

A COMPREHENSIVE VIEW ON THE DRUG LAWS IN INDIA

Ritik Dhankhar (1st Year)

Army Institute of Law, Mohali

ABSTRACT

The use and abuse of illegal and prescription drugs are a health, social and law enforcement problem that is affecting Indians across the country. Drug abuse is destroying the lives of many teens and adults and is also destroying the families in India.

During the teenage it is common to experiment with drugs and alcohol, but most teens do not realize what experimenting with drugs can lead to in the future. There are some teenagers that experiment with drugs for the first time in their life and then abstain themselves from using it. There are others who get addicted to drugs and start using dangerous drugs in their day to day life.

And with this process, many teenagers fall into the trap of drug abuse from which they are unable to get out affecting themselves as well as their families.

This research paper would talk about the legal perspectives on various drug laws. The research would highlight various drug laws being passed by the Centre and the State Legislatures. It would highlight the problems, flaws and the implementation of such laws in the country. In the end, the research would highlight the solutions as to effective administration and implementation of such laws.

1. HISTORY OF DRUGS IN INDIA

a) Alcohol

Alcohol can be considered to be man's oldest drug. In India, it has been used from time immemorial. Post-independent India is no exception to widespread use of alcohol. In 1976, the Government of India appointed a committee with the Director General of the Indian Council of Medical Research as its Chairman to check the extent of alcoholism and drug abuse in India. The committee concluded that alcohol use is a wide spreading menace and the Government should take serious steps to arrest it.

b) Opium

The word "opium" is derived from the Greek word for "juice". One can infer that opium smoking (and eating) in ancient civilization was done as a practice of obtaining pleasure. The Sumerians prepared opium 5000 years before Christ. Opium was first used in Assyrian medical tablets from the 7th century B.C. They have spread opium poppy in India and China. Opium was known in India in the 9th century and it was undoubtedly widely known in the country in the 15th century, when the Portuguese first came to Calicut in 1498. Opium was an article of trade taken from Arabia to Calicut and other places. After the fall of the Moghul Empire in 1757, the monopoly of cultivation of poppy passed into the hands of the East India Company. In 1788, Warren Hastings brought whole of the opium trade under the control of the Government. As a result, large quantities of Indian opium exported to China were shipped from Calcutta Port.

c) Cannabis

The use of cannabis plant for a variety of purposes has long existed in India and many other Asian countries. Archaeological evidence indicates that cannabis cultivation dates back to 6000 BC; religious and mystical use of cannabis in Indian societies was reported from the 7th century AD. Until the 1980s cannabis consumption does not appear to have been regarded as an issue of major social concern in India, with little or no official mention of excessive use. Prevalent socio-cultural regulations with regard

to the form of use, mode of consumption, context of use and profile of users, ensured a system of use management that limited drug use within the country.

d) Morphine

Morphine and its Derivatives Morphine derived from opium was well-known in ancient times and was used as far back as 4000B.C. In the 15th century, Paracelsus (1493-1541), the Swiss physician, gave the name “landanum” (from the Latin ‘landare which means “to praise”) to preparations of opium. With the passage of time, the pattern of use and self-administration of opium drugs has changed. From smoking of opium, sniffing of heroin, subcutaneous injection of morphine or heroin, the methods of IV (intravenous) self-injection etc. have been adopted in recent times. The hypodermic syringe was discovered by Rynd of Dublin in 1845 and Wood of Edinburgh in 1853. The invention of the syringe shortly before the American Civil War (1861-65) led to enormous use of morphine for battle injuries, relief of pain or anxiety, the induction of relaxation and sleep and the alteration of a state of consciousness. The hypodermic use of morphine as a drug of addiction has become in western countries the most common method of administration. In 1898, a further impetus was given to the use of opium through the discovery of heroin by Dresser in Germany.

e) Cocaine

Sigmund Freud, the Austrian psychoanalyst (1856-1939) while treating many deeply disturbed cocaine addicts, noted the numbing effect of the drug. He brought this effect to the attention of the clinical pharmacologist, Carl Koller, who introduced cocaine as a local anesthetic into surgical procedure. In most of the cases where youngsters are found to do any sort of crime under intoxication of drugs the commonly used drug has been proved and ascertained to be cocaine. The biggest source of cocaine for supply in India is from African countries like Nigeria and Liberia.

2. HOW THE DRUG BUSINESS WORKS IN PUNJAB?

- a) For decades drugs in Punjab comes from the poppy fields of Afghanistan, cultivated for the working of the Taliban as it is a big source for making money easily.
- b) According to United Nations Office on Drugs and Crime¹, a total of 328,000 hectares of land was used for the poppy cultivation in Afghanistan, a 63% increase over the previous year. Potential opium production was estimated at 9000 tons in 2017, an increase of 87% from 2016. Punjab is not the only route for drug smuggling.
- c) One so circuitous that it first reaches Africa and then comes to Punjab and Delhi. This route is usually functioned by the African smugglers who have bases in Delhi. Afghanistan is not the only source of drugs in Punjab. Cheap and Spurious drugs are also manufactured locally in pharmaceutical factories.
- d) Main entry point for drugs in Punjab is through Pakistan. According to BSF², the origin of the drugs lies in Afghanistan which is the world's largest producer of heroin. From there the drug reaches Pakistan and enter India through Indo-Pak border.
- e) A kilogram smuggled across the border is valued about Rs 5 crore in the international market. When the drugs enter Pakistan, it costs somewhere between Rs 1.5 lakh and Rs 5 lakh.
- f) However, when it enters India, it shoots up to 10 to 15 times i.e. 20-25 lakh. Rivers and streams along Indo-Pak border are popular routes for smugglers because they are not easy to track for the authorities. There are other ways such as sliding in drugs in plastic pipes through the barbed wire at the international border.

¹ https://www.unodc.org/documents/crop-monitoring/Afghanistan/Afghan_opium_survey_2017_cult_prod_web.pdf

² <https://economictimes.indiatimes.com/news/et-explains/the-chitta-economy-how-the-business-of-drugs-works-in-punjab/articleshow/65634397.cms>

- g) After reaching the nearest border village, the drugs are packed in small packets containing a gram of chitta (synthetic drug made from heroin) each. These small packets are sold to customers by local peddlers. A large chunk of these, however, is moved towards big cities like Amritsar and Ludhiana. Migrant laborers, poor farmers and drug addicts transport drugs from the border to the cities.
- h) Even police are also involved in the distribution network. According to The Tribune³, more than 100 Punjab Police personnel have been arrested for smuggling drugs or abetting the trade since 2014. The distribution networks could be patronized not only by the police but also by influential politicians. Over a period of time many politicians have been accused of patronizing the drug trade.
- i) One gram of heroin costs more than Rs 2500 per gram till 2016. Now the price is not less than Rs 8000 for a gram of heroin.
- j) In recent years Punjabi songs have glorified and glamorized drugs for years. For e.g.- the movie 'Udta Punjab' shows how Punjabi music is one of the vast advertisement machines for drugs and violence.
- k) Not only the unemployed youth or poor indebted farmers but also police, housewives, professionals, businessmen as well as rich and bored youths. Drug dealers cater to a diverse range of customers, right from poor people in the villages to rich and educated city dwellers.
- l) According to the Punjab Opioid Dependence Survey⁴, which was conducted in 2015 in 10 districts by the Ministry of Social Justice & Empowerment, the estimated size of opioid dependent population in Punjab is 2,32,856. The most common drug in Punjab is chitta or heroin followed by opium and its byproducts.

³<https://www.tribuneindia.com/news/archive/punjab/punjab-police-battles-drug-taint-615877>

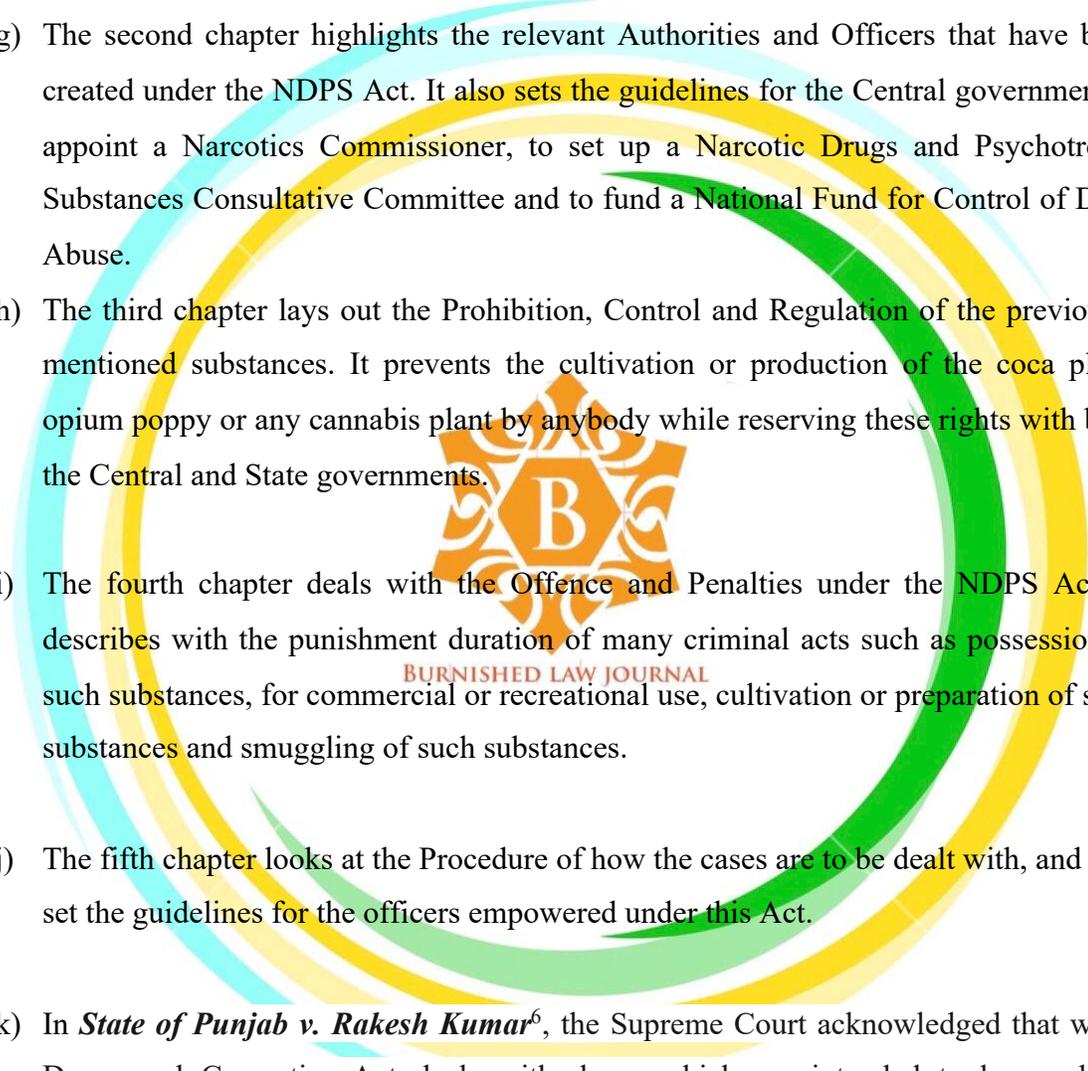
⁴[http://www.pbhealth.gov.in/scan0003%20\(2\).pdf](http://www.pbhealth.gov.in/scan0003%20(2).pdf)

- m) According to a 2017 report, Epidemiology of substance use and dependence in the state of Punjab, by Post Graduate Institute of Medical Education and Research⁵, Chandigarh there are 78000 opioid users in Punjab of which 61.6%, making it the most common drug.
- n) According to latest research conducted in 15 distinct villages of Jalandhar District in the previous year and published in the Journal of Family Medicine and Primary Care, one out of every three persons in Punjab is addicted to drugs other than alcohol and tobacco.

3. NARCOTICS DRUGS AND PSYCHOTROPIC SUBSTANCES ACT 1985

- a) The Narcotics Drugs and Psychotropic Substances Act,1985 (NDPS Act) was passed by the Indian Parliament hastily, without much debate and came into force on 14 November 1985, replacing the Opium Acts and the Dangerous Drugs Act. The 1940 Drugs and Cosmetics Act,1940, however, continues to apply.
- b) The main aim of the NDPS Act is to provide adequate penalties for drug trafficking, strengthen enforcement powers, implement international conventions to which India was a party and enforce controls over psychotropic substances. The Act was amended in 1989, 2001 and more recently in 2014.
- c) The NDPS Act prohibits cultivation, production, possession, sale, purchase, trade, import, export, use and consumption of narcotics drugs and psychotropic substances except for medical and scientific purposes in accordance with the law.
- d) Preparation to commit certain offences is punishable as is attempt. Accessory crimes of aiding and abetting and criminal conspiracy attract the same punishment as the principal offence.

⁵<https://pubmed.ncbi.nlm.nih.gov/>

- 
- e) The NDPS Act contains 5 Chapters, with each chapter dealing with a certain subject with respect to the statute.
- f) The first chapter serves as a Preliminary chapter, introducing and defining the various narcotic drugs and psychotropic substances to the list.
- g) The second chapter highlights the relevant Authorities and Officers that have been created under the NDPS Act. It also sets the guidelines for the Central government to appoint a Narcotics Commissioner, to set up a Narcotic Drugs and Psychotropic Substances Consultative Committee and to fund a National Fund for Control of Drug Abuse.
- h) The third chapter lays out the Prohibition, Control and Regulation of the previously mentioned substances. It prevents the cultivation or production of the coca plant, opium poppy or any cannabis plant by anybody while reserving these rights with both the Central and State governments.
- i) The fourth chapter deals with the Offence and Penalties under the NDPS Act. It describes with the punishment duration of many criminal acts such as possession of such substances, for commercial or recreational use, cultivation or preparation of such substances and smuggling of such substances.
- j) The fifth chapter looks at the Procedure of how the cases are to be dealt with, and also set the guidelines for the officers empowered under this Act.
- k) In *State of Punjab v. Rakesh Kumar*⁶, the Supreme Court acknowledged that while Drugs and Cosmetics Act deals with drugs which are intended to be used for therapeutic or medical usage, the NDPS Act intends to curb and penalize the usage of drugs which are used for intoxication or for getting a stimulant effect.

⁶(2019) 2 SCC 466; (2019) 1 SCC (Cri) 739

4. AMENDMENTS

a) NDPS Amendments, 1989

In 1989, the NDPS Act underwent the first set of amendments after the recommendations of a Cabinet Sub-Committee for combating drug trafficking that the law be made more stringent. It led to the introduction of very harsh provisions such as mandatory minimum sentences of 10 years imprisonment, restrictions on bail, bar on suspension and commutation of sentences, forfeiture of property, trial by special courts and mandatory minimum sentence for certain repeat offenders.

b) NDPS Amendments, 2001

After criticism of harsh and disproportionate sentencing structure, In 1998, the NDPS (Amendment) Bill, was introduced in Parliament and subsequently examined by the Parliamentary Standing Committee on Finance. The amendments were finally adopted in 2001, to grade punishment on the basis of the quantity of drugs involved- that is “small”, “commercial” or intermediate”.

c) NDPS Amendments, 2014

In early 2014, the NDPS Act was amended for the third time and the new provisions came into force on 1 May 2014. The main features include:

- i. Creation of a new category of “essential narcotic drugs”, which the central government can specify and regulate uniformly throughout the country.
- ii. Enhanced punishment for small quantity offences from a maximum of six months to 1-year imprisonment.
- iii. Widening the objective of the law from containing illicit use to also promoting the medical and scientific use of narcotic drugs and psychotropic substances in keeping with the principle of ‘balance’ between control and availability of narcotic drugs and underpins the international drug control treaties.

- 
- iv. Allowing private sector involvement in the processing of opium and concentrated poppy straw.
- v. Raising the rank of officers authorized to conduct search and arrest license holders for alleged NDPS violations.
- vi. More elaborate provisions for the forfeiture of property of persons arraigned on charges of drug trafficking.
- vii. Making the death penalty discretionary for a subsequent offence involving a certain quantity of drugs under section 31A. The court will have the alternative to impose imprisonment for 30 years under Section 31.
- viii. Including the terms “management” of drug dependence and “recognition and approval” of treatment centers, thus allowing for the establishment of legally binding treatment standards and evidence-based medical interventions.

BURNISHED LAW JOURNAL

5. TREATMENT CENTERS

According to the NDPS Act, these centers may be set up by the central or state governments or voluntary organizations. Presently. Services for drug dependence are available through:

- a) Government Hospitals: provide inpatient and outpatient care, mostly detoxification. As per official statistics, drug treatment is available in 122 government hospitals across the country.
- b) NGOs: can run drug rehabilitation centers as they receive grants from the Ministry of Social Justice and Empowerment and their state counterparts.
- c) Psychiatric hospitals or nursing homes, operating privately, under license by the Mental Health Act, 1987.
- d) Private ‘de-addiction’ centers that operate without registration or license

In *BachpanBachaoAndolan vs Union Of India And Ors*⁷, the Supreme Court has directed the government to complete a national survey and generate a national data base within a period of six months. Along with this, the Supreme Court has urged the government to complete a national survey on drug and substance abuse by children and generate a national data base within a period of six months.

6. NATIONAL SURVEY REPORT

The report of the National Survey on Extent and Pattern of Substance Use in India conducted by National Drug Dependence Treatment Centre (NDDTC) of the All India Institute of Medical Sciences (AIIMS), New Delhi sponsored by the Ministry of Social Justice and Empowerment has been submitted. These are as follows:

- a) A total of 2.8% of Indians (3.1 Crore individuals) reported of having used any cannabis or drug-based product within past 12 months (Bhang- 2% or 2.2 crore people; Ganja/Charas -1.2% or 1.3 Crore people)
- b) A total 0.66% of Indians(or approximately 72 lakh individuals) require help for their cannabis use problems.
- c) Though bhang use is more common and in complete effect of usage than ganja/charas users.
- d) States with higher than national prevalence of cannabis use are Uttar Pradesh, Punjab, Sikkim, Chhattisgarh and Delhi.
- e) The most commonly used and sold opioid used in India is Heroin, (current use 1.14%) followed by Pharmaceutical opioids(current use 0.96%) and then Opium (current use 0.52%).
- f) Of the total estimated approximately 60 lakh people with opioid use disorders in the country, more than half are contributed by just a few states: Uttar Pradesh, Punjab, Haryana, Delhi, Maharashtra, Rajasthan, Andhra Pradesh and Gujarat.

⁷Writ petition (Civil) No. 906 of 2014

- g) An estimated 4.6 lakh children and 18 lakh adults need help for their inhalant use(harmful use/ dependence).
- h) It is estimated that about 8.5 Lakh People who Inject Drugs(PWID)

The use of PWIDs are common in the states of Uttar Pradesh, Delhi, Punjab, Haryana, Andhra Pradesh, Telangana, Karnataka, Maharashtra, Manipur and Meghalaya

Based on the above reports it is to be noted that the supply of drugs in to the vast areas of the country has been prominently in progress.

The fundamental statement – “Where there is demand there is supply” applies. In our country the percentage of youth is 34.33%. This population is also the most exploited population in India. The acts of drug abuse are not something that starts at a particular age, it is either that the children are forcefully exposed or they voluntarily expose themselves to these acts of drug abuse.



BURNISHED LAW JOURNAL

7. CONCLUDING REMARKS

In 21st century when science and knowledge has gone par human expectation and our country India is on the path of a developing future there are multiple factors that pulls India backwards. Drugs and alcohol are one among these factors. The point to be noted is that the main people who are affected are the youth of the country. It doesn't in any way mean that people of middle-aged class have nothing to do with drugs and alcohol but the point is that the percentage of youngsters under the influence of drugs is far more and in a higher number. The main problem is not the use but it is the increasing number of addicts every year. Every year lakhs of youngsters in the country enter into the vicious menace of drugs and start to ruin their life, their career and family.

There are many different kinds of drugs that are actively present in the black markets. Youngsters start it right from the school and college days and hence ruin a very vital part of their life. The sources indicate that the money inflicted from the top drug barons of the country find its destination to be top terrorist outfits and other anti-national groups such as Maoists, Naxals etc. The Drug business also has an unclassified link with the origin of counterfeit money in the country. The increasing number of cancer patients in the country specifically lung cancer and liver cancer are also indicative of the fact that drug abuse is in double effect in the country.

There are many steps that are being taken by the government to control the matter like the establishment of the NDPS act and also its amendments over the years. The law lays down basis for the law against such abuse via drugs and also puts forward strict levels of punishment for preventing and controlling the problems of drug abuse in India and also to prevent more and more youngsters from entering into the Drug Circuit of the country. One main conclusion is that there is a huge and strong lobby that maintains the sales and supplies of drugs in India. Its proper functioning is because of the immense support provide by power-seeking politicians who find their asylum behind these peddlers.

The classic statement "Where there is demand there is supply" applies in this issue. The supply of drugs is maintained due to the assurance that there is demand for drugs among

the youth. So, the first action should be to curb these demands and this is to be done by teachers, friends and finally family.

