



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.

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Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

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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.

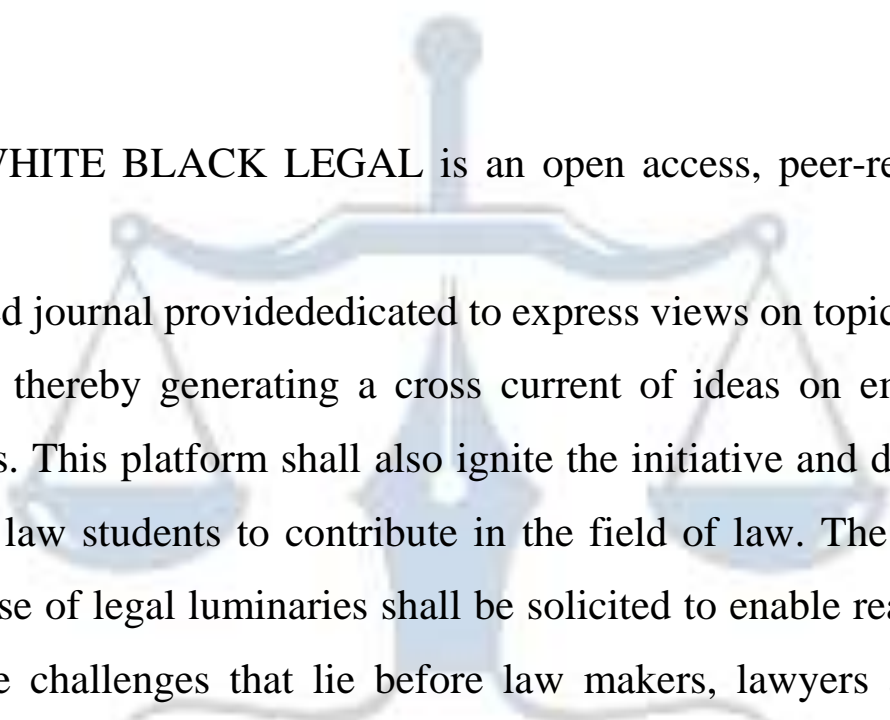


Subhrajit Chanda

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.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated 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

THE ROLE OF LAW ENFORCEMENT AGENCIES IN DRUG TRAFFICKING VIS-À-VIS PENAL APPROACHES AND REFORMS

AUTHORED BY - A. BHUVANESWARI

Research scholar, Assistant Professor, School of Law,
Vels Institute of Science Technology and Advanced Studies.

CO-AUTHOR - PROF DR. S. AMBIKA KUMARI

Professor, Dean, School of Law,
Vels Institute of Science, Technology and Advanced Studies, Pallavaram

ABSTRACT

The global phenomenon of drug trafficking encompasses the cultivation, production, distribution, and sale of substances prohibited by law. Drug traffickers demonstrate remarkable agility in adapting to societal shifts, swiftly adopting new marketing and distribution methods. Exploiting cutting-edge technologies, they continuously innovate their illicit operations to evade detection and maximize profits. In India, Law Enforcement Agencies endeavour to combat drug trafficking through their policies and strategies, despite facing certain limitations. The emergence of New Psychoactive Substances (NPS) represents a burgeoning global trend within the drug market, presenting substantial risks to public health and posing challenges to drug policy. Drug Traffickers increasingly favour cryptocurrencies like Bitcoin, Monero, Ripples, and Zcash due to their anonymity and untraceability. Law Enforcement agencies must undergo specialized training to penetrate these online systems, track funding sources and purposes, and implement preventive measures accordingly. Also it should prioritize disrupting the entire supply chain to effectively halt the flow of drugs within the city. Targeting the suppliers is an arduous task as it involves operational constraints and numerous restrictions, including jurisdictional issues. Innovations in penal approaches for drug offenders refer to novel strategies and methodologies aimed at addressing drug-related crimes within the criminal justice system. These approaches focus on rehabilitation, prevention, and reducing recidivism rates among drug offenders. These includes Therapeutic Courts, Diversion Programs, Restorative Justice, Community-Based Sentencing, Educational and Vocational Problems and

many more. Thus innovations in penal approaches for drug offenders prioritize rehabilitation, treatment, and support services to address the root causes of drug-related crimes and promote long-term positive outcomes for both offenders and society.

Keywords: Drug Trafficking, Law Enforcement Agencies, Innovations, Penal Approaches.

DRUG TRAFFICKING AND WORLD DRUG REPORT 2023

Drug trafficking involves the worldwide underground commerce that includes the cultivation, production, dissemination, and vending of substances that fall under the purview of laws prohibiting drugs. Cannabis continues to be the most used drug worldwide¹. Products for its non-medical use have diversified over the last two decades, in particular in geographical locations which have legalized cannabis supply for non-medical use². In recent years, particularly since 2020, there has been an emerging trend in synthesizing cannabinoids primarily from a non-psychoactive compound found in the cannabis plant, known as cannabidiol (CBD). These cannabinoids, potentially crafted to circumvent drug regulations, have been marketed in diverse formats, such as edibles, vaping cartridges, and sprayed onto low-tetrahydrocannabinol (THC) cannabis, primarily for recreational purposes. Thus, the New cannabis-related substances are appearing on the drug market. Also, high doses of Tramadol, Captagon, Ketamine which is a dissociative anaesthetic not under international control but used in medicine are used for non-medical use and its trafficking has spread beyond a handful of countries in East and South-East Asia³. Traffickers persist in innovating, leading to a renewed expansion in the variety of illegal drugs accessible on the market. The cumulative number of new psychoactive substances identified over the last 15 years reached 1,165 substances in 2021 and, according to preliminary data, 1,184 substances in 2022⁴. So it is clear that 19 NPS has been innovated by the drug traffickers. The new drug combinations are a growing challenge for monitoring and treating drug use. Similarly, “happy water” and “k-powdered milk” are new mixtures that have recently appeared in East and South-East Asia.

¹UNODC, *World Drug Report 2023*, 40 (2023) https://www.unodc.org/res/WDR-2023/WDR23_Exsum_fin_SP.pdf

²*ibid*

³UNODC, *World Drug Report 2023*, 48 (2023) https://www.unodc.org/res/WDR-2023/WDR23_Exsum_fin_SP.pdf

⁴*ibid*

Narcotics are available for purchase across various social media platforms, spanning from popular ones like Facebook, Instagram, Snapchat, and WhatsApp to those fostering interactions among strangers like Tinder, Grindr, Instagram, Facebook, and Discord. These platforms offer sellers the opportunity to openly showcase their products to unfamiliar buyers through public profiles. In contrast, messaging platforms, whether encrypted or not, facilitate more discreet drug deals among acquaintances through direct messaging or group chats⁵. During the pandemic, drug traffickers swiftly adjusted their methods. The surge in digital connectivity has spurred innovations in global drug supply chains, particularly through advancements in digital communication platforms. Online drug transactions offer traffickers several advantages over traditional, in-person street sales. The Tor Network, the largest darknet, hosts numerous sites, where customers typically utilize software like the onion router (Tor) to safeguard their identities when accessing darknets. Specialized "darknet explorers" facilitate access to market platforms, where transactions usually occur using cryptocurrencies, notably bitcoins. The delivery of darknet-purchased drugs typically involves public and private postal services unwittingly transporting parcels to anonymous post office boxes or self-service "pack stations." The primary benefit of the dark web (darknets) for both suppliers and customers lies in the transaction's anonymity, eliminating the need for physical contact and alleviating some customers' reluctance to engage with drug dealers.

ROLE OF LAW ENFORCEMENT AGENCIES IN DRUG TRAFFICKING

The Indian Legislations that counters drug trafficking are:

- The Narcotic Drugs and Psychotropic Substances Act, 1985.
- The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.
- The Narcotic Drugs and Psychotropic Substances (Regulation of Controlled Substances) Order, 2013 and Amendment Order, 2018.

The Law Enforcing Agencies empowered under NDPS Act are NCB (Narcotics Control Bureau in terms of Section 4(3) of NDPS Act). It is the central authority for exercising powers and functions and a nodal agency for matters pertaining to drug law enforcement in India and coordinates actions taken by various agencies of central and state government. It includes any

⁵UNODC, *Use of the Dark Web And Social Media For Drug Supply*, 8 (2023) https://www.unodc.org/res/WDR-2023/WDR23_B3_CH7_darkweb.pdf

Officer (being an officer superior in rank to peon, sepoy or constable) of the departments of Central Excise, Narcotics, Customs, Revenue Intelligence, Sashatra Seema Bal or other department of Central government including Para-Military forces or armed forces as is empowered in this behalf by general or special order by the Central Government or any officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government. They have the power of entry, search, seizure and arrest without warrant. NCB is signatory to all UN Drug Conventions and SAARC Conventions⁶.

The role of Law Enforcement Agencies in order to counter Narcotics are as follows:

- i. Surveillance and enforcement at import points and land borders.
- ii. Preventive and interdiction efforts along the known drug routes.
- iii. Control measures at export points, such as air-passenger terminals, cargo terminals and foreign post offices.
- iv. Improved co-ordination between the various drug law enforcement agencies.
- v. Identification and eradication of illicit cultivation and the wild growth of cannabis and the opium poppy.
- vi. Strengthening of the intelligence apparatus to improve the collection, collation, analysis and dissemination of operational intelligence
- vii. Increased international co-operation, both in operational and long term intelligence as well as in investigations and mutual legal assistance.
- viii. Assisting States in enhancing their drug law enforcement effort;
- ix. Collection and dissemination of intelligence;
- x. Analysis of seizure data, study of trends and modus operandi;
- xi. Preparation of National Drug Enforcement Statistics;
- xii. Liaison with International agencies such as UNDCP, INCB, INTERPOL, Customs Cooperation Council, RILO etc;
- xiii. National contact point for intelligence and investigations

One such contribution of Law Enforcement Agencies is the “OPERATION LION FISH”.

The operation "revealed a network of West African and Asian organised crime groups behind

⁶ Narcotics Control Bureau, <https://narcoticsindia.nic.in/#>, (last visited Mar25, 2024)

trafficking in methamphetamine⁷ -one of the most smuggled drugs in the region. Traffickers are increasingly swallowing condoms filled with liquid cocaine to cheat traditional detection methods. The campaign, called Operation Lionfish - ASEAN, involved more than 2,000 police and customs officials in 14 countries. It focused on drug trafficking through airports while a second phase will target land and sea borders. They identified cocaine trafficking route via Ethiopia to destinations in the Middle East, Asia and Pacific". It resulted in seizure of 1,000 bricks of Cocaine in South Africa. Police and Customs officials spread over 41 countries, arrested 287 individuals in this operation.

CHALLENGES FACED BY LAW ENFORCEMENT AGENCIES

a. New Technologies

The swift advancement of new technologies poses a threat to the effectiveness of law enforcement endeavors. The internet's worldwide accessibility serves as a platform for traffickers to communicate and coordinate, influencing the movement of illegal shipments and the tactics utilized by trafficking organizations. Law enforcement agencies face challenges in maintaining effectiveness if they fail to adapt to the increasing significance of cyber technologies in drug trafficking and associated money laundering operations.

b. Close Proximity To Golden Triangle And Golden Crescent

The Golden Triangle encompasses the rural mountainous areas of Myanmar, Laos, and Thailand, serving as Southeast Asia's primary opium-producing region and one of the oldest routes for narcotics supply to Europe and North America. Myanmar's borders with the Indian states of Arunachal Pradesh, Manipur, Mizoram, and Nagaland facilitate the smuggling of various drugs, including opium, heroin, and methamphetamine, into the northeastern region. Additionally, drugs cultivated illicitly in India traverse the same route for trade. Products from the Golden Triangle enter India through Mizoram, Manipur, and Nagaland from Myanmar's Bhamo, Lashio, and Mandalay.

The Indo-Myanmar border is monitored by the Assam Rifles (AR), a paramilitary force under the operational control of the Indian Army's Eastern Command. The amicable relations between India and Myanmar, devoid of any border disputes, result in the absence of strict

⁷ United Nations Office on Drugs and Crime, https://www.unodc.org/southasia/frontpage/2012/october/drug-mules_-swallowed-by-the-illicit-drug-trade.html (last visited Mar25, 2024)

fencing along this stretch. Furthermore, an understanding between the Indian and Burmese governments establishes a Free Movement Regime (FMR), allowing visa-free movement of Indians and Burmese within 16 kilometers of the border. The susceptibility of the populace due to inadequate education, unemployment, poverty, and police corruption makes them susceptible to exploitation by traffickers, who manipulate them into participating in criminal activities. The Golden Crescent encompasses Afghanistan, Iran, and Pakistan, where heroin and hashish are primarily produced and trafficked. These substances enter India through the border states of Gujarat, Rajasthan, Punjab, and Jammu & Kashmir.

c. New Psychoactive Substances

The phenomenon of New Psychoactive Substances (NPS) is marked by the continual emergence of numerous new substances annually that are not regulated under international drug control treaties, rendering their trafficking legally permissible. These substances often replicate the effects of conventional illicit drugs and can lead to serious adverse health outcomes. Both law enforcement and healthcare practitioners are increasingly alarmed as they grapple with how best to respond to these evolving risks. Moreover, existing legislation proves insufficient in monitoring and regulating the proliferation of NPS, leading to a situation where their expansion outpaces the capacity of healthcare and justice systems worldwide, exacerbated by the fact that they fall outside the purview of International Drug Control Conventions.

d. Insufficient Training And Inadequate Infrastructure

Cryptocurrencies have emerged as sophisticated tools for financing terrorism, especially when utilized on dark net platforms like TOR, Freenet, Zeronet, and Perfectdark, rendering transactions untraceable for security agencies. Money launderers, cybercriminals, and terrorists favor cryptocurrencies such as Bitcoin, Monero, Ripple, and Zcash due to their inherent anonymity and lack of traceability. Security agencies must undergo training to infiltrate these online systems, enabling them to trace funding sources and intentions for proactive measures. The darknet also offers self-destructing mailboxes and proxy servers, enabling individuals to operate under false identities, complicating the process of proving specific charges. Amendments to the Information Technology Act and Evidence Act are necessary to address these challenges. Strengthening infrastructure, including high-configured servers, and enhancing coordination for information sharing with foreign law enforcement agencies are imperative steps forward.

These are the challenges faced by Law Enforcement Agencies.

PENAL APPROACHES AND REFORMS

Punishment involves enforcing a penalty or sanction upon individuals who have violated laws or committed offenses. It serves as a means of societal regulation by governmental bodies to uphold order and discourage unlawful behaviour. This legal procedure operates within established laws and regulations, guided by principles and standards to uphold fairness and equity.

In this context, criminal offenders include not only those who are in possession of drugs but also those who commit crimes under the influence of psychoactive substances and those who commit crimes like theft to obtain money to purchase such substances. For such crimes, alternatives to incarceration can be given to these drug related offences as our penal systems insists on Reformatory method of punishment.

In India, there are several alternatives to traditional incarceration for drug-related offenses, which focus on rehabilitation and addressing the underlying issues contributing to substance abuse. Some alternatives include:

i) Drug De-Addiction Programme (DDAP)

The Constitution of India, under Article 47, enjoins that the state shall endeavour to bring about prohibition of the consumption of intoxicating drinks and drugs, which are injurious to health. The activities to reduce the drug use related problems in the country could broadly be divided into two categories- supply reduction and demand reduction. The supply reduction which aims at reducing the availability of illicit drugs within the country come under the purview of the NCB under the MHA and the Department of Revenue as the administrator of the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 and the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1988. The demand reduction activities focus upon awareness building, treatment and rehabilitation of drug using patients. These activities are run by the Ministry of Social Justice and Empowerment as the nodal Ministry and to some extent by the Ministry of Health and Family Welfare⁸.

The Ministry of Health & Family Welfare operates a Drug De-Addiction Programme (DDAP) by providing financial grants for augmenting post abuse treatment facilities in selected Central

⁸MINISTRY OF HEALTH AND FAMILY WELFARE, Drug De-Addiction Programme (DDAP) 1
<https://main.mohfw.gov.in/sites/default/files/drugs%20deaddiction%20programme.pdf>

Government Hospitals/ Institutions and the Government Hospitals/ Institutions in North-East States. Under this programme, a National Nodal Centre, the “National Drug Dependence Treatment Centre (NDDTC), Ghaziabad (U.P.)”, has been established under the All India Institute of Medical Sciences (AIIMS), New Delhi. The other DDTCs receiving regular annual recurring financial assistance under this programme are PGIMER, Chandigarh and NIMHANS, Bangalore⁹. The purpose of these centres is not only to provide de-addiction services and rehabilitation services to the patients but also to conduct research and provide training to medical doctors in the area of drug de-addiction.

ii) Community Service

Indian law does not specifically outline community service as a sentencing option for drug-related offenses. Instead, penalties for drug offenses are primarily governed by the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 which focuses on imprisonment and fines. Community service for drug-related offenses involves requiring offenders to perform unpaid work within the community as an alternative to traditional incarceration. This approach aims to address the underlying issues contributing to substance abuse while also promoting accountability and rehabilitation. Community service for drug-related offenses is not widely practiced or formally recognized in India, there is potential for its implementation as part of a broader strategy to address drug abuse and addiction within the criminal justice system.

iii) Offender Re-entry Mapping

‘Offender Re-entry Mapping’ is a strategy that is designed to facilitate community engagement in assessing ex-prisoners who are returning to community. Re-entry mapping helps us gain insights into who is being released from incarceration and where these individuals are located. It focussed on the needs of the offender, their family and neighbourhood.

The key elements are:

- a) Enlisting the support and involvement of the community
- b) Developing diverse methods
- c) Presenting research findings to create a foundation for positive community action.

⁹*ibid*

iv) Drug Courts

Establishing specialized drug courts that emphasize treatment and rehabilitation rather than punishment, providing offenders with the opportunity to address their addiction through structured programs.

v) Probation

Placing offenders on probation with conditions such as regular drug testing, attendance at Counseling sessions, and adherence to treatment plans.

vi) Restorative Justice

Emphasizing restorative justice practices that focus on repairing harm caused by drug-related offenses through mediation, victim-offender dialogue, and community involvement.



CONCLUSION

The role of law enforcement agencies in combating drug trafficking encompasses a multifaceted approach that balances penal measures with the need for reformatory strategies. While traditional punitive approaches have long been the cornerstone of drug enforcement efforts, there is growing recognition of the limitations and drawbacks of this approach, including issues of mass incarceration, recidivism, and the perpetuation of socio-economic disparities.

Reforms aimed at shifting focus towards prevention, treatment, and harm reduction strategies are gaining traction globally, acknowledging the complex nature of drug addiction and trafficking. These reforms emphasize the importance of addressing underlying factors such as poverty, lack of access to education and healthcare, and social marginalization, which often contribute to involvement in drug trafficking.

However, law enforcement agencies continue to play a crucial role in disrupting drug trafficking networks, dismantling supply chains, and holding traffickers accountable for their actions. Collaborative efforts between law enforcement, government agencies, and international partners are essential for effective enforcement strategies, including intelligence-sharing, capacity-building, and coordinated operations.

Moreover, there is a growing recognition of the need for a balanced approach that incorporates both punitive measures and reformative strategies. This includes alternatives to incarceration such as diversion programs, drug courts, and community-based interventions that focus on rehabilitation, reintegration, and addressing the root causes of drug trafficking.

Community based rehabilitation are reintegration programs for offenders must be focussed. eg. 'Crime Reduction Strategy', this was implemented in Surrey, British in 2006. The main aim of this strategy is to Prevention and Deterrent of crimes. Apprehension and Prosecution of offenders, Rehabilitation and Reintegration of offenders, Addressing the perception and reality of crime.

Thus, while law enforcement agencies remain integral to the fight against drug trafficking, there is a growing imperative to adopt a more holistic and balanced approach that prioritizes prevention, treatment, and social reform alongside traditional enforcement measures. Only through comprehensive and collaborative efforts can we hope to effectively address the challenges posed by drug trafficking while promoting justice, public health, and human rights.



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