



THE REGULATION OF NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES IN INDIA- AN INTROSPECTION

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ABSTRACT

Drug abuse has to be condemned not only for the reason that the abuser suffers but for the impact on the parents and the society. Narcotic drugs and psychotropic substances are to be regulated in use as medicine and misuse and abuse by addicts. There is a consensus among most of the nations for the proper regulation of the narcotic drugs and psychotropic substances and through the United Nations, they are being regulated. This paper examines the effect of narcotic drugs and psychotropic substances and its regulation both internationally and in India.

Key words: Narcotic drugs, psychotropic substances, menace, regulation.

Introduction:

Drugs have been abused since ages and controlling the menace of drug abuse has been challenging right from the beginning as well. According to World Health Organisation (WHO), drug dependence is a medical condition classified as a "multi-factorial health disorder that often follows the course of a relapsing and remitting chronic disease". Since most of the countries round the globe are an area of the current international drug management mechanism, it may be declared that the international efforts in dominant the drug menace have made-up the means. The international mechanisms have acted sort of a catalyst, within the sense that they need been useful within the formation of national level policy and regulative frameworks. There's currently an explicit degree of uniformity round the globe relating to drug control. However varied nations consideration and approach towards the issues associated with narcotic medication and psychotropic substances are different.

International framework:

The international control over narcotic drugs can be recognised under the three secretaries within the UN: the UN Division on Narcotic Drugs, the International Drug Control Board Secretariat and the World Health Organization Drug Dependence and Alcoholic Secretariat. The following are the major conventions entered to control the drug menace in narcotic drugs and psychotropic substances:

1. Single Convention on Narcotic Drugs, 1961
2. Convention on Psychotropic Substances, 1971
3. United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988

Single Convention on Narcotic Drugs, 1961: The adoption of the Single Convention on Narcotic Drugs, 1961 is regarded as a milestone in the history of international drug control. The Single Convention codified all subsisting multilateral treaties on drug control and elongated the subsisting control systems to include the cultivation of plants that were grown as the raw material of narcotic drugs. The principal aims of the Convention are to constrain the possession, utilize, trade in, distribution, import, export, manufacture and engenderment of drugs exclusively to medical and scientific purposes and to address drug trafficking through international cooperation to deter and daunt drug traffickers. The Convention withal established the International Narcotics Control Board, merging the Permanent Central Board and the Drug Supervisory Board¹.

Convention on Psychotropic Substances, 1971: The Convention, which contains import and export restrictions and other rules aimed at constraining drug use to scientific and medical purposes, came into force on August 16, 1976. As of today, 175 nations are Parties to the treaty. Many laws have been passed to implement the Convention, including the U.S. Psychotropic Substances Act, the UK Misuse of Drugs Act 1971, and the Canadian Controlled Drugs and Substances Act. Just like the treaty itself, these statutes customarily divide drugs into several classes or Schedules².

United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988: Provisions to culminate the international trafficking of drugs covered by this Convention are contained in the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. This treaty, signed in 1988, regulates precursor chemicals to drugs controlled by the Single Convention and the Convention on Psychotropic Substances. It withal reinforces provisions against money laundering and other drug-cognate malefactions³.

Indian Legal Framework:

The Narcotic Drugs and Psychotropic Substances Act 1985 (NDPS Act) sets out the statutory framework for drug law enforcement in India. This Act consolidates the erstwhile principal Acts, viz. the Opium Act 1857, the Opium Act 1878 and the Dangerous Drugs Act, 1930. The NDPS Act also incorporates provisions designed to implement India's obligations under various International Conventions. Certain significant amendments were made in the Act in 1989 to provide for the forfeiture of property derived from drug trafficking and for control over chemicals and substances used in the manufacture of narcotic drugs and psychotropic substances. In order to give effect to the statutory provisions relating to these substances, an order, namely the N.D.P.S. (Regulation of Controlled Substances) Order, was promulgated by the Government of India in 1993 to control, regulate and monitor the manufacture, distribution, import, export, transportation etc., of any substance which the Government may declare to be a 'controlled substance' under the Act. The statutory regime in India consequently covers drug trafficking, drug related assets as well as substances which can be used, in the manufacture of narcotic drugs and psychotropic substances. Some further amendments were incorporated in the NDPS Act in 2001, mainly to introduce a graded punishment⁴. Drug traffickers can be detained to prevent their illicit traffic through an executive order issue under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988. Other laws include which indirectly have a control on drugs include the Poisons Act, 1919, the Drugs and Cosmetics Act, 1940, Pharmacy Act, 1948, the Drugs and Magic Remedies Act, 1954, the Prevention of Cruelty to Animals Act etc⁵.

The administration of the NDPS Act, 1985, as was with the predecessor Acts namely the Opium Act and the Dangerous Drugs Acts falls within the domain of the Department of Revenue, in the Ministry of Finance and the Ministry of Home Affairs. Various enforcement agencies under the Central Government namely the Border Security Force (BSF), Customs & Central Excise, Revenue Intelligence, Central Bureau of Narcotics and the central Economic Intelligence Bureau are involved in the administration of this Act⁶. Designated agencies under the NDPS Act to effect seizures of drugs are Narcotics Control Bureau, Directorate of Revenue Intelligence, Directorate of Revenue Intelligence, State Police, State Excise and Central Bureau of Investigations. Empowered agencies under the Customs Act, 1962 to interdict drugs include Coast Guard, Border Security Force, Indo-Tibetan Border Police, and Central Reserve Police Force. In order to obtain the

coordination of the multiple disciplines, Narcotics Control Bureau was engendered under the ascendancy the NDPS Act⁷, by a Regime notification of 17.3.1986.

The National Policy on Narcotic Drugs and Psychotropic Substances, 2012 was framed on the interference of illicit cultivation of poppy and cannabis, accenting the employment of satellite imageries for detection of illicit crop and its sequent obliteration and development of alternate means that of living in respect of cultivators in pockets of ancient illicit cultivation⁸.

National Academy of Customs Excise & Narcotics or NACEN is the apex institute of Government of India for capacity building in the field of indirect taxation. It withal plays a vital role in international capacity building by imparting training to officers of sundry countries in the field of customs, drug laws and environment bulwark. In collaboration with United Nations Office on Drugs & Crime (UNODC), NACEN is providing training on enforcement of the drug laws to many Asian countries. The Government of India has entrusted NACEN the responsibility of erudition exchange, experience sharing and training with sundry countries of the world⁹.

Immunities under the Act:¹⁰

1. Offenders: Central or state governments will tender immunity to a wrongdoer so as to get his proof within the case. This immunity is granted by the govt. and not by the court. The facility is unconditional with the Central Government solely.¹¹ The power can be exercised by the Central Government only.
2. Addicts¹²: Addicts charged with consumption of drugs¹³ or with offences involving small quantities will be immune from prosecution if they volunteer for de-addiction. This immunity may be withdrawn if the addict does not undergo complete treatment¹⁴. It is pertinent to notice that it's not essential that the drug, if any, found with the addict in tiny amount, needn't be for private use. The legislation provides negligible attention to support structures at intervals the law for de-addiction and referral of drug users¹⁵.
3. Minors: All offences committed under any law by persons under the age of 18 will be covered by the Juvenile Persons (Care and protection) Act. This Act seeks to reform such juveniles instead of penalise them underneath the various Acts. It prevails over the other Act in respect of persons below the age of eighteen. Hence, such persons can't be prosecuted underneath the NDPS Act additionally.

Punishments under the Act:

The penalizations for many offences under the NDPS Act depend on the quantity of drug involved- with three levels of penalization for minute¹⁶, more than minute but less than commercial and commercial quantities¹⁷. The consumable quantity, the commercial quantity and the intermediate quantity differ under the Act and accordingly penalizations withal vary for the offenders and it is cognizable and non-bailable¹⁸. The average penalization for minute quantity is six months to one year and intermediate is up to ten years and commercial quantity is between ten to twenty years with or without fine¹⁹. A fine of Rs 1 lakh to 2 lakh can additionally be imposed on the offender under the same provisions.

However, the offender is penalized of the genuine quantity of the narcotic drug or psychotropic substance possessed or consumed. It signifies that the authentic quantity omitting the impurities in the coalescence is considered to determine the authentic quantity²⁰. The impurities is abstracted and the genuine quantity is resolute in each case afore determining the nature of penalization.²¹ For example, if a person endeavors to sell 1 kg of heroin which is a derived substance from opium and is caught, subsequently the quantity of heroin is tested. But, on testing the heroin, if it is found that only 200g of genuine heroin is present, he eludes the maximum penalization of 10-20 years²² and on the other hand he can be confined to a maximum of 10 years only²³. If it is looked in another way, the offender has a mens rea to sell that quantity he possessed and it would become the genuine amount possessed. Therefore, he should be penalized for that offence he is committing. The Indian Penal Code, 1860 though does not define as to what mens rea but it is pellucidly evident from the utilization of the words such as fraudulently²⁴, voluntarily²⁵, intentionally and other offences such as endeavor to commit an offence²⁶, conspiracy²⁷,

abetment²⁸ etc., the offenders might be convicted according to the aforesaid Act for abetment, conspiracy or any other offence but this is not authentically according to the Indian Penal Code. Because, if the abetment or conspiracy is for selling of a commercial quantity but the genuine quantity is less than the commercial quantity, it signifies that he eludes for what he commits or conspires or whatever may be the case. The authentic offence he is doing is selling of commercial quantity and not below that and ought to be penalized for that but dolefully it is not done so.

Conclusion:

The overall effect of drug is the impact on the growth of the nation. It can said that there is a strong regime to control the narcotic drugs and psychotropic substances. However, the governments have failed to implement the legislations and global conventions. The administrative inefficiency is becoming intolerable especially in India. The Government needs to step up and act swiftly and tackle the menace. Deterrence among the among is not working because of the loopholes in the system and administrative inefficiency.

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