International Journal of Engineering, Management, Humanities and Social Sciences Paradigms (IJEMHS)
Vol. 05, Issue 01, March 2014
An Indexed, Peer Reviewed, Referred and Impact Factor Journal with ISSN: 2347-601X
www.ijemhs.com

Drug Control Laws in India: An Analysis

Dr (Mrs) Kavita Dhull

Faculty of Law, M.D. University,
Rohtak, Haryana (India)

Abstract

Problem of drugs is a far more serious social problem than other social evils because it is associated with the health of the individual including the law and order problem. And India has a long history of cannabis and opium use in social, spiritual and medicinal context. The gravity of the problem increases when small children aged 6-7 years are using drugs. The law can arrest the offenders but pays less heed to the drug users alias adductors .they do not taken them to the rehabilitation centers instead treat them as dustbins and leave them as they are. Problem of drugs can be solved only if law for the drug adductors be made and executed. Children are like flowers, they had to be handled with care and caution. How do we imagine a youth India concept where most of the youth indulged in drugs addiction? After NDPS Act, 1985 all the amendments done in the act are only for arresting the offenders or making the laws lenient for use of drugs in medicinal purposes. No law or the amendment has been made for the health of the drug adductors. The rehabilitation centers are only carrying on their business without any strings attached without being answerable to anybody charging enormous fees from the patient or their families where they have no other alternative but to pay whatsoever. The law should be made for the rehabilitation centers, the process of treatment, the medicines used, the psychiatric sessions for making the person healthy.

Keywords: *Drug, Indian Control Laws, Addiction, psychiatric sessions.*

Introduction

In recent years malady of drug abuse has spread its tentacles in almost every sphere of public life and has had a large array of corrosive effects on the societies in which it has been most rampant. The reason why the problem than other social evils is because it is inextricably intertwined with order offences such as organized crimes, human trafficking and money laundering as well as health hazards such as HIV-AIDS. India has a long history of cannabis and opium use in social, spiritual and medicinal contexts. The gravity of the problem can be gauged from the statistics released by the National Crime Records Bureau (NCRB) which indicate that drugs and narcotics worth Rs. 19.51 crore and Rs. 17.05 crore were seized in 2010 and 2009 respectively. The problem is especially more serious in the states of Punjab and Manipur where estimates show there are roughly 18000 and 25000 intravenous drug users (IDUs) respectively.

Research Methodology

The research is doctrinal in nature and involves the references from the secondary sources with the help of the case law, various acts passed by the Parliament & legislative assembly. References to the various articles and research papers were also referred to.

An overview of drug control laws in India

The genesis of drug control laws in India can be traced back to the Opium Act of 1857. This was followed by the Opium Act of 1878 and the Dangerous Drugs Act of 1930. These laws were designed to regulate and monitor the use of some specific drugs in limited contexts; they were not based on any well-defined principles and did not contain any overarching provisions to grapple with the problem of drug abuse in a holistic manner. Moreover, they provided for meagre punishments for their contravention which were to the tune of three years imprisonment for the first time offenders and 4 years imprisonment for repeat offenders. In the post World War 2 period, countries began working collectively on enacting human rights instruments that were designed to allow individuals to live with dignity and respect.

The clearest manifestation of this general principle in the context of health can be found in Articles 25 of the Universal Declaration of Human Rights[1] and Article 12 of the International Covenant of Economics, Social and Cultural Rights[2] which seek to promote the highest attainable standards of physical and health. Against this backdrop, several

international instruments such as the Single Convention on Narcotic Drugs[3], 1961 and more importantly, the convention on Psychotropic Substances, 1971 unequivocally recognised the need to put in place regulatory regimes and systems to grapple with international standards and to effectuate the goals of these treaties, the National Drugs and Psychotropic Substances Act, 1985 was enacted by the Government of India. The act is widely regarded as a prohibitionist law which seeks to grapple with 2 kinds of offences: trafficking of prohibited substances i.e. cultivation, manufacturing, distribution and sale, as well as their consumption.

Drug Control in India

The first legislation regulating narcotics in India were the Opium Act[4] of 1857 and 1878, which introduced licensing for cultivation and trading in poppy with a view to consolidate the British colonial government's commercial interest from the profitable opium, the government allowed opium supply through legal outlets. The practice, which finds mention in current legislation, bears semblance with present day against maintenance programmer where drug dependent persons are provided opiate substitutes under clinical supervision.

In 1930, the Dangerous Drugs Act[5] was enacted to extend government controls to coca and cannabis besides opium. Notwithstanding proscriptions on drug related activities under the law, use and possession for personal consumption were exempt from penalties.

The Narcotic Drugs and Psychotropic Act (hereinafter "NDPS Act") was introduced in 1985, overriding earlier legislations. It lays down a strict criminal regime around narcotic and psychotropic drugs including controls over cultivation, delivery and use. The clampdown on traditionally used substances, that is, cannabis and opium under the NDPS Act in the late 1980's is believed to have triggered a pattern of pattern of shifting to use of more dangerous drugs such as chasing and injection heroin. The Act has been amended twice- in 1989 [6] and 2001.[7]

Legislative changes in 2001 rationalised sentencing for possession of drugs. Prior to 2001, a drug user could be sentenced to ten years and a hefty fine for possession of small amount s she was unable to establish that the drug was for personal consumption. The supreme court's criticism of harsh and disproportionate penalties against drug users led the legislature to fix penalty on the basis of the amount of drug in possession, irrespective of intention to use or sell, currently, (under sections 21 and 22, NDPS Act, 1985)[8] the punishment for possession of small quantity of drugs is imprisonment for a maximum of six months or a fine of Rs. 10,000/- Consumption is a separate offence, punishable with a maximum of six months to one year sentence, depending on the drug consumed (section 27, NDPS Act 1985).[9]

Despite the punitive mandate, concern for the person using drugs and treatment for drug dependence figured consistently in legislative debates on the NDPS Act, as seen in the statement by a member of parliament.

Enforcement of Drug Treatment Provisions

Treatment section under the NDPS act have been implemented in varying degrees of scale and scope depending on the funds secured by the State as the State is a welfare state and if the state has the resources then had to utilize for the welfare of the citizens. There are many funds which are appropriated for this purpose.

(i) National Fund

A National Fund for Control of Drug Abuse was established in May 1989. Rules for its administration were notified almost twenty years later, in 2006. The fund can receive contributions from the Central Government, individual donors and proceeds from the sale of property forfeited from drug trafficking. Both NGO's and government departments are eligible to make request for grants for drug control activities including treatment. Till date, amounts, if any disabused from the fund for drug treatment, are not known.

(ii) Treatment Fund

The mainstay of drug treatment delivery are "de-addiction" centres, which, according to the NDPS Act, may be set up by the Central or State governments or by voluntary organisations with government approval. Another legislation that regulates treatment is the Mental Health Act, 1987, which mandates

the establishment of special institutions for persons addicted to alcohol and other drugs that cause behavioural changes. This statute and rule framed under it set out an onerous system of licensing of private institutions that offer such treatment.

Presently, serving for drug dependence are offered through:

(i) Government hospitals that provide inpatient and outpatient care, mostly detoxification.
(ii) NGO's who receive grants from the Ministry of Social Justice and Empowerment (MOSJE) and their state counterparts-departments of Social Welfare to run integrated rehabilitation centres for addicts. There is greater emphasis on psycho-social interventions in order to make.
(iii) Psychiatric hospitals or nursing homes, operating privately, under license by the Mental Health Authority. These institutions offer a range of psychiatric services besides addiction treatment.
(iv) Private "de-addiction" centres that operate without registration or license and reportedly charge anything between Rs. 30000/- to 70000/- from addicts or their families.
(v) The main cause on the person who is trafficking but also is a addiction of the drugs then even if the act which regulates the treatment of the adductors the Govt. hospitals or the NGO's are not so well of to give treatment to these people and to rehabilitate them afterwards without any money. They charge money from the parents for their rehabilitation. They do not allow them to meet the patient as when these de-addiction centers take away the patient's unawares as in sleep or under the influence of the anaesthesia. The patients develop the sense of revenge towards their patents and do not want to meet the parents.

Problems in the Legal Issue Surrounding Drug Treatment Centers in India

a) Silent on Standard

Notwithstanding statutory provisions, drug treatment in India largely remains unregulated, placing the health and safety of patients at risk. With the exception of some reputed institutions, most centres do not follow sound clinical practices; instead, utilise outmoded and unscientific methods. There is no standardised care; anything and everything is called treatment. In some parts of the country, may faith based centres run on the belief that God, not medicines will help "addicts." In Punjab, where drug dependence has reached enormous proportions, numerous "clinics" have opened up to cash in on the desperation of persons who use drugs and their families. Instead of medical care, "punishments" are meted out to rid patients of addiction. Physical isolation, chaining, electric shocks, beating, forced labour, denial of meals, other cruel and inhuman behaviour are commonly practiced at such unauthorised centres. Many drug users have reportedly died because of physical torture and/or lack of timely medical attention.

b. No monitoring

Existing guidelines are sketchy; they elaborate neither clinical not human rights standard in managing drug dependence. Further still, they are operational codes and not statutorily binding on private centres. Legally, confusion prevails over whether drug dependence treatment is governed by the NDPS or the mental health Act. System for review and oversight are non-existent evaluation of NGO centres is limited in scope to grant and/or renewal of funding. The effectiveness of psychological interventions supported by MSJE has not been scientifically evaluated till date. Instead of giving them medicines which helps them detoxify their body they are only refrained from using them. When a person is addicted, his dependence on the drugs can only be guarded with the help of other drug which is essential for the patient to have them.

Legislative Policy of Indian Parliament on Drug Abuse

India's approach towards Narcotic drug & Psychotropic Substance is enshrined in Art 47 of the Constitution which mandates that the *"State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injuries to health."*

There are members of centre and state enactments which help to exercise the statutory control over the use of the drugs in India. To

name a few are Opium Act 1857, Opium Act 1878 and the dangerous Drug Act 1930 were enacted a long time ago. But afterwards numbers of legislations were made as:

1. NDPS (Amendment) Act, 1988.
2. NDPS (Amendment) Act, 2001.
3. NDPS Rules 1985.
4. NDPS (National fund for Control of Drug Abuse) Rules 2006.
5. Haryana NDPS Rules 1985.
6. Notification issued by the Central Govt.
7. NDPS (Amendment) Act 2014.

This is Narcotics and Psychotropic Act 1985 that governs, controls the Psychotropic's like amphetamine which have the medicinal value. We use two term as opioids at the narcotics. As they are similar synthetic substance and they have the medicinal properties and if used in a proper way they relieve the pain and if used excessively they are the drugs which have very long-lasting consequences. Patient with severe pain were unable to get opioids medicines for pain relief because the state NDPS rules made it difficult for the hospitals to store and dispense opioids. Hospitals have to obtain license for obtaining, stocking, export, import etc. And each of the license was valid only for a month or so and had to give by various departments. To avoid the legal hassles the most of the department solved this problem by not stocking it. The overall impact was the denial of pain relief to people in India.

Public interest litigation was filled in 2007 by the Indian Association of Palliative Care along others pleading for the adequate pain relief for the cancer patients in the country. Many of the representation were made to the Deptt. of Revenue, Finance Ministry and the Standing Committee on Finance (2012) with regards to the amendments made in the NDPS Act.

There were scrutinized, researched analyzed and then incorporated in the NDPS Prill 2011 which was finally passed by the parliament in 2014.

The important provisions of the amendment were

1. There should be the National Uniform Policy on these selected medicines and powers to amend the rules would vest in Central
   Govt. Currently each state had its own rules and that is why now these will be the uniformity in the rules under NDPS.
2. The power to amend to rules would vest in Central Govt. so as to ensure the Uniformity.
3. Each institution will require a single order instead of now having 4-5 different licenses.
4. Each state shall have one drug controller thus eliminating the many interdepartmental infringements.

Another thing done by the amendment was about the health and the rights of the people who use drugs. We must remember that this problem of drugs in India is not a low and order problem but a psycho- socio problem. The dimensions of the drugs and drug trafficking are so high that they have not only claimed millions of lives but have endangered the society as a whole by weakening the youth of the country. This is also termed as the Drug epidemic. This amendments has now allow management of drug dependence thereby legitimizing uploads substitution, maintenance of at other harm reduction services i.e. the drug rehabilitation centres etc. Secondly it authorizes the government to 'recognize and approve' the treatment centres which currently operate without the license and accreditation and inflict violence and torture to the Drug Addicts. This amendments will allow for the evidence based and human Rights complaint standards for drug-treatment facilities whether public or private.

The third thing which the amendment has done was about the sentencing for the drug offences. Sentencing in the NDPS act is dependent on the quantity of the drug found with the scale of the punishment varying from 6 months for the 'small' involving the 'commercial quantity'. Now the amendment act has defined small and commercial quantity as on the basis of the total weight of the contraband as opposed to the actual content of the Narcotic or psychotropic drug in the seized substances. This would lead to more and more people including those person who use drug to be sentences for the commercial quantity. Another important change in the parliament was to recast the death penalty which was until now mandatory for the subsequent offence involving the certain quantity of the drugs in Sec 31 A as an alternative to the imprisonment for 30 years u/s

31 NDPS[10] Act 1985. This is a welcome step but falls shoot of the International Human Rights Commission which have given the standard and restrict the imposition of the death penalty where the offence is not serious or the rarest of the rare cases[11] and the drug offences do not fall in this category and till death sentence cannot be attracted here.

Emerging Drug Scenario

Due to the mushrooming the chemist shop, Jail Culture, Cultural change and a lot more of the personal and family issues lead to drug addiction, adventives, peer culture, peer pressure, stress and strain, rapid urbanization, migration, unemployment, growth of slums, poverty etc. are loads and loads of the reasons of which can lead to drug addiction. Heroine addicts in rave parties, snake venom is highly precious commodity, anything for the extra back to user without anything scientific basis. Some researches also reported using lizard tales, snake oil, iodex, paints, puncture glue, shoe polish, spirit, petrol. Glue sniffing is the habit noted in the school children and children living and working on the stress which is quick and cheap.

Drug like morphine, fortwin, avil and pheargan injected etc. Parental and Peer influence, family structure and socio-economic factors, Advertisements and Role Model, Availability, knowledge, attitude and beliefs, effect of media, films also play the important part in initiation and maintenance of drug abuse in adolescents.

Progress in the drug abuse prevention depends on several factors. First our strategy to response to drug response to drug problems should being with the people, communities & institutions involved. People should be considered as the heart of the problem and the beginning of any solution. This principle will obviously take different forms in rural and urban areas and also be influenced by class distinctions.

Second, alternative development strategy for rural areas should respond to the conditions found in the target areas, which will differ according to the communities.

Conclusion and Suggestions

After going through all the problems faced by the drug addicts and facing the rehabilitation centers the patients are in a very awkward position. They are not able to cope with the outside world because of the addiction to drugs. Nobody considers them to be the patients and are serious with them but on the other hand they are the vulnerable children who want extra care and attention for their overall development. Most of the times they are depressed and unable to come back in the society. There must be a legislation for the rehabilitation centres and a uniform policy to inspect over them. The medicines, behavior and the facilities which they provide should be reviewed and a session of Psychological analysis should be compulsorily dine as per the directions of the act. Every act should be monitored and a Brief medical history should be maintained by the rehabilitation centers. The patients normally start having an hard feeling towards the parents after their admission in the rehabilitation centres. But NDPS have many shortcomings which are pointed out in the suggestions.

1. Until and unless the problem of drug abuse is not recognized as a serious problem. This problem will continue to mushroom more and more in the society and will result in a drug epidemic. We have to identify the people and help them to detoxify or discourage them to use drugs on them. Recognize the drug abuse as a serious problem.
2. If the society will become more aware for the drug abuse and think seriously for it as a problem then the patients who visit the de-addiction centres will not consider as a black label on their forehead and are self-conscious for this purpose. Most often the parents do not disclose the fact of their child visiting the de-addiction centres because it is still a stigma will respect to the society. Creation of social awareness & education.
3. The community should also come forward and have a lined attitude towards the child who has come back from the rehabilitation centre and also encourage the child for not using drugs again and should accept him with open arms. Role of Community to combat drug abuse.
4. Peer Pressure group should welcome the member of the group who has visited the rehabilitations centre and should also discourage him from using the drugs again. Peer group should keep a close watch on the individual and should also discourage other members of the group to

follow him if they are under the influence of the drugs. Role of Peer group pressure.

5. Supply is also reduced and all the things should be monitored with the help of the licensing authority hospital management or the rehabilitation centres that the supply should be utilized properly as according to the need & the desires of the persons. Reduction in supply.
6. New software should be developed which has a censor that can detect drug use or the person carrifing drugs. This software should be installed in every phone irrespective of the make and the technology which the person should not have the permission to remove such software. Use of tools of new communications technology to achieve better and effective transfer and use of information regarding drug abuse.
7. The drug abuse should be considered as a global problem and International Collaboration a must on such an issue should be must. The international mean of communication should be made censor-sensitized so that the drugs cannot be taken from one country to other. Increase International Collaboration on drug abuse.
8. Drug- addict are the victim of this menace and they should be identified and should be taken to the rehabilitation centers free of cost. They should be helped to detoxify themselves and should be treated as patients. This should not involve any being of stigma. Identification and isolation of drug-addicts.
9. The parent, friends are the person who will remain with him for his lifetime. They should by cancelling session, interactive sessions with the psychiatrist about the behavioural changes which the patient now has and what he will have afterward coming back from the rehabilitation centres. These sessions will help them to deal with the patients nicely and will keep his morale up for not using the drug again. Counselling of the addicts, parents and friends.
10. Hate the drug not the addict should be the motto of the rehabilitation centres and this motto should be spread throughout the society. As this will help the drug addict to come out of the arena of drugs. The love, affection which the inmate will get after coming out will help him come out of the ordeal of the drugs. Treatment- after case and rehabilitation of the addicts after the treatment. Only pure drug content to be considered for penalties.
11. Only the pure drug possession of the actual drug which is an offence should be served from the consignment and then be impounded and case should be registered on the actual amount. There is no use of the number of the case registered but actually the use is when we can punish all the persons against whom the case was registered. Only pure drug content to be considered for penalties.
12. All the addiction centres whether, funded, mom funded, private, or govt. they should be monitored and the medicines, or the measure which they use should be checked by the licensing authority. A feedback from the patients and their families should also be taken. Monitoring the work progress against de-addiction.

References

[1] Universal Declaration of Human Rights 1946 Art 25
[2] International Covenant of Economics, Social, and cultural Rights
[3] Narcotics Drugs, 1961
[4] Sec. 21. Punishment for contravention in relation to manufactured drugs and preparations.
[5] The Dangerous Drugs Act, 1930
[6] The NDPS Amendment Act 1989
[7] The NDPS Amendment Act 2001.
[8] The NDPS Act 1985 Sec. 21 Punishment for contravention in relation to manufactured drugs and preparations.
[9] Sec. 27, NDPS Act 1985. Punishment for illegal possession in small quantity for personal consumption of any narcotic drug or psychotropic substance or consumption of such drug or substance
[10] Sec. 31 (A) NDPS Act 1985
[11] Rarest of the rare cases Sec 302 IPC 1860