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Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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Increasing Cases Of Substance Abuse In India: A Deeper View Into The Role Of Law

Authored by-Tanushree Das
Student of LLM (International Law), Chandigarh University

Abstract

There are multiple states in India that are still struggling to implement the NDPS act for the management of substance abuse. Substance abuse is one of the oldest concerns for the people in India in legal, medical and psychological perspectives. It can simply be defined as the harmful utilisation of any substance for the purpose of mood altering. The term substances can include any kind of drug, be it illegal or not. “*The Narcotic Drugs and Psychotropic Substances Act, 1985*” is the legislative instrument putting restrictions on the abuse of substances in India. Despite the restrictions imposed by the government and the effectiveness of this particular act, India has been facing multiple cases every year regarding substance abuse. It is not an unacceptable fact that substance abuse has long been an enemy to the country and its development as it is not only affecting the lives of youths, but at the same time it is putting restrictions on the growth of the Indian economy.

Introduction

Substance abuse is one of the oldest concerns for the people in India in legal, medical and psychological perspectives. It can simply be defined as the harmful utilisation of any substance for the purpose of mood altering. The term substances can include any kind of drug, be it illegal or not. Substance abuse is a big concern as abuse is addressed as a process where an individual is utilising a substance in an intended or a recommended way in order to meet their level of pleasure. There are multiple side effects and negative consequences of harmful substance abuse. Based on this concern, the Indian government has long been trying to make the use of certain substances illegal. “*The Narcotic Drugs and Psychotropic Substances Act, 1985*” is the legislative instrument putting restrictions on the abuse of substances in India¹. Despite the restrictions imposed by the government and the effectiveness of this particular act, India has been facing multiple cases every year regarding substance abuse. From traditional drugs such as cocaine, heroin and cannabis, to synthetic drugs like tramadol have increased the number of substance abuse incidents in India, putting the lives of multiple victims at risk. Considering the health of the youth along with the entire country, it is high time to think about the reasons behind continuous substance abuse cases in the country and how to tackle the same.

Drug Policy In India

Psychotropic substances and narcotic drugs have multiple scientific and medical benefits and uses. However, they can also be trafficked and abused in some cases. Considering this concern India had taken an approach towards the management of psychotropic substances and narcotic drugs by introducing the Narcotic Drugs and Psychotropic Substances Act, 1985². Moreover, according to Article 47 of the Indian Constitution it dictates that “*State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health*”³. Apart from the prohibition initiated by the NDPS act and the constitution of India, there are certain international conventions in relation to drug matters that also apply for India in its cases of substance abuse as India has signed as well as ratified these conventions and the conventions are as follows:

- “*Single Convention on Narcotic Drugs, 1961*”
- “*Convention on Psychotropic Substances, 1971*”
- “*The UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988*”

¹Substance abuse: Impact on Adolescents in India – Project UDAYA | Population Council Projectudaya.in, <https://www.projectudaya.in/substance-abuse-impact-on-adolescents-in-india/> (last visited Nov 7, 2021)

²Dor.gov.in, <https://dor.gov.in/sites/default/files/Narcotic-Drugs-and-Psychotropic-Substances-Act-1985.pdf> (last visited Nov 7, 2021)

³Constitution of India Constitutionofindia.net, https://www.constitutionofindia.net/constitution_of_india (last visited Nov 7, 2021)

Commitment of India for the prevention of substance abuse and trafficking of the same predates since the coming into force of all these conventions. The policies of the Indian government have just been focused on promoting the use of substances for medicinal and scientific purposes while at the same time the Indian government is also preventing the diversion of substances from illicit sources as to the matters of prohibiting illicit traffic as well as being used. In the concern of managing the issues, the NDPS act has developed different statutory authorities including the Narcotics Commissioner under Section 5, the Competent Authority under section 68D, and the Administrator under section 68G of the given act.

Despite the precautions and initiatives taken by the given policies in India, there is no uniform policy in relation to some issues including injecting drug users or IDUs. Injecting drug users are often found to share needles. In such cases an addict who is HIV positive and sharing a syringe for injecting drug may spread the virus among all the group members. In such cases, no direct policies have been introduced to specifically govern on these matters. In these kinds of cases, there are two schools of thought that focus on dealing with IDUs, and these schools include Harm Reduction and Abstinence Only. In the case of Harm Reduction, the drug addicts are encouraged to use clean syringes and needles for injecting in order to minimise the risk of HIV spread. However, on the other hand, in the case of Abstinence Only, it is believed that the only way to prevent or minimise drug-driven HIV is by completely abstaining the users from consuming drugs.

Now, given that produce taken by the Indian government regarding drug management, the second school of thought should be considered for the application of uniform policy.

However, considering all the applicable legislative instruments it can be said that in India NDPS is acting as the primary legislation for the prevention and management of drug abuse under the governance of Article 47 of the Indian Constitution along with the above-mentioned international conventions.

Amendments To The NDPS Act

“NDPS Amendment, 1989”

The first amendment for the NDPS Act was called for in 1989 after a recommendation was made by a cabinet sub-committee for making the law more stringent. Following this particular amendment individuals with events at small amounts of drugs faced long sentences in prison followed by heavy fines, unless the offender could prove that the drug was for personal use because in such cases the individual will be subject to imprisonment for 6 months to 1 year depending on the type of drug. According to this amendment there was a chance of bail. However, from this amendment it was also witnessed that individuals got arrested for possessing even a small amount of drug that was intended for personal use and proof so, where sentence improvement over 10 years even for a few mg of contraband.

“NDPS Amendment, 2001”

Following the criticism regarding the horse as well as the disproportionate sentencing structure in the previous amendment created a significant momentum for reform. Considering this criticism, in 1998, another amendment was proposed for the NDPS act in parliament, and it was finally adopted in 2001. This particular amendment finalised that a sentence will be proposed for the individual possessing any kind of drug based on the quantity and type of drug involved in the case; that is whether the drug is found in a small amount or commercial or intermediate amount.

“NDPS Amendments, 2014”

The NDPS act was amended for the third time in 2014 and through this particular amendment, new provisions were introduced by including some main features. These features are as follows:

- ✓ A new category of essential narcotic drugs was created, which could be specified and regulated by the central government uniformly throughout India.
- ✓ The objective of the given law was widened substances to the promotion of scientific and medical utilisation of narcotic drugs.
- ✓ Death penalty was made discretionary in relation to a subsequent offence that involved a certain quantity of narcotics substances under the governance of section 31A of the given act. It was also mentioned that the court will be capable of using the alternative for imposing imprisonment approximately 30 years under the governance of section 31.

State-Wise Study On Substance Addiction Cases

On June 26th of every year the international day against substance abuse as well as in the trafficking of substances is celebrated aiming at sensitizing individuals around the nation regarding drug abuse and addiction followed by their negative impacts. However, despite multiple initiatives taken by the Central Government the epidemic of drug abuse in India among adolescents has been increasing at a notable rate in the country and this is recognised to be the direct result of the different cultural values and fields competition in different fields of education as well as employment and many other factors. It is an observable fact that the negative impact of excessive drug abuse on adolescents is not only affecting their health and psychological well-being but at the same time it is directly affecting the future of the country. In every state of India there are more or less victims identified who are of adolescent group and were victims of drug abuse, especially taking advantage of those drugs that are easily available including tobacco, alcohol, glues and cannabis. Reports have stated that the highest risk is identified for the group of adolescents who belong to the group of child laborers, street children and teens with a family history of substance abuse and

any other kind of behavioural or emotional challenge in the family. Now, saving the life and future of the children has always been the primary concern of a nation as they are the pillars of the future of the country. However, the increasing cases of drug abuse in India has been putting questions everyday against the capability of the legislative body and the government as well.

As per the data collected by UDAYA, the substance abuse has been identified to be at a higher rate among adolescent children aged between 15 to 19 years. The study has also proved the use of tobacco and alcohol and it has also revealed that approximately 20% of the address and children aged between 15 years to 19 years in Bihar and 22% in Uttar Pradesh are consuming tobacco products. On the other hand, in the case of alcohol consumption the percentage of users in Bihar is 8% and 5% in UP⁴.

However, according to the report published in 2020, Uttar Pradesh continued to report the highest cases under NDPS among all the states in India. In this case, Mumbai has been reported among 19 metropolitan cities in the country under NDPS for the highest number of drug abuse cases. Mumbai has reported approximately 3509 cases under the act as per "Crime in India 2020". Now analysing these cases with the perspective of personal and commercial use it has been identified that over 85% cases in the top 5 cities were for personal consumption. However, on the contrary 537 cases were reported in Chennai under the given act related to drug trafficking which is not for personal use. At the same time 312 cases were reported in Kanpur and 72 cases were reported in Kolkata for drug trafficking which were not related to personal consumption.

The names of the cities identified above must raise questions against the capability of the state government as well as the central government as these cities are some of the developed and biggest cities in India. In the absence of sufficient effectiveness of the NDPS act, the figures of these cases have been increasing day by day and 2021 has again brought specific attention of not only the country but also the foreign countries on the drug abuse cases in India with the NCB vs. Aryan Khan case. With cases being reported everyday regarding drug abuse in India raising a question whether the legislation related to the same issue is really effective in India or it is not really being applied to manage such cases.

Should India Legalise Cannabis?

Cannabis along with its derivatives has been banned in the country under the governance of the “*Narcotic Drugs and Psychotropic Substances Act, 1985*”. There are a range of preparations that come under the generic name of cannabis. The act mentioned above strictly regulated the production and use of cannabis plants along with its products. However, relaxation to the harvesting of cannabis has been given by the government exclusively for the purposes of industrial use. Focusing on this relaxation Himachal chief minister while announcing the budget for the state 2021

⁴Substance abuse: Impact on Adolescents in India – Project UDAYA | Population Council Projectudaya.in, <https://www.projectudaya.in/substance-abuse-impact-on-adolescents-in-india/> (last visited Nov 7, 2021)

the government of Himachal Pradesh is coming up with a policy allowing controlled contribution of cannabis within the state⁵. Since the time of introduction of the NDPS act, cannabis has received much relaxation from the government based on its medicinal use and its status as a less dangerous drug. In December 2020, the UN Commission voted to remove cannabis from a category of most dangerous drugs of the world. This decision was taken to expand the use of cannabis marijuana for medicinal and research uses⁶. It was viewed as the classification of cannabis along with its derivatives with the confirmation from the World Health Organisation. In recent years, the use of marijuana for medicinal uses has exploded and similarly the use and circulation of products that contain cannabis derivatives like non-intoxicating compound, cannabidiol or CBD has increased. However, despite the legalisation of the use and harvesting of cannabis in different countries and relaxation given by the UN Commission, some countries like China and India are still strictly controlling the use of cannabis for the protection of people from harm and abuse. However, from this observation it is at least can be considered that the relaxation given to the use of cannabis from different countries prove its less harmful nature and need for the country to promote its use widely for medical and research purposes.

Conclusion

There are multiple states in India that are still struggling to implement the NDPS act for the management of substance abuse. It is not an unacceptable fact that substance abuse has long been an enemy to the country and its development as it is not only affecting the lives of youths, but at the same time it is putting restrictions on the growth of the Indian economy. From the observation of the entire analysis, it has been identified that the impact of substance abuse is significantly high on the psychological health of youth with a possibility of developing substance disorder that can lead towards death in serious cases. Now, the question arises that despite such restrictions implemented by the legislation in the country, how are the children and the youth getting access to the drugs so easily? Is it the inability of the government or the implementation mechanism? The answers need to be developed at the earliest to safeguard the lives of the future of the country. Also, with the relaxation given by the UN for the production and use of cannabis, India might need to rethink its narcotics law structure and application.

⁵Himachal Pradesh mulls legalising cannabis cultivation: Here's why Deccan Herald, <https://www.deccanherald.com/national/north-and-central/himachal-pradesh-mulls-legalising-cannabis-cultivation-heres-why-965319.html#:~:text=banned%20in%20india%3F-,Cannabis%20and%20its%20derivatives%20are%20banned%20in%20India%20under%20the,of%20the%20cannabis%20sativa%20plant.> (last visited Nov 7, 2021)

⁶UN reclassifies cannabis as a less dangerous drug Deccan Herald, <https://www.deccanherald.com/international/world-news-politics/un-reclassifies-cannabis-as-a-less-dangerous-drug-922580.html> (last visited Nov 7, 2021)

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