

DRUG LAWS AND INDIAN SOCIETY

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Abstract

Drugs and drug related problems in India are some of the core areas of research. Drug trafficking is something we should not neglect; it is a very serious issue and has to be addressed. The drug menace has extended the geographical boundaries and drug trafficking in India is largely ascribed to various internal as well as external factors. The history of drugs explores the long term relationship between mankind and mind altering substances. The use of drugs is as old as the history of mankind. The primitive as well as the modern societies seem to have used mood modifying drugs and in some cases, it was alcohol. The state police agency has become a major stakeholder in seizing and arresting the person involved in drug trafficking. The drug related problem can be regulated only when there is stringent laws and punishment for it.

Keywords: Drugs, laws, drug trafficking.

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INTRODUCTION

A drug is a substance (with the exception of food and water) which when taken into the body alters the body's functioning. Drugs can be legal like alcohol and caffeine and illegal like cannabis, cocaine and heroin. According to the World Health Organization (WHO) a drug is a chemical substance used in the treatment, cure, prevention and diagnosis of a disease or otherwise enhances a person's physical or mental wellbeing.¹

Drugs are classified in order to organize them into different categories. There is a legal as well as a chemical classification of drugs. In the world of illicit and abused drug, use most of the countries have a legal classification of drugs. Legally drugs are defined under 5 schedules. In the first schedule drugs are defined as those substance which have no medical use and have a high probability for addiction and abuse. These include drugs such as heroin, MDMA (methylene dioxy methamphetamine) which is colloquially known as ecstasy and LSD. The second schedule defines drugs as substance having a high rate of potential abuse along with significant psychological or physical dependence. This includes drugs like Cocaine, meth and opioids. The third schedule talks about drugs that have moderate to low potential or misuse. These include drugs like anabolic steroids and testosterone. Schedule four talks about drugs which have low potential for dependence. Examples of these

types of drugs are valium Ativan and Ambien drugs. Lastly, schedule five talks about drugs as medication usually used as antitussive analgesic or antidiarrheal purpose.²

Experts are constantly disagreeing about the concept of classification of drugs as it could mean that the same drug might be classified into 2 different categories or into two different systems. Because of this, it is virtually impossible to create a set of drugs defining any classification standards. However these are some of the common classifications. Many types of drugs are being prohibited by the government in order to protect the welfare of the people. Many laws have also been introduced for the same.

HISTORY OF DRUG TRAFFICING IN INDIA

The Arab Merchants introduced the drug opium which can be used as a medicine for curing diseases such as analgesic effects but later on people started consuming this drug as a pill or with water. Later in 1300, the country started the cultivation of opium on the western coast but when the demand increased, the farmers were unable to feed the growing consumers. Then the drug was imported from the middle of the globe. When the Britishers came to India in 1720, they saw this product as a great source of business and started exporting the opium to other countries. China was the first country which served as a client of the drug and imported about 14 tons of opium during the same year. Even when China

¹https://www.who.int/substance_abuse/publications/drugs/en/

² <https://luxury.rehabs.com/drug-abuse/classifications/>

banned the smoking of opium drug in 1929, they did not ban the importation of the same. In 1793, the Indian government banned opium but the East India Company took control of the opium cultivation in India and the exportation of the opium continued to flow. This gave huge profits to the businesses.

In the late 1799 china completely banned the use as well as the importation of the opium drugs. This led to the illegal importation and smuggling of the opium drugs. When china opposed this illegal importation or smuggling, the first Opium War was fought. China was defeated and the trade between India and China continued. Then, even after suffering a defeat in the second Opium War, China finally legalised the trade of opium. In the same year, the colonial government enacted the opium act 1817, which promoted the regulation for the cultivation of opium poppy its manufacturing and its domestic sale and export conditions. Later in 1878, the opium Act came into the picture for the use of opium in the local streets in India. But in 1893, the royal commission proclaimed that the excessive of the opium is having negatively impactings on the health of the people and therefore the excess consumption should be banned. In 1920, the Indian government partially banned opium. In 1930 colonial government enacted the Dangerous Drugs Act. During 1985 NDPS act was passed. This was again amended 2 times till date³.

PROHIBITION OF DRUGS

³ <https://www.youthkiawaaz.com/2008/04/drug-abuse-in-india/>

After decades of criminal prohibition, there were intensive enforcement efforts to get rid of illegal drugs, violent traffickers still endanger life in cities and a steady stream of drug offenders still pours into the jails and prisons with loads of cocaine heroin and marijuana still crosses the borders unimpeded. At the turn of the century, many drugs were made illegal throughout the globe. In 1914, the Congress passed the Harrison Act banning opiates and cocaine. Alcohol prohibition was quickly followed by this and in 1918 US was officially a dry nation⁴. But this failed to mean an abrupt end to drug abuse. It meant that suddenly a lot of individuals were arrested and jailed for doing what they had previously done without government interference. Prohibition also meant the emergence of a black market operated by criminals and marked by criminals and violence.

As far as India is concerned, during the time of independence in 1947, narcotics were heavily regulated as dangerous substances, medical products also as goods subjected to excise taxes. With the enforcement of the Indian constitution in 1950 all the laws became subordinate to the constitutional provisions with relevance to fundamental rights. So, there have been some challenges to the drug laws on the grounds that they were discriminatory and contravened farmer's freedom of trade and occupations. However, the cases were unsuccessful. The court relied inter alia on India's international drug control commitments to justify the restrictions on the

⁴ <https://www.aclu.org/other/against-drug-prohibition>

cultivation use and trade. The prohibitionist sentiments were further entrenched by Article 47 of the constitution. Although the directive principles of the state policy aren't enforceable, this provision is frequently invoked to justify the existing punitive drug laws in India.⁵

MEASURES TO CONTROL DRUGS IN INDIA

There are several measures adopted by the Indian government so as to cut back the drug menace in India. The following are some of the measures adopted by the Indian Government⁶.

1. Control through legislations.

The Narcotic Drugs and Psychotropic substance Act (NDPS) is a statutory framework for drug law enforcement in India. The NDPS Act also incorporates some provisions which were designed to implement India's obligations under various international conventions. Some amendments were made within the Act so as to provide for the forfeiture of property derived from drug trafficking and for control over chemicals and substances employed in the manufacturing of narcotic drugs and psychotropic substances. In order to give effect to the statutory provisions relating to the substances, the Regulation of Controlled Substances order was announced by the Government in 1993 to control and

regulate the manufacture, distribution, import, export transportation, etc. of any substance which the government shall declare to be a controlled substance under the Act.

2. Administration.

The administration of the NDPS Act 1985 succeeded the Opium Act and therefore the Dangerous Drugs Act falling within the domain of Department of Revenue in the ministry of Finance and Home affairs. Various enforcement agencies under the Central Excise, Revenue Intelligence, Central Bureau of Narcotics and the Central Economic Intelligence Bureau are involved in the administration of this act.

3. Strategies and policies.

The National Policy on Narcotics Drugs and Psychotropic Substances 2012 was framed for the prevention of illicit cultivation of poppy and cannabis. The use of satellite imaging was started so as to detect unlawful crops and eradicate them to help the cultivators in the pockets of traditional illegal cultivation develop an alternative means of livelihood.

4. Institution level Control

The National Agency of Customs Excise and Narcotics is that the apex institute of the government of India for capacity building in the field of indirect taxes. The government of India has entrusted the National Academy of Customs, Indirect Taxes and Narcotics (NACEN) for the responsibility of knowledge, exchange, and experience, sharing and training with various countries of the planet.

⁵https://idhdp.com/media/400258/idpc-briefing-paper_drug-policy-in-india.pdf

⁶<http://www.legalservicesindia.com/article/1875/Controlling-the-drug-menace-in-India.html>

DRUG POLICY IN INDIA

In India, cannabis was consumed for medicinal, spiritual and recreational purposes right from the classical era. During the time of the post colonisation the British attempted to regulate it through excise laws that licensed cultivation and imposed taxes on the sale, cultivation and use of opium⁷. The use of opium is believed to have been started from the early 10th century. During the colonial period, the Britishers began investing opium into a large scale commercial enterprise thereby consolidating and bringing the cultivation of the poppy and manufacture of opium under their great control through the Opium Act of 1857 and 1878. By the early nineteenth century, many provincial governments passed laws to restrict the consumption of opium. Cannabis was classified as an intoxicating drug and was continued to be regulated through the provincial excise in 1930 in order to strengthen control over drugs which was derived from coca cannabis possession sale and manufacture by the way of imposing and penalizing unlicensed activities. But there were no offences in the consumption of drugs as well as cannabis. The Dangerous Drugs Act continues to prevail in the current legislation as well, especially in their statutory definitions for cocaine, opium, cannabis and their derivatives in the category of ‘manufactured drugs’ and in the division of rulemaking powers between central and the state governments.

⁷ https://idhdp.com/media/400258/idpc-briefing-paper_drug-policy-in-india.pdf

The Drugs and Cosmetics Act 1940 was introduced for the purpose regulation of medicinal drugs including cannabis and opium⁸. However the Dangerous Drugs Act continued to apply. During the time of independence in 1947, narcotics were a heavily regulated commodity as dangerous substance medical product as well as subject to excise taxes. The constitution also earmarked certain subjects on which the Parliament or the state legislature could make laws exclusively or concurrently. Drugs and poisons were placed in the concurrent list so that the state government as well the central government could alter laws regarding these matters. The division of legislative powers was important as it determines the state government’s ability to break from the national drug policy and employ a different alternative in the area where they are empowered to produce policies.

India has signed the three United Nations drug conventions in 1961, 1971, 1998. The current domestic legislations giving effect to these treaties were introduced only 1980s during the time of grace period for abolishing non-medical use of cannabis and opium under 1961 conventions expired. The Indian Parliament has passed the Narcotics Drug and Psychotropic Substance Act in 1985, without many debates. This act came to force on 14th November succeeding the Opium Act and the Dangerous Drugs Act. The NDPS was enacted with a view to provide adequate penalties for

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<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6755770/>

drug trafficking to strengthen enforcement powers and implement international conventions to which India was a party. The act was amended in 1989, 2001 and 2014. The act also prohibits cultivation, production, sale, purchase, import, export, and use of psychotropic substances except for medical and scientific purpose in accordance with the law. The act covers the following classes of substances.

1. Narcotic drugs (1961 convention)
2. Psychotropic drugs (1971 conventions)
3. Controlled substance that is used to manufacture psychotropic substances.

Narcotic drugs also include cannabis cocaine and opium. Narcotic drugs also falls under the category of manufactured drugs. The NDPS Act gives powers to the authorities for the procedures of search, seizure and arrest of people in relation to drug related suspicions in public and private places⁹. Measures such as prior recordings of information notifying superior limiting powers to arrest the designated officers informing the person being searched of his or her rights has been enforced by the court. In the light of the punishments prescribed under the Act. The NDPS Act is predominantly punitive in nature as it contains provisions affiliated with drugs. The Act gives powers to the central as well as the state governments to frame rules to control drug related activities. Some regulative activities are reserved exclusively for the government,

while others are carried out by the private entities under license. The regulatory system also includes the supply of opium for the purpose of consumption as per the medical advice. In 1998, an addition was made to the NDPS Act. The Prevention of Illicit Trafficking in Narcotics Drugs and Psychotropic Substances provided for the preventive detection of people suspected or accused of involvement in drug trafficking. This was made with a view of social wellbeing of people. Certain amendments were also made to the NDPS Act.

In 1989, the NDPS Act was amended for the first time after a cabinet subcommittee that was formed for combating drug trafficking and abuse recommended that the law should be made more stringent. This led to the introduction of 10 year imprisonment punishment. The changes came in less than four years after the law was passed. Following the amendments, people caught even with small amounts of drugs could potentially to face lengthy prison sentences with a bleak chances of release on bail. Because of the criticism received by this harsh disproportionate sentencing structure in 1998, the NDPS (amendment) bill was introduced in the Parliament and subsequently examined by the Parliamentary Standing Committee. Thus the 2001 amendment was made. It says about grade punishment that is on the basis of the quantity of the drugs involved¹⁰.

⁹https://idhdp.com/media/400258/idpc-briefing-paper_drug-policy-in-india.pdf

¹⁰ https://www.unodc.org/pdf/technical_series_1995-03-01_1.pdf

In 2014, the NDPS Act was amended again in order to add some new provisions to the Act. The following are its features;

- Creation of new categories of the essential narcotics drugs.
- Widening the objective of the law containing illicit use in order to promote the medical and scientific use of narcotics drugs in keeping with the principle of balance between the control and availability of the narcotics drugs.
- Including the term ‘management of drug dependence’ along with recognising and approving of treatment centers.
- Making death penalty discretionary for a subsequent offence involving a certain quantity of drugs under sec. 31 A.
- Enhanced punishment for small quantity offences from a minimum of 6 months to maximum of 1 year of imprisonment.
- Allowing the private sector’s involvement in the processing of opium and concentrated poppy extract.
- Ranking of the officers authorised to conduct search and arrest license holders for alleged NDPS violations.
- More elaborate provisions for the forfeiture of property of persons arrested on charges of drug trafficking.

DRUGS AND CRIME

In the context of the crime, a victim or an individual or a group or entity who has

suffered hurt either physically, emotionally or psychologically, harm or loss because of an illegal activity. Victimization refers to the process of being victimised. Based on the hierarchy of sufferings, victimisation can be primary or secondary. The former would refer to direct victimization due to an offence committed against oneself. The latter refers to an individual being victimized by legal or other institutions, communities and society.¹¹

Many crimes have been associated with drug usage in India. The Injecting Drug users are engaged in several high risk behaviours. In addition to injecting drug use and sharing of needles, high risk behaviour also included unsafe sex. Among the injecting drug users, there was an increase in reporting of unsafe sex with sex workers in addition to the common domestic social, economic, legal, and health consequences associated with drug abuse. Injecting drug users suffered from many health consequences such as abscesses in superficial veins subcutaneous tissues and muscles septicaemia, HIV infection and hepatitis B and hepatitis C infections.

Millions of people in India are dependent on alcohol¹², cannabis and opium drug abuse has become a widespread and frequent phenomenon in Indian society. This was reported in a news report which was published jointly by UN office on drug and crime and India’s Ministry of social Justice. In a national

¹¹
https://tiss.edu/uploads/files/Donita_Victims_of_Drug_abuse_and_law_enforcement.p

¹²
https://www.researchgate.net/publication/311101008_Drug_Trafficking_-_A_Analytical_Study

household survey¹³, more than 40000 men and boys from the age groups of 12 years to 60 years were interviewed which the subsidiary studies looked at drug misused among women and inmates and several populations and borders areas. Alcohol cannabis opium and heroin are the major drugs misused in India. These were reported in the report.

The survey estimated that in India whose population is just over a billion 5 million people consume alcohol. 8.76 million ingest cannabis and opium, 2 million make opium and 0.6 million use sedatives or hypnotics. 17 per cent to 26 per cent of users of opiates and cannabis are likely to seek treatment while about one in every six people who use alcohol are also likely to do so. The addiction to drugs not only destroys the life of the individual but also their families. People from the age group of 18-35 years the ones who are the most addicted to drugs. In India, 60 per cent of teens consume drugs is in the state of West Bengal and Andhra Pradesh while about 35 per cent of the teenage population are drug consumers in Uttar Pradesh and Haryana. In India, 7 per cent or more people commits suicide of which 3.3 per cent did so due to the influence of drug abuse. India is one of the biggest markets for drug consumers, so the supply is fulfilled as per the demand of the consumers. Some of the very common drugs which remains in the highest demand are cocaine, fentanyl, fentanyl analogs, heroin, morphine, opium, oxycodone,

hydro cocaine and lysergic acid diethylamide (LSD).

DRUG ABUSE IN INDIA

The issue of drug abuse and drug addiction is a well-known global phenomenon. The expansion of the drug trafficking trade has cast its shadow in almost all the countries of the world and its impact is felt in the health sector as well as the human development of any country. The drug market of the world is approximately \$500 billion a year and continues to grow with an increase in demand for drugs both- natural and synthesised. According to the UNODC Drug Report of 2016¹⁴, an estimated 1/4th of a billion people in the age group of 15 to 64 years abused at least one drug in the year. The UNODC report also shows that in the year 2014 over 207,400 deaths were due to drug abuse which indicated that the deaths due to drug abuse remained unchanged from the previous research statistics. This ratio is however an unacceptable one and nothing effective was done to prevent it.¹⁵

Drug abuse is growing in India and this problem is serious in South Asia. According to a United Nations report drugs cross the border through illicit markets and various sources. The International Narcotics Control Board, which is an independent United Nations body was tasked with monitoring the production and

¹³ <https://www.unodc.org/unodc/en/data-and-analysis/Studies-on-Drugs-and-Crime.html>

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https://www.researchgate.net/publication/311101008_Drug_Trafficking_-_A_Analytical_Study

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https://tiss.edu/uploads/files/Donita_Victims_of_Drug_abuse_and_law_enforcement.pdf

consumption of narcotics worldwide. India amounts for 10 per cent of the total pharmaceutical produced in the world. In its report it stated that the law required all drug with abuse potential to be sold only with prescriptions. But there was a significant diversion from this. In a study conducted by the Delhi commission for Protection of Child Rights on Substance Abuse by children, it was revealed that 100 per cent of children who had a run-in with the were drug abusers while 95.5 percent of them who stayed in child care institutions were on drugs. The study also stated that 88 percent of the children consumed drugs due to peer pressure.

Throughout the borders of the state of Punjab whether in villages or cities drugs have become a very big problem. Opium is prevalent refined as heroine or other illegal substance. An overwhelming majority of addicts are in the age groups of 15-35 as per the survey. India is also caught in this vicious circle of drug abuse, and the numbers of drug addicts are increasing day by day. It is estimated that about 850,000 Indians inject drugs, about 460,000 children and 1.8 million adults need help for inhalant dependence and 7.7 million Indians require help for opioid dependence. The prevalence of opioid use in India is three times the global average, as per the 2019 All India Institute of Medical Sciences (AIIMS) study.

Cannabis, heroin, and Indian-produced pharmaceutical drugs are the most frequently abused drugs in India. Cannabis products, often called charas, bhang, or ganja, are

abused throughout the country because it has attained some amount of religious sanctity.

The International Narcotics Control Board in its 2002 report released in Vienna pointed out that in India persons addicted to opiates are shifting their drug of choice from opium to heroin. Pharmaceutical products containing narcotic drugs are also increasingly being abused. The intravenous injections of analgesics like dextropropoxyphene are also reported from many states, as it is easily available at 1/10th the cost of heroin. The codeine-based cough syrups continue to be diverted from the domestic market for abuse¹⁶

CONCLUSION

Over the last few decades the awareness of illicit drugs their access and their abuse have increased dramatically. Despite major information gaps the increases in abuse of major dependence producing drugs are reflected in reports from official and unofficial sources. United Nations, observation of experts, studies of crime education work and health reported all the reasons for serious problem in developing as well as industrialized countries. Reports from the United Nations and other sources indicates that drug abuse has harmful consequences in most parts of the world. Substance related deaths have been estimated at nearly 5 million annually for alcohol and tobacco and 200,000 annually for injecting drug abusers. Life years cost through disability related to drug dependence have been estimated for 1990 at 39.3 million years

¹⁶ <https://www.youthkiawaaz.com/2008/04/drug-abuse-in-india/>

worldwide for years worldwide for males and 13.3 million for females. The aggregate worldwide estimate of the burden of drug related diseases, lost jobs time and cost of other associated conditions that are not available. Patterns of abuse in different countries show enormous variations, including different drug abused individual who takes drugs in various settings and a range of impacts. A problem of major concern is that the consumption of drugs in the areas producing it. Another way of addressing the problem is a shift in consumption from developed to developing countries. To that extend the producers of drugs ties them closely to the future illicit production. Production and illicit traffic in opium/heroin, coca/cocaine, or cannabis appear extremely high whether assessments are based on the official estimates or the opinion of independent experts. In some, illicit supply and the demand for drugs have surged with enormous profits for a few modest income provided to others. Increased morbidity and mortality and associated family, educational and employment problem due to drug abuse are persuasive. Measures to prevent and control drug abuse are weak and the knowledge base on which these measures rest are even weaker. While it is possible that this picture may improve further deterioration is more likely. In a study about drug trafficking in the past few years it has been noted that there is a considerable increase in the trafficking as compared to the previous years, which means that the drug trafficking laws are not enough to bring about a fear of punishment among the traffickers and there is

need for more strict laws in order to control the drug trafficking in the country. For this, a detailed analysis should be made on the laws.

SUGGESTIONS

- The laws should be made strict
- Death punishments should be meted out in case related to drug trafficking
- More attention is needed on the borders to curtail drug trafficking