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DRUG ABUSE AMONG CHILDREN SPROUTS BONSAI CULTURE-A SOCIO-LEGAL ANALYSIS

AUTHOR BY: DR NL SAJIKUMAR

“Drugs is suicide, paid in instalments.” — Titus Lenk

Human population are undergoing many challenges for a conducive survival. Some of the greatest threats to our survival are sweeping epidemics which adversely affects people globally. Drug addiction, although often regarded as a disorder among children, may also be seen as a worldwide epidemic which regulates, physiological behaviour. Globally, the use of drugs has reached at its peak. On average, drug popularity differs from nation to nation. The menace of drug abuse among juveniles is at an alarming rise. The nexus between health and social problems makes it the need of the hour to wipe out the drug abuse from its root. The World Drug Report 2018 highlights the importance of gender- and age-sensitive drug policies, exploring the particular needs and challenges of women and young people. Drug use among young people differs in countries and is dependent upon multifarious factors. . Drugs are used for different sensations. Most prominently it is used in recreational settings to add excitement and enhance the experience; on the other hand it is used in extreme climatic conditions to cope with the situation.. The use of such substances is reportedly much higher among young people. Many street children are exposed to physical and sexual abuse, and substance use is part of their coping mechanism in the harsh environment. The path from initiation to the aggravated use of substances among young people is controlled by several factors which later leads to addiction. There are mainly three different factors at three levels. They are personal level, micro level and macro level. Factors at the personal level (including behavioural and mental health, neurological developments and gene variations resulting from social influences), the micro level (parental and family functioning, schools and peer influences) and the macro level (socioeconomic and physical environment) can render adolescents vulnerable to drug use. . Early mental and behavioural health problems, poverty, lack of opportunities, isolation, lack of

parental involvement and social support, negative peer influences and poorly equipped schools are more common among those who develop problems. Youngsters may also crave for economic upliftment and they end up in dealing drugs. Children are the targets of mafias for drug trafficking and even organised crimes and they are used as “mules”, to smuggle illegal substances in International trade.

The problem of drug addiction and trafficking has become a global phenomenon with the rapid expansion of trade and business.

Despite the plethora of legislations there are rampant use of drugs by youngsters which retards them psychologically and leads them to grave. Hence it is the need of the hour to intrude into these evils which destroys the budding generations which ultimately retards the development of a powerful nation

Methodology

The present study is purely doctrinal study. The doctrinal method is used to study the relevant literatures dealing with the factors influencing Children which leads to drug abuse and the socio-legal implications regarding the abuse.

Objectives

- 1 To probe into the factors that influences children to drug abuses which retards their neurocognitive as well as psychological development.
- 2 To unravel the International as well as national legislations to mitigate the problems of Drug abuse among children
- 3 To find out the loopholes in various levels for curbing the misuse of drugs among Children
- 4 To suggest suitable mechanisms for moulding a powerful youth who are not entangled under the clutches of drugs

The use of drugs has been in vogue since time immemorial. Drugs are rampantly used for medicinal, recreational, social and various other purposes. The pleasurable feelings derived from marijuana were discovered by the Chinese around 2800 B.C. There is a sharp escalation in the use of psychoactive or mood alleviating drugs in our society. The misuse outweighs the use. Traditionally, dependence signified psychological reliance on a particular drug, while addiction was reserved for physiological dependence, as indicated by withdrawal symptoms when stopped. The modern concept denotes physiological and psychological dependence. The

term 'drug abuse*' is used to indicate the excessive consumption of non-prescribed drug. The most commonly used problem drugs are heroin, barbiturates, amphetamines, LSD, marijuana and alcohol. Drug trafficking and abuse are closely related to the geographical location of the Indian subcontinent. Opium use was known to have existed almost 6000 years, used by Sumerians and then passed on to Babylonians and then to Persians¹ the problem of drug abuse in India mostly started in the colonial British era. During the early 1800s, the British East India Company used to export opium from different regions of India, precisely Bengal, Benaras to China. As to fight this drug problem in China, it banned the export of opium and as a result, the infamous opium wars took place².

The gamut of International as well as National legislations curbing the drug menace is in operation. The International Opium Convention called the Hague Convention on Narcotics was held in 1912 which was the first drug traffic control treaty at the international level. One of the most important conventions in this regard was the Single Convention on Narcotic Drugs, 1961(SCND) which codified all the existing multi-national treaties and merged the Permanent Central Board and Drug Supervisory Board into a Single International Unit of Drug Control.

The United Nations Commission on Narcotic Drugs and the International Narcotic Control Board are the international organizations which are seized with the problem of eradication of drug addiction. The main function of the international bodies is to provide machinery for giving full effect to the international conventions relating to narcotic drugs and to provide for continuous review and progress in the international control of these drugs. Despite the adoption of the International Conventions in national legislations the menace of drug trafficking in children remains a nightmare and it is high time that we combat against this evil which crumbles a nation. An introspection into the legal framework and its loopholes can unravel the mysteries of combating this menace.

INTERNATIONAL FRAMEWORK FOR DRUG

¹ Rishi, Dev Dass, Drug abuse and illicit trafficking a critical analysis of the law and enforcement in India, shodhganga,

² Pramit Bhattacharya, Drug laws in India, ipleaders,

CONTROL IN CHILDREN

The UN Convention on the Rights of the Child (CRC) stands alone among the core UN human rights treaties in setting out a human right to protection from drugs. Article 33 provides that “States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.”³ There are two points to note here; first, Article 33 contains two clauses: one relating to drug use and one to involvement in the drug trade. And second, the CRC is connected via Article 33 to the three UN drug control conventions: the Single Convention on Narcotic Drugs 1961 (“Single Convention”), the Convention on Psychotropic Substances 1971 (“1971 Convention”), and the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (“Vienna Convention”⁴). States have an obligation to protect children from drugs and concurrent obligations to control those drugs in certain ways. The drug supply chain imperils children at each stage, from production to use. Children are harmed through drug use, parental drug dependence, drug-related violence, exploitation in trafficking, and a range of other ways⁵ Article 33 requires action in a legal and policy area long characterized by considerable human rights risks⁶. According to Anne Orford, law “is inherently genealogical. The past, far from being gone, is constantly being retrieved as a source or rationalisation of present obligation.”⁷ In 1919, the League of Nations was entrusted with mandates relating to both

³ Convention on the Rights of the Child (CRC) *G.A. Res.* 1989;44(25)

⁴ Single Convention on Narcotic Drugs. 520 *U.N.T.S.* 204. 1961. (as amended by the Protocol Amending the Single Convention on Narcotic Drugs 1972, 976 *U.N.T.S.* 3) Convention on Psychotropic Substances. 1019 *U.N.T.S.* 175. 1971. Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances. UN Doc. E/CONF.82/15. 1988;493 reprinted in 28 *I.L.M.*

⁵ Barrett D. *The impact of drug policies on children and young people*. New York: Open Society Foundations; 2015. For an overview,

⁶ Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. UN Doc. A/HRC/10/44. Manfred Nowak. 2009 See, for example. January 14. Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health. U.N. Doc. A/65/255. Anand Grover. 2010 August 6. Office of the High Commissioner for Human Rights. UN Doc. A/HRC/30/65. *Study on the Impact of the World Drug Problem on the Enjoyment of Human Rights*. 2015 September 4.

⁷ Orford A. “On international legal method,” *London Review of International Law*. 2013;1(1):166–197. p. 175.

opium (and other drugs) and child welfare under Article 23(c) of its covenant. Two major international conventions on drugs were adopted in 1925 and 1931⁸ Children, minors, and young people are not mentioned in these conventions; they appear only in treaties of lesser scope adopted in the same years, and which refer to prohibitions of opium sales and smoking in colonial territories⁹ In 1936, the League of Nations adopted a treaty against drug trafficking, but it was very unpopular, reaching as it did too far into national sovereignty.¹⁰ It also omitted mention of children unlike its counterpart, the Vienna Convention, adopted 50 years later. By the end of the 1960s, synthetic drugs were becoming a major concern at the UN and weaknesses in the Single Convention were identified. The Convention on Psychotropic Substances was adopted in 1971 to address the former concern, and the Protocol amending the Single Convention in 1972 to address the latter. concurrent drafting of the CRC and the Vienna Convention illustrates the political environment from which the right to protection from drugs emerged. As we have seen, the concept of drugs as a threat to children first appears in international discourse in 1971. Most working in drug policy recognize the importance of that year: President Nixon declared drugs as public enemy number one, beginning the “war on drugs” as we now know it. In the years that followed, the narrative of threat became more prominent in drug diplomacy¹¹ The war on drugs was at full steam. It is at this stage that drug control and child rights law converge on the international stage for the first time, in the form of new obligations in a drugs treaty, and a new human right. The CRC creates obligations independent of the drugs conventions. So what, in other words, does the child’s right to protection from drugs add, independent of its apparent connection to the those treaties¹² While drugs entered into international human rights law through what is rightly recognized as a milestone in the development of child rights, this seems to have been done with little discussion as to what it meant in practical terms for children to have a human right to protection from

⁸ . International Opium Convention. 81 *L.N.T.S.* 319. 1925. Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs. 139 *L.N.T.S.* 303. 1931.

⁹ Agreement Concerning the Suppression of the Manufacture of, Internal Trade in, and Use of, Prepared Opium. 51 *L.N.T.S.* 337. 1925. Arts. II and III. Agreement Concerning the Suppression of Opium Smoking. 177 *L.N.T.S.* 375. 1931. Art. II (referring to those under the age of 21)

¹⁰ Convention of 1936 for the Suppression of the Illicit Traffic in Dangerous Drugs. 198 *L.N.T.S.* 301. 1936

¹¹ Lines R. *Drug control and human rights in international law*. Cambridge: Cambridge University Press; 2017

¹² Barrett D., Tobin J. For a discussion. “Article 33: Protection from narcotic drugs and psychotropic substances. In: Alston P., Tobin J., editors. *Commentary on the UN Convention on the Rights of the Child*. Oxford University Press; 2017.

drugs. Meanwhile, children entered into international drug control law via the most punitive and repressive drugs treaty to date, a characterization justified by its own terms. Despite their apparent coherence, the CRC and the drugs conventions are different kinds of laws. The former is a rights document. The latter put in place a system of market control and transnational criminal law with very little regard for human rights. The case of incitement illustrates the importance of this basic difference. In the drafting of the CRC, incitement to become involved in the drug trade was rejected.¹³ But it was included in the Vienna Convention at around the same time.¹⁴ It was easier, in effect, to include a measure raising clear freedom of expression concerns and other legal problems in a treaty the drafters knew contained elements that could be unconstitutional for some states, than in one focused on protecting human rights.¹⁵ Some see the CRC as an important check on state actions in drug control.¹⁶ Others see it as a child rights confirmation of the existing drug control apparatus, with the concurrent development of the Vienna Convention and the CRC providing support for this view.¹⁷ Given the human rights risks associated with drug control, this is a serious debate for child rights scholars and advocates. Protecting children from drugs will be carried out in the context of drug policies, not some abstract realm of child rights implementation. States parties must take appropriate measures to prevent the use of children in the illicit drug trade.

LEGISLATIONS IN INDIA

¹³ Office of the High Commissioner for Human Rights, UN General Assembly. Youth and dependence-producing drugs. *G.A. Res.* 1971;2859(XXVI):711

¹⁴ Vienna Convention. *Art. 3(1)(c)(iii)*

¹⁵ Some of the more intrusive elements of the treaties are subject to each State's 'constitutional principles and the basic concepts of its legal system' *Art. 3(2)* Vienna Convention. Asset forfeiture under the Vienna Convention is recognised in its official commentary as being 'deliberately Draconian.' UN Doc. *E/CN.7/590. Commentary on the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988.*

¹⁶ Barrett D. *The impact of drug policies on children and young people.* New York: Open Society Foundations; 2015.

¹⁷ Takahashi S. "Human rights and the international drug control regime: Myths and realities. In: Nilsson L., Lejonmark E., editors. *Future of drug policy: Real solutions grounded in global evidence.* Drug Policy Futures, World Federation Against Drugs, European Cities Against Drugs; 2016. pp. 41–46.

The Directive Principle of State Policy under Article 47 of the Indian Constitution which directs the State to bring about prohibition of the consumption of intoxicating drugs injurious to health, except for medicinal purpose has unravelled a spectrum of legislation in India which is directed against illicit trafficking in drugs and alcoholic substances National Policy on Narcotic Drugs and Psychotropic Substances is based on¹⁸ India is also a signatory to the 1961 single convention in Narcotic Drugs as amended by the 1972 protocol, Convention In view of the alarming increase in drug menace in India, the Parliament enacted the Narcotics Drugs and Psychotropic Substances Act, 1985 which was later amended and was called the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1988 and came into force on July 4, 1988. The Act emphasizes on the preventive aspect of drugs evil and covers a wide list of substances that are recognized as narcotic drugs. The National Committee on Drug Addiction was set up by the Government of India in 1976 to enquire into- the extent of addiction to drugs in the country, to determine motivation for drug addiction, to recommend the suitable de-addiction and suggest steps to prevent misuse.

The Opium Act of 1857, which was to regulate the cultivation and manufacturing of opium in India, *The Opium Act of 1878* was established that controlled opium use on a domestic basis. In 1920, possession of 10 grams of opium was considered illegal banning opium partially by the then Indian government. The then government also enacted different Acts like the *Dangerous Drugs Act of 1930* and other legislation, but the truth was it only banned these substances on a partial basis, and many illegal drug and other trafficking still happened in different Indian borders. In 2019, the Ministry of Social Justice and Empowerment, Government of India in its report titled, “Magnitude of Substance Use in India”, stated that alcohol was considered the most commonly used substance and 19% of the use. The NDPS act is considered to be the prime legislation of the Indian subcontinent which regulates Narcotics Drugs and Psychotropic Substances. The NDPS act replaced the other old acts, i.e., the *Opium Acts, 1857 and 1878*, and the *Dangerous Drugs Act of 1930*, and came into force on 14 November 1985. This Act is in consideration of the international treaties of which India is part of, more specifically the Convention on Narcotic Drugs, 1961, Convention on Psychotropic Substances, 1971, Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, Transnational Crime Convention, 2000. Keeping these conventions, international, domestic

¹⁸ Jhamman Ram Chauhan, Enforcement of drug laws in India: A critical Study, Kurukshetra University, 2014 retrieved from <http://inflibnet.ac.in/handle/10603/38108>

setup, and criminal activities in focus, India further amended the NDPS act in 1989, 2001, and 2014. Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988. This Act was introduced supplementary to the above-mentioned NDPS act. This Act covered the grounds on detention, powers of an absconding person, etc. This is also the second core legislation after the NDPS Act. National Commission for Protection of Child Rights (NCPCR) set up a Working Group in July 2011 for “Substance Abuse and Drug Addiction among Children”.

Based on the recommendation of the Working Group, a study was commissioned by NCPCR titled “Assessment of pattern, profile and correlates of substance use among children in India”, conducted through the National Dependent Treatment Centre (NDTC), All India Institute of Medical Sciences (AIIMS), New Delhi in the year 2012-13, covering 135 sites across 27 States/2 UTs with a sample size of 4024 substance using children. The objective of the study was to collect information on pattern of substance use and profile of children using substances; and to collect information on family, peer, stress, psychological, physical health and legal aspects associated with substance use among children. Some major findings of the study are as under:-

- (i) More than 50% children living on the streets reported bad or very bad relationship or no relationship with the family;
- (ii) Tobacco and alcohol were the most common substances used by children, followed by cannabis and inhalants, pharmaceutical opioids, sedatives, heroin and opium;
- (iii) The percentage of inhalant users (lifetime, last one year and last one month) was higher in the children living on the street than in children living at home;
- (iv) The lifetime and last one year use of opium was higher in the children living on the street than in children living at home.

The Ministry of Women and Child Development is implementing a Centrally Sponsored Scheme, namely, Integrated Child Protection Scheme (ICPS) from 2009-10 for children in difficult circumstances including children who are victims of substance abuse. Under ICPS,

financial assistance is provided to State Governments/UT Administrations, inter-alia, for setting up and maintenance of various types of Homes, including, Shelter Homes, Open shelters etc. These Homes provide inter-alia, shelter, food, education, medical attention, vocational training, counseling, detoxification and treatment etc. to such children so that they can ultimately reintegrate into the mainstream society.

ICPS also provides Specialised Services for Children with Special Needs including children affected by substance abuse. These services cater to individual specific needs like substance abuse, behavioural problems and social deviant behaviours and require specialized institutional care and treatment including medical, nutritional, and psychological support. Each State/UT has to notify and designate at least one shelter home for care, detoxification and counseling of children affected by substance abuse. These Shelter Homes shall offer day and night shelter facilities to the children in need of support services for a temporary period, while efforts are made to rehabilitate them.

Further, the Ministry of Social Justice and Empowerment implements Central Sector Scheme of Assistance for Prevention of Alcoholism and Substance (Drugs) Abuse under which financial assistance is provided to NGOs /Voluntary organizations for running Integrated Rehabilitation Centres for Addicts (IRCAs), organizing de-addiction camps and conducting awareness programmes about the ill effects of Alcoholism and Substance (Drugs) Abuse on the individual, family, workplace and the society at large. The IRCAs (de-addiction centres) provides counselling, treatment, after care and rehabilitation of drug dependent persons including children.

The Ministry of Social Justice and Empowerment has taken the following steps to create awareness in society about the ill-effects of alcoholism and drug abuse:-

- (i) International Day against Drug Abuse & Illicit Trafficking is observed on 26th June each year. As part of this programme, rallies, paintings campaign, workshops, seminars etc are organized at the National as well as State level. On this occasion, National Awards for outstanding services in the field of Prevention of Alcoholism and Substance (Drugs) Abuse are conferred to the Individuals and Institutions to encourage them and recognize their efforts.

- (ii) The National Institute for Social Defence, an Autonomous Organization under the Ministry of Social Justice and Empowerment in collaboration with Regional Resource and Training Centres and other collaborating partners organizes sensitization programmes in Schools/Colleges and skill development programmes in the field of social defence including counselling and drug de-addiction.
- (iii) Information regarding ill-effects of alcoholism and drug abuse is also disseminated in regional languages through the All India Radio programme “Sanwanti Jayen Jeevan Ki Rahen” and also through advertisements in news papers.
- (iv) In the year 2011-12, the Ministry of Social Justice and Empowerment had conducted an awareness generation programmes in some districts of Punjab and Manipur through Nehru Yuva Kendra Sangathan (NYKS), an Autonomous Organization under the Ministry of Youth Affairs. In October 2014, the Ministry has again assigned the task of awareness generation in Punjab to cover all districts to NYKS.¹⁹

The right of the child is a part of Human Rights is guaranteed and protected by law, both international law and national law. Child rights should even be treated differently than adults, which are specifically regulated in specific conventions. The concept of restorative justice becomes one of a number of important approaches to crime and justice that are constantly being considered in the judicial system and in the law. Restorative Justice aims to empower victims, perpetrators, families and communities to remedy an act against the law, using awareness and insight as a foundation for improving community life. The crime of drug abuse perpetrated by a child, seen as a violation of humanity and the relationship between human beings, creates an obligation to make things better by involving themselves and the community in finding solutions to reconciliation and reassurance. Restorative justice is an effort to support and implement the provisions set forth in Article 16 paragraph 3 of Law No.23 of 2002 on Child Protection, namely "that arrest, detention or imprisonment of children is only Legal Protection of Children²⁰ if it is in accordance with applicable law and can only be done as a last resort ". The criminal prosecution of the public prosecutor, rarely found any criminal charges, but the

¹⁹ Press Information Bureau ,Ministry of Women and Child Development Substance Abuse & Drug Addiction among Children 24-April-2015 16:36 IST

act that if the defendant is found guilty, the action is returned to his parents or the breath in accordance with the duration of the defendant's child is in temporary detention. Efforts to execute the law order for prison imprisonment of children is the last attempt, the best decision is the action to return children to their parents or social service to be educated and nurtured properly. There are several reasons for the implementation of restorative justice to the child should be imposed the act of return to the parents. Children have the right to be protected from all exploitative and vulnerable situations that have been discussed. But that is possible only if you make yourself aware of the real problems and risks that children face and of the remedies that are available in law and policy to change the situation in the best interest of children.

There are multifarious initiatives taken by the Government to curb this evil

The National Commission for Protection of Child Rights has decided to conduct fact-finding inquiries on the availability of drugs through the internet, social media and the darkweb. The commission is planning to create a team at its headquarters for regular fact finding wherein experts would also be involved in the analysis. The information will be shared with the Narcotics Control bureau (NCB) and other law enforcement agencies.

“Joint Action Plan on Prevention of Drugs and Substance Abuse among Children and Illicit Trafficking” is an attempt to standardise practices that can help stop selling drugs and substances in surroundings areas of schools and other educational institutes through enforcing existing laws. School-going children who use substances are mostly using legal but harmful substances in the form of tobacco and/or alcohol.

However, the out-of-school children, especially those on the streets or slums and vulnerable populations, are at risk of experimenting with more hazardous substances, both “licit as well as illicit” in nature.

The introspection into the legal framework and its effectiveness in curbing the menace has urged to draw certain suggestions which plug in loopholes to build a healthy nation empowered with healthy children

SUGGESTIONS

There should be an initiative from the part of government to implement the regulations of drug abuse strictly. There should be a joint effort of school authorities to have surveillance upon children in observing their behavioural pattern. Cameras should be installed in educational premises to track any unwarranted use of narcotics in the premise. Periodical visits of excise department is inevitable for monitoring the drug use among children. Moreover a conducive family relationship should be created so as to retard the deviational behaviour of children, This should be strengthened by fostering the talents of children in educational institutions .Finally a deterrent policy should be implemented against the habitual offenders and curb the menace of this social evil. Thus we can prevent a Bonsai culture sprouted among children due to drug abuse .

