

# Matching Footsteps with International Regime for Control of Personal Drug Consumption

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## Abstract

India has witnessed the problem of drug menace and with the changing times, the abuse is on the rise like never before. Some states in the country have been badly affected by the problem of addiction by the people. Thus, the response of Indian legislative mechanism has come to a point of scrutiny considering the spurge in the convictions of persons for personal drug consumption. Through the various steps taken by the legislative and enforcement machinery, the drug addiction and consumption has been demonized which has rather deflected from understanding the issue of addiction. The prohibitive approach towards drug consumption has proved to be ineffective in reducing addiction. On the other hand, there is a global trend of decriminalizing drug use. This paper aims at understanding the meaning of drug abuse, analyze the legal mechanism, its effectiveness in reducing drug consumption and evaluate the same in the light of global measures. A systematic web-based review of various journal articles, statutes, conventions, reports, news articles and blogs has been conducted for this research work. The referred material has been cited accordingly.

*Key words:* drug, drug consumption, drug abuse, addiction, decriminalization of personal drug consumption

## Introduction

Pursuit of human pleasure, enhancing aesthetic experiences, desire of ecstasy has always been a core human trait. Since antiquity, man has gone to any level to achieve these. This yearning for bliss in life has taken man on path of art, music, meditation, alcohol, sexual ventures, herbs, drugs and so on. Consumption of certain substances which created ecstatic state of mind has been a common phenomenon in early society. These substances became a part of people's life because of their addictive nature. However, as the times changed, the substance which were consumed also changed. Soon, the public opinion about drug use was tarnished and addiction was disdained by the modern society.

The recent full-blown drama of jeopardizing Bollywood in 2020 sensationalized the issue of drug use. The so-called drug probe did not result into any firm conclusions but rather sowed the seed of vigilantism among the people wherein they considered the drug use devilish and worthy of severe punishment and almost terrorized the drug use.

This, however, is going to have a negative impact on understanding the crux of the issue of drug use and drug addiction. Like many other countries, India is also grappling with drug menace. With urbanization and economic growth, the drug usage and addictions has reached new heights. State machinery has certainly waged war against drugs but, it has seldom affected the addicts. The prohibitive and punitive stance in India,

rising cases of drug addiction, and global inclination towards liberalization of drug policies has brought to us to rethink about our drug regime. This paper specifically deals with the issue of personal drug use and reaction of legal machinery. This is high time that we analyze the issue of drug use and addiction from a humanitarian perspective and from the point of view of an addict.

At this point, the following film dialogue by an addict proves to be intriguing and leaves us with a lot of questions about addiction and addicts:

*"I wish I could think something to say. Something sympathetic, something human"<sup>1</sup>*

## Understanding Drug Use, Abuse and Addiction

In English, the noun 'Drug' is thought to originate from old French word 'Drogue' which means a dry herb. The World Health Organization defines drug as 'any substance that when taken into the living organism, may modify one or more of its functions'<sup>2</sup> Thus, drugs are substances

which have physical and psychological effects, and which alter the consciousness, moods and perceptions of person.

Now as far as 'use' of these drugs is concerned, people use drugs for recreational purpose, so that they are able to lose their futile individuality in the mystic ecstasy of universal life<sup>3</sup>, to tranquilize their pains, remove frustrations, gain energy, for a simple adventure, thrill and so on. This casual and temporary resort to drugs does not seem dangerous. However, how much use would lead to abuse is an important point to understand.

WHO defines 'Abuse' as a 'maladaptive pattern of use indicated by continued use despite knowledge of having a persistent or recurrent social, occupational, psychological, or physical problem that is caused or exacerbated by the use or by recurrent use in situations in which it is physically hazardous'<sup>4</sup> Thus, continued consumption of drugs without any regard for consequences is considered as improper, disgraceful, unacceptable, reprehensible and thus amounts to abuse of drugs. Abuse is essentially socially constructed as it represents society's moral and ethical standard.

This continued use can cause dependency for some persons which would further culminate into addiction of these substances. Addiction is defined as a chronic, relapsing brain disease that is characterized by compulsive drug seeking and use, despite harmful consequences. It is considered a brain disease because drugs change the brain—they change its structure and how it works. These brain changes can be long-lasting and can lead to the harmful behaviors seen in people who abuse drugs.<sup>5</sup> An 'addict' means a person who has dependence on any narcotic drug or psychotropic substance<sup>6</sup>

<sup>1</sup> *Trainspotting* (film), 1996, Written by: Irvine Welsh, Directed by: Danny Boyle

<sup>2</sup> Maickel, Roger P, 'Drugs and Driving: A Research Review' Department of Transportation, National Highway Traffic Safety Administration, 1977 pg.no. 15

<sup>3</sup> William Glenn Steiner, 'Drug Use' available at <https://www.britannica.com/topic/drug-use>

<sup>4</sup> Substance use, Terminology and Classification, WHO, available at [https://www.who.int/substance\\_abuse/terminology/abuse/en/](https://www.who.int/substance_abuse/terminology/abuse/en/)

<sup>5</sup> Drugs, Brains and Behavior - The Science of Addiction, National Institute on Drug Abuse, NIH Pub No. 14-5605

The drug control regime in India condemns drug consumption and considers it as a criminal act. But, The Narcotic Drugs and Psychotropic Substances Act, 1985 does not define

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'consumption', nor does it prescribe any procedure for determining what constitutes 'consumption'. At what stage can the 'crime' be considered to have been committed?<sup>7</sup>

The very concept of '*drug consumption*' creates ambiguities and confusion as to what exactly is unconscionable, drug use, drug abuse or drug addiction.

The persons who might use drugs responsibly and for recreational purpose occasionally might not amount to abuse per se. All those who indulge into excessive use are not necessarily addicted. Some people get addicted, and some do not. The factors like early childhood development, biology of the person, environmental, social, cultural background play a major role in development of addiction. Addiction is a psychological phenomenon and a form of Mental Illness<sup>8</sup>. Thus, addiction is a form of drug abuse, but all abuse will not amount addiction and every act of use will not amount to abuse and culminate into addiction. Therefore, drug use, abuse and addiction though are very closely related, bear a thin line of difference. From close observation of these concepts, it is evident that abuse has a moral basis which is susceptible to change with place and time, and addiction is essentially a mental illness which need to be treated. In the light of this discussion, we shall ponder over the thought that whether incarceration is the right methodology to deal with the situation of personal drug consumption or there is need for change in moral perspective and introduction of treatment methods to treat the addicts.

## Legal Framework in India

As discussed above, India takes a prohibitive approach and punitive measures towards personal drug consumption. Let us understand the legal provisions dealing with the same.

The Constitution of India enshrines the principle of prohibition of drug consumption as a directive to state policies. Article 47 states that it is the '*Duty of the State to raise the level of nutrition and the standard of living and to improve public health and that State shall endeavor to bring about*

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<sup>6</sup> Sec.2(i), The Narcotic Drugs and Psychotropic Substances Act, 1985

<sup>7</sup> Neha Singhal & Naveed Ahmed, "*Criminalization Leads To Exploitation: The Mumbai Story No One Knows About*", Vidhi Centre for Legal Policy, available at <https://vidhilegalpolicy.in/research/criminalisation-leads-toexploitation-the-mumbai-story-no-one-knows-about/>

<sup>8</sup> 'mental illness' means mental conditions associated with the abuse of alcohol and drugs; Sec2(1)(s), Mental Healthcare Act 2017

*prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health’.*

Even though, India has cultural and mythological references of using various sedative substances like soma, cannabis, opium, bhang etc. the criminalization of these substances owes a lot to the sensitive political scenario of the second half of 20<sup>th</sup> Century. President Nixon had waged ‘War on Drugs’ in USA, Single Convention on Narcotic Drugs (1961) was passed. India initially resisted implementation of laws against drugs, but later became obligated to the international delegations. This compelled Indian government to eliminate ethnically deep-seated use of cannabis. Consequently, on 14 November 1985, The Narcotic Drugs and Psychotropic Substances Act was enacted, banning all narcotic drugs in India without much resistance.<sup>9</sup>

Section 27 of the NDPS Act specifically criminalizes the personal drug consumption and prescribe punishment for it. The ingredients of Section 27<sup>10</sup> are as follows:

Whoever, *consumes* any narcotic drug or psychotropic substance shall be punishable

(a) where the narcotic drug or psychotropic substance consumed is cocaine, morphine, diacetylmorphine or any other narcotic drug or any psychotropic substance as may be specified in this behalf by the Central Government by notification in the Official Gazette, *with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to twenty thousand rupees; or with both; and*

(b) where the narcotic drug or psychotropic substance consumed is other than those specified in or under clause (a), *with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both*

Further, Section 64A provides Immunity from prosecution to addicts volunteering for treatment. It says that *any addict*, who is charged with an offence punishable under Section 27 or with offences involving small quantity of narcotic drugs or psychotropic substances, who voluntarily seeks to undergo medical treatment for de-addiction from a hospital or an institution maintained or recognized by the Government or a local authority and undergoes such treatment

shall not be liable to prosecution under Section 27 or under any other section for offences involving small quantity of narcotic drugs or psychotropic substance<sup>11</sup>

Section 27 criminalizes every act of consumption in general and 64A talks about treatment for addicts. There is no clarity about what degree of consumption will amount to addiction. This indistinctness between these two provisions goes directly against the principles of harm reduction<sup>12</sup>, creates compulsion of treatment to those who might not need ultimately creating a burden on treatment machinery, lack of prioritizing the

<sup>9</sup> Shweta Sharma, Kapil Kumar and Gyanendra Singh, “An Overview on Narcotic Drugs and Psychotropic Substances Act, 1985”, Journal of Forensic Sciences and Criminal Investigation, Volume - 4 Issue 3 - August 2017

DOI: 10.19080/JFSCI.2017.04.555644

<sup>10</sup> Section 27, The Narcotic Drugs and Psychotropic Substances Act 1985.

<sup>11</sup> Section 64A, The Narcotic Drugs and Psychotropic Substances Act 1985

<sup>12</sup> Neha Singhal & Naveen Ahmed, “The long list of harmful effects of cannabis criminalization no one talks about” Available at <https://theprint.in/opinion/harmful-effects-of-marijuana-use-what-criminalisation-does/486254/><sup>13</sup> Balsara Case, 951 AIR 318, 1951 SCR 682

addicts, designing evidence-based treatment, incarceration of poor who might not be able to avail deaddiction program and overall failure to conceive addiction as a Mental Illness.

Whoever is suffering through any disease, ailment, illness, has a fundamental right to seek proper health care without any stigma or social barrier. Thus, the above provision of NDPS Act does not fulfill the objective of improving standard of living and public health. In this light, the directive of prohibition fails, and need is felt for adopting transformative approach in interpreting

Article 47. Patna High Court while striking down Bihar Government's total prohibition policy has mentioned that Article 47 cannot be violative of fundamental right to health.<sup>13</sup>

### **Failure of Incarceration**

Two major ministries of Government of India, Ministry of Social Justice and Empowerment and Ministry of Health and Family Welfare, are mandated to provide treatment services. It is the finding of concern that the flagship treatment programs of both these ministries hardly have any reach or coverage. Only a minuscule proportion of people affected by alcohol or drug dependence report having received treatment from an NGO de-addiction center or a government de-addiction center<sup>13</sup>

Further, Neha Singhal, Founder of Vidhi Centre for Legal Policy, have conducted extensive research about drug abuse. They analyzed that out of 10,669 cases from Magistrate Courts in

Mumbai, 99.9 per cent of these cases involved consumption of a narcotic substance. Wherever information on the kind of substance involved was available, 87 per cent of the cases involved cannabis.<sup>14</sup> The conviction rate under the Narcotic Drugs and Psychotropic Substances Act is 60% higher than that under the Indian Penal Code<sup>15</sup>. There are around 3 crore cannabis users in India and users of synthetic and high potency drugs are also rising<sup>16</sup> thus, adhering to Section 27 of NDPS, criminalizing such humongous number of people will break the criminal justice system.

It is elaborately evident that there is increase in convictions but hardly any deterrence towards the personal drug consumption. This leads to rethinking about the prohibitive measures.

### **Futility of Prohibition in Control of Drug Consumption**

Prohibitive laws are merely an effort of the State to enforce morality as drug use is considered immoral. In the wake of this regime, we have spent billions of rupees in incarceration, and there has been no deterrence and no decrease in addiction. It has rather created 'unintended consequences'<sup>17</sup> Prohibition has adverse economic effects, it leads to black market, cartelization, overdose, corruption and violence. Prohibition fuels

<sup>13</sup> Ministry of Social Justice and Empowerment, Government of India, '*Magnitude of Substance Use in India, 2019*'

<sup>14</sup> Supra Note. 12

<sup>15</sup> Vijayata Lalwani, "*Could decriminalising drug use help curb Punjab's narcotics problem? A new report backs idea*" Available at <https://scroll.in/article/890337/>

<sup>16</sup> Supra Note. 14

<sup>17</sup> United Nations Office of Drugs and Crime, World Drug Report 2018

criminality, bribery, and violence and regulation does “reduce crime.”<sup>18</sup> “Just putting the addicts in prison doesn’t solve the problem; we need to see drug abuse as a public health issue,”<sup>19</sup>

Further, for an act to be a criminal wrong, it must be a harm to entire society and pose a threat to security of entire society. Whereas addiction is peculiar type of victimless crime where the addict himself is the victim who become prey of its misuse.<sup>20</sup>

Thus, when the person is suffering through the illness of addiction creating mental depravity and weakening of character, caused due to social, economic, and cultural disorganization,

incarcerating him further would be a paradox where the victim of addiction will be punished by the law and the other members of the society who are not affected by this remain completely indifferent from the entire process. This is far from humanitarian method of dealing with the situation.

## International Regime for Control of Drug Consumption

The Single Convention on Narcotic Drugs 1961, Convention on Psychotropic Substances 1971, UN Convention 1988 are three main documents dealing with control and regulation of narcotic drugs, psychotropic substances, and illicit trafficking, respectively.

In 1971, US President Nixon declared “War on Drugs” endorsing “Zero Tolerance” approach to drugs and declared that drugs are the countries ‘number one enemy’. In 1981, Nancy Reagan, wife of President Reagan reiterating the drug war, launched “Just Say No” campaign. This political hysteria of drug control was ineffective in curbing addiction rates.

During 2000s, when world was struggling with cartelization and addiction, Portugal, on the other hand, undertook a monumental experiment: It decriminalized the use of all drugs in 2001, even heroin and cocaine, and unleashed a major public health campaign to tackle addiction.<sup>21</sup> This proved to be successful with a decline in the rate of deaths due to drug overdose and rate of drug abuse. Now, delegations from around the world are flying to Lisbon to study what is now referred to as the “Portuguese model.”<sup>22</sup> Countries<sup>23</sup> like Argentina, Czech Republic, Mexico, Australia has followed the similar footsteps in liberalizing their laws relating to drugs at different levels.

In terms of sending first time users into treatment, there has been massive decreases since initial stages of decriminalization. In 1999, Portugal had 92.2% new clients for heroin use in treatment, and by 2009 that number had dropped to 55.7%. In that same time frame, Germany has dropped from 37.1% to 19.6% first time users entering treatment. The Netherlands, again in the same time frame, dropped from 29% to 5.6%. These numbers indicate that increased investment

<sup>18</sup> Shashi Tharoor, “By prohibiting marijuana, India is giving free run to illegal drug cartels” <https://theprint.in>

<sup>19</sup> Dr Upneet Lalli, Deputy Director, Institute of Correctional Administration, Chandigarh  
<https://www.tribuneindia.com/news/archive/chandigarh/news-detail-735343>

<sup>20</sup> Prof. N V Paranjpe, Criminology and Penology, Central Law Publication, Eighteenth Edition, 2019, pg no: 264c

<sup>21</sup> Nicholas Kristof “How to Win War on Drugs”, The New York Times, available at <https://www.nytimes.com/>

<sup>22</sup> *Ibid*

<sup>23</sup> ‘10 Countries That Ended Their War On Drugs’ available at <https://www.inspiremalibu.com/>

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in treatment instead of criminal sanctions has resulted in large drops of heroin use in all three countries.<sup>24</sup>

Various International Organizations like World Health Organization, American Public Health Association, Human Rights Watch, NAACP, National Latino Congreso, Global Commission on Drug Policy, International Federation of Red Cross and Red Crescent Societies, The Drug Policy Alliance<sup>25</sup> have also supported decriminalization stating that arresting people simply for using a drug is ineffective, unjust, costly, and harmful. It is also interesting to note that the 1961 and 1971 Conventions does not require drug consumption as such to be established as a punishable offence.<sup>26</sup>

The UN General Assembly held a Special Session (UNGASS) on drugs in 2016. This Special Session was an important milestone in evolving Integrated and Balanced Strategy to Counter the World Drug Problem. The report suggests measures for preventing drug use by increase the availability, coverage and quality of scientific evidence-based prevention measures and tools that target relevant age and risk groups<sup>27</sup> rather than penalizing it.

## A Way Forward

India is coping with colonial past regarding various other controversial provisions, and punitive drug laws bears the burden of American War on Drugs. It is high time that we break the shackles a start afresh with rather liberal policies. The core principles of the 2030 Agenda for Sustainable Development are to “ensure that no one is left behind” and to “reach the furthest behind first”.<sup>28</sup> Thus the addicts are susceptible to be left behind owing to their criminalization, marginalization, stigmatization. The moral standard fulfills the function of keeping all stakeholders

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of society in peace, security and in mental and physical healthy state. When the morals which stop performing this function are liable to perish.

Drug abuse and addiction should be considered as public health issue. The liberalization policies have already shown positive results in dealing with issue of drug abuse. The economic resources spent on incarceration can be diverted to developing treatment methods. Vulnerable groups which bear high risk of developing addiction should be identified. The rehabilitation and deaddiction mechanism should be strengthened. As the countries are moving towards relaxing control of personal drug consumption, it is time to reject the antiquated perceptions.

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<sup>24</sup> Anderson, Steve (2012) "European Drug Policy: The Cases of Portugal, Germany, and The Netherlands," *The Eastern Illinois University Political Science Review*: Vol. 1: Issue. 1, Article 2.

Available at: <https://thekeep.eiu.edu/eiupsr/vol1/iss1/2>

<sup>25</sup> Approaches to Decriminalizing Drug Use & Possession, Drug Policy Alliance, February 2015, available at <https://www.unodc.org/>

<sup>26</sup> Commentary on the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, given in Vienna on 20 December 1988, New York: United Nations, 1998, ISBN 92- 1-148106-6, for 3.95, p. 82

<sup>27</sup> Outcome Document of the 2016 United Nations General Assembly Special Session on The World Drug Problem

<sup>28</sup> World Drug Report 2020, booklet 2 on Drug use and Health Consequences, page 9

## Conclusion

The reconsidering of Indian drug consumption control regime in the light of global scenarios is long overdue. There is need for cultivating empathy towards the addict and thus adopting humanitarian point of view and divorce with the prohibitive and punitive attitude.

First, The Constitution of India is a living document and thus transformative constitutionalism should be adopted in implementing the directive under Article 47.

The NDPS Act, 1985 lack in proper distinction between drug use, abuse, and addiction. Hence, any form of drug consumption should not be archaically criminalized. The prohibitive laws have failed in creating deterrence and reducing the drug abuse.

As drug use is a victimless crime and basically a mental illness, it should be treated medically rather than punishing under criminal justice system. Punishing for drug use devilizes that person which ultimately leads to marginalization and stigmatization. This further creates hindrance in seeking treatment.

Instead of blanket grouping of users and addicts, bifurcation can be done of first-time users and persons which bear a risk of fostering addiction. This will reduce the load of first-time users or recreational users and will help in devising evidence-based treatment. A proper record of the data of those who have taken treatment and if there are any incidences of recurrence and causes of the same should be maintained.

The liberal policies have shown remarkable results. Further research for viability of these models should be conducted.

With harm-reduction and demand-reduction approach various opportunities for making wise choices for healthy and holistic living should be made available to people from early age through various awareness regimes.

Thus, it is the time that we match our footsteps with the global trend of liberal drug policies and clear our prejudiced perceptions towards personal drug consumption.