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### **Menace of Drug Abuse and the Law: An Analysis**

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#### **ABSTRACT**

Alarming and ever increasing incidence of drug abuse coupled with new productions thereof are a cause of serious threat to not only Indian but world security, economic and social health. The researcher's and even Punjab and Haryana High Court has highlighted 75% youth every third student and 65% families of Punjab are caught in drug addiction. Constantly legal efforts have been made to curb the menace with Opium Acts of 1857 and 1878, Dangerous Drugs Act 1930 and NDPS Act 1985 with periodic amendments to sharpen the teeth of such laws but of no avail. The reason is casual approach towards legislative implementation, untrained and non-committed investigations resulting in poor convictions. As such deterrent punishments for masters of trade and even drug users ranging from 1 year to 20 years imprisonment, the minimum punishments adding to the deterrence have proved to be of little effect. The answer lies in easing out procedural technicalities, training and separating cadre of investigating officers and speedy disposal of court cases. The problem is also required to be dealt with as drug dependent disease than in all cases, an illicit trade and heinous crime.

**KEYWORDS:** Drug abuse, Opium Act, drug trafficking, narcotic drugs.

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## **INTRODUCTION**

Consumption of Narcotic drugs and other psychotropic substance have plagued the entire world and India is no exception. India is geographically surrounded by the golden triangle on the eastern side i.e. Thailand, Burma, and Laos, and golden crescent on the western side i.e. Afghanistan, Iran and Pakistan and therefore, it is an important transit point of illicit drug supply originating from the countries located in the golden triangle and the golden crescent. The regions located in golden triangle and golden crescent are the largest suppliers of drugs in Asia. India is sandwiched between these two regions and it has become not only the transit point but also consumer of NDPS (Narcotic Drugs and Psychotropic Substances). According to World Drug Report 2009, India has a dubious distinction of having the largest Opiate using population in South Asia. As per the report, there are around 3.2 million people using Opiate in India<sup>1</sup>.

Drug Abuse is a transnational phenomenon. As per UNODC (United Nations Office on Drugs and Crimes) Report 2015, about 246 million people worldwide, between the age group of 15-64, were using drugs in 2013<sup>2</sup>. Around 27 million of these people have drug use disorders which imply that one out of the ten has drug use disorders. Of these, 70% drug users use opiate. 187100 drug related deaths were reported in 2013. As per UNODC, worth of illicit drugs market was about 322 Billion USD in 2003<sup>2</sup>. The market is estimated to have swelled from 322 Billion USD to around half trillion i.e. between 426 billion USD to 652 billion USD billion<sup>3</sup> and is placed second after counterfeit currency and pirated goods market (1.13 trillion USD). Trafficking in illegal drugs is one of the top five largest industries including Arms state and petroleum<sup>4</sup>.

The menace of rising illegal trafficking in drugs coupled with increasing incidence of drug dependence and resultant socio-economic, physical, emotional, and other evil consequences on the community at large encouraged the researchers to explore the problem of drug abuse, the pattern and prevalence of drug abuse and the legal measures initiated to contain, curb and regulate this menace.

Before proceeding further, it is worthwhile to define drug abuse. It may be defined as self-administration of a substance/drug for personal use except on medical prescription in such combinations and in such quantity as may lead to impairment of an individual's ability to work efficiently and effectively. It gives pleasure to an individual momentarily but in long run leads to dependence of that individual on the substance leading to physical, emotional, economic and psychological harm to the individual and his family. It also causes substantial loss to the society and the country in terms of loss of human productivity and economic losses<sup>5</sup>.

## **PREVALENCE AND PATTERN OF DRUG ABUSE**

As per World Drug Report -2017, 28 billion healthy years of life have been lost as a consequence of drug abuse and 17 million healthy years of life have been lost due to drug abuse disorders. The report points out that in 2015, around quarter of a billion people used drugs and out of these 29.5 million suffered from drug use disorders, which is nearly 0.6% of the global adult population. Cannabis were used by maximum number of drug users (183 billion) followed by opioids 35 million and amphetamine and prescription stimulants 37 million, ecstasy 22 million, opiates 18 million and cocaine 17 million. The report also highlighted the relationship between diseases associated with drug use and revealed that 1.6 million people who live in drugs are having HIV; 6.1 million people are suffering from hepatitis C; 1.3 million are suffering from both hepatitis C and HIV<sup>10</sup>.

So far as India is concerned, tobacco and alcohol are most commonly used. This apart, high prevalence of Cannabis, Heroin, Opium, and Hashish have been found in India<sup>6</sup>. National survey on extent pattern and trends of drug abuse in India was the first of its kind wherein systematic effort was made to document the prevalence and pattern of drug abuse in India. National household survey took a sample size of 4697 males between the age group of 12-60 and found that alcohol was one of the top intoxicants being abused (21%). The survey brought to light the usage of cannabis, opiates, poly drugs, etc. Survey revealed that incidence of opiates was higher in India as compared to average use at the global level and Asian level<sup>7</sup>. Similarly Drug Abuse Monitoring System reported that alcohol abuse in patients admitted for treatment accounted for 44%, opiates 26% and cannabis 12%<sup>8</sup>. The report concluded that drug abuse was largely prevalent in males though the instances of drug abuse in females were also found.

Rapid Situation and Response Assessment<sup>8</sup> from a sample of 5800 male drug users found that 50% of the drug users belonged to the age group of 21-30. Majority were literate and employed. The report pointed out that 62% of drug users were injecting drugs. Further 78% of the drug users switched to injecting from non-injecting methods.

Various studies pertaining to prevalence and pattern of drug abuse in the state of Punjab have been conducted. A brief analysis of some of these is presented hereunder:

Salil Dubeet. al (2017) from a sample size of 1732 from rural area of Punjab found that 30.83% of the subjects have used drugs once in a lifetime and 27.95% used drugs during the past 12 months. The study shows that among the subjects belonging to productive age group of 25-54, the prevalence rate was 32.49% where as it was 38.76% in age group of 65 years and above. 12.39% of

the drug users were consuming cannabis. Those who consumed cannabis for the first time in the age group of 15-24 were 76.67% whereas 11.67% users used cannabis before or at the age of 15 years<sup>11</sup>.

Bhuvan Sharma et.al.<sup>6</sup> took sample of 400 households from 15 villages of Jalandhar District of Punjab in the age group of 11-13 years. 93.3% of the sample was males and 6.8% females. Of the study sample, 17.3% were illiterate or having primary education, 44.3% had secondary education and 38.5% were higher secondary or graduate. The study found high prevalence of substance abuse i.e. 65.5% and the most common substance abused was alcohol (41.8%) followed by tobacco 21.3%, Bhukki (11%), Heroin (20.8%), Bhang (6.3%), Charas (1.5%), and Ganja (1.5%). Therefore, study found that substances other than alcohol and tobacco accounted for 34.8% and high prevalence of heroin addiction was found. Gur Parkash Singh et.al, (2016), carried out cross sectional study in the modern central jail in Faridkot and studied the drug profile of prisoners admitted at the de-addiction facility of central jail. 66 prisoners who were being treated at the de-addiction facility constituted sample for the study. The study showed that heroin was used predominantly in prison. The study also brought to the forefront that prior to imprisonment; the predominant substance used by these inmates was poppy husk i.e. 45%. Of these, 47% were using intravenous route and 87% of these drug injectors started using this method after imprisonment<sup>12</sup>.

Ajit Awasthi et.al.<sup>13</sup> collected data from 6398 households wherein 13925 respondents were interviewed. Researchers found lifetime substance dependence of 15.83% respondents. Alcohol was the most commonly used substance followed by Tobacco. After extrapolating the results to the population of Punjab, study estimated that there were around 2.2 million users who were dependent on alcohol, 1.6 million on Tobacco and 0.17 million were using Opiate. Significantly, the study pointed out only one in six subjects sought professional intervention.

Punjab & Haryana High Court has also taken cognizance of high prevalence of drugs in the State of Punjab. Based on a report published in "The Hindu" and the "Tehelka News Magazine" , (Vol. 9, Issue 15, dated 14th April 2012), High Court observed that:

“75% of the youth, every third student, 65% of all families in Punjab are in the throes of a sweeping drug addiction with little or no hope in sight....a staggering 75% of Punjab's youth is hooked to drug abuse, a figure the state government itself submitted to the Punjab and Haryana High Court in 2009. One out of every three college students in the state is on drugs. Every kind of drug is readily available here. From smack, heroin and synthetic drugs to over the-counter drugs like Buprenorphine, Proxyvonspas, Codex Syrup and spurious Coaxil and Phenarimine injections. This is a State where 30% of all jail inmates have been arrested under the Narcotic Drugs and Psychotropic

Substances Act and the DGP has kicked up a political storm by saying it is impossible for him to control the flow of drugs into his prisons....”<sup>14</sup>.

From the above analysis, it can be safely concluded that there is high incidence of drug abuse apart from alcohol and tobacco abuse and the trend is rising. Different researchers have given different data. The exact data is not available. In many cases, data shows high prevalence rate which may be exaggerated. There is, thus, a need to have reliable and authentic data so that the problem can be accurately gauged and remedial measure be taken accordingly.

Drug Abuse not only affects the individual concerned but it also has deleterious effects on the society. As stated earlier, illicit drugs market is thriving and is nearly half a trillion. The amount so earned is generally laundered and used in various crimes like terrorism, purchase of arms, corruption and other crimes. It pushes the youth towards mental disorientation and emotional disarrangement from which seldom is reversible. Therefore, it destroys the flower of nation's future<sup>15</sup>. UNODC has tried to measure the economic cost of drug abuse in select countries and has found that it costs around 1.2% of global GDP and accordingly, they have estimated the economic cost between 400 billion USD to 700 billion USD (UNODC 2011). Further, various reports have established co-relationship between drug abuse and deadly diseases like HIV, Hepatitis, STD and Tuberculosis leading to innumerable deaths.

## LEGAL MEASURES

Since times immemorial, efforts have been made to contain and regulate intoxicants. According to Manusmriti, those who produce and sell spurious liquors should be banished from the kingdom, as they are thieves who harass the subjects by their ill-deeds<sup>16</sup>. During Mughal period, the production of drugs increased manifold since it was viewed as the source of revenue generation by the State and there was complete state monopoly over the trade of Opium<sup>17</sup>. However, with the decline of Mughal Empire, drug trade fell in the hands of the British and the Dutch until Britishers gained full control over it.

### *Evolution of Law relating to Drugs in India*

*The Opium Act, 1857* provided for licensing for cultivation of poppy and appointment of Opium Agents and Officers to assist Opium Agents. The Act also provided for levy of penalties for failure to cultivate the full area provided in the licence and for unlicensed cultivation etc.

*The Opium Act, 1857* was replaced by *The Opium Act, 1878* which made various offences punishable with imprisonment. The Act also made a major breakthrough in the form of presumption of culpable mental state unless contrary is proved. This presumption of culpable mental state was

contrary to established canons of criminal jurisprudence which provided for presumption of innocence till contrary is established.

International Opium Convention, 1925 paved the way for enactment of *The Dangerous Drugs Act*, 1930 since India had ratified the Convention. The Act inter-alia provided for regulation of import and export of dangerous drugs other than prepared Opium, prohibition of cultivation of Coca plant, prohibition of cultivation of poppy, except in accordance with the law. The Act not only defined and made various contraventions punishable but it also made attempt and abetment punishable offences.

However, the above laws were not sufficient to deal with the increased incidence of drug trafficking and drug abuse. It was contended that the laws had little deterrent effect. It is pertinent to mention here that the *Dangerous Drugs Act* 1930 provided for maximum punishment of 3 years and in case of repeat offenders, the maximum punishment was 4 years. Further, various important functionaries like officers of customs, Central Excise Department, etc. had no investigation powers to investigate the offences under the Act. Furthermore, the introduction and popularity of psychotropic substances compelled the government to make laws for containing and preventing their abuse. It is apt to mention here that *Constitution of India* in Directive Principles of State Policy mandated the state to bring about the prohibition of consumption of intoxicating drinks and drugs injurious to health, except for medicinal purposes [Article 47]. This apart, adoption of UN Single Convention on Narcotic Drugs, 1961 also paved the way for enactment of new law. All these factors led to demand for enactment of a comprehensive law on Narcotics Drugs and Psychotropic Substances.

### ***The Narcotic Drugs and Psychotropic Substances Act, 1985***

NDPS Act, as amended from time to time, has been enacted with the following objectives:

- To consolidate and amend the law relating to narcotic drugs;
- To make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances
- To provide for the forfeiture of property derived from, or used in, illicit traffic in narcotic drugs and psychotropic substances,
- To implement the provisions of the International Convention on Narcotic Drugs and Psychotropic Substances

The NDPS Act has prohibited cultivation of Coca plant, Opium, Poppy and Cannabis plant. The Act has prohibited production, manufacture, possession, sale purchase, transport, use, consumption, import or export of any Narcotic drug or psychotropic substance except for medical or scientific purposes or except in accordance with any licence, permit etc. issued as per the Act (Section 8& 25A). It is worth mentioning here that Opium poppy and other Narcotic drugs have various scientific and medical uses and therefore complete ban on the cultivation and production of such substances is neither possible nor desirable. The Act has therefore, empowered the appropriate government to regulate the production/cultivation and issue licences or permits in this regard (Section 9, 9A & 10).

The NDPS Act has laid down deterrent punishments for contravention of the provisions of the Act. Three levels of punishment have been provided i.e. punishment for small quantity, greater than small quantity but lesser than commercial quantity and for commercial quantity. The law has laid down minimum mandatory punishment for various offences so as to ensure that the violators do not walk away with minor penalties. A brief analysis of the acts criminalised under the NDPS Act and the punishment provided for them is given hereunder:

**Table1- Offences and Punishments under NDPS Act**

Section	Offence	Punishment
15	Production, possession, transport, sale, purchase (inter-state and intra state), etc. of Poppy Straw.	<ul style="list-style-type: none"> <li>• <b>Small quantity:</b> RI* which may extend to one year or fine or both</li> <li>• <b>Commercial quantity:</b> RI minimum 10 years and maximum 20 years and fine.</li> <li>• <b>Greater than small lesser than commercial:</b> RI upto 10 years and fine.</li> </ul>
17	Manufacture, possession, sale, purchase (inter-state, intra state), use, transportation of prepared Opium.	
18	Cultivation of Opium, Poppy; production, manufacture, possession, sale, purchase, transportation, use of Opium.	
20	Production, manufacture, possession, sale, purchase, use of Cannabis.	
21	Manufacture, Production, possession, transport, sale, purchase (inter-state and intra state), Use of manufactured drugs and preparations.	
22	Manufacture, Production, possession, transport, sale, purchase (inter-state and intra state), use of psychotropic substances.	
23	Import, or export of NDPS	
20	Cultivation of Cannabis plant	RI upto 10 years and fine.
16	Cultivation of Coca plant, production, possession, sale, purchase, transportation, use of Coca leaves	
19	Embezzlement or illegal disposal of Opium by licensed cultivators	RI minimum 10 years, maximum 20 years and fine.
24	Procuring NDPS outside India and supply outside India	
27A	Financing illicit traffic and harbouring offenders	

\*RI implies Rigorous Imprisonment

In addition, the Act has criminalised attempt, preparation, abetment, and criminal conspiracy regarding NDPS (Sections 28, 29, 30). It is important to mention here that NDPS Act has also provided punishment for consumption of NDPS i.e. for drug users. In case the person consumes Cocaine, Morphine, or other prescribed NDPS, he may be punished with imprisonment upto one year or with fine extendable upto 20,000 or both. In case of consumption of any other NDPS, the punishment is upto 6 months or fine upto 10,000 or both (Section 27). Therefore, the Act has not only criminalised illicit traffic in NDPS but also the consumption of NDPS. However, keeping in view that the drug user/dependant is required to be rehabilitated and that drug dependence is a disease which is required to be cured, law has provided that if an addict is found guilty in respect of small quantity of NDPS, he may be released by the court for undergoing medical treatment for de-addiction. Therefore, instead of being jailed, he may be allowed with his consent to undergo treatment for detoxification.

In order to make law more stringent, various amendments have been made viz. amendments by Act 2 of 1989, Act 9 of 2001, and Act 16 of 2014. Amendment of 1989 introduced Section 31A which provides for death penalty in case of repeat offenders for the offences prescribed in the Section in respect of the specified quantity. Therefore, if a person engages in production or trafficking of illicit drugs in large quantities, and he has already been punished previously for various offences in respect of commercial quantity, then he can be punished with enhanced punishment which shall be one and half times of the prescribed punishment or with death.

Offences under the Act are cognizable and non-bailable (Section 37) and therefore, bail of the offender is not a matter of right but is the discretion of the court and generally bail is not granted to offenders in such heinous crimes. Further, pre-trial detention in such cases is also more than the other offences. Whereas in case of other offences, if the charge-sheet is required to be presented within 90 days, in case of NDPS offences, the pre-trial detention is 180 days (Section 36A) keeping in view the gravity of the problem.

So far as NDPS offences are concerned, the provisions pertaining to probation of offenders do not apply (Section 33). Further, the sentence awarded under the NDPS Act cannot be suspended, remitted or commuted (Section 32A).

Not only the stringent penalties have been provided to create deterrent effect but also provisions have been made for forfeiture of illegally acquired property of a person convicted with imprisonment of ten years or more (Chapter VA, sections 68A-68Z).

## CONCLUDING OBSERVATIONS

Despite stringent law, the incidence of drug trafficking and drug consumption is on the rise and therefore, the question arises as to the efficacy of the existing law and the reasons for increase in drug abuse. A cursory look into the following table is useful.

	1990	2005	2010	2015	2016
Cases Reported across India under NDPS Act	14176	29421	29576	50796	49256

Source: Reports of National Crime Records Bureau (NCRB)

There is large pendency of NDPS cases in India despite the constitution of special courts to deal with them. As per the 2016 report of NCRB, the status of NDPS cases is as under

Sr. No.	Particulars	Number of cases
1	Trial completed in 2016	35607
2	Conviction	25782
3	Acquittals	9852
4	Conviction Rate	72.4
5	Cases Pending on December 2016	162265

Source: Report of NCRB, 2016

As against 50394 cases sent to the court during the year, the number of cases decided was 35607, adding to the existing pendency of the cases. Delay in disposal of cases leads to a poor and tardy implementation of the law giving hope to the offenders of being let off thereby militating against the deterrent object of the Act.

Various other reasons have been identified from time to time for poor implementation of the law. One such reason was poor conviction rate. Of late, conviction rate has improved drastically as is apparent from the above table. However, traditionally the conviction rate has been much lower owing to frequent change of investigation officer, acquittals on technical grounds like non-compliance with mandatory provisions of Section 42 and 50, <sup>18</sup>non-compliance with procedural formalities regarding sample, improper investigation, witnesses turning hostile etc.. This apart, the menace could not be adequately controlled for lack of social sanctions, lack of awareness, improper

sentencing, etc. Besides, wild growth of Coca plant, Opium Poppy and Cannabis plant encourage drug abuse and is used as pretence by offenders cultivating them.

From the above discussion, it is clear that despite stringent law, the objective of law has not been achieved for reasons discussed above. Therefore, there is a need to change the existing approach to the problem including remedying the defects in the system like easing out procedural technicalities, restraint in changing Investigation officers, rigorous training of police personnel regarding the law relating to drug trafficking and abuse, speedy disposal of cases, effective implementation of the law, etc. It must always be remembered that just by creating stringent law with deterrence objective may not solve the problem, rather certainty in conviction can create the desired deterrent effect. Further, the present approach in dealing with the problem seems to be focussing on containing supply of illicit drugs which has not yielded the desired results. Therefore, equal emphasis should be laid on containing the demand of such drugs by persistent awareness, social sanctions, and the like. Furthermore, more emphasis should be made on rehabilitation of victims. It must be remembered that drug abuse is more of a disease and the drug dependent is sick who is needed to be cured and brought back in the mainstream.

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