

THE NARCOTICS DRUGS AND PSYCHOTROPIC SUBSTANCES: LEGISLATION AND CONTROL MEASURES ESPECIALLY IN REFERENCE TO INDIA.

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Abstract

Today, everyone is busy in rat race, everyone is under pressure to achieve in their target-based ambitions. They also paid any amount to achieve the same including legal and illegal ways to rescue in their pressure/ tension, drug abuse is one of them. Drug abuse is a problem not confined to any society, it affected to the whole world. Every countries are tried to solve this issue through their legislations, policies, etc. At the international level United Nations Single Convention on Narcotics Drugs, 1961, The Convention on Psychotropic Substances, 1971 and the Convention on Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.

India also tried to solve this issue. E.g. the Indian Constitution provides fundamental right to health under Article 21, the Narcotics Drugs and Psychotropic Substances Act, 1985, etc. As per Hindu Methodology Lord Shiva uses the 'Som-Ras' and Cannabis [Ganja] for to attained Samadhi. Afterwards, their followers especially Shaiv, uses Kannis for attainment of Samadhi, and today we have noticed that this is also misused by some persons. Recently some cases found that school's child used Whitener's liquid for their addictions.

This research paper's aims at detecting the reasons for failure of law to prevention, control of drug abuse especially reference to India.

Keywords: Drug abuse, World, Indian Constitution, Legislations, Law.

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Today, everyone is busy in rat race, everyone is under pressure to achieve in their target-based ambitions. They also paid any amount to achieve the same including legal and illegal ways to rescue in their pressure/ tension, drug abuse is one of them. Drug abuse is a problem not confined to any society, it affected to the whole world. Every countries are tried to solve this issue through their legislations, policies, etc. At the international level United Nations Single Convention on Narcotics Drugs, 1961, The Convention on Psychotropic Substances, 1971 and the Convention on Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.

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This research paper's aims at detecting the reasons for failure of law to prevention, control of drug abuse especially reference to India.

For this research paper considering the pandemic situation arises due to Covid-19, research methodology adopted study of available books, journals and research monographs available in TMV's Lokmanya Tilak Law College, Solapur's library and also material available on internet on various websites, study of judgements of Hon'ble Supreme Court of India and the Hon'ble High Courts of various States. Non-Empirical method has been adopted for this research paper.

Firstly, we see the definition and meaning of the term 'Drug' which has divided into four angles, such as Medical, Scientific, Sociological and Legal. According to Medical term, the drug as any chemical agent which affects live protoplasm¹. As per Scientific definition the term drug refers to a substance which by its chemical nature, affects the structure or functions of a living organism. Combine effect of these definitions, substances like medicines, cigarettes, food, alcoholic beverages, water also may fall within the scope of drug.

In case of legal definition there is no specific definitions of the term 'drug'. It varies from statute to statute. In India, under the Drugs and Cosmetics Act, 1940, mosquito repellents are also drug. As like same position under the Drugs and Magic Remedies [Objectionable Advertisements] Act, 1954. The International Conventions and Agreements on narcotics too not specifically define 'drug' due to its scope. In a nutshell, as per study author utilized narcotic drug or psychotropic substance as defined in the Narcotic Drugs and Psychotropic Substances Act, 1985, which is major penal law on this subject in India.

Drug abuse has been defined by the World Health Organisation as 'Persistent or sporadic excessive drug use, inconsistent or unrelated to acceptable medical practice.' As per above criteria, drug abuser may be classified into following categories: -

- I] Persons who use narcotic drugs or psychotropic substances, restricted legally to medical purposes only, e.g., morphine, sedatives, etc. for non-medical purpose.
- II] Persons who use totally banned narcotic drugs or psychotropic substances which have no legitimate medical use, e.g., cocaine, charas, heroin, etc.
- III] Persons who habitually use prescription drugs not falling within the scope of 'narcotic drug' or 'psychotropic substance' e.g., antibiotics, steroids, etc. even without medical prescription or advised.

Narcotics meaning as per dictionary is a substance used to treat moderate to severe pain. Narcotics are like opiates such as morphine and cocaine, but are not made from opium. They bind to opioid receptors in the central nervous system. Narcotics are now called opioids.²

As per Merriam Webster dictionary, a] Narcotic drug (such as [opium](#) or [morphine](#)) that in moderate doses dulls the senses, relieves pain, and induces profound sleep but in excessive doses causes stupor, coma, or [convulsions](#) b] a drug (such as [marijuana](#) or [LSD](#)) subject to restriction similar to that of addictive narcotics whether physiologically narcotic or not.³

Prevention and Control of Drug Abuse on International Level

In 1909, the first International Conference on Narcotics was held in Shanghai, China with 13 nations attended the same, known as International Opium Commission. In this Conference, resolution passed that use of opium other than medical purpose as a matter of prohibition by suitable legislations.

In 1921, the Hague Conference held, which known as first International Convention for considering the suppression of drug abuse. Some major international convention in this regard such as, the Geneva Convention, 1925, the Single Convention on Narcotic Drugs, 1961, the Convention on Psychotropic Substances, 1971, the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.⁴

Control, Regulation and Prevention of Drug Abuse: Role of India

When we deeply study about the prevention and control of drug abuse in India, then we divided into basically two categories, i.e. Pre-Independence period and Post-Independence period.

I] Pre-Independence period Opium & Cannabis had been the only narcotics drugs abused in India till mid-20th Century. The Cannabis must be used in religious ceremonies such as like Holi, Mahashivratri, etc. In Ayurvedic field also it has used for treatment to the patient by Vaidya⁵. The Indian Hemp Drugs Commission in 1893, was appointed to control use of cannabis. Upon the recommendation of this Commission the Act XII of 1896 was passed to enabling government to take control of cannabis cultivation. Only license holder can be cultivated this cannabis and none others. The Dangerous Drugs Act, 1930 passed on the ground of the Geneva Convention. The Cannabis product Charas was prohibited by the Government of India in 1935 and also 'Ganja' in 1961.

II] Post-Independence period-Now when we study about the post-independence period, then we start from the Indian Constitutional provisions in this regard. In India, Union government and State government may make laws in respect of control and prevention of abuse of drugs and psychotropic substances.

01] Seventh Schedule of the Indian Constitution-

i] Cultivation, manufacture, and sale for export, of opium.: Entry No. 59 of List I [Union List]

ii] Drugs and poisons, subject to the provisions of Entry 59 of List I with respect to opium.: Entry 19 of List III [Concurrent List]

02] The Directive Principles of State Policy-The Directive Principles of State Policy enshrined in Part IV of the Constitution of India are fundamental in the governance of the country as laid down in Article 37 of the Constitution, which is reproduced below:

The provisions contained in this Part shall not be enforceable by any Court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.⁶

The Fundamental Rights impose a duty on the State not to violate them; the Directive Principles of State Policy impose corresponding duty on the State to apply them in making the laws for the welfare of the people. The objectives underlying both in the Fundamental Rights and in the Directive Principles of State Policy are equally important and go together and represent the kind of the society which we wish to create in India. One of the Directive Principles of the State Policy enshrined in Article 47 of the Constitution of India lays down as under:

Article 47 of the Indian Constitution provides that, it is the duty of the State to raise the level of nutrition and the standard of living and to improve public health. This is a one of the Directive principles for the State to consider for framing of laws in society. As per this Article it is duty imposed upon the State to raising of the nutrition level, standard of living, improve public health and prohibition of the intoxicating drinks and drugs which are injurious to the health of the people⁷.

03] The Narcotic Drugs and Psychotropic Substances Act, 1985-This Act commonly referred to as N.D.P.S. Act, which is made by the Parliament of India for the control and regulation of the activity relating to the narcotic drugs or and psychotropic substances.

In case of *Durand Didier V. Chief Secretary, Union Territory Of Goa*⁸, the Hon'ble Supreme Court of India, held that, underworld involved in this types of activities and they targeted adolescents and student, whether male or female. The Hon'ble Supreme Court of India, in above stated case observed that this is serious issue regarding the young generation of India. The Narcotic Drugs and Psychotropic substances smuggled from one country to another. India's population global rank is second, illiteracy rate is high, unemployment, lack of carrier opportunity, dirty politics, etc. are makes easy work to the habitual offender to successfully complete his target.

This Act's Salient features are under

a] This Act is applicable to whole of India. The Parliament of India, as per legislative competency in this subject, made this law, which is applicable to whole of India. Provide definition of various terms under this Act.

b] Major penal law relating to the production, manufacturing, etc., of any narcotic drugs and or psychotropic substances. This is special enactment which cover prohibition, control and regulation of Narcotic drugs and psychotropic substances. As per criminal jurisprudence, special law prevails on the general law except otherwise provided. This Act prevail on the other laws which contains as like provisions.

c] Provide Authorities, Officers, Consultative Committee. Under this Act, the Central government appointed authorities, hierarchy of authorities, Narcotic Commissioner and also other officers for the purpose of this Act. Here basically provide provision in connection of coordination between Central and State government's authorities or staff for the purpose of this Act.

d] Constitute National Fund for Control of Drug abuse. As per section 7A of the Narcotic Drugs and Psychotropic Substance, the Central government constitute National Fund for Control of Drug abuse.

e] Provide provisions relating to Prohibition, Control and Regulation of Narcotic Drugs and Psychotropic Substances.

f] Offences and Punishments. The Narcotic Drugs and Psychotropic Substances Act, 1985, provide offences and punishments for the same on the basis of classification such as punishment for possession of narcotic drugs or psychotropic substances in commercial quantity is severe punishment compare to the offender possessed small quantity. Various offences punished under this Act, minimum ten years imprisonment and maximum twenty years imprisonment to the convicted person under this Act. Fine also imposed minimum one lakh rupees to maximum two lakh rupees to the convicted person under this Act. Death punishment and forfeiture of property also provide in some exception offences under this Act.

g] Provide Procedure for prohibition, control and regulation of Narcotic Drugs and Psychotropic Substances.

h] Provision relating to Forfeiture of Illegal acquired property.

i] Miscellaneous provisions such as bar of jurisdiction, repeal and savings, etc.

j] Schedule of the Act containing list of psychotropic substances.

Conclusion and Suggestions

I conclude that, the use of narcotics drug and psychotropic substances are rapidly increased without fear of punishment and consequences. Some suggestions on prohibition and control of narcotic drug and psychotropic substances are as under

a] To make life imprisonment for whole natural life of the convicted person who is found in international trafficking of narcotic drug and psychotropic substances offences. Adolescents and students are addicted due to lack of family care or reasons, then provide them opportunity to reformation. As like some students/ adolescents take narcotic drugs or psychotropic substances for new curiosity, having some pleasure and thrilling experience. These adolescents / students are needed treatment and not punishment.

b] Investigation and Trial of offences under the prohibition and control of Narcotic drug and psychotropic substances must be completed within stipulated period, speedy trial.

c] As like other penal laws, bail may be granted on the prima facie grounds of the case. Now bail is rule and jail is an exception.

d] From school education to post graduate degree, government make awareness of harmful effect of narcotic drugs and psychotropic substances.

e] Family or parent must be spent time with their children and not spend huge amount in name of pocket money, which will be misused for purchasing these narcotic drugs or psychotropic substances.

f] Most of the young persons inspired to take drugs or psychotropic substances from films especially Bollywood films, so, we need to prohibit these scenes in the films. Here Censor Board of India's role is more important to cut those scenes which instigate to take narcotic drugs on the name of 'Hero'.

g] Every one learns firstly from his family then his society. So, every family member should remember this aspect before addicting narcotic drugs.

h] Authorities under the NDPS Act, must take help of local police as well as people to curb this offence. Specially in border areas of India, wherein these prohibited narcotic drugs or psychotropic substances are supplied in huge quantity from neighboring countries.

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