



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal

– The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK
LEGAL

EDITORIAL TEAM

Raju Narayana Swamy (IAS) Indian Administrative Service officer



Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and a

professional diploma in Public Procurement from the World Bank.

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.



Senior Editor

Dr. Neha Mishra



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi, Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of Law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.

Dr. Rinu Saraswat



Associate Professor at School of Law, Apex University, Jaipur,
M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



Subhrajit Chanda



BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

NEED FOR REFORMS IN NARCOTICS LAWS IN INDIA

AUTHORED BY - SHREYA PANCHWAL

Abstract

Since the beginning of civilization, humans have lived in groups owing to their social nature. Man, being a social animal, has always strived for something more and is unhappy with whatever the nature has been bestowing upon him. This desire for wanting more acted as a catalyst as well as proved disastrous for the civilization. One such way to destruction as a consequence of this desire was through the abuse of drugs or what is termed as drug intoxication. These were basically consumed for inducing a sense of euphoria against the feelings of anxiety or despair. Over the decades it took a different path and has been drawing individuals all over the world into a deep pit since then. Many reforms have been taken at international level such as the 1961 UN Single Convention on Narcotic Drugs of which India became a signatory and was pressured into adopting a well-structured framework for narcotics control.

Introduction

Drug abuse is indeed a significant global issue with far-reaching consequences. It affects individuals, families and communities in various ways, including health problems, social issues and economic burdens. Initially tracing its way all over the world, drug abuse in India has evolved alongside global trends. Over the years, factors such as rapid urbanization, economic disparities and social changes have influenced patterns of drug use. Today, India faces challenges related to drug abuse, including addiction, trafficking and the spread of diseases like HIV/AIDS. In recent decades, India has experienced a shift in drug abuse patterns, with an increase in the use of synthetic drugs like MDMA, methamphetamine and ketamine, particularly among urban youth. These substances have been associated with rave parties and club culture.

Drug abuse in India is also influenced by regional factors. For example, states like Punjab have seen a significant rise in opioid addiction, particularly to heroin, leading to social and health crises in

affected communities. Efforts to address drug abuse in India include awareness campaigns, treatment facilities and rehabilitation centres, however challenges remain the stigma associated with addiction and the evolving nature of illicit drug market.

History

The history of drug abuse in India is complex and spans centuries. Historically, substances like cannabis, opium, and alcohol have been used for various purposes including medicinal, religious and recreational. Opium cultivation and trade were regulated during the British colonial period, leading to widespread addiction issues, particularly in regions like Bengal. Opium was a significant concern before independence. British colonial policies played a role in the proliferation of opium cultivation and trade, particularly in regions like Bengal and Bihar. Initially promoted for medicinal purposes, opium later became a substance of abuse. It was later exported to China to address trade imbalances which led to widespread addiction issues among both Indian and Chinese populations. This opium trade led to various conflicts, including the Opium Wars between Britain and China in the mid-19th century. Furthermore, opium cultivation was imposed on Indian farmers by the British thereby fuelling addiction issues. Attempts were made by the British colonial government to regulate opium consumption through legislation, such as the Opium Act of 1857¹ and the Dangerous Drugs Act of 1930². However these measures were often ineffective and did little to curb the menace.

Additionally, cannabis, known as ganja or bhang, has been used traditionally in India for religious and recreational purposes the abuse of which became advanced in certain regions over time where it was readily available. While historical records may differ, drug abuse proved to be a concern before India gained independence. It was a complex issue shaped by colonial policies, cultural practices and socio-economic factors. While opium and cannabis were the primary substances of concern, other drugs were also used in varying degrees.

In the post-independence era, drug abuse continued to be a concern, with the emergence of pharmaceutical drugs and synthetic substances adding to the problem. The 1980s saw a surge in heroin trafficking and abuse, especially in states like Punjab. Both cannabis and opium remained

¹ The Opium Act, 1857, No. 13, 1857 (India)

² The Dangerous Drugs Act, 1930, No. 2, 1930 (India)

prevalent in some parts of India despite efforts to control their production and use. Alongside recreational abuse, traditional cultural practices such as the use of cannabis in religious ceremonies persisted. India saw the rise of synthetic narcotics, such as methamphetamine and heroin, in the second part of the 20th century. Because these chemicals are highly addictive and are frequently produced covertly, they presented additional hurdles for public health experts and law enforcement. Following independence, India's pharmaceutical sector grew significantly, increasing the availability of prescription medications. But this also led to cases of pharmacological abuse and misuse, particularly with regard to sedatives and opioids. Besides, India actively participated in international efforts to combat drug abuse, including collaboration with organizations such as the United Nations Office on Drugs and Crime (UNODC) and bilateral agreements with other countries to tackle drug trafficking.

Impact on public health

Substance abuse can have a significant impact on public health since it can lead to higher rates of addiction and overdose deaths. It can also result in spreading of infectious diseases like Hepatitis and HIV/AIDS and contribute to mental health problems and social problems like crime and violence. In addition to placing a heavy financial burden on society, it could fracture families, put stress on healthcare systems and reduce productivity. It is imperative to address these issues and lessen the impact on public health by implementing treatment plans, harm reduction techniques and preventative measures. Addiction is a chronic brain disorder marked by obsessive drug seeking and use despite negative effects. Drug abuse can lead to addiction. In addition to having an adverse effect on one's health, addiction also ruins relationships and interferes with society's ability to operate.

The number of drug overdoses, especially from opioids like heroin and prescription medications, has skyrocketed in many nations. In addition to taking lives, overdose deaths cause emotional and financial strain on families, communities and other stakeholders. Sharing tainted needles and other injectable supplies makes injection drug users more susceptible to infectious diseases like hepatitis and HIV/AIDS. This presents a risk to the general public's health in addition to the health of drug users. Drug abuse is a contributing factor to societal issues like homelessness, unemployment, crime and family dissolution. It places a huge financial burden on society by taxing the resources of social welfare, healthcare and law enforcement. People who suffer from drug addiction problems frequently experience discrimination and stigma, which can discourage them from getting treatment and seeking

a proper assistance. Promoting empathy, support and successful interventions for individuals impacted by drug dependence requires addressing the stigma.

In addition to impacting lives of people around the world, drugs have also played a greater role in affecting environment. Deforestation, water source pollution and habitat destruction are just a few of the negative environmental effects that could result from illicit drug manufacture, trafficking and waste disposal. In impacted areas, these environmental effects may make public health issues worse. Comprehensive approaches that include harm reduction, treatment, prevention and policy interventions catered to the unique requirements of communities and people impacted by substance use disorders are needed to address the complex public health challenges related to drug abuse. Drug abuse has posed significant challenges to public health and societal well-being in India. In India, drug addiction, including that of opioids, cannabis, alcohol and prescription medications, has increased. Rapid urbanisation, globalisation, and socio-economic inequality are some of the factors that make drug usage more common. Indian teenagers are especially susceptible to drug abuse because of things like media glamorization of substance use, peer pressure, stress from school and unemployment. To lessen the effects of drug abuse, youth-focused preventive initiatives are essential.

In many regions of India, especially in rural areas, there is a little access to mental health and addiction treatment facilities. The stigma associated with substance abuse and mental illnesses make it more difficult for people to get the care they need and to ask for assistance. India bears heavy economic costs from drug abuse, including medical bills, lost wages and law enforcement expenditures. Drug abuse patterns in India are not uniform across its regions; higher prevalence rates are found in some states and urban areas. To successfully address these regional variances, tailored treatments that take into account cultural, socio-economic and geographical elements are important. In order to tackle drug abuse, the Indian government has been working with non-governmental organisations and civil society groups on a number of programmes. These include awareness campaigns, treatment facilities and law enforcement actions aimed at upsetting drug trafficking networks. But tackling the complex issues of drug usage in India calls for consistent work, cross-sector cooperation and a comprehensive strategy that takes demand and supply reduction tactics into account.

Several landmark case laws have shaped the legal framework surrounding drug abuse and related

issues in India. The Narcotic Drugs and Psychotropic Substances Act, 1985³ governs the offences related to substance abuse in India and provides stringent measures for penalising those found guilty under its purview. The case of *Mandujano v. State of Madhya Pradesh*⁴ highlighted the importance of adhering to procedural safeguards during the trial of drug-related offenses. The Supreme Court emphasized the need for strict compliance with legal procedures to ensure fair trials and protect the rights of the accused. In India, narco-analysis tests, also known as the truth serum tests, have also been a subject of legal and ethical debate. These tests do not directly contribute to substance abuse in India. Instead, they are a forensic tool used by law enforcement agencies to extract information from suspects or witnesses by inducing a semi-conscious state using drugs. The drugs used in narco-analysis tests, such as sodium pentothal, are not substances commonly abused in society. However, issues surrounding administering drugs to individuals without their full consent and the psychological effects resulting from such tests have been raised. Additionally, these tests have been criticised for violating an individual's right against self-incrimination. Keeping in mind the above discrepancies, the Supreme Court has provided the guidelines regarding the use of narco-analysis tests in *Selvi v. State of Karnataka*⁵. While not specifically related to drug abuse, this case addressed the admissibility of evidence obtained through narco-analysis tests in criminal proceedings. These guidelines ensured safeguarding of rights of individuals undergoing narco analysis tests as well as their reliability and ethical conduct in legal proceedings.

Another growing concern surrounding substance abuse in India is the use of prescription drugs which widely depends on factors such as access to healthcare, income levels and cultural attitudes towards medication. Their use has been on the rise in India owing to a growing population and increasing healthcare awareness, particularly in urban areas. India has a large generic drug manufacturing industry, making essential medicines more accessible to a larger portion of the population. This easy access leads people resorting to self-medication which often results in incorrect dosage, incomplete treatment and development of antibiotic resistance. India faces a significant challenge with the overuse and misuse of antibiotics, leading to antibiotic resistance. Healthcare providers may prescribe patients demanding antibiotics unnecessarily contributing to the drug-resistant infections. The Bombay High Court in the case of *Abhay Bang v. State of Maharashtra*⁶ addressed the misuse of

³ The Narcotic Drugs and Psychotropic Substances Act, 1985, No. 61, Acts of Parliament, 1985 (India)

⁴ *Mandujano v. State of Madhya Pradesh*, AIR 1977 SC 1448

⁵ *Selvi v. State of Karnataka*, AIR 2010 SC 1974

⁶ *Abhay Bang v. State of Maharashtra*, 2012 (9) SCC 586

antibiotics in India. The court highlighted the need for stricter regulation and enforcement measures to curb the indiscriminate use of antibiotics, which contribute to the rise of antibiotic resistance. Opioids, being prescribed for pain management, are sometimes misused for recreational purposes. This misuse leads to addiction, overdose and other serious health consequences.

Prescription drugs are sometimes sold illegally without a valid prescription or through unlicensed pharmacies and online platforms, facilitating their misuse and abuse. In *Nimesh Bhagat v. Union of India*⁷, which involved the illegal sale of prescription drugs without a valid license, the Supreme Court emphasized the importance of regulating the sale and distribution of prescription medications to prevent misuse and protect public health. The case of *S. Ravi v. State of Tamil Nadu*⁸ involved the unauthorized sale of prescription drugs by pharmacies in Tamil Nadu. The Madras High Court emphasized the responsibility of pharmacists to ensure that prescription medications are dispensed only with a valid prescription from a registered medical practitioner.

Need for formulation of a revised policy

There has been a growing recognition globally of the need for more nuanced approaches to narcotics laws, focusing on harm reduction, public health and human rights rather than solely on punishment. This international concern pressured India to change the landscape of narcotics laws by formulating laws that focused more on penalisation rather than reformation. One such attempt was the implementation of the Narcotic Drugs and Psychotropic Substances Act, 1985 which confers upon the State wide powers to prohibit and punish cultivation, production, sale, purchase, trade, use and consumption of narcotic drugs and psychotropic substances. The objectives of this act have been influenced by Article 47 of the constitution⁹ which highlights the prohibition of the consumption of intoxicating drinks and drugs which are injurious to health, hence giving a high regard to prohibition of drugs in India. Its provisions confers harsh penalisation upon the accused which however has been softened down owing to the multiple amendments over the years. However, it was left with several open loopholes which are yet to be addressed. One of them is the gravity of punishments which raises serious concerns regarding human rights. Section 31A of NDPS act provides for death sentence or sentence of one and a half times the maximum term of imprisonment for repeat offenders. This has

⁷ Nimesh Bhagat v. Union of India, 2013

⁸ S. Ravi v. State of Tamil Nadu, 2016

⁹ INDIA CONST. art 47

been the subject of intense debate as the Supreme Court has relegated capital punishment to be the 'rarest of rare cases' and punishing an economic offence like drug trafficking with the death penalty is grossly disproportionate¹⁰. This act took a further step in the amendment of 2014¹¹ by imposing harsher penalty of one year of imprisonment for 'small drug' offences. This shows that India is mainly concerned with the penalisation rather than the rehabilitation approach which might benefit both the society and individual at last. The stringent nature of punishments along with lack of rehabilitation centres have hindered the effective implementation of narcotics laws in India.

The drug landscape in India is constantly evolving, with new substances emerging and patterns of drug use shifting over time. A revised policy would need to address these changes and adapt to emerging trends in drug abuse and trafficking. A growing recognition of the importance of adopting a public health approach to drug policy has rooted owing to its menace, which would prioritize prevention, treatment, harm reduction, and rehabilitation. A revised policy could emphasize public health strategies to address drug related issues effectively.

There needs to be a shift in approach which focuses more on reformation. Instead of solely focusing on punishment, reformed laws could prioritize rehabilitation and treatment for individuals struggling with substance abuse, treating it as a health issue rather than a criminal one. Current laws contribute to the stigma surrounding drug use, making it difficult for individuals to seek help or access support services. Reformation could help in reducing this stigma and encouraging a more compassionate approach towards those affected by drug addiction. The enforcement of stringent laws contributes to overcrowding in prisons and strains on the criminal justice system. Shifting towards a more rehabilitative approach could alleviate these pressures and allow resources to be redirected towards more pressing matters.

Besides, India is a signatory to various international drug control conventions and treaties, which influence its drug policies. A revised policy would need to balance international obligations with domestic priorities and consider global best practices in drug policy formulation. This revised drug policy should be based on sound evidence, research and data analysis to ensure its effectiveness and relevance. Regular evaluation and monitoring mechanisms should be established to assess the impact

¹⁰ National Crimes Records Bureau, Annual Report, 2012-13,120

¹¹ The Narcotics Drugs and Psychotropic Substances (Amendment) Act, No. 16, Acts of Parliament, 2014 (India)

of the policy and make necessary adjustments over time. As a whole, a revised drug policy for India should be balanced and grounded in principles of public health, human rights, social justice and evidence based practice to effectively address the challenges posed by drug abuse.

Conclusion

Drug abuse remains a significant challenge requiring comprehensive efforts from government, communities and individuals alike. It has various social, economic and health implications. Despite efforts to combat it, such as the Narcotic Drugs and Psychotropic Substances Act, drug abuse continues to be a pressing concern. Collaboration between government agencies, non-governmental organizations, healthcare providers, educators and communities is crucial to effectively address the issue of drug abuse in India. By working together, it is possible to reduce the prevalence of drug abuse and its associated harms, improving the overall well-being of society. Socioeconomic disparities, lack of access to quality education and healthcare and limited employment opportunities in certain regions create fertile ground for drug abuse to flourish. Therefore, holistic approaches that tackle these root causes are vital for long-term solutions.

Preventive measures should be focusing more in empowering individuals with life skills, resilience and coping mechanisms to resist the allure of drugs. Educational initiatives, besides providing information about the risks of substance abuse, must promote positive alternatives and healthy lifestyles. A reformative technique by destigmatizing addiction and promoting a compassionate approach to treatment and rehabilitation can encourage individuals to seek help without fear of judgment or discrimination. It includes integrating mental health services into primary healthcare systems and ensuring that treatment facilities are accessible. International cooperation is also crucial owing to the transnational nature of drug trafficking and globalized nature of the pharmaceutical industry. Ultimately, addressing drug abuse requires a coordinated approach that involves all sectors of society. India can make significant strides towards creating a healthier and more resilient society for future generations.