

SUBSTANCE ABUSE DISORDER: A COMPREHENSIVE SOCIO-LEGAL ANALYSIS

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Abstract

Over the history of humankind, substances, both organic and non-organic, have been used to induce pleasurable states, alter consciousness, create spiritual experiences, and diminish personal and physical pain. Substances that alter consciousness are an inevitable part of our lives.

It has been generally agreed that criminality in human beings is to be attributed to their mental depravity. Investigations made by sociologists and criminologists on substance abuse and crime relationship reveals that, there is a close and directly proportionate relationship between them.

Substance abuse may be conceptualized as a crime without victim, i.e., addict himself to the victim who becomes a prey of its misuse. Substance abuse disorder is a disease that affects a person's brain and behaviour and leads to an inability to control the use of a legal or illegal drug or medication. A person who is addicted, may continue using the drug despite the harm it causes.

This paper has been divided into different chapters for better understanding of the topic and it seeks to highlight the threats posed by the problem of substance abuse and suggest measures to control it. It describes the various causes which result in substance abuse by a person ultimately leading to crime and disorganization in the society. The paper also deals with the international aspect of the problem and then analyses whether the current Indian legal framework is enough to tackle the problem. It then suggests a number of control measures. Finally, it deals with drunkenness as a defence to criminal responsibility.



Introduction

Substance abuse may be conceptualized as a crime without victim, *i.e.*, addict himself to the victim who becomes a prey of its misuse¹. This devastating melody is eroding the roots of social, economic and cultural fiber of Indian society. It gives rise to criminality and criminal behavior which eventually leads to social disorganization.

Alcoholism and drug consumption have been prevalent in most societies over the ages because of their allegedly pleasurable and relaxing effects or as a means of relieving physical tensions, fatigue and as stimulant to withstand adversities. However, with the unprecedented expansion of pharmaceutical industry, the use, abuse and misuse of alcohol and drugs has increased leaps and bounds covering almost all sections of society.

Substance abuse is indicative of the irresponsibility and weakness of the character of the persons using these intoxicants. The relation between alcoholism and various aggressive and criminal acts is often confirmed by police records and prison statistics which indicate that in the present day there is a considerable increase in such alcoholic-criminal episodes². Experience has shown that various preventive and punitive measures such as fine, imprisonment or detention for drunkenness and other disorderly behaviors have failed in eliminating this menace.

It has been generally agreed that criminality in human beings is to be attributed to their mental depravity. Persons with balanced emotional and physical health normally do not indulge in criminality or aggressive conduct nor do they resort to alcoholism beyond control.

Investigations made by sociologist and criminologists on alcohol-crime relationship revealed that there is a close resemblance between the structure of alcoholics and criminals. This proposition brings us to the following

¹ P. Kundram & V.N. Murty, "Drug Abuse and Crime - A Preliminary Study" (1979) 7 Indian Journal Crime 65-68.

² Robert Seliger, *Alcohol and Crime*, Journal of Criminal Law and Criminology XLI (May-June 1950) 24-31.

conclusions regarding the impact of alcoholism and drug-addicts on criminality:

1. Crimes are often planned in liquor shops and bars where alcohol is sold.
2. Offenders generally consume liquor, alcohol or drugs to overcome their inhibitions and emotional strains.
3. The booty and gains of crime are often distributed and shared in liquor or wine-shops.
4. Alcohol and narcotic drugs help to remove the element of self-criticism from the criminal in relation to himself and his acts.
5. Juvenile delinquency and drinking are intimately connected.
6. The illegality of purchase and possession of alcohol and narcotic drugs make alcoholics or drug addicts delinquent *ipso facto*.
7. Alcoholism and drug addiction being forbidden by law, their procurement gives rise to a number of related crimes such as illicit spirit distilling, smuggling of wine or intoxicating drugs, racketeering, drug trafficking underhand deals in transmission of alcohol and narcotics from one place to another and bribing the officials to escape arrest and punishment.

Lately, drug abuse seems to have become a fashion for fun to relieve boredom, to get rid of tensions at home and in society, to feel good and high, to revolt against establishment, to heighten sexual experience, improve studying and so on.

Causes of Substance Abuse

Alcoholics and drug addicts resort to drinking or use of drugs for a variety of reasons. The factors mainly responsible for the spread of this evil are:

1. Rapid industrialization and urbanization have ushered a new way of life with new values like permissiveness. As a result, the age-old inhibitions, taboos and traditional social control mechanisms have ceased to have force. Many cases of drug or alcohol addicts arise after apparent failure in business or professional life³. Unemployment is also

³ Sharma & Mohan, Drug Abuse in India: Prevalence, Pattern, Policy and Prevention, Social Defence, Vol. XVI No. 63 (1981) 63.

- an important factor contributing to drug and alcohol addiction especially among youths.
2. The lack of parental care and control partly due to working situation of both spouses and disintegration of joint family system are also contributory factors to encourage this vice. The menace of drug abuse is more common among the middle, upper-middle, and high economic class families. Urban areas seem to be more effected by this vice⁴.
 3. The recent developments in pharmaceutical and medical sciences have provided scope for production of a variety of toxic synthetic substances. This has contributed substantially to drug-abuse and addiction.
 4. People often take drugs for relief from painful illness and ultimately get addicted to it. Besides, there are some addicts whose neurological heritage is such that they find it difficult to survive without the use of alcohol or narcotic drugs.
 5. Frustration and emotional stress due to failures, sorrows or miseries of life, diverts people to join the company of addicts. For them drugs or alcohol is a medicine, a blessing in disguise⁵.
 6. Hippie-culture also detracts youngsters to drug addiction and they start it as a 'fun' or enjoyment. They start consuming drugs or alcohol on an experimental basis out of fun and enjoyment. The frequency of consumption gradually increases due to its narcotic effect and finally a good majority of them turn out to be drug addicts.
 7. The lack of knowledge of child psychology and communication-gap between parents and young addicts are also contributory factors for drug-abuse and alcoholism.
 8. People who do manual work often believe that use of drugs such as alcohol, opium, ganja etc. provides them added strength and vigor to withstand hard labour. This delusion of physical vitality by use of alcohol or narcotic drugs ultimately makes them confirmed addicts.

⁴ Rod Morgan, *The Oxford hand Book of Criminology*, 914 (London; Oxford University Press, 2003).

⁵ George Callin E.G., *Alcoholism in the Encyclopedia of Social Sciences* (1960) p 155.

9. Social disorganization is also a contributing factor for the menace of drug abuse or misuse. Frequent family strife and breakdowns due to poverty, temperamental differences, neighborhood influences etc. may divert a person to alcohol or drug consumption to overcome his domestic and family problems.

Thus the process of alcoholism and drug-addiction sets in when a person knowingly or unknowingly begins to consume alcohol or narcotic-drug as a medicine for a sound sleep at night or to get stimulation for work or to get relief from domestic problems or to repress depression, resentment and so on. He prefers to remain in the world of imagination rather than facing realities of life. Gradually, he becomes addicted and finally he reaches a stage when he cannot live without alcohol or drug since it becomes his life-habit.

It must be stated that the use of opium and cannabis in the form of ganja and bhang was tolerated in India and had a religious sanction but addiction to them was confined to aged persons only.

International Perspective of the Problem

With the rapid expansion of trade and commerce beyond national boundaries, the problem of drug addiction and trafficking has become a global phenomenon. It has been realised over the years that no country can deal with this problem of abuse of drugs without international co-operation and action.

Therefore, as a measure of drug control, a thirteen-nation international conference on narcotic drug was held in China in 1909⁶. Thereafter, the International Opium Convention called the Hague Convention on Narcotics was held on 1912 which was the first drug traffic control treaty at the international level. This was followed by a series of conventions and declarations which were made to combat illegal drug trafficking which eventually led to the establishment of an International Narcotics Control Board (INCB) in 1961. It has been assigned the responsibility of ensuring the balance between supply and demand for narcotic purposes and make all out efforts to prevent illicit

⁶ This was termed as Opium Commission in China (1909).

drug cultivation, manufacture, traffic and misuse.

Another International Convention on prevention, abuse and illegal trafficking in narcotics called the Convention on Psychotropic Substances was signed in 1971 which came into force on 16 August, 1976. The convention has stressed the need for prevention of abuse of psychotropic substances and early identification, treatment, education, after-care, rehabilitation and social reintegration of the persons involved⁷.

This was followed by setting up a five-year action program by the General Assembly of the United Nations in 1981 under the International Drug Abuse Control Strategy. It provided for a number of measures dealing with drug control, drug trafficking and treatment and rehabilitation strategy for addicts. It also sought to intensify efforts to dismantle illegal drug-trafficking gangs and organisations⁸.

An International Conference on Drug Control was held in Vienna in June, 1987 under the auspices of United Nations. It focused attention on drug control policies and strategies which could be enforced at the national, regional and international level to prevent drug abuse and illegal trafficking of narcotic substances.

The Commission on Narcotics Drugs in close collaboration with the World Health Organisation adopted a convention on psychotropic substances and in view of same *India enacted the Narcotic Drugs & Psychotropic Substances Act, 1985* to prevent drug-addiction. This Act was *amended in 1988 and called the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988*. It provides for death penalty on conviction for a second drug trafficking offence.

Classification of Drugs

The International Convention on Drugs to which India is a signatory has classified drugs under two categories:

⁷ Art. 20(1) of the Convention on Psychotropic Substances Act, 1971.

⁸ Kriagsak Kittichaisaree, *International Criminal Law*, 262 (London; Oxford University Press, 2003).

- (a) Narcotic Drugs and
- (b) Psychotropic Substances.

Narcotic Drugs: The main drugs covered under this head are the following:

- Opium⁹ and its derivatives like brown sugar, heroin and codeine,
- Cocoleaf, cocaine,
- Cannabis, cannabis resin, extracts and tinctures,
- Methadene, pethedine, hebaine.

Psychotropic Substances include:

- valium, diazepam, tidijesic, morphine etc.

Recently in the case of **Vishal Puri vs Union of India**¹⁰, the High Court of Delhi upheld the inclusion of Ketamine in the list of psychotropic substances for the purposes of Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985.

Upholding the inclusion, the Bench noted that there existed enough material before the Centre evidencing trafficking of Ketamine. It further took note of the fact that both, the Commission on Narcotic Drugs (CND) and the International Narcotics Control Board (INCB), had recommended to put in place appropriate control measures to address the growing problem of Ketamine abuse and diversion to illicit channel for non-medical use.

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Alcoholism, Drug Addicts and Crime

Alcoholism

Like drug-addiction, alcoholism also causes disillusionment, unhappiness and troubles in family life. An alcoholic finds it difficult to adjust with other people and so are the others uncomfortable with him due to his drinking habit. The mental faculty of an alcoholic does not function in a normal way with the result, he loses self-control and often behaves improperly at times picking up quarrels, accusing, abusing or insulting others or committing acts of aggression and violence. Thus, an alcoholic, while he is drunk is an irresponsible person

⁹ Opium is taken from opium poppy called "*papaver somnifentm*" and is generally used as pain killer and hypnotic in certain regions of India.

¹⁰ W.P. (C) 11416/2015.

faltering and pampering in many ways and prone to criminality at any moment. The acts of indecency or assault are usually committed by the persons who are under the influence of liquor or narcotic drugs. The abuse of drugs and alcoholism spells disaster not only for the addict but also to his family and the society as a whole¹¹.

Drug-Addicts and Crime

Besides alcoholism, drug-addiction is also closely interconnected with crime. Mere possession of narcotic is also an offence punishable under the law and therefore drug addiction by itself adds to the crime-statistics.

American researches on relationship between drug-addiction and crime have shown that narcotic addicts often commit predatory crimes such as larceny, shop-lifting, stealing, burglary, robbery etc. The drug-addicts generally lead a criminal life. It is often noticed that addicts of narcotic drugs mostly resort to theft to obtain money for procuring drugs. Most persons become delinquent after they had started use of narcotic drugs. Many violent offenders take narcotic drugs to get stimulation and courage and commit violent acts such as murder, burglary, extortion, rape etc., which they might not otherwise commit when not drugged."

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Another question which is too often raised in context of criminal traits of drug addicts is "*whether criminality in them precedes or follows addiction.*" That is to say *whether the addicts are already delinquents before they take to addiction or they become so subsequently.*

Conflicting views have been expressed on this point by Prof. Percor and Dr. Kolb. Prof. Percor made an intensive study of 1,036 addicts in Lexington and reached a conclusion that seventy-five per cent of them had no history of delinquency prior to addiction¹².

Anslinger, however, has expressed a contrary view and suggested that drug-addicts are already criminals before they take to addiction.

¹¹ Ahmed Siddique, *Criminology Problems & Perspectives*, 439, (Lucknow; Eastern Book Company, 2001).

¹² Percor, "A study of Drug Addicts", Public Health Reports Supplement No.143 (1943).

Dr. Kolb also studied a group of 119 persons who became drug-addicts as a result of medical prescription of narcotics for ailments and found that ninety of them were without any prior career of delinquency and crime.

The studies conducted by the researchers of New York and Chicago Universities, however, suggest that delinquency precedes as well as follows addiction. Be that as it may, it is now generally agreed that after addiction, the criminal hardly sheds off his habit of delinquency as he adopts it as a way of life with his advancing age. Thus, most addicts who are adolescent offenders turn into habitual and professional criminals when they grow older in life.

A British study reveals that the problem of criminality has been further aggravated by drug addiction.

The U.N. Report on abuse of drugs has concluded that the relationship between drugs, misery and crime compelled the governments to interfere in their use and sale¹³.

Global statistics indicate that various parts of the world are drastically affected by drug hazard and the problem has reached alarming dimensions particularly in Middle East, South-East Asia, Eastern Europe, Canada, Mexico, U.S.A., Central America and Africa. Heroin which was practically unknown in Africa, is now extensively being used (abused) in Mauritius and Nigeria. Ghana has also become a centre of drug abuse in recent years.

Since Bolivia, Peru and Columbia commonly known as "*Cocaine triad*" are largest cocaine producers in the world, they are obviously the largest supplier of this narcotic to other parts of the world. In Brazil also, illicit drug trafficking has lately increased due to its extensive borders with Columbia, Peru and Bolivia. It has now become the largest manufacturer of *acetone* and *ethylether*¹⁴.

An Analysis of Indian Law

¹³ Facts Sheet No. 1, National Council on Crime & Delinquency; USA (1983).

¹⁴ Kriagsak Kittichaisaree, *International Criminal Law*, 270 (London; Oxford University Press, 2003).

In view of the alarming increase in drug menace in India, the Parliament enacted the *Narcotics, Drugs & Psychotropic Substances Act, 1985* which was later amended and called the *Prevention of Illicit Traffic in Narcotics, Drugs & Psychotropic Substances (Amendment) Act, 1988* and came into force on July 4, 1988.

The Act emphasizes on the preventive aspect of drug evil and covers a wide list of substances that are recognised as narcotic drugs. It seeks to prevent people from the dangers of drug-abuse. It was for the first time in India, that a legislation recognised wide list of substances that were categorised as dangerous drugs.

The main policy underlying the Act is to prohibit supply and distribution (trafficking) of prohibited drugs, for which minimum sentence of ten years, which may extend to 20 years, with a minimum fine of rupees one lakh, and a maximum upto rupees two lakhs has been prescribed. The Act makes no distinction between a drug addict and a drug-trafficker in respect of punishment except under Sections 27 and 64-A of the Act¹⁵.

Section 27 of the Act provides that if a drug addict proves that he possessed drug of less than 'small quantity'¹⁶ as notified by the Central Government and that it was for his own personal consumption and not for sale, he or she shall be liable to punishment which may extend to maximum one year.

Section 64-A provides immunity to a drug addict from criminal liability provided he proves that the offence is committed for the first time and he or she voluntarily agrees to be treated for de-addiction in a recognised institution.

Section 71 of the Act provides for rehabilitative and reformatory measures for an addict whether he is an offender or not. The provision of this section

¹⁵ Ahmed Siddique, *Criminology Problems & Perspectives*, 436, (Lucknow; Eastern Book Company, 2001).

¹⁶ The Central Government specified the 'small quantity' of drugs as follows:

- (i) Heroin commonly known as Brown Sugar or Smack—250 gms
- (ii) Hashish or charas—5 gms.
- (iii) Opium—5 gms.
- (iv) Cocaine—125 gms.
- (v) Ganja—500 gms.

seems to have been based on the principle that the purpose of reformatory penology is to "destroy criminality in a human being without destroying humanity in a criminal". This is undoubtedly, more in tune with the Supreme Court's view that "right to life includes right to live with dignity" as envisaged by Article 21 of the Constitution. Thus the Act combines within it deterrence and reformatory techniques of punishment to tackle the problem of drug addiction and trafficking effectively.

In India also drug addiction spread like wild fire as could be seen from the fact that heroin was being smuggled even in dead bodies. Two Nigerian nationals were sentenced to 12 years rigorous imprisonment and a fine of Rs. 2 lakh by Greater Bombay Principal Judge under the Narcotic Drugs and Psychotropic Substances Act for smuggling huge quantity of heroin in dead bodies.

The Supreme Court of India, in **Dawood Lama's case**¹⁷, confirmed the conviction of the accused, a foreign national under the Narcotic Drugs & Psychotropic Substances Act, 1985, and sentenced him to 10 years rigorous imprisonment and to pay a fine of Rs. 1,00,000/- and in default further undergo rigorous imprisonment for two years. The Court further ruled that under NDPS Act the police officer taking search is duty bound to inform the person arrested that if he so desired he shall be searched in the presence of a Gazetted Officer or a Magistrate.

In **Birendra Kumar Rai v. Union of India**¹⁸, the Supreme Court further held that in a case falling under the Prevention of Illegal Traffic in Narcotic Drugs & Psychotropic Substances Act, 1988, the accused should be sternly dealt with under Section 3 of the Act and provisions of Article 22(5) of the Constitution of India are not attracted in such cases. Therefore, the detention of the accused under the Act shall not be held arbitrary¹⁹.

¹⁷ *Wilfred Joseph Dawood Lama v. State of Maharashtra*, (1990) Cr. L.J. 1034.

¹⁸ AIR 1993 SC 942.

¹⁹ Ahmed Siddique, *Criminology Problems & Perspectives*, 341, (Lucknow; Eastern Book Company, 2001)

Whether the Procedure prescribed under the Act is Mandatory or Discretionary

The Constitution bench of Supreme Court in **Baldev Singh vs State of Punjab**²⁰, observed that the failure to comply with the procedure prescribed under Section 50 may not vitiate the trial but it would render the recovery of the illicit article suspect and vitiate the conviction if the same is recorded only on the basis of the recovery of the illicit article from the person of the accused during such search.

The same view was held by Supreme Court's Constitution bench in the decision of **Vijaysinh Chandubha Jadeja vs. State of Gujarat**²¹.

Supreme Court's verdict in **Arif Khan v. State of Uttarakhand**²², observed that *"failure to comply with Section 50 of the NDPS Act is fatal to the case of the prosecution, which stands vitiated, in its entirety"*.

The Delhi High Court in **Sumit Rai vs State**²³, reiterated the settled position of law that search of an accused under Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) has to be conducted, mandatorily in the presence of a Magistrate or Gazetted Officer even if the accused refuses the offer in this regard.

In the case of **Basant Balram vs State of Kerala**²⁴, the High Court of Kerala held that violation of mandatory formalities under the NDPS Act, including the search procedure under Section 50 of the Act, constitute "reasonable grounds" under Section 37(1)(b)(ii) to grant bail. The safeguards contained in Section 50 of the NDPS Act are intended to serve dual purpose to protect a person against false accusation and frivolous charges as also to lend credibility to the search and seizure conducted by the empowered officer.

²⁰ (1999) 6 SCC 172.

²¹ (2011) 1 SCC 609.

²² AIR 2018 SC 2123.

²³ CRL.A 578/2017.

²⁴ B.As. 8553 & 8857 of 2018.

In *State of Punjab vs Baljinder Singh*²⁵, merely because there was non-compliance of Section 50 of the Narcotic and Drugs and Psychotropic Substances Act as far as "personal search" of the accused was concerned, no benefit can be extended so as to invalidate the effect of recovery from the search of the vehicle.

Control Measures and their Loopholes

Stringent Legislations

Efforts to control alcoholism and drug addiction have been made by introducing stringent legislative measures to regulate the manufacture, transportation and sale of these products and ban on their possession or use for other than medical and scientific purposes. The use of alcohol and narcotic drugs for cure or treatment purposes has, however, been permitted to cater to the legitimate needs through a proper licensing system and regulatory measures. International control of narcotic-drugs is attained through International agreements and conventions reached between nations under the United Nations Commission on Narcotic Drugs to which India is a signatory.

Apart from regulatory measures to control alcoholism and drug addiction, the system of licensing physicians to give drugs to addicts at a reasonable rate also helps in preventing their exploitation from the underworld peddlers and thus mitigating this crime.

In India, various legislative measures have been introduced to control alcoholism and sale of alcoholic beverages. Several States introduced prohibition laws during the preceding decades²⁶. The Prohibition Enquiry Committee appointed by the Planning Commission in its report of June, 1955, recommended that the scheme of prohibition and anti-drug should be integrated with the country's development plans with a view to control

²⁵ SLP (Crl.) Nos. 5659-5660.

²⁶ Art. 47 of the Constitution of India requires that the State should endeavour to bring about prohibition of intoxicating beverages and drugs which are injurious to public health.

alcoholism and improve the standard of living of the people. The Committee also suggested that a Central Prohibition Committee²⁷ be established to review the progress of prohibition and co-ordinate the related activities in different States. Accepting the recommendations of the Committee the Lok Sabha by a resolution passed on March 19, 1956 made prohibition an integral part of the Second Five-Year Plan. In result, several States introduced regulatory measures to curb the tendency of alcoholism. Some States resorted to complete prohibition while others preferred to follow a phased program²⁸.

Despite these prohibitory measures to control alcoholism, the consumption of liquor and other intoxicating drugs has hardly been reduced. The theory of creating scarcity of liquor by prohibitory laws with a view to discouraging 'drinking' habit has not yielded desired results. On the contrary, demand for liquor has all the more increased and opened new vistas for blackmailing, smuggling and illicit distilling.

The Government have realised that strict laws prohibiting sale and consumption of alcohol have not delivered the goods and the policy needs to be reviewed once again. In fact, the consumption of wine and liquor has taken the shape of a fashion in today's ultra modern societies. Therefore, it cannot be curbed by prohibitory laws unless people who habitually drink voluntarily give it up. It is for this reason that many States have withdrawn their prohibition-laws and are content with a balanced regulatory policy under which liquor is available for sale only in licensed shops at a fair price. The heavy loss of revenue due to "dry-laws" is perhaps the real cause which has prompted the States to withdraw 'prohibition'.

Active and Organised Enforcement

The entire gamut of legislation in India is directed against illicit trafficking in drug and alcoholic substances. The machinery utilized for the purpose at

²⁷ The Central Prohibition Committee was set up by the Ministry of Home Affairs in 1960 to intensify the prohibition campaign.

²⁸ Ahmed Siddique, *Criminology Problems & Perspectives*, 349, (Lucknow; Eastern Book Company, 2001).

Central level includes the Department of Customs, Central Excise Narcotics Commissioner, Central Bureau of Investigation, Central Economic Intelligence Bureau, Directorate of Revenue Intelligence, Border Security Force and the Drugs Controller. At State level the State Excise, Police and Drug Control authorities control the menace of drug addiction and alcoholism.

The National Committee on Drug Addiction was set up by the Government of India in 1976. The Committee in its Report suggested establishment of a National Advisory Board on Drug Control. It outlined the need for cooperation of Police, Excise and Drug Control Departments to curb this menace and necessity for creating awareness against drug addiction in the public. In order to co-ordinate the activities of the various enforcement agencies involved in the anti-drug trafficking, a Central authority called the Narcotics Central Board was established in 1985 under the Act²⁹.

The main functions of the NCB are:

1. Co-ordination of all enforcement actions by various Central and State authorities.
2. Implementation of counter measures against illicit drug trafficking under international protocols, conventions and treaties.
3. Assistance to the concerned authorities in foreign countries.

Moreover, the NDPS³⁰ Act has provided for the establishment of special courts for expeditious trial of drug addicts and traffickers.

Particularly, the problem of use and abuse of drugs and trafficking in drugs has wide ramifications. The organised criminal-gangs in smuggling of drugs operate-across national frontiers. The United Nations Commission on Narcotics, Drugs and the International Narcotic Control Board are the international organisations which are seized with the problem of eradication of drug addiction. The main function of the international bodies is to provide machinery for giving full effect to the international conventions relating to

²⁹ Ahmed Siddique, *Criminology Problems & Perspectives*, 436, (Lucknow; Eastern Book Company, 2001).

³⁰ Narcotics, Drugs & Psychotropic Substances ACT, 1985.

narcotic drugs and to provide for continuous review and progress in the international control of these drugs.

Systematic rackets operate throughout the country to supply liquor and other narcotic drugs to alcoholics and addicts. Those involved in these illegal activities earn huge profits. Even international gangs dealing with this contraband traffic are known to be operative throughout the world.

An unprecedented convention against drug trafficking was adopted by consensus in Vienna on December 19, 1988 by 108 countries seeking better international co-operation in bringing drug-traffickers to justice. It was a major step towards solving the 'global crisis' of today's drug problems.

The lack of adequate training to the concerned officials in skilful investigation of drug-trafficking cases often leads to lacunae and loopholes in the procedure of investigation which enables drug peddlers and addicts to escape prosecution.

It would not be out of place to mention here that corruption which is rampant among the enforcement agencies because of the temptation of economic advantage is also one of the contributory factors for inadequate enforcement of the NDPS Act. Drug traffickers generally operate and carry on their nefarious activities in close liaison with the concerned officials.

News regarding raid cases in which narcotics worth lakhs of rupees is seized by the Excise or the Customs Department are often seen in papers and magazines. Commenting on this aspect of the problems, *Donald Taft* observed that many crime-problems in relation to alcoholism and drug addiction are not so much drug created problems as law created crime problems.

Remedial Measures

Like any other socio-legal problem, the problem of drug addiction and abuse is a complex problem. Besides the legislative measures for combating this menace, some other remedial measures may, to a large extent, help in preventing this evil which are as follows:

1. There is dire need to evolve an effective control mechanism to check

- unrestricted production of drugs and their sale in open markets. The present licensing system has proved inadequate in exercising proper control on the producers of drugs especially cannabis and alcohol.
2. As stated earlier, lack of proper enforcement and implementation of related legislation on drugs has resulted into steady increase in drug and alcohol menace.
 3. Perhaps the best remedy to eliminate this evil is to educate people about the harmful effects of drug addiction and consumption of liquor. This kind of education would be most beneficial for the adolescents and school or college going students.
 4. Early detection of drug addicts and their prompt treatment and resocialisation may help to prevent drug addiction to a large extent. The role of social organisations in rehabilitating the drug addicts need to be emphasised. The Government of India is providing liberal grants to the State Governments to start drug de-addiction centres. As the problem of drug abuse is very acute especially in North-Eastern Region, the Government is giving 100 per cent assistance to these States³¹.

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Drunkenness and Criminal Responsibility

Consumption of alcohol and intoxicating beverages results into drunkenness. Therefore, a word need to be said about 'drunkenness' as a defence to criminal responsibility. Section 85 of the Indian Penal Code provides:

"Nothing is an offence which is done by a person who at the time of doing it, by reason of intoxication, was incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law provided that the thing which intoxicated him was administered to him without his knowledge or against his will."

Thus, the provision makes it clear that voluntary drunkenness is no excuse for

³¹ N.V. Paranjape, *Criminology & Penology*, 144, (Allahabad; Central law Publication, 2004).

the commission of a crime. Nevertheless, drunkenness, does not, in the eye of the law, make an offence more heinous. But if a man is made to drink through stratagem or the fraud of others or through ignorance or any other means causing intoxication without the man's knowledge or against his will, he is excused. If a person, by the unskillfulness of his physician or the connivance of his enemies eats or drinks such a thing as causes frenzy, this puts him in the same condition with any other frenzy and equally excuses him. Section 84 of the Indian Penal Code provides immunity from criminal responsibility on the ground of unsoundness of mind. Unsoundness of mind can be caused due to madness, sickness, lunacy or intoxication. Thus insanity brought on by drunkenness is a good defense provided it is caused involuntarily.

A person is said to be insane when he does not, and cannot understand the nature and quality of his act, or is incapable of knowing that what he is doing is either wrong or contrary to law. Intention or guilty knowledge being an essential element of the crime, the fact that the accused was intoxicated at the time he committed the act may be taken into consideration in deciding whether he formed the intention necessary to constitute the crime³².

In order to make the point clear, it would be prudent to refer to the observations made by the Court of Appeal in the famous case of **Director of Public Prosecutions v. Majewski**³³. The Court found on facts that M was able to respond to a request for assistance by his companion; he was able to direct his violence, and he was able to utter abuses and issue threats before he attacked. Therefore, on these facts his plea of intoxication was rejected³⁴.

The Indian case of **Manindra Lai Das v. Emperor**³⁵, is yet another illustration of Court's attitude towards the defence of intoxication. In this case the accused shot a person and set up the defence of intoxication. The trial judge in his direction observed:

³² *Maung Gyi v. Emperor* (1913) 14 Cr. L.J.

³³ (1966) 2 All. E.R 142.

³⁴ N.V. Paranjape, *Criminology & Penology*, 140, (Allahabad; Central Law Publication, 2004).

³⁵ AIR 1937 Cal. 432.

"If an act is done in a state of intoxication and that intoxication is voluntarily incurred he is equally liable before the law as if he had done that act in a state of sobriety."

In an appeal before the High Court the direction was held to be wrong on the ground that "knowledge" is not synonymous with intention.

Thus, it may be concluded that though voluntary drunkenness cannot be an excuse for the commission of an offence yet where the question is whether the act was premeditated or done due to sudden heat and impulse, the fact of the party being intoxicated, is held to be a circumstance proper to be taken into consideration in mitigation of sentence justifying leniency.

The main problem in cases where intoxication is pleaded as defence is whether the offender was really intoxicated at the time of the commission of the offence. Medical evidence quite often helps to reach a correct conclusion in this regard. That apart, a more recent device to determine the alcoholic condition of a person is through the use of an instrument called "drunkometer". This apparatus detects the presence of alcoholic percentage in the blood stream of a person and thus helps to find out whether the person was under the influence of liquor or not at a given time. It also helps in determining the extent of alcoholic condition of the drunken person and its effect on his mental faculty³⁶. Studies on drug addiction, however, reveal that the problem of drug abuse and alcoholism is not confined to cities alone but it equally persists in rural areas as well. It equally affects the economically depressed classes, middle classes, upper classes and ultra-modern social groups. However, in cities mostly youth and students are affected whereas in rural areas the agriculturists and labour classes are generally addicted to drugs.

Conclusion

Recently, special treatment centers have been set up by social welfare agencies to deal with alcoholics and drug addicts. In Bombay, *The*

³⁶ N.V. Paranjape, *Criminology & Penology*, 144, (Allahabad; Central Law Publication, 2004).

Samaritans a social welfare agency is doing commendable work in the area of rehabilitation of drug addicts. It is high time that Government should also consider setting up special treatment centers for the rehabilitation of drug-addicts and alcoholics.

The modern process of development have opened the floodgates for offences and drug-offences are no exception to this global phenomenon. It hardly needs to be stressed that alcoholism and drug-addiction are the off-shoots of modern fast changing social patterns, hence these twin problems should be tackled in their socio-legal perspective. Then only concrete results may be possible.

Undoubtedly intensive surveillance on the border check-posts and awareness among the public about the evil effects of drug and alcohol addiction have brought about a decline in drug trafficking in recent years but much more still remains to be done in order to eradicate this menace which is damaging the moral fabric of Indian society and culture.

Suggestions

In view of the growing menace of Substance Abuse it is high time to emphasize the need for generating universal consciousness of, and determination to battle the drug problem in all its pervasive forms at the national, regional and international level. Some suggested measures are:

1. to accelerate the struggle against the scourge of drugs and to adopt measures to strengthen international co-operation;
2. to formulate effective strategy against drug-abuse, illicit production and trafficking;
3. to formulate a comprehensive system for the collection, evaluation and dissemination of relevant data relating to drugs;
4. to workout an effective education program for counteracting drug abuse worldwide;
5. to ensure proper enforcement of a system of the international control of narcotic drugs which includes control of cultivation, production,

- manufacture, use, demand and supply of drugs;
6. to ensure absolute curtailment of the enormous funds generated from the drug trade by means of money laundering;

It is an accepted fact that fight against drug related crime is undermined by corruption, therefore, India need to review the effectiveness of its laws and strategies against corruption.

As we know Article 47 of the Constitution of India contains a mandate relating to policy of prohibition. It casts a duty on the Union and the States to initiate adequate measures to implement this directive principle for improvement of public health. This subject is at present in the State List. But in view of the laxity on the part of State Governments to implement the policy of prohibition on liquor, it is desirable that a national policy on the subject be framed. This would obviously require the transference of this subject from State List to the Union List as a Central subject.



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