



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2024

Editor-in-Chief – Prof. (Dr.) Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

DRUG ABUSE IN INDIA

ABSTRACT

Drug misuse is a major issue that affects the entire world, and India is not an exception to it, since it hinders the progress of our nation. It is evident from the Ministry of Social Justice and Empowerment's Annual Report 2018–19 that drug addiction is the most common among Indian men between the ages of 15 and 35. Women make for up to 20% of injectable drug users, and some users are younger than 18. According to a research, 66% of female users admitted to exchanging drugs for sex work. The number of drug users in Punjab is rising exponentially. The important finding of this study is that 2.8% of Indians affirmed that they had used cannabis products in the previous year. There is enough legislation in India to address drug usage, including the Narcotics Drugs and Psychotropic Substances Act of 1985. 2.8% of Indians abuse drugs in spite of the present prohibitions, not because the Act is flawed rather because of a flaw in implementation of laws. This is among the factors contributing to the nation's rising drug misuse rates. The legal and policy responses to drug usage in India are discussed in this study. This study examines drug abuse from the Indian perspective in an effort to identify contributing factors and potential remedies. Additionally, this study attempts to offer recommendations to the legislative body for the resolution of this issue.

INTRODUCTION

There is no such thing as medication. Everything has medicinal properties. It depends on the amount of medication being consumed. Drug usage and abuse are fundamentally different from one another. A medication causes a negative physiological response in the body if its Therapeutic Index is higher than ED50. Drug misuse is a severe issue that affects people all over the world, including India. India has a long history of utilising drugs in ceremonies and

everyday activities, while being a global producer of pharmaceuticals for legal markets. This historically drug-abundant nation has only recently begun to witness a problem with drug usage. This is a serious issue that hinders a nation's progress by causing economic downturns, increases in crime, and perceived threats to life. The primary emphasis of this study is India's drug abuse laws and policies. What causes drug misuse to be on a rise in India? Drug misuse is increasing quickly even though we have several pieces of legislation to cope with the issue. We must investigate if the law is weak or whether there is an issue with how it is being applied. Data that plainly shows that 14.2% of Indians consume alcohol and adding to it, the report showed usage of numerous other drugs that can set off a chain reaction that would escalate the problem. An estimated 2.8% of Indians are considered to be drug addicts, according to reports of drug addiction. Evidently, Chhattisgarh, as shown in the report, is leading the drug abuse index. The figure suggests that there could be an issue with implementation, which makes the cause pretty evident. Certain drugs are sold in a highly legalised manner, although some users utilise them appropriately, and their use of certain legal substances may or may not be documented as misuse.

An increasing number of people take drugs for a variety of reasons, including psychological, social, and financial ones. This study will not only examine how the Act is being implemented as well as court rulings, orders, etc.; it will also offer recommendations for how to get rid of these kinds of issues.

The Narcotics Drugs and Psychotropic Substances Act of 1985 essentially lacks a definition for the term "drug abuse." Although several intuitions attempt to describe drug abuse, these concepts are not exclusive.

Similar to drug abuse, "substance abuse" is defined by the World Health Organisation as "the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs." Psychoactive substance abuse can result in dependence syndrome, which is a collection of behavioural, cognitive, and physiological symptoms that appear after recurrent drug use. These symptoms usually include a strong desire to consume the drug, face trouble in controlling it, and eventually continue to use it despite its negative effects, prioritising drug use over other responsibilities and activities, increased tolerance, and occasionally a physical withdrawal state.

The use of illegal drugs or prescription or over-the-counter pharmaceuticals for purposes other than those for which they are intended, or in excess of recommended dosages, is known as drug abuse.

To put it simply, drug abuse, also known as substance misuse, is the use of specific chemicals with the intention of producing pleasurable effects on the brain.

HISTORICAL BACKGROUND

Before the Enactment of NDPS Act 1985, there were two Central Act in India:

1. Opium Act 1878
2. Dangerous Drug Act 1930

These regulations are presently insufficient to address the issues of drug usage and illicit drug trafficking on a national and worldwide scale due to the passage of time.

These laws lacked the rigour necessary to address or regulate these kinds of issues. There are numerous gaps in these rules, such as the fact that well-organized smugglers were not deterred by them. The 1930 Act sets a maximum sentence of three years in prison, a fine, or both. There is no minimum punishment specified; the maximum penalty for repeating the offence is four years in prison or a fine, or both. Investigating agencies like drugs, customs, central excise, etc. were not provided.

STATUTORY PROVISIONS

Periodically, the Indian parliament has passed laws aimed at accomplishing the objectives of international conventions and treaties. India is a participant in the international convention as well. The following is the convention.

1. The 1961 Convention on Narcotic Drugs
2. Psychotropic Substances Convention of 1971
3. The 1988 Convention to Combat the Illegal Trafficking of Narcotic Drugs and Psychotropic Substances

4. The 2000 Transnational Crime Convention

Indian Parliament has enacted two Central Laws:

1. The Narcotic Drugs and Psychotropic Substances Act, 1985, and
2. The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988

The Indian Constitution's Article 47 makes it abundantly evident that the state has a responsibility to enhance public health, boost living standards, and promote nutrition. The state will work to outlaw the use of intoxicating beverages and medications, unless they are prescribed for medical conditions that pose a health risk. Despite the fact that no court may enforce Part IV of the constitution, the state is nonetheless required by the social contract idea to establish policies that promote the welfare of its inhabitants. Drug misuse is an issue that may be controlled if the state is ready to take action. Since poisons and drugs are on the concurrent list, both the federal and state governments have the authority to enact laws pertaining to those subjects. However, there is a possibility that these laws may diverge because of unequal coordination between the two authorities. The Narcotic Drugs and Psychotropic Substances Act of 1985 was passed by the Indian Parliament in response to pressure from around the world on how to handle drug users. This Act essentially laid out the consequences for manufacturing, importing, exporting, selling, or possessing restricted substances. According to the Narcotic Drugs and Psychotropic Substances Act of 1985, a conviction would carry the following penalties: 10 to 20 years in prison for a first offence and fines; 15 to 30 years in prison for a second offence. After the statute was amended in 1988, those found guilty faced punishments that ranged from asset forfeiture to execution. The Bombay High Court held in the Harm Reduction Network v. Union of India case that the Narcotic Drugs and Psychotropic Substances Act, 1985's death punishment is unconstitutional, however it did not invalidate Section 31-A of the Act.

CAUSES OF DRUG ABUSE IN INDIA

In India, drug misuse can stem from a variety of factors, including social, economic, psychological, and religious practices. When it comes to the usage of narcotics for religious purposes, this has been done since ancient times, and there has never been any opposition to

taking substances like ganja or bhang in the name of Lord Shiva. These kinds of medicines are typically taken during holidays like Holi and Shivaratri. The usage of opium and cannabis has gained social acceptance since their consumption has been approved by religious practice among followers and other religious individuals. Their usage has, nevertheless, typically been moderate. Numerous reasons have contributed to this self-regulation, primarily the restricted quantity of drugs available, the restrictions on drug access, and most importantly, social control. People have been protected against deviant behaviours by informal restrictions like family and neighbourhood influence, religious prohibitions, and other forms of influence. Drug misuse can also be attributed to social factors, such as a communication gap between parents and children. The explanation is fairly clear. In today's technologically advanced society, when everyone is glued to technology, parents may not be able to provide their kids with the required care, which could result in drug misuse. Another reason is that friends who are hooked to drugs often try to get other friends to take drugs for the same high, and most friends try drugs just for the test. They develop a drug addiction after abusing drugs frequently. There are those who fall in love with women. They start using the medicine to get over this kind of mental pain since they lost their love. Another major factor is the economics. The explanation is fairly clear. To meet their basic requirements, the majority of impoverished individuals in rural areas grow ganja, bhang, and other drugs and sell them in the local market. People engage in this type of behaviour even though it is illegal because of the lack of money.

JUDICIAL APPROACH

The NDPS Act's Part V addresses the framework that approval specialists must obtain. The final goal of this show is to take into account the truth along with the seriousness of the offence and the comprehensive order. To guarantee that drugs are not hidden, exhibiting provides an exceptional framework regarding section, chase, seizure, and catch under display, keeping in mind the fundamental idea of offences. The goals of these strategies are to guarantee that people are easily located with great precision, as well as to maintain the accuracy and legitimacy of any verification obtained from such an interest. To this end, the inquiry office must strictly adhere to the Act's method, and any instances in which this is not done should be reported to higher authorities.

A Division Bench made up of Rajeev Sharma and Lok Pal Singh, JJ., decided on an open intrigue case writ petition in the *Manoj Singh Pawar v. State of Uttarakhand*¹ case. The case involved the opening of an alcohol distributor in the heart of Almora town, near the District Hospital and Girls Inter College. The bench advised the State to control the risk of free accessibility of opiates, including alcohol, to minors. The High Court observed that Article 47 of the Constitution gave rise to doubts regarding the State's commitment to attempt to regulate alcohol consumption. 'Sedate mistreatment' has been observed to have destroyed many families and fractured society. The Court saw an increase in the smuggling of drugs into the State from outlying areas; drug dealers, and especially their "bosses," were evading police capture. The Court ruled that strict management is necessary to prevent medication abuse. The NDPS Act and the Money Laundering Act, which address the counteraction of illicit tax avoidance and the appropriation of property obtained from or associated with tax evasion, as well as concerns related thereto, require the bosses secured in such circumstances to be reserved.

The Supreme Court of India ruled in the landmark case of *State of Punjab v. Balbir Singh*² that the very assurance that clause (2) of section 42 requires that where an official cuts down any information under sub section (1) or records avocation for his conviction under the specification thereto, he will forthwith send a copy thereof to the speedy authority common, itself is a strong indication of the request that the official will record his motivations behind his conviction as required under the specification. The question in this case was whether resistance of the equivalent vitiate the preliminary or not.

The Punjab and Haryana High Court held in *Pipal Singh v. UOI* that the consistency of Section 42 of the Act's courses of action could be viewed from a different angle in light of the Supreme Court's ruling in the *Sajan Abraham* case. They reasoned that if Section 42 had been followed, the situation would have conceded the getting and the responsible parties would have fled in the truck near the reserve; however, the Delhi High Court expressed in the *Mohd. Rahish* case that during a watch commitment, the police team received unclear information regarding their culpability and promptly proceeded to apprehend the censured.

The Honourable Himachal Pradesh High Court held in *State of Himachal Pradesh v. Shri Sudarshan Kumar*³ that the benefit under Section 50 is an incredibly important right, which the

¹ *Manoj Singh Pawar v. State of Uttarakhand*, 18 June, 2018

² *State of Punjab v. Balbir Singh*, 1994 AIR 1872, 1994 SCC (3) 299, AIR 1994 SUPREME COURT 1872

³ *State of Himachal Pradesh v. Shri Sudarshan Kumar*, 1989 CRILJ 1412

legislative body has dressed the individual stressed over and has been interwoven in the Act keeping in mind the earnestness of the sentence. The court further held that submitting a request to a Gazetted Officer or Officer would give the system essentially more authenticity and credit an incentive and that it would, in fact, strengthen the prosecution.

Police officers observed the appellant in the most recent case, *Than Kunwar v. The State of Haryana*⁴, holding a bag. The accused allegedly turned back and began to walk quickly upon sighting the police party. The ASI became suspicious as a result. He caught them off guard. It was thought that the bag contained drugs. The accused were told they might search the luggage in front of a magistrate or gazetted officer if they so desired. A Gazetted Officer's search was what the appellant wanted. The DSP arrived on the scene. The search was done per his instructions. Three hundred grammes, or six kilogrammes, of opium were inside the bag. Samples were obtained. Following that, a formal FIR was filed. The recovery was impacted by the bag, for which it is established law that compliance with Section 50 of the Act is not necessary, the court ruled through Justice Kurian M. Joseph. The court also declared that the High Court's position could not stand.

CHALLENGES DURING IMPLEMENTATION OF LAWS

Unsuitable application of legal content

Certain medications are readily accessible in the market and can be obtained legally without breaking any current laws. Like spirit, petrol, sniff glue, cough syrups, pain reliever ointments, paints, colophony, cleaning solutions and whitener, among other things. These drugs are offered in the neighbourhood market for certain objectives and acceptable uses, but drug addicts misuse these medications, causing their bodies to react negatively. Since spirit belongs to the alcohol functional group and alcohol is outright banned in some states, such as Bihar, there was a major problem for alcohol addicts who began using spirit instead of alcohol.

Traditional Faith

The majority of drug use history is associated with two main substances: opium and cannabis (marijuana). Cannabis is still used today for its mystical and religious purposes, as documented

⁴ *Than Kunwar v. The State of Haryana*, AIR ONLINE 2020 SC 272

in Indian ancient literature on multiple occasions. Indian religious rites employ cannabis because it is thought to enhance the mind during meditation.

Conventions from around the world are applied cautiously. The United States has consistently maintained that the use of opium and other narcotics should only be allowed for research and medical needs. The Indian government, however, argues that those who use opium as a remedy for certain ailments and pains and live in isolated rural areas would suffer if such an enactment were to be made. It is hard for these people to access modern medication. In response to the United States' stance, India included a caveat to the Hague Convention agreement stating that "the production of opium for such uses and its use in raw form, as per established practice in India, are legitimate under the Convention."

Corruption

In general, authorities pay greater attention to large-scale drug dealers than to street vendors. There are instances when the court issues an order, but the judgment's effects are not evaluated. That judgement is being executed with purposeful delay. It is plausible that certain political factions are attempting to postpone the implementation of the ruling. Drug agents in India or other countries may be corrupt, which could lead to a decrease in seizures and arrests, a decrease in convictions, and an increase in the amount of narcotics available on the streets.

A financial issue

The United States spent more than \$12 billion fighting narcotics in 1993. The rehabilitation centre has funds assigned to it, but those monies are also insufficient to completely stop drug misuse. The N.C.R.B. reports that there has been an increase in drug abuse data index compared to the prior year. India has never overspent on the fight against drugs, and information is therefore lacking. The only information available is the amount of funds given to N.G.O. to combat drug usage.

Inadequate infrastructure

However, as of 1990, "not a single court has been constituted due to which offenders escape from the trial as well as from punishment also." The N.D.P.S. Act of 1985 established a special court to expedite drug trials. "The ability of Indian courts to apply the law effectively has not been demonstrated." In addition to this, there are other obstacles such as incongruous collaboration between federal and state authorities, transnational drug trafficking, politically

driven cases that embolden drug traffickers, and so forth. The majority of drug users are not familiar with the fundamental effects that drugs have on his or her physical form. Even the producers promote the harmful effects of drug usage in discreet or tiny areas.

CONCLUSION

According to the author, there is no foolproof way to end drug abuse. It can be managed in one of two ways: by using scientific and legal processes. Although we have several regulations in place to regulate drugs, drug misuse remains an issue and is contributing to diseases like cancer that affect the entire nation. Since a nation's human capital is its greatest asset, any disease that lowers that resource might be perilous for any nation, and it would be challenging to represent such a nation internationally. Therefore, my guiding theory is that the black market would vanish owing to a lack of buyers if illegal drug users did not buy the product. I'm attempting to offer solutions to end the drug abuse issue in this part.

- As I mentioned in the previous paragraph, people who are addicted to alcohol are substituting spirit for alcohol. However, the manufacturing sector has discovered a way to stop drug abuse in inappropriate ways. Businesses began adding copper sulphate to spirit, which turns the drink from colourless to blue and makes it obvious that the substance is dangerous. As a result, addicts stopped using spirit in place of alcohol. My suggestion is that in order to prevent the improper use of legal substances, the legislature should enact a law that involves industry consultation.
- Certain narcotics, such as ganja, bhang, etc., are grown in rural locations and require a very typical climate in order to thrive. Plants can occasionally be grown without any personal planting. Therefore, it is my suggestion that the specialised departments gather data on certain regions and apply anti-growth chemicals or medications there in order to prevent the regrowth of those plants under typical weather conditions.
- An efficient approach should be taken to build the national drug action plan.
- Parents and children should have a healthy communication relationship.
- In the United States, drug control policy is handled by 15 or 16 agencies in the executive branch of the government. Drug misuse policy is directly influenced by no fewer than 17 standing committees in the house and 11 committees in the senate. My suggestion is that an organisation of this type be set up to oversee India's drug laws.

- Enough control must be exercised over the production, sale, import, and export of chemicals that may be utilised illegally.
- Early identification of drug users is necessary to implement corrective actions.
- It is necessary to be aware.
- Appropriate therapy for drug addicts is necessary.