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Drug Abuse in India & abroad with context to legalities

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Historical perspective:

The illegal drug trade has emerged as a result of drug prohibition laws. In the First opium war the Chinese authorities has banned opium but the united ingdom forced china to allow British merchants to trade opium with the general population. Smoking opium had become common in the 19th century and British merchants increased. Trading in opium was (as it is today in the heroin trade) extremely lucrative.

As early as in 1917, Mahatma Gandhi While addressing the all India social Service Conference in Calcutta, had said:

“The cocaine habit was sapping the nation’s manhood, and that like the drink habit it was on the increase in its effect more deadly than drink.

Introduction at a glance

June 26 is celebrated as international Day against Drug Abuse and Illicit Trafficking every year. It is an exercise undertaken by the world community to sensitize the people in general and the youth in particular, to the menace of drugs. The picture is grime if the world statistics on the drug scenario is taken into account. With a turnover of around 500 billion, it is the third largest business in the world, next to petroleum and arms trade. About 190 million people all over the world consume one drug or the other. Drug addiction causes immense human distress and the illegal production and distribution of drugs have spawned crime and violence worldwide. Today, there is no part of the world that is free from the curse of drug trafficking and drudge addiction. Millions of drug addicts, all over the world, are leading miserable lives, between life and death.

The statistics released by the Narcotic Bureau also indicate the magnitude of the problem facing our nation. Let us see last ten years track record. From the year 1996-2006, amongst other 21895kgs of Opium, 855667kgs of Ganja, 48278kgs of hashish and 10147kgs of heron have been seized by various enforcing agencies. In the case arising from these seizures, a total of 142337 persons were involved including the foreigners. Out of these, 38030 persons stand convicted for offences while 44656 persons have been acquitted. The rate of acquittal has, varied from 27.7% to 59.1% annually during this period.

Legal Framework dealing with Drug Abuse :

Apart from constitutional provision there are several legislation which control drug abuse and Drug trafficking in India.

- Poisons Act, 1919 and Dangerous Drugs Act, 1930.
- The Drug and Cosmetic Act, 1940
- The Drug (Control) Act, 1950
- The narcotic Drugs and Psychotropic Substances Act, 1985
- Pharmacy Act, 1948: It was passed in 1948 and was amended in 1959, 1976, 1982, 1984 & 1986.
- Law of Torts and Consumer Protection Act, 1986
- Monopolies and Restrictive Trade Protection Act, 1967 and Completion Act, 2002.
- Import and Exports (Control) Act, 1947 which was repealed by Foreign
- Trade Contract Act, 1872
- Sale of Goods Act, 1930
- Drug Policy
- Pharmaceutical Policy, 2002
- Drugs (Prices Control) Order, 1995

Apart from these legislation in crimes related to drugs Indian Penal Code, 1960 also comes into picture. Among several legislation NDPS Act play vital role by prescribing limit to carry drug and prohibiting its use.

Constitutional Provisions regarding Drug Abuse :

India has a written Constitution that provides for all areas of governance. The Preamble proclaims that the Constitution will secure to all its citizens justice, liberty and equality¹. Fundamental rights, set out in chapter III of the Constitution, are enforceable but only against State entities². Some Fundamental rights are available exclusively to citizens whereas others are available to all persons. Fundamental rights to equality include equality before the law and equal protection of laws³, prohibition of discrimination on grounds of religion, race, caste, sex or place of birth⁴, equality of opportunity in matters of public employment⁵ and the abolition of un touch ability⁶ and titles⁷. Reservation in matters of public

1. Constitution of India, Preamble
2. Article 12 This is in contrast to the Directive Principles contained in Chapter IV that are not enforceable at law; however they are supposed to be fundamental in the governance of the country.
3. Article 14, available to non-citizens
4. Article 15, available only to citizens
5. Article 16, available only to citizens Article 14 to 16 incorporate the doctrine of classification and non-arbitrariness.
6. Article 17 of the Indian Constitution
7. Article 18 of the Indian Constitution

History of Drug and Alcohol Abuse :

Drug use and abuse is as old as mankind itself. Human beings have always had a desire to eat or drink substances that make them feel relaxed, stimulated, or euphoric.

The start of farming about 6000 B.C. and the later discovery of fermentation was closely followed by the production of alcohol.

Home Remedies:

As time went by, “home remedies” were discovered and used to alleviate aches, pain and other ailments. Most of these preparations were herbs, roots, mushrooms or fungi. They had to be eaten, drunk, rubbed on the skin, or inhaled to achieve the desired effect.

They were all naturally occurring substances. No refinement had occurred, and isolation of specific compounds (drugs) had not taken place.

Religious Rites :

Certain of these preparations were discovered to produce euphoria, exaltation, and trace-like states. Many of these were used in religious rites. Drugs also were used

- To see visions or gain insights
- To dull the pain of ritual mutilation in initiation ceremonies
- To enhance the strengths and pain resistance of warriors to prepare them for battle, or to program them to kill as pain or hunger suppressants.
- To help cope with thin air at high altitude
- To relax during celebrations.

By current standards, the historical use of herbal preparations was not too harmful. It became so only after mankind learned to increase the potency and effects of these substances.

Alcohol Becomes More Potent :

It is likely the first drug to have its potency increased was alcohol, through the discovery of distillation. The strongest naturally occurring alcohol preparation was homemade wine, in which the alcohol level could reach a high of about 14-16% by volume.

It was found that by distillation of the alcohol into spirits such as rum, rye, scotch, gin or vodka, the potency could be more than doubled. The distillation process later was improved, allowing for over-proof spirits and absolute alcohol (100% by volume). By inference, in the more potent product, less alcohol (volume) was required to generate the desirable effect.

International Scenario On Drug Abuse And Crime

India has breached itself to face the menace of drug trafficking both at the national and international levels. Several measures involving innovative changes in enforcement, legal and judicial systems have been brought into effect. The introduction of death penalty for drug-related offences has been a major deterrent. The Narcotic Drug and psychotropic substances Act, 1985 were enacted with stringent provisions to curb this menace. The Act envisages a minimum term of 10 years imprisonment extendable to 20 years and fine of Rs. One

Lakh extendable up to Rs. Two Lakhs for the forfeiture of properties derived from illicit drug trafficking. Comprehensive strategy involving specific programmes to bring about an overall reduction in use of drugs has been evolved by the various government agencies and NGOs and is further supplemented by measures like education, counseling, treatment and rehabilitation programmes. India has bilateral agreements on drug trafficking with 13 countries. Including Pakistan and Burma. Prior to 1999, extradition between India and the United States occurred under the auspices of a 1931 treaty signed by the United States and the United Kingdom, which was made applicable to India in 1942. However, a new extradition treaty between India and the United States entered into force in July 1999. A mutual Legal Assistance treaty was signed by India and the United States in October 2001. India also is signatory to the following treaties and conventions:

- 1961 U.N. Convention on Narcotic Drugs.
- 1971 U.N. Convention on Psychotropic substances
- 1988 U.N. Convention Against illicit Traffic in Narcotic Drug and psychotropic Substances’.
- 2000 Transnational Crime Convention

The signatories to the 1961 U.N 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 pattern and associated management strategies.

The Narcotics Control Bureau:

The narcotics control bureau was set up in May 1986 as a primary enforcement agency to deal exclusively with drugs. This high powered body which is controlled by a Director General has direct liaison with the United Nations Narcotics Control Bureau and other international agencies working against drug trafficking. A number of the other enforcement agencies have been provided effective support with the Narcotics Control Bureau acting as a nodal agency to enforce the law which included the central excise, customs, board security CBI, Directorate of Revenue Intelligence and Food and Drug Control officers.

The research in the chapter has tried to discuss relevant conventions, international bodies and its effects in Indian machinery to control drugs. The research also discusses harm reduction programmes coming from international conventions play an important role as the Indian Government's policy depended on it and even the legislation does have origin from it.

Legal Framework On Drug Abuse In India And Crime Relating Therewith

Both licit and illicit substances are being used extensively in our country. This chapter discusses in details various laws related to both groups of drugs. These include laws concerning licensing and abuse of licit substance and laws concerning criminal offences and penalties prescribed. Drug abuse is a major public health problem with extensive legal ramifications. In India, legal aspects of drug abuse involve two main areas:

Licensing Laws – regulate production and retail supply.

Legislative Law – deal with offences committed under intoxication. The penalties for various offences under the NDPS Act are as follows:

Offences And Penalties:

Offences	Penalty	Sections of the Act
Cultivation of opium, cannabis or coca plants without license	Rigorous imprisonment –up to 10 years + fine up to Rs1 Lakhs	Opium -1(c) Cannabis -20 Coca-16
Embezzlement of opium by licensed framer	Rigorous imprisonment-10 to 20 years + fine Rs.1 to2 Lakhs (regardless of the quantity)	19
Production, Manufacture, possession, sale, purchase, transport, import inter-stat, export inter-state or use of narcotic drug and psychotropic substance	Small quantity –Rigorous imprisonment up to 6 months or fine up to Rs.10,000 or both more than small quantity but less than commercial quantity- Rigorous imprisonment. Up to 10 years +Fine up to Rs. 1 Lakhs commercial quantity- Rigorous imprisonment 10 to 20 years + Fine Rs 1 to 2 Lakhs	Opium-18 Prepared opium-17 Cannabis-20 Manufactured drugs or their preparation-21 psychotropic substance -22
Import, export or transshipment of narcotic drugs and psychotropic substance	Same as above	23
External dealings in NDPS-i.e. engaging in or controlling trade whereby drugs are obtained from outside indiaand supplied to a person outside India	Rigorous imprisonment 10 to 20 years + Fine of Rs. 1 to Lakhs (Regardless of the quantity)	24
Knowingly allowing one’s premises to be used for committing an offence	Same as for the offence	25
Violations pertaining to controlled substance (Precursors)	Rigorous imprisonment up to 10 years + Fine Rs 1 to 2 lakhs	25 A
Financing traffic and harboring offenders	R.I. 10 to 20 years + Fine Rs 1 to 2 Lakhs	27 A
Attempts, abetment and criminal conspiracy	Same as for the offence	Attempts-28 Abetment and criminal conspiracy-29

Preparation to commit an offence	Half the punishment for the offence	30
Repeat offence	One and half times punishment for the offence. Death penalty in some cases	31 Death -31 A
Consumption of Drugs	Cocaine, morphine, heroin, R.I. up to 1 year or fine up to Rs. 20,000 or both other drugs-imprisonment up to 6 months or fine up to Rs. 10,000 or both Addicts volunteering for treatment enjoy immunity from prosecution	27 Immunity - 64A
Punishment for violations not elsewhere specified	Imprisonment up to six months or fine or both	32

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