 1985 drug business is booming; addicts are rapidly increasing; crime with its role to narcotics is galloping and drug trafficking network is ever growing” (Former CJI A.S. Anand in State of Panjab v. Baldev Singh, AIR1999 SC 2378; Gurbax Singh v. State of Haryana, 2001 (3) SCC 28; State of Punjab v. Makhan Singh, (2004) 3 SCC 453).

Considering the comparatively rapid progression to dependence, we feel that some legal controls should be considered. This should be considered especially for the hazardous (or predependent stages) use of drugs, which should be included in the NDPS Act. Use of opioids, which are considered as “hard drugs”, having a dire prognosis and a faster progression of criteria of dependence needs to be totally eradicated from society with a view to protect the future generations. The easy availability of narcotic and psychotropic drugs is a major cause in increasing the prevalence of their non-medical use by varied populations. However, we should be seriously concerned: prescription drugs can be powerfully addictive and their abuse is accompanied by toxic and sometimes fatal consequences. One of the most challenging aspects of this trend is that prescription drug abuse affects individuals of all ages. The emerging drug abuse problem increases the responsibility of physicians as well as the society at large to rationally and successfully address this challenge. In the light of above observations, we need to have a balanced approach instead of giving as much attention to demand reduction as to supply and punishments through stringent legal provisions. Reliable and systematic data to assess the drug problem, its use or abuse, complexity and linkages with other socio-economic and cultural systems and to monitor progress in achieving the control goals is not readily available. Two major limitations encountered are the reporting of the drug situation is not systematic enough and lack of adequate monitoring systems. Further, Drug abuse is illegal and illicit drug promotion related activities come under the purview of criminogenic structure and it is very difficult to assess its quantum since these are mostly clandestine and controlled by racketeers and drug mafia. Thus difficulties of trying to measure in illicit activity are well known. They impose obvious limitations on data collection. Today drug traffickers are increasingly merging with international organized crime and terror to flourish together. Drug has become an instrument to kill the opponent economically and socially. World today is concerned about the close connection between international terrorism and transnational organized crime, illicit drugs. The need for enhancement of coordination and efforts on national, sub-regional, regional and international level in order to strengthen a global response to this serious challenge and threat to international security is *sine qua non*. Illegal narcotics trafficking constitute a serious threat to the health and well being of individuals as well as to international security as a whole.

Though drug abuse has existed in India as one of the ancient maladies, today it has started spreading in an epidemic form. The entire nation is today facing the problem of drug abuse and is fighting the menace in a gigantic form without a proper shield to protect itself. If India is not to disintegrate, this epidemic must be counteracted immediately. To avoid the misery and devastating effects of drug use and more so of drug-addiction, the problem should be uprooted completely. To curb the drug menace, the Government of India is adopting various measures including enactment of laws prohibiting drug trafficking and related offences. Simultaneously, de-addiction and rehabilitation centers are being opened and budgetary allocations rose to increase the number of hospital beds for addicts in the country. Preventive education programmes through various mass media are being given importance. A Narcotics Control Bureau was set up as an apex body to co-ordinate the function of all agencies fighting the drug menace. Law-enforcement agencies are being invested with more powers including drastic measure like preventive detention of drug-pushers and dealers in narcotics. But the extent to which, these measures will be effective in tackling the problem is a question of doubt, yet to be answered by years to come.

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Narcotics Control Bureau acts as the nodal agency for intelligence collection, dissemination, enforcement and coordination with various Central and State enforcement organizations and international, regional and foreign enforcement agencies.

Niklas Swanstrom, Director, Contemporary Silk Road Studies, Sweden's Uppsala University said "It is a demographic disaster, or at least has the potential of being a demographic disaster, since it affects mostly young people, We don't see any new economic trades coming out because why should you start focusing on something that would earn you \$100 when you can get \$1,000 for smuggling drugs?" at <http://www.rferl.org/content/article/1053454.html> as visited on 4 April, 2014.

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Section 9 prescribes a punishment, which could extend up to 3 year, with or without fine for the commission of an offence.

See, *The United Nations Convention Against Illicit Traffic in Narcotics Drugs and Psychotropic Substances*, UN doc. E/CONF. 82/15, reprinted in 28 I.L.M. 493 (1989) [hereinafter Vienna Convention]. The Vienna Convention represents an international response to the awakened need for "concerted and more effective action" to harness money laundering.

South Asia Drug Demand Reduction Report, Revised Edition 2000 UNDCPROSA

The Act provided the procedure for the cultivation of opium poppy, manufacturing of opium and matter connected there with. The stated aimed at the control of poppy cultivation by directing that all cultivators tender their opium produce to the government limits where fixed for cultivation and licenses issued. Violation or failure to comply with the provisions of the statute resulted in penalties.

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