CRITICAL APPRAISAL OF NDPS ACT 1985

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ABSTRACT:

Substance abuse is a growing problem in India. It needs to be tackled by demand reduction and supply reduction. NDPS act 1985 sets out the statutory framework for Drug Law Enforcement in India. This article analyses the need for NDPS act, its content, positive aspects, and shortcomings and gives suggestions regarding possible changes for improvement.

KEYWORDS: NDPS, UN 1961 single convention, addict, narcotic drug, psychotropic substance, small quantity

INTRODUCTION

India with a population of over 1 billion people from diverse socio-economic, cultural, religious and linguistic backgrounds has victims of different kinds of drug usages.

India is the biggest supplier of licit demand for opium required primarily for medicinal purposes. Besides this, India is located close to the major poppy growing areas of the world, with “Golden Crescent” on the Northwest and “Golden Triangle” on the North-East. (1) These make India vulnerable to drug abuse particularly in poppy growing areas and along the transit/trafficking routes.

The processes of industrialization, urbanization, migration and disintegration of joint family system have led to loosening of the traditional methods of social control rendering an individual vulnerable to the stresses and strains of modern life. The fast changing social milieu, among other factors, is mainly contributing to the proliferation of drug abuse, both of traditional and of new psychoactive substances. (1) The introduction of synthetic drugs and intravenous drug use leading to HIV/AIDS has added a new dimension to the problem, especially in the Northeastern states of the country.

THE EXTENT PATTERN AND TREND OF DRUG ABUSE IN INDIA (2)

‘National survey on extent, pattern and trend of drug abuse in India’ (2004) was a pioneering attempt to generate national level prevalence estimates of drug abuse in India.

<table>
<thead>
<tr>
<th>Drug Type</th>
<th>National Household Survey (current prevalence, %)</th>
<th>Drug Abuse Monitoring System (% among treatment seekers)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alcohol</td>
<td>21.4%</td>
<td>43.9%</td>
</tr>
<tr>
<td>Cannabis</td>
<td>3.0%</td>
<td>11.6%</td>
</tr>
<tr>
<td>Heroin</td>
<td>0.2%</td>
<td>11.1%</td>
</tr>
<tr>
<td>Opium</td>
<td>0.4%</td>
<td>8.6%</td>
</tr>
<tr>
<td>Other Opiates</td>
<td>0.1%</td>
<td>6.3%</td>
</tr>
</tbody>
</table>
It was observed that between 17 and 26 percent of current users of various substances were dependent users. A large number of current users require help so that they do not progress to regular or dependent use.

LEGISLATIVE POLICY OF INDIAN PARLIAMENT ON DRUG ABUSE

The constitution of India under Article 47, enjoins that “the state shall endeavor to bring about prohibition of the consumption, except for medical purposes, of intoxicating drinks and of drugs which are injurious to health”. The various drug de-addiction programmes of Government of India have to be seen in this light. (3)

In pursuance of this goal, the government of India has initiated a variety of legal, preventive and therapeutic measures to reduce the demand for dependence producing substances.

India is a signatory to (4):


The broad legislative policy of the Indian Parliament on narcotic drugs is contained in the two Central Acts (4), viz.-

A. The Narcotic Drugs and Psychotropic Substances Act, 1985 and

NDPS ACT (5)

The main legislation on the subject of psychoactive substances, the narcotic drugs and psychotropic substances (NDPS) act, 1985, came into force from 14.11.1985. The NDPS Act 1985 sets out the statutory framework for Drug Law Enforcement in India. It replaced by repealing (vide section 82) the following three earlier legislations on the subject:

- The opium act, 1857
- The opium act, 1878, and
- The dangerous drugs act, 1930.

The pharmaceutical and medical use of the drugs covered by the NDPS act (earlier by the dangerous drugs act) is governed by the drugs and cosmetics act, 1940, and the drugs and cosmetic rules, 1945.

WHAT IS NDPS ACT? (6)

NDPS act is an Act to consolidate and amend the law relating to narcotic drugs, to

1. Make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances
2. Provide for the forfeiture of property derived from, or used in, illicit traffic in narcotic drugs and psychotropic substances,
3. Implement the provisions of the International Conventions on Narcotic Drugs and Psychotropic Substance and for matters connected therewith.

**NDPS ACT- A HEALTH CARE LEGISLATION**

The ground of inclusion or deletion of any drug or substance, within the NDPS act, and their categorization for the varying degrees of control, is determined solely on medical considerations and under predominant medical advice. The NDPS act is therefore entirely a health care legislation, with even enforcement and penal measures motivated from the concern for elimination of illicit supplies, which would otherwise create health hazards.

**NEED FOR NDPS ACT**

A new and updated law was necessary for the following reasons:

1. The scheme of penalties under the earlier acts was not sufficiently deterrent to meet the challenge of well organized gangs of smugglers.
2. The power of investigation of offences of illicit trafficking was not available to officers of many organizations concerned with the subject.
3. The international conventions that have subsequently come into operation and to which India has become a party, required appropriate legal provisions in the national law for discharge of the treaty obligations.
4. The earlier acts lacked provisions for controlling the new drugs of addiction, known as psychotropic substances.

**WHY IS ALCOHOL NOT INCLUDED IN NDPS ACT?**

The reasons for not including alcohol in the NDPS Act are many, the important ones being

- (a) prevailing social acceptance even for frequent self-induced intoxication;
- (b) the high revenues earned by the Government on the sale of alcoholic beverages;
- (c) prevalence of illicit and locally brewed undistilled forms of alcohol is very high in society and
- (d) there may be differences in the clinical course of alcohol dependence contrary to other drugs like opium which have been included in NDPS.

**INTERNATIONAL PRESSURE FOR ENACTING NDPS ACT**

As a signatory to the UN 1961 Single Convention, India was obliged to eradicate culturally ingrained patterns of drug use, including those involving cannabis and opium.

Indian delegations at the UN had long objected to a proposed policy of international cannabis prohibition, but had “made little headway against the massive,” predominantly Western and US-led, “anti-cannabis bloc”. Yet, in order to gain widespread acceptance, the final draft of the Single Convention included transitional reservations allowing so-called grace periods for phasing out traditional drug use. This meant that the “quasi-medical use” of opium had to be abolished within 15 years of the Convention coming into force. Similarly, the non-medical or non-scientific use of cannabis was to be discontinued as soon as possible, “but in any case within 25 years” from the date the convention came into force (United Nations 1972).
In political terms, any move to phase out cultural drug use within India was problematic, since it was difficult for any party in power to tamper with popular religious and cultural feelings concerning the use of opium and cannabis. Consequently, mindful of international obligations regarding the UN grace period and the political sensitivity of the issue within the country, the NDPS Act was quietly put on to the statute books with little national debate. (10)

The parliament could enact the legislation because of article 253 of the constitution conferring powers to legislate for implementation of international treaty obligations. (5)

**COMPONENTS OF NDPS ACT (6)**

The act as originally passed in 1985 was spread over six chapters comprising 83 sections. After being amended by the narcotic drugs and psychotropic substances (amendment act), 1988 with effect from 29-5-1989, the act now contains eight chapters.

*Chapter I* contains definitions of various terms and expressions used in the act and also the provisions enabling the central government to add or omit from the list of psychotropic substances.

*Chapter II* empowers the central and state governments to make appointments of certain officers, etc. for the purposes of the act.

*Chapter II A* inserted by the amendment act of 1988 provides for the contribution of a national fund for control of drug abuse.

*Chapter III* provides for prohibition, control and regulation of narcotic drugs and psychotropic substances.

*Chapter IV* defines various offences and punishments prescribed.

*Chapter V* gives the procedure which is to be followed by the officers appointed for implementation of the various provisions of the act.

*Chapter VA* inserted by the amendment act of 1988 provides for forfeiture of any income, earnings or, assets which are derived or obtained from or are attributable to illicit traffic.

*Chapter VI* is entitled 'miscellaneous'.

A reassessment of the Act in 2001 resulted in amendments relating to the length of imprisonment and the quantity and type of drug seized. Further changes in the law in 2002 created two categories (small and commercial quantity) that are based on quantity seized.

**CHAPTER I (6)**

Section 2 of the act defines 36 terms (sub sections (i) to (xxix), (viia-d), (viiia), (xxiiia), and (xxviiia)), including “use” which excludes personal consumption. Some of the important definitions under this act include

1. “Addict” as a person who has dependence on any narcotic drugs or psychotropic substance.
2. “Narcotic drug” as coca leaf, cannabis (hemp), opium, poppy straw and includes all manufactured goods.
3. "Psychotropic substance" as any substance, natural or synthetic, or any natural material or any salt or preparation of such substance or material included in the list of psychotropic substances (n=110).

4. "Controlled substance" means any substance with possible use in the production or manufacture of narcotic drugs or psychotropic substances or to the provisions of any international convention. The Central Government has so far notified Acetic Anhydride, which is used in the processing of opium into heroin, N-Acetylanthranilic acid which is used in the illicit manufacture of Methaqualone and Ephedrine and Pseudoephedrine which are used in the illicit manufacture of Amphetamine type stimulants as controlled substances.

CHAPTER II (6)

Section 4 authorizes the central government to take measures necessary to prevent and combat drug abuse and illicit trafficking, including identification, treatment, education, aftercare, rehabilitation and social reintegration of addicts.

Subsection 3 of section 4 also authorizes the central government to constitute an authority or hierarchy of authorities for the purposes and objectives mentioned in details in the different subsections.

Section 6 empowers the central government to constitute an advisory committee called "The Narcotic Drugs and Psychotropic substances Consultative committee" to tender advice on matters referred to it. The necessary rules were framed and a consultative committee was constituted in 1988.

CHAPTER II A

It was added by the 1989 amendment. Central Government may, constitute a fund to be called the National Fund for Control of Drug Abuse with government and public contributions and also with the sale of proceeds of forfeited property derived from or used in illicit traffic with action predicated on criminal conviction, which shall be applied to meet the expenditure incurred in connection with the measures taken for-

a) Combating illicit traffic in narcotic drugs, psychotropic substances or controlled substances,
b) Controlling the abuse of narcotic drugs and psychotropic substances,
c) Identifying, treating and rehabilitating addicts

d) Preventing drug abuse,
e) Educating public against drug abuse and
f) Supplying drugs to addicts where such supply is medical necessity.

CHAPTER III (6)

This act prohibits cultivation of any coca plant, opium plant or any cannabis plant or gather any portion of coca plant or produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter State, import into India, export from India or transship any Narcotic drug or psychotropic substance except for medical or scientific purposes and in manner and to the extent provided by the provisions of this act.
The act empowers Central Government to permit and regulate by rules i) the sale of opium and opium derivatives from the Central Government Factories for export from India or sale to State Government or manufacturing chemists; ii) the manufacture of manufactured drugs, not including manufacture of medicinal opium or any other preparation containing manufactured drug from materials which the maker is lawfully entitled to possess.

The State Government may by rules permit and regulate i) the cultivation of cannabis plant, production, manufacture, possession, transport, import inter-State, export inter-State, sale, purchase and consumption of cannabis (Except Charas); ii) The manufacture of medicinal opium or any preparation containing the manufactured drug from materials which the maker is lawfully entitled to process; iii) the sale of opium and opium derivatives from the Central Government Factories for export from India or sale to State Government or manufacturing chemists; iv) the manufacture and possession, of prepared opium from opium lawfully possessed by an addict registered with the State Government on medical advice for his personal consumption.

CHAPTER IV (6)

Chapter IV, (Sections 15 to 40) sets out the penalties for offences under the Act. These offences are essentially related to violations of the various prohibitions imposed under the Act on the cultivation, production, manufacture, distribution, sale, import and export etc. of narcotic drugs and psychotropic substances. All these offences are triable by Special Courts and the punishments prescribed range from imprisonment from 10 to 20 years for first offences to 15 to 30 years for any subsequent offences together with monitory fines. In addition to persons directly involved in trafficking narcotic drugs and psychotropic substances, any person who finances trafficking or harbors a person involved in trafficking, or abets, or is a party to a criminal conspiracy, including a criminal conspiracy to commit an offence outside India is also liable to the same scale of punishments. The Act was amended in May 1989 to mandate the death penalty for second offences relating to contraventions involving more than certain quantities of specified narcotic drugs and psychotropic substances.

The Act, however, makes a distinction between possession for personal consumption and trafficking, the punishment for the former being limited to between six months and one year only. The application of this provision is subject to the qualification that the quantity of the drug involved in the offence should be a small quantity as specified by the Central Government.

'Small quantity of drugs' defined under this act are (11)

- Hashish or Charas- 5gm
- Opium-5gm
- Cocaine-125mg
- Ganja-500gm
- Heroin/Smack/Brown Sugar-250mg

Court has to record reasons in the judgment, for imposing a fine exceeding 2,00,000 rupees. Punishment for cultivation of any cannabis plant is rigorous imprisonment up to ten years and also fine up to 1,00,000 rupee.
<table>
<thead>
<tr>
<th>Substance</th>
<th>Quantity</th>
<th>Punishment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Poppy straw</td>
<td>Small quantity</td>
<td>Rigorous imprisonment for a term up to six months or with fine up to 10,000 rupees or both</td>
</tr>
<tr>
<td>Prepared opium</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cannabis plant &amp; cannabis,</td>
<td>Quantity less than commercial quantity but greater than small quantity</td>
<td>Rigorous imprisonment for a term up to ten years and with fine up to 1,00,000 rupees</td>
</tr>
<tr>
<td>Manufactured drugs &amp; preparations,</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Psychotropic substances,</td>
<td>Commercial quantity</td>
<td>Rigorous imprisonment for a term not less than ten years, which may extend up to 20 years and fine not less than 1,00,000 rupees, which can be extended up to 2,00,000 rupees</td>
</tr>
<tr>
<td>Illegal import into India, export from India or Transhipment of narcotic drugs and psychotropic substances</td>
<td></td>
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</tr>
</tbody>
</table>

Punishment for contravention in relation to coca plant and coca leaves is rigorous imprisonment for a term up to ten years or fine up to 1,00,000 rupees.

Punishment for consumption of any narcotic drug or psychotropic substance like cocaine, morphine, diacetyl-morphine or any other narcotic drug or any psychotropic substance specified by Central Government by Gazette Notification is rigorous imprisonment for a term up to one year or fine up to 20,000 rupees or both. Punishment for consumption of any narcotic drug or psychotropic substance other than mentioned is rigorous imprisonment for a term up to six months or fine up to 10,000 rupees or both.

For second and each subsequent offence, punishment is rigorous imprisonment for a term, which may extend to one half of the maximum term of imprisonment and also fine up to one half of the maximum amount of fine. If person is liable to punished with a minimum term of imprisonment and minimum amount of Fine, the minimum punishment for such a person will be one half of the minimum term of imprisonment and one half of the minimum amount of fine.

**CHAPTER V (6)**

Chapter V of the NDPS Act (Sections 41 to 68) sets out the powers as well as the procedures for the investigation of offences under the Act. This Chapter empowers officers duly authorized by the Central Government or a State Government to issue warrants, to enter and search premises, to stop and search conveyances, to seize narcotic drugs and psychotropic substances, to take statements and to arrest persons suspected of having committed an offence, punishable under the Act.

**CHAPTER VA (6)**

A new Chapter, Chapter V-A, was introduced into the Act in May 1989 to provide for the
investigation, freezing, seizure and forfeiture of property derived from or acquired through illicit trafficking in narcotic drugs and psychotropic substances. This Chapter prohibits any person from holding any property derived from drugs trafficking and authorizes officers empowered under the Act to investigate, identify and seize such property. The Chapter also sets out a quasi judicial procedure for the forfeiture of such property consequent to which it shall vest in the Central Government.

CHAPTER VI (6)

Under section 70 central and state governments should have regard to international conventions while making rules.

Section 76 and 78 give rule making powers to both central and state governments.

ENFORCEMENT OF NDPS ACT (4)

Traditionally, the two major strategies at the level of primary prevention are:

(i) Supply reduction (policies and activities aimed at minimizing the availability of alcohol and drugs to people); and

(ii) Demand reduction (aimed at decreasing the internal need or demand for the substances by the people).

A third strategy is harm reduction, which tends to minimize the harm resulting due to substance use, and thus acts at the levels of secondary and tertiary prevention.

Various Ministries/Departments are given responsibility for tackling different aspects of the problem.

1. The supply reduction aspects are largely the responsibility of the Ministry of Home Affairs (along with the Narcotics Control Bureau) and the Ministry of Finance (Department of Revenue).


Thus, a multi-pronged approach has been adopted.

POSITIVE ASPECTS OF NDPS ACT

An interesting feature of the act is that the procedure of addition and deletion from the lists of manufactured drugs (narcotic drugs) and psychotropic substances have been made very simple. No formal bill or amendment is required for the purpose, and the government has been empowered to do such changes through simple notifications in the official gazette on the basis of available information or a decision under any international convention (sections 2 x(b) and 3). (5)

In terms of subsection 3 of section 4, the Narcotics Control Bureau was set up by the Central Government in 1986 with the broad remit to coordinate drug law enforcement nationally.

The NCB basically functions as national coordinator international liaison and as the nodal point for the collection and dissemination of intelligence. This system assures coordinated implementation within the parameters of a broad national strategy.

The Narcotic Drugs and Psychotropic substances Consultative committee makes
significant contributions in shaping and developing a national policy and strategy and also in matters of amendments under section 2xb and 3 for scheduling addition or deletion of drugs and substances for legal regulation and control. The committee also provides valuable inputs for India's contribution to the molding of international policy and programmes. (5)

Section 31 A of this act has a provision for death penalty for severe offences thereby serving as an effective deterrent. Further Section 31 A states that any person convicted by a competent court of criminal jurisdiction outside India under any corresponding law shall be dealt with as if he has been convicted by a court in India. Thus international criminals are also dealt with effectively.

An addict convicted under section 27 may be released on probation under section 39 after signing a bond with or without sureties, for detoxification or deaddiction from a hospital or an institution maintained or recognized by the Government. The conviction would stand and the sentence remain in abeyance to enable him to report back on successful completion of deaddiction treatment within one year. The court may direct the release of the offender after successful completion of deaddiction treatment and abstaining from the commission of any offence under Chapter IV for three years. On failure to do so, he would have to serve the sentence. (11)

The power to issue search and arrest warrants, has in terms of Section 41 been vested both in Magistrates as well as in specially designated (Gazetted) officers of the Central and State Governments. This is designed to ensure both timely and effective action in response to any information and to obviate the need for judicial satisfaction each time a warrant is required to be issued. In addition, both the Central and the State Governments are authorized to entrust any Officer duly empowered under the Act with the powers of an Officer-in-charge of a Police Station for the investigation of offences under the Act. It needs to be noted however, that while the powers to search, seize, arrest etc., are inherent in the Act, all these are subject to both the substantive and procedural safeguards mandated by the Code of Criminal Procedure.

Under section 64 immunity may be tendered to a person with a view to obtaining evidence, from prosecution for any offence under this Act or under the Indian Penal Code or under any other Central Act or State Act on condition of his making a full and true disclosure of the whole circumstances relating to such contravention. This section is an exception to the rule that no inducement should be given to a person to make him disclose what is in his knowledge. It is also an exception to the general rule that the statement of the accused cannot be used against co-accused. (6)

Under section 64 A, 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 any other section for offences involving small quantity of narcotic drugs and psychotropic substances. This immunity may be withdrawn if the addict does not undergo the complete treatment for de-addiction. (11)

Statement recorded under section 67 can be used as a prima facie evidence as NDPS is a special act. It does not attract the provisions of sec 25 of the evidence act and sec 161 of the code of criminal procedure. (6)
Chapter V-A, was introduced into the Act in May 1989 to provide for the investigation, freezing, seizure and forfeiture of property derived from or acquired through illicit trafficking in narcotic drugs and psychotropic substances. (6)

Section 71 of this act empowers government to establish centers for identification, treatment, education, after care, rehabilitation, social reintegration of addicts and for supply, of any narcotic drugs and psychotropic substance (as prescribed by concerned Government) to the addicts registered with government and to others where such supply is a medical necessity. (11) The supply of opium to registered addicts through ration cards issued to them has continued in a few states (like West Bengal) under provisions of section 78. (5)

The Ministry of Social Justice and Empowerment currently funds more than 400 counselling and rehabilitation centres throughout the country (December 2002: 462 centres; 318 are De-addiction-cum-rehabilitation centres and 144 are Counselling and Awareness centres). The Ministry of Health and Family Welfare has funded more than 100 drug de-addiction centres in the country (December 2003: 122). These are located in the hospitals and medical institutes. (4)

**CRITICISM ABOUT NDPS ACT**

The first real problem lies with the complainants. Parents, friends, relatives, neighbors, servants do not really complain. Many of the law’s practical aspects are generally unknown.

The police too do not willingly respond to such complaints for fear of the drug user developing health problems while in custody. This is the least complained about and most underutilized section of the law. And yet, perhaps, the most needed in the current environment of drug use and abuse. In the rare and isolated case that a user ends up in prison, lack of a prison policy for such issues ensures that there are no facilities for proper rehabilitation and correctional programmes.

The approach of the Indian government is law enforcement led, with limited resources provided for treatment. This is unfortunate, since studies in other cultural settings show that efforts dominated by the law enforcement are not particularly effective. A high rate of drug incarceration as a strategy to control drug use has at best a marginal impact and does not lead to a significant undermining of the drug market. Indeed, experience from around the world reveals the cost effectiveness of appropriate treatment and harm reduction programmes and interventions. (9)

By concentrating predominantly on the punitive aspects of UN legislation, the Indian authorities fail to adequately address the issue of drug use within the country. (9) As signatory to the 1961 UN Single Convention on Narcotic Drugs, many Asian countries have been required to move away from longstanding approaches to control customary drug use. In many respects, there has been a subsequent shift from traditional drug use management to an emphasis on eradicating all drug use and trade. The implementation of law-enforcement-dominated policies has generated a tense relationship between contemporary legislation and culturally ingrained drug use patterns and associated management strategies.

The use of the cannabis plant for a variety of purposes has long existed in India. Apart from use for medical reasons, the cannabis plant also provides food grain, oil seed and fibre for manufacture of
fibrous products in select parts of India. The practice of using cannabis to alter consciousness and as part of religious and shamanistic rituals has also existed in India for centuries. For example, the drug has a strong religious association as a gift from Lord Shiva to his followers. Opium has also been used for socio-cultural reasons in different parts of the country, with medicinal use being more prevalent than cultural use, like that seen among the Rajputs in Rajasthan and Gujarat.

Most prevention efforts within India are, within the international framework laid down by the United Nations, currently based on experiences in predominantly Western countries. As such, they start from a position that considers all forms of drug use criminal and deviant. Thus, this leaves no scope for strengthening cultural mechanisms of use management or integrating them into contemporary legislation. For example, where institutional care appears unsustainable, practitioners could consider traditional forms of control such as the use of doda pani (a drink made from poppy pod) to wean users away from excessive opium or heroin consumption. Research suggests that cultural norms in India are far more efficient means of drug control, and have fewer negative side-effects than legislation inspired by global norms. (12)

Prior to the introduction of contemporary drug control legislation, a system for procuring opium and cannabis through legal outlets existed. However, drug control initiatives put in place procedures that made it difficult to obtain these substances. Legislation in 1985 and 2001 include provisions for medical use, but there has been a trend not only to reduce the quantity released by the government, but also to tighten up procedural regulations for obtaining the drugs by traditional medicinal practitioners. The resulting inability to source sufficient licit opium and cannabis for traditional use has forced such practitioners to make purchases from the expanding illegal market.

The drug commonly known in India as bhang does not come within the purview of the NDPS act (Samid vs State of UP 1995 JIC 833 (ACC)). Bhang is covered by the excise acts of the different states in India and several states continue to issue license for gathering of bhang and its vending for general consumption. But the dividing line from cannabis is very thin because a big consignment of bhang containing a few flowering tops would come within the definition of ganja. Besides, tetrahydrocannabinol, the active component of bhang is a psychotropic substance. Therefore, if bhang tests positive for THC, it can be treated as a psychotropic substance. Further, the permission for cultivation of cannabis plant for medical or scientific purposes can be given by the state governments. However, no such licenses have been issued since after 1989 by any of the states, the scope of collecting bhang licitly is practically restricted to wild bushes. (5)

The following points should also be noted. Poppy seeds or khas-khas are not narcotics. Poppy straw or concentrate thereof is a narcotic drug. Preparations which contain more than 0.2% of morphine (or traces of diacetyl morphine) or 0.1% of cocaine are narcotic drugs under the act. (5) But a lay man cannot be expected to know the concentration of the preparation he is taking.

Evidence suggests that, in largely ignoring the socio-cultural context of traditional drug use, the NDPS Act led to a significant increase in the arrests of low-level drug users. Research also shows that many of those arrested on drug charges spent years in jail before their cases came up for hearing. (9) This was a result of the notoriously slow pace of the Indian judicial system. In some
instances, it meant that those caught with small quantities of drugs were eventually acquitted after spending years behind bars. Beyond concerns about the obvious injustice of such cases, prolonged prison time for low level drug offenders raised the issue of recruitment by criminal groups. The situation has however improved with the amendments relating to the length of imprisonment and the quantity and type of drug seized.

The NDPS might have inadvertently pushed users towards harder and stronger drugs to attain the same high, not to mention the adoption of dangerous usage practices such as injecting to maximize the potency of the drug. (9)

The use of the sound and comprehensive provisions relating to forfeiture of property acquired from trafficking too is scanty. Reasons other than lack of will are responsible.

Under Section 4(3) or sec 7, the central government or the state governments can also constitute separate appropriate authorities for discharge of functions connected with health care. Some existing authority or authorities can also be identified for the purpose and assigned specific relevant tasks. This has not been done so far, perhaps because there was no such perceived urgency.

National Fund for Control of Drug Abuse was constituted with the seed money provided by central government. Forfeiture proceedings being highly time consuming, the fund has not yet attained the desired growth.

India is the largest licit producer of opium in the world, which is both exported as well as used by the domestic pharmaceutical industry. The Government periodically raises the official price paid to farmers to increase incentives to licit cultivators for declaring and selling to the Government all licitly grown opium. This price raise is related to the export price the US and other countries are willing to offer in the international market for Indian opium. However this is just a fraction of the drug’s value on the black market to the farmer. This has led to inducing the farmers to divert sales to drug traffickers who pay a much higher price, in spite of severe penalties for doing so.

Chapter V-A, does not constitute a comprehensive code against the laundering of the proceeds of drugs trafficking. This lacuna was catered for by the Money Laundering Bill which was passed in 2003.

It will also be seen that necessary rules for deaddiction centres and for maintenance of addicts, as permissible under sections 71, 76 and 78 have also not yet been formulated and notified.

An earlier evaluation of the national demand reduction activities in the country observed that the budgetary utilization was low, the pace of the implementation of the programmes have been slow, and the quality and range of services were limited. The latest formal evaluation of the drug deaddiction centres funded by Ministry of Health & Family Welfare has depicted a rather dismal picture: about 60% of the centres were non-functional (though some of them have been maintaining a degree of low-key service), nearly one-fourth of the centres’ were not providing any de-addiction services at all, and only about 13% of the evaluated centres’ were optimally functional. Almost all the functioning centres kept their activities limited to providing out-patient and/or inpatient services; only a minority of the centres was providing community based services as well. This may be attributed to inadequate funding and lack of trained manpower.
SUGGESTIONS FOR IMPROVEMENT

1. Efforts to understand patterns and trends of drug use within the country, especially in rural areas falling along the drug trading routes and those close to cultivating areas should be strengthened.
2. Methods for supporting socio-cultural controls on drug use should be developed.
3. Soft drugs such as cannabis could be decriminalized, if not legalized, considering that cannabis grows wild all over the country and is freely accessible to those who seek it.
4. The demand for drug treatment, particularly amongst the urban poor engaging in the most dangerous forms of drug use should be assessed and the coverage of treatment interventions should be increased.
5. A coherent policy about drug usage should be developed as it cannot be approached purely as a health problem. It is a problem which directly affects seemingly diverse issues such as HIV/AIDS, child rights and crime (perpetrated both by users and on users).
6. There must be comprehensive provisioning for enforcement of NDPS Act — beginning with the police, infrastructure, courts, community awareness, social institutions and regular reviews backed by mid-course corrections — as is the case in many progressive countries.
7. The Government should shift resources into programmes that work and not only treat the whole issue of drug abuse as a law enforcement problem but focus on treating it as a health issue with social and economic implications.
8. The empowerment of society through sensitization and awareness is the only solution to support the efforts of enforcement agencies in containing the proliferation of drug trafficking and drug abuse.

CONCLUSION

Former Director General police Ms Kiran Bedi summarized the current state of affairs thus “NDPS Act is comprehensively designed — on paper. In practice, it is only as effective as we want it to be, it is as effective as we equip ourselves to enforce it, it is as effective as we train and resource our law enforcement agencies with. It is also as effective as the coordination of all its aspects. And most of all, it is as effective as the general awareness amongst the people.”(13)

While all round efforts are being made for prevention and containment of drug abuse in our society, a long journey is yet to be covered before we can draw some satisfaction. The problem having transnational causes and implications shall require Herculean efforts on the part of all the institutions.

References


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