



DRUG ABUSE IN INDIA: A STUDY FROM LEGAL PERSPECTIVE

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The fight against drug trafficking is a wildfire that threatens to consume those fundamental rights of the individual deliberately enshrined in our Constitution.

-Juan Guerrero Burciaga

Abstract- Drug abuse is an age old phenomenon traditionally viewed as a form of victimless crime as drug abusers often face stigmatization from the society and the legal structures which in turn impacts their welfare and health. In India, Narcotic Drugs and Psychotropic Substances Act, (NDPS) 1985 criminalizes trafficking, storage and consumption of drugs making the drug abuser a victim to the drug and an offender against law. This paper plans to counter this by featuring the burdens of criminalization of medication abusers and weights on an elective remain of review them as survivors of medication misuse. It additionally plans to concentrate on restoration of the casualties of medication maltreatment as a path towards "request decrease" of medications with the assistance of the law authorization organization for example the police as likewise imagined by the NDPS demonstration. The paper crosses the criminological hypotheses from mental to discerning decision and supports the contention with a continuous intercession model of the law authorization organizations with network, casualties and guilty parties.

Keywords- Drugs, Drug Abuse, Psychotropic Substance, Addiction.

INTRODUCTION

Drug Abuse is a social shrewdness. Opiates and other reliance delivering substances have been utilized on the planet in some structure since times prehistoric. Moreover exchanging these substances has been carried on over a significant timeframe. Opiate came into no matter how you look at it use in Western restorative work on in the midst of the last bit of the nineteenth century. They had in their grungy structure, been known for the alleged favorable effects for a significant long time and had been broadly used, both therapeutically and non-remedially, for their calming, intoxicating and expected recuperating properties. Notwithstanding, introduction of these medications instantly provoked their abuse. Recalling, we can recollect that somebody who is dependent of the Chinese Government in 1800 AD forbidding import of opium as it contained a hazard to the prosperity of the Chinese people achieved the famous Opium War for right of unhindered trade. European powers sifted through huge pilfering of the substance into China which was contradicted by the Chinese achieving the Opium War. Correspondingly as any disease, use of medications and medication managing knows no bonds or imprisonments. It spreads all over a country from nation to nation to the entire globe tainting each developed society paying little mind to rank, explanation of confidence, culture and the land.

Opiate drugs, for example, cocaine, opium and heroin acknowledged and enthusiastically connected worldwide in prescription until their addictive properties and helpful impediments in wide-scale application were perceived. It was soon universally acknowledged that the wellbeing and social dangers that such drugs presented to singular customers and society, related with their uncontrolled or over the top use and simple accessibility, to a great extent exceeded the advantages got from their therapeutic us.

Opiate drugs and psychotropic substances have been viewed as one of the most exceedingly awful adversaries of the people through hundreds of years and keep on being respected so in this logical and mechanical age. Drug dealing and misuse is a worldwide marvel, has gained the elements of a scourge, influences the monetary strategies of the State, debases the framework and is additionally impeding to the fate of the nation. The illegal dealing and maltreatment of these drugs is ascending at disturbing rates and if the dealing of these reliance delivering substances isn't controlled and averted, a similar will bring volumes of catastrophe for our present and who and what is to come. Featuring, the unfriendly impacts of dealing and maltreatment of Narcotic, the Supreme Court in **State of Punjab versus Baldev Singh** has¹ watched: "Medication abuse is a social sickness. While illegal medication use eats into the vitals of the overall population, steady managing not simply eats into the vitals of the economy of the country, anyway unlawful money made by tranquilize managing is consistently used for illicit practices including backing of mental persecution. There is no vulnerability that medication managing, trading and its usage, which is an overall wonder and has gotten the components of a scourge, impacts the monetary game plans of the State, taints the structure and is troublesome to the possible destiny of a country. It has the effect of conveying a cleared out society and damaging society. Unfriendly to cure value is a criminal component of social value. The United Nations Conventions Against Illicit Trafficking in

¹AIR 1999 SC 2378.

Narcotic Drugs and Psychotropic Substances which was held in Vienna, Austria in 1988 was perhaps one of the principle tries, at a worldwide measurement, to deal with the threat of medication managing all through the comity of nations. The Government of India has endorsed this Convention."

DRUGS AND ITS CLASSIFICATION

A drug is any substance (with the exception of food and water) which, when taken into the body, alters the body's function either physically and/or psychologically. Drugs may be legal (e.g. alcohol, caffeine and tobacco) or illegal (e.g. cannabis, ecstasy, cocaine and heroin).

Psychoactive drugs affect the central nervous system and alter a person's mood, thinking and behavior. Psychoactive drugs may be divided into four categories: depressants, stimulants, hallucinogens and 'other'.

Drugs can be gathered dependent on their ramifications for human system or better on the mind of a person. The effects can be sedation, prompting or dream. In any case, when the medications under sedation are portrayed in two separate groupings of Narcotics and depressants, it makes a sensible picture of the space of medications abuse. It is a direct result of the explanation that Narcotics have their own recorded centrality, which makes them a characterization isolated from other equivalent medications to be overseen as depressants. Along these lines, medications can be requested in four characterizations, for instance, Narcotics, depressants, energizers and medications. Medications under characterization hallucinogenic medication generally cause mental dependence, where various classes of medications cause both kind of outrageous dependence.

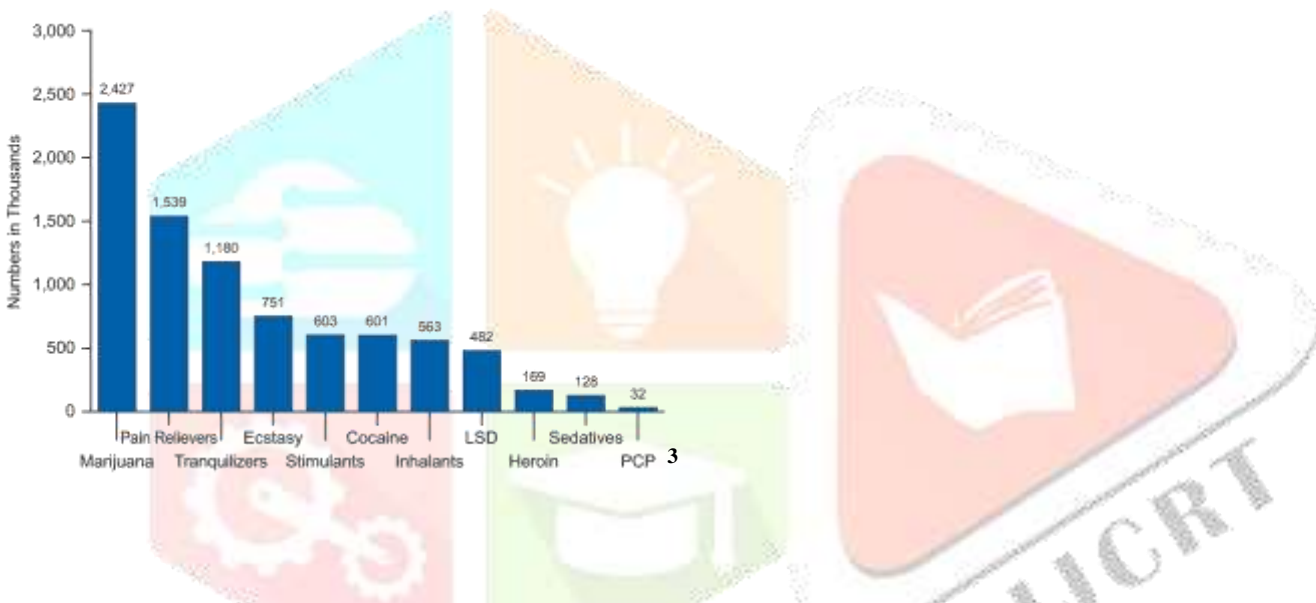
Drugs under classification psychedelic drug for the most part cause mental reliance, where different classes of drugs cause both sort of extreme reliance:

- Narcotic, i.e. Opium, Heroine, Morphine, Synthetic Narcotics, etc.
- Depressants Drugs
- Stimulants Drugs
- Methylphenidate
- Pemoline
- Cocaine²

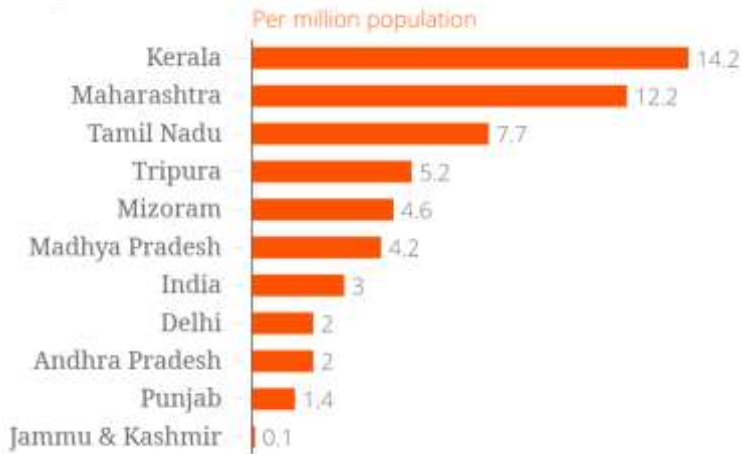
² <http://www.jetir.org/papers/JETIR2003195.pdf> (Written by Pawan Gupta and Ashwini Kumar Dwivedi)

DRUGS ABUSE IN INDIA AND ITS RELATED LAWS

India has long history of abuse of medications like cannabis and opium. There are different references to the pleasurable use of cannabis in the composition of India, where use of the plant for its hallucinogenic properties, and truth be told still is, settled in. The-most reliable reference to psychoactive effects of cannabis appears in the Atharva Veda said to have been made around 2000 BC. In the mid 20'h century the British pros contemplated that the usage of cannabis in India was such a basic bit of everybody's life that it couldn't and should not be blocked. No additional measurement concentrates on the level of medication abuse have been done when opportunity. As such, no hard data on the level of medication abuse is open to find the level of medication abuse issue in India. Without the nation over diagram, we have to rely on test investigations of the comprehensive network or sub-social affairs, to choose the level of medication abuse issue. This horrible situation of the country can be elaborated on the basis of some graphs:



Drug addiction or abuse related suicides in some Indian states



Source: [illegible]

Data: Ministry of Social Justice and Empowerment

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³https://www.google.com/search?q=graph+for+drug+abuse+in+india&sxsr=AleKk00Yu0svOULqVAg5hAGAmmuakcetrA:1587626882575&source=lnms&tbm=isch&sa=X&ved=2ahUKewjlrVyCg_7oAhVG73MBHezfCGsQ_AUoAXoECA0QAw&cshid=1587626887545123&biw=1280&bih=561#imgrc=DynZdIUBJIR22M
⁴ Ibid

DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1988

The sweeping legitimate methodology segment in this issue is contained in three Central Acts, viz. Medications and Cosmetics Act, 1940, The Narcotic Drugs and Psychotropic Substances Act, 1985, and the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988. The obligation of medication abuse control, which is a central limit, is brought out through different Ministers, Departments and Organizations. These consolidate Ministry of Finance, Department of Revenue which is having the nodal co-arrangement work as regulators of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) and the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (PITNDPS Act). The Narcotic Drugs and Psychotropic Substances Act, 1985 which got compelling from the 14th November, 1985 made an express game plan for including a central master to rehearse the powers and components of the central government under the Act. In exercise of the powers, the "Opiate Control Bureau" was included with focal station at Delhi with sway from the 17th March, 1986. The position, subject to the supervision and control of the central government, rehearses the powers and limit of the central government.

The principle enactment to control drug maltreatment in India to be specific the N.D.P.S. Act, 1985 became effective on fourteenth November, 1985 supplanting the Opium Act, 1857, the Opium Act, 1878 and Dangerous Drugs Act, 1930. The prior Acts were mostly administrative or prohibitive in character. Against the consistently expanding complex situation, the obligations of requirement faculty are likewise expanding. Since there are numerous edges to the drug issue of the nation, the legislature has a multi-pronged enemy of drug strategy set down in the NDPS Act, 1985 and PITNDPS Act, 1988.

Drug control establishment has, as its basic point, the protection of open government assistance by shielding prosperity and clearing out annoying social and great effects routinely associated with the capricious use of sedative medications and psychotropic substances. The Supreme Court of India has esteemed the activity of Indian Parliament in a very subtle manner, how the fruitful courses of action have been introduced in the NDPS Act, 1985 by judgment of **Durand Didier v. Boss Secretary, Union State of Goa**⁵, in the going with words:

“With significant concern, we may raise that the sifted through activities of the underground market and the secret sneaking of sedative medications and psychotropic substances into this country and illicit managing in such medications and substances have provoked constant medication use among a sizeable Section of everybody, particularly the young people and understudies of the two sexes and the danger has acknowledged certifiable and upsetting degree in the continuous years. Subsequently, in order to feasibly control and obliterate this increasing and impacting decimating risk, causing vindictive effects and savage impact on the overall population with everything taken into account, the Parliament in its information has made suitable game plans by introducing this Act 61 of 1985 demonstrating mandatory least confinement and fine.”

⁵ AIR 1989 SC 1966

HEMP DRUGS COMMISSION, 1894

Responding to a request presented in the spot of corridor with respect to the course of action of a Commission to enquire into the age and usage of hemp-sedates in India, Secretary of State for India imparted his energy to request the Government of India to designate a Commission to enquire into the advancement of the hemp plant in Bengal, the arranging of medications from it, the trade those medications, the effect of their use upon the social and great condition of everyone, and the hankering limit of forbidding the improvement of the plant and the freedom of ganja and cooperated drugs. As necessities are, the Government of India chose a Hemp Drugs Commission in the year 1893. The Hemp Drug Commission communicated in their report that wild advancement of hemp plants was inescapable all through the Himalayas from Kashmir to the exceptional east of Assam. It connects down the southern slopes of the mountains, and into the Punjab and Ganges fields to a limited division.

ADDICTION OF DRUGS AND ITS REASONS

Chronic drug use, additionally called substance use issue, is an illness that influences an individual's mind and conduct and prompts a failure to control the utilization of a legitimate or illicit medication or medicine. Substances, for example, liquor, weed and nicotine likewise are viewed as medications. When you're dependent, you may keep utilizing the medication regardless of the damage it causes.

Various symptoms of this are:

- ❖ Illicit medicate use signs or practices consolidate, among others.
- ❖ Feeling that you have to use the medicine typically — step by step or even a couple of times every day.
- ❖ Having genuine tendencies for the drug that shut out some different contemplation.
- ❖ After some time, requiring a more prominent measure of the prescription to get a comparative effect.
- ❖ Taking greater proportions of the medicine over a more broadened time span than you anticipated.
- ❖ Verifying that you keep up an inventory of the prescription.

Constant medication use, furthermore called substance use issue, is a disease that impacts a person's psyche and direct and prompts an inability to control the usage of a real or unlawful prescription or medication. Substances, for instance, alcohol, weed and nicotine in like manner are seen as prescriptions. At the point when you're reliant, you may continue using the medicine paying little heed to the harm it causes. A couple of prescriptions, for instance, opiate painkillers, have a higher danger and cause reliance more quickly than others. As time goes on, you may require greater segments of the prescription to get high. After a short time you may require the medicine just to feel much improved. As your medicine use grows, you may find that it's unquestionably difficult to forsake the prescription.

Invariably this addiction creates some legal as well as ethical issues. Certainly, substance use issue has been viewed as a bad behavior rather than a wearisome disease. While a couple of meds like alcohol, tobacco, and doctor embraced prescriptions are seen as licit (or legitimate), various routinely mishandled meds are unlawful, or illegal to purchase. Along these lines, screening masses for substance use issue is joined by various authentic consequences and raises moral concerns. Government law makes sure about information about individuals' substance misuse. The Confidentiality of Alcohol and Drug Abuse Patient Records rule gives legal master to the mystery of patient records. This urges people to search for treatment given they won't be mistreated in their future endeavors. State law may in like manner give protection of restorative and mental prosperity information. The component of protection varies by state. Prescription abuse is both an individual and an open issue, raising issues about individual rights and the constraints of law, similarly as about national force and worldwide control. Moral issues that develop under these headings may be related to certain wide good positions. The repercussions of grasping utilitarian doubts may be showed up diversely corresponding to assembling ethics concerning a speculation of individual rights, solidly related to a theory of human intuition. Neither one of the positions legitimizes a libertarian supposition against control, for, introductory, an individual decision to reveal one's cerebrum and character to the control of drugs can't be ethically pushed and, second, there are no ethical reasons, nor any persuading disputes from social and political theory, for decriminalizing non-remedial medicine use.

JUDICIAL APPROACH

Part V of the NDPS Act deals with the framework to be gotten by the approval specialists with the ultimate objective of this show considering the truth joined with the gravity of the offense and exhaustive order. In order to ensure that medications are not planted, and in context on the intrinsic thought of offenses, the showing gives certain extraordinary framework in respect of section, chase, seizure and catch under the exhibition. The objectives of these game plans are to ensure that individuals are simply looked for with incredible point and moreover in order to keep up veracity and validity of verification got from such interest: The inquiring about office must seek after the method as imagined by the Act scrupulously and the failure to do as such ought to be seen by the higher pros genuinely inviting movement against power concerned.

In the case of **Manoj Singh Pawar v. State of Uttarakhand**⁶, a Division Bench involving Rajeev Sharma and Lok Pal Singh, JJ., was choosing an open intrigue case writ petition that featured the opening of an alcohol distribute in the core of Almora town close to the District Hospital and Girls Inter College and the bench guided the State to control the danger of free accessibility of opiates including alcohol to the young. The High Court saw that Article 47 of the Constitution, give occasion to feel qualms about an obligation the State to take a stab at the restriction of utilization of alcohol. It was seen that 'sedate maltreatment' has broken the social texture and wrecked numerous families. The Court noticed that the sneaking of medications into the State from outskirt regions was on an ascent; the police couldn't get

⁶ 2018 SCC OnLine Utt 552

hold of medication vendors and particularly their 'bosses'. The Court held that the hazard of medication misuse must be managed harshly. The bosses secured in such cases are to be reserved under NDPS Act as well as under the Money Laundering Act which accommodates counteraction of illegal tax avoidance and appropriation of property got from, or associated with, tax evasion and for issues associated therewith. The State was additionally coordinated entomb alia to delegate more Drug Inspectors, comprise Special Operation Groups, set up check posts at Indo-Nepal Border, attempt unique drives to remove cannabis, set up Rehabilitation Center in each region, guarantee that no minor is served any medication or mixed drink, and so forth. The request was discarded in above terms.

In the leading case of **State of Punjab v. Balbir Singh**⁷, the question was whether in Section 42 there is a central issue whether resistance of the equivalent vitiate the preliminary or not, this inquiry has been talked about in the event, to which the honorable Supreme Court of India held that the very assurance that clause (2) of section 42 requires that where an official cuts down any information under sub section (1) or records avocation for his conviction under the specification thereto, he will forthwith send a copy thereof to the speedy authority common, itself is a strong indication of the request that the official will record his motivations behind his conviction as required under the specification and besides that the information got will be diminished into creating with the objective that it will in general be affirmed whether there are satisfactory clarifications behind conviction.

In **Pipal Singh v. UOI**⁸, Punjab and Haryana High Court was of the view that the consistence of the courses of action of Section 42 of the Act could be seen from another point in the light of the impression of the Supreme Court in Sajan Abraham case, the consistence of the game plan of section 42, expecting any, for the circumstance would have conceded the getting and, in the result, the liable gatherings would have escaped in the truck close by the reserve yet really the Delhi High Court gives its view in Mohd. Rahish case that while on watch commitment the police bunch got the puzzled information about responsibility for and bunch immediately continued to catch the censured, in that situation there was an encroachment of the game plans of section 42 (2) of the Act.

In **State of Himachal Pradesh v. Shri Sudarshan Kumar**⁹, Hon'ble Himachal Pradesh High Court was of the view that benefit under Section 50 is an inconceivably significant right, which the lawmaking body has dressed the individual stressed over and has been intertwined in the Act keeping in see the earnestness of the sentence, the court was further of the view that request before a Gazetted Officer or Officer would give essentially more authenticity and credit an incentive to the system and that it would, verily, strengthen the prosecution.

In the latest case of **Than Kunwar vs The State Of Haryana**¹⁰, the police officials noticed the appellant carrying a bag in their hands. On seeing the police party, the accused allegedly turned back and started walking briskly. This aroused suspicion in the mind of the ASI. He intercepted them. The bag was suspected to contain narcotic items. The

⁷ AIR 1994 SC 1872

⁸ AIR 2001 SC 137

⁹ Appeal (Crl.) No.1403 of 2011

¹⁰Criminal Appeal No. 2172 of 2011

accused were informed that if they so desired, they could have search of the bag in the presence of a Gazetted Officer or Magistrate. The appellant desired search by a Gazetted Officer. The DSP came to the spot. On his directions, the search was carried out. The bag contained on weight of 6 kilograms 300 grams of opium. Samples were taken. Thereafter, the formal FIR was registered. The court through Justice Kurian M. Joseph held that the recovery was affected from the bag for which it is settled law that compliance with Section 50 of the Act is not required. The court further held that the view taken by the High Court is unsustainable.

CONCLUSION AND SUGGESTIONS

Starting late, India is going up against an essential issue with the illicit use of medication, quiet managing, eating up, and so on. In this manner, the Narcotic Drugs and Psychotropic Substances Act, 1985 is endorsed. This Act gives improved and stringent disciplines to the offenses relating to sedative medications and psychotropic substances. However, these infringements are continually extending among all classes of the overall population. Consequently, the sole purpose of this assessment is that to find the regular answer on it.

Drug abuse is a social smart. Opiate and other dependence making substances have been used on the planet in some structure since times ancient. In like way trading these substances has been carried on over a broad time period. Sedative medications and psychotropic substances have been seen as one of the most exceedingly terrible enemies of the individuals through many years and continue being regarded so in this intelligent and creative age. Medication abuse and medication managing as a general wonder has transformed into a pandemic which impacts the monetary plan of State and demolishes the system and is moreover hazardous to the destiny of mankind. The unlawful managing and abuse of these medications is on the development at upsetting rate. In case the man's dependence on these substances isn't checked, it will convey unprecedented catastrophe for the present and who and what is to come. This abuse has transformed into the most noteworthy issue for individual just as for the family and society. The unlawful money which is created by medicate managing engages the dread mongering. The dread monger social affairs utilized that money in purchasing the weapons and to support the mental activist activities. It not simply impacts the money related courses of action of the State yet moreover destroy the destiny of the country. Some of the suggestions and recommendations on the part of authors are:

1. It is essential that the plans in the NDPS Act suggesting sentences requires a fresh look dependent on denouncing strategy. An open minded sentence doesn't continually address the issues of value.
2. To develop unprecedented courts in each state promptly, the state is under a secured order to ensure quick starter. In this way, necessary courses of action should be intertwined for the creation of appropriate number of unprecedented courts in each state of the country right away.
3. To set up a Drug Court to manage cases including less certified medication using liable gatherings through a supervision of treatment program. The reliance treatment should be required so medicate devil and alcoholics will be given an opportunity of treatment with no fear of catch and it should be set up in each tahsil level.

4. To set up a regulatory clinical center got together with exceptional court and the propensity treatment should be required so the medication addicts and overwhelming consumers will be given an opportunity of treatment with no fear of catch.
5. To change the course of action of assessment, it should be driven and wrapped up by one inquiring about official similarly as agreeable stockpile of units, quick disbursal and getting ready are fundamental for fruitful usage of packs.

