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An overview of drug abuse in India: A study

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Abstract

Drug abuse is a pressing global issue with far-reaching social, economic, and health consequences. This study provides a comprehensive overview of drug abuse in India, shedding light on the prevalence, trends, contributing factors, and impact of this growing problem. India, with its vast population and diverse cultural and socioeconomic landscape, faces unique challenges in addressing drug abuse. Our research draws from a wide range of sources, including government reports, academic studies, and surveys conducted across the country. The findings reveal, drug abuse in India has escalated significantly over the past few decades, affecting individuals of all age groups and backgrounds. Factors contributing to this surge include changing social norms, increased urbanization, economic disparities, and the availability of a wide range of substances. While traditional drugs like alcohol and tobacco remain prominent, the abuse of prescription medications, synthetic drugs, and opioids is on the rise. The result of drug abuse in India encompass not only health-related issues but also social and economic burdens, including crime, unemployment, and strained healthcare resources. Our study emphasizes the urgency of implementing comprehensive prevention, treatment, and rehabilitation programs, as well as policy reforms, to address this complex issue and mitigate its adverse effects on Indian society.

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Introduction

Right from the beginning, one must approach a sensitive topic such as addiction to drugs and narcotics in a multi-dimensional way. The discussion must not only include the legal framework within which the drug trade and consumption is criminalised but also the sociological and psychological effects such illicit items have on the individual, their family, and society as a whole.

Before delving deeply into the various international conventions and laws that attempt to curb the menace of drug trafficking and the history of the use of drugs, one must first understand the term itself. "Drugs" is a term used to describe A substance that generates a non-permanent change in the body's physical and sometimes mental state when taken through the lungs, bloodstream, stomach, skin, or mouth ^[1]. But within the context of this project, the term drug is used in a narrower sense, referring to narcotic drugs, including – coca leaf, cannabis (hemp) opium, and poppy straw, and includes all manufactured drugs. The narcotic drugs are dangerous substances that are commonly used for recreational purposes.

Recreational drug usage is the use of a substance (legal, illicit, or under control) with the primary goal of changing one's state of consciousness through a central nervous system alteration in order to produce pleasant sensations and feelings. Due to the immediate sense of alleviation and the addictive nature of these substances, there is rampant abuse of such narcotic drugs. A cursory look at the list of items that are included within the term "narcotic drugs" we can observe that these are the substances that are the primary ingredient in various illicitly trafficked drugs consumed by people to get "high". Cocoa leaves are used to make the highly addictive and dangerous cocaine, cannabis is the plant containing the chemical tetrahydrocannabinol (THC) which is what gives it its effects, and is often consumed in leaf form –marijuana or hashish.

Opium is used to make one of the most perilous drugs of all – heroin, which is often consumed intravenously through an injection wreaking havoc on the body and mind. The term narcotic drugs often crosses paths with another term "psychotropic substance", this term is used to refer to chemicals within the drugs that result in psychological effects, such as THC or Methamphetamine, and other chemicals used in the making of drugs such as Valium, Diazepam and Morphine.

The legality of the drugs is often dependent on their area of production and culture. For example, in India cannabis is often consumed as *Bhang* since time immemorial, in various nations cannabis due to its lack of serious damage to the body has been legalized. It is essential to highlight that the utilization of narcotics and psychotropic substances in scientific and medical contexts is crucial. While completely prohibiting the production of these substances isn't feasible due to their necessity in these fields, the government can implement controls and regulations to deter their illegal distribution and misuse. The psychotropic substance morphine itself is one of the most useful medicines for pain alleviation while cannabis is medically recommended for chemotherapy patients. But these drugs, like most other drugs have chemicals in them that cause physical addiction that alters the state of mind, it is not just the use of the drug that leads to slow deterioration of the person's body and mind but the abuse of the drug.

Drug addiction has become one of the curses of our times a menace that threatens public health and results in the dissolution of human personality, promoting conditions for various forms of human degradation, consequences of which led to crime and lawlessness. Its morbid assault on youth, which frequently causes mental confusion and emotional derangement, is one of its tragedies because it drives the sufferer towards a fate from which there is rarely any possibility of recovery. The evil is subtle, operates covertly, and frequently only becomes apparent to others after the addict has passed the point of no return. The repercussions are severe because targeting a nation's youth slowly ruins the future of that country. The deliberate sabotage of a nation's culture, social values, and integrity through the intentional depravation of its youth through the use of illegal narcotics is well documented throughout history. The risks associated with the illicit commerce in narcotic drugs have been acknowledged on a global scale, and they have so stirred the consciousness of humanity that they are now the focus of international treaties.

In this paper, we shall explore multiple facets of drug addiction and the crimes related to the same. The subsequent chapters include a detailed analysis of the causes of drug addiction and its effects on the individual, family, and society. Further, the paper discusses various international conventions that India is a signatory to in the interest of curbing the drug menace. Finally, the paper takes a critical look at the Indian laws relating to drug trafficking and response to drug addiction by the State. The paper shall conclude with an analysis of the shortcomings within the legislations of the country and possible solutions to help curb the menace of drug trade and addiction.

Objectives

- To analyse the cause of drug addiction
- To analyse the effects of drug addiction on the Individual, Family and Society

- To analyse the International Conventions relating to Drug Trade and Drug Addiction
- To critically analyse the laws relating to Drug Abuse in India
- To propose possible solutions to help curb the drug menace

Research Methodology

The research methodologies used in this paper are doctrinal in nature. The data and the law relating to causes of drug addiction, their effect and the response to it along with the laws related to reducing the manufacture, production, sale and by the use of narcotic drugs and psychotropic substances has been explained using various manuals, case laws, websites, books, periodicals and statutes. It can also be termed as a qualitative study as it mainly uses facts and data about the different aspect of this topic and relies on multiple disciplines.

Drug Addiction

Drug Addiction is a brain disorder. The addict becomes dependent on the drug. The addict uses it, despite having full knowledge of its harmful effects on health. It is considered a brain disease because it changes the structure and functioning of the brain. Different facets of addiction include

- An uncontrollable desire or craving to consume the drug.
- Engaging in compulsive behaviour to obtain the drugs.
- Find it impossible to control the drug intake.
- Taking drugs in larger doses than the recommended doses.
- Not being able to discharge his day-to-day responsibilities in an efficient manner.

Sometimes, drug addiction is also referred to as drug dependency since the addict develops dependency or addiction for a particular drug.

Causes of Drug Addiction

Psychological Causes of Drug Addiction

Drug addiction can sometimes be caused by psychological trauma, such as sexual or physical abuse, neglect, or chaos in the home. This trauma can lead to feelings of pain and distress, which some people try to numb with drugs. However, this self-medication can actually make the problem worse, leading to addiction.

Other psychological causes of drug addiction include:

- A psychological condition like depression.
- Inability to connect with others.
- Subpar or inadequate performance in a professional or academic setting.
- Inadequate abilities to manage stress.

Environmental Causes of Drug Addiction

The world around us can play a role in whether or not we develop a drug addiction. People are more likely to become addicted to drugs if they see others using drugs regularly and if drug use is seen as normal or acceptable. Children grow up in homes where there is drug abuse are more likely to develop drug addiction later in life.

Teenagers are more probable to start using drugs if their parents are not paying attention to them or if their parents are abusive or neglectful. This is because teenagers who do not have a strong parental bond are more probable to experiment with drugs and to continue using drugs if they start.

Additional environmental factors that may contribute to drug abuse comprise:

- Engagement in a sport that encourages the use of substances to enhance performance.
- A peer group that promotes drug use
- People who lack access to resources and opportunities are more vulnerable to drug addiction.
- Gender and ethnicity also contribute to addiction of drugs.

Genetic Causes of Drug Addiction

Drug addiction is a complex disease that can be caused by a combination of genetic and environmental factors. Genetic studies have shown that about half of a person's risk of becoming addicted to drugs is due to their genes. However, it is important to note that having a genetic predisposition to drug addiction does not mean that you will definitely become addicted. Environmental factors, such as childhood trauma, exposure to drugs, and social pressure, also play main role in drug addiction. Thus, in such cases the person has greater propensity to be an addict, if not of drugs, then some other addictive act.

Other Causes

While the aforementioned types are certainly the broad causes for drug addiction, there are certain specific reasons for the increase of this dependency on drugs. There include the following

1. Rapid Industrialization
2. Lack of parental care and control
3. Developments in pharmaceutical sciences and creation of new synthetic drugs
4. Frustration and emotional distress
5. Hippie culture and lax limits of "experimentation"
6. Communication gaps between children and parents
7. Social disorganization

Effects of Drugs on the Individual

Effect on Health

The effect of drug abuse and dependence can be far-reaching, affecting almost every organ in the human body. Drug use can: Weaken the immune system, increasing susceptibility to infections; Cause cardiovascular conditions ranging from abnormal heart rate to heart attacks. Cause the liver to have to work harder, possibly causing significant damage or liver failure; Cause seizures, stroke and widespread brain damage that can impact all aspects of daily life by causing problems with memory, attention and decision-making, including sustained mental confusion and permanent brain damage; Produce global body changes such as breast development in men, dramatic fluctuations in appetite and increases in body temperature, which may impact a variety of health conditions. The individual may also die in case of an overdose [2].

Effects on the Brain

Although initial drug use may be voluntary, drugs have been shown to alter brain chemistry, which interferes with an individual's ability to make decisions and can lead to compulsive craving, seeking and use. This then becomes a substance dependency. All drugs of abuse - nicotine, cocaine, marijuana, and others - effect the brain's "reward" circuit, which is part of the limbic system. Drugs interfere with the brain's natural reward system, causing a surge of dopamine.

This surge of dopamine is what produces the feeling of pleasure or euphoria that people experience when they use drugs.

Such abuse results in various behavioural problems, paranoia, aggressiveness, hallucination, impaired Judgment, impulsiveness and loss of self-control

Effects of Drugs on the Family

When a family member has a drug or alcohol addiction, it can have a devastating impact on the entire family. Addiction can cause tension, conflict, and anxiety within the household. Family members may feel stressed, unsupported, and unsure of what to do. Addiction can also lead to job instability, financial problems, and erratic behavior. Family members may feel isolated, helpless, and hopeless.

Drug addiction can have a devastating impact on families. When a loved one is addicted to drugs, other family members may have to take on more responsibilities, which can move to stress, strain, and negative emotions such as blame, resentment, hatred, anger, and fear. Trust can erode as family members become increasingly suspicious of the addict's lies and excuses. All of these factors can contribute to a damaged and altered family dynamic.

Damaging Family Ties – Naturally, the behavioral issues the addict brings within the household and the negative response to it by the family members is bound to result in the damaging of family ties.

Financial instability A family member may have to be on guard for theft, as addicted individuals may steal money or valuables to pawn in an attempt to finance their addiction. A person may not be able to fulfil their job responsibilities due the effects of their addiction, to the extent that they lose their job. If this happens, their family may suffer from lack of heat, food, electricity, or even a roof over their heads. In other cases, they may not have money for these essentials, as they spent it on drugs or alcohol.

Isolation Drugs and alcohol exert a heavy influence on a person's cognitive functioning, judgment, and sense of inhibition, thus the addicted family member may say and/or do things that can greatly embarrass a family, to the extent that they withdraw from family or social activities, causing an extreme sense of isolation. Some family members may also choose to distance themselves from their addicted loved one, due to this embarrassment or an inability to cope with the situation.

Enabling A hallmark of addiction within a family dynamic, enabling behaviors allow the addicted individual to continue forward in their destructive patterns of abuse, due to the way a family member's actions protect them from the consequences. Many times, the enabler will actually feel as if they're helping the person when in reality they are perpetuating the addiction by not allowing their loved one to experience the harmful results of their addictive behaviours.

Co-dependency This dysfunctional relationship is very commonplace within families and heavily linked to patterns of enabling. Oxford Dictionaries defines it as "Excessive emotional or psychological reliance on a partner, typically one with an illness or addiction who requires support." Essentially, the family member without the addiction begins to draw their sense of self-worth by becoming reliant on their role of providing care for their addicted loved one.

The devastating impact on children within the family

If family member has an addiction it greatly impacts children

of all ages and they commonly suffer or get hurt in some respect. When a person has an addiction, they may forget to care for the needs of their child, as the pursuit of finding and using more substances or the resulting illness these substances may cause, may detract from their responsibilities. The absence of the parent in the child's life can create problems, as they may no longer be attuned to their child's needs. They may fail to provide basic and necessary care, such as providing or preparing meals, keeping their child clean, or attending to any other important needs such as schoolwork or concerns of social problems.

A child may be forced to care for these essential needs for either themselves or their siblings on their own. These behaviors may be even more prevalent in children of single-parent households, to the extent that "children are likely to behave in a manner that is not age-appropriate to compensate for the parental deficiency." What this essentially means, is that they may create a wall of denial to keep themselves from dealing with the reality of their parent's addiction, by attempting to step up and act as the effect t of the parent, provider, or caregiver.

Safety is also a huge concern for these children, as an addicted individual may not be focused or aware enough to keep their children from accidents or other adults who may wish their children harm. They may not also be attuned enough to take action and get help, should these events arise. If criminal activities are committed within the child's home, such as dealing drugs, a child experiences the risk of their parent ending up behind bars. In more severe cases, the child may be forced to take part in these criminal acts, in a way that damages their trust, jeopardizes their lives, and causes them to live in an even greater state of fear and instability.

Drug addiction affects the parent-child relationship in other ways as well, these include ^[3].

Negativism creating a negative atmosphere in the household through harmful ways of communication i.e., by complaining, condemning, or making other disparaging remarks towards each other.

Parental inconsistency If a parent or child is addicted, the child can become confused if boundaries are not set, rules are not clearly delineated, and discipline is not enforced, creating a rocky family structure.

Parental denial When faced with clear indicators of abuse or addiction, a parent may still exhibit patterns of denial, asserting, there is no cause for concern and that their child does not have a problem.

Miscarried expression of anger A child or a parent who develops strong emotions towards their toxic and emotionally unstable home life may find that they are unable or fearful of demonstrating their deep anger. As they suppress these feelings, they may sometimes turns to drugs or alcohol to deal with their own pent up thoughts or emotions.

Self-medication This is when a parent or a child further opens the door for drug or alcohol abuse, as they continue to self-medicate in an attempt to deal with the emotions or mental health concerns that may result from this environment.

It can be seen clearly that in the face of addiction, the parent-child dynamic can be drastically and detrimentally altered, calling for a positive intervention that can initiate healing of the strained family unit.

Effects of Drugs on the Society

As discussed above, the effect of drugs on the individual and

the family is deep and grave. As the family is the central unit of society, anything that affects the family naturally negatively affects society. Beyond that, however, on a purely public level drug abuse has a direct correlation to crime. It is not only limited to stealing to obtain money to buy drugs but goes to indulging in the sale of drugs and drug-related paraphernalia. A significant number of those arrested for serious crimes including murder, robbery, and assault were under the influence of illegal drugs. The illegal drug trade is a complex network of criminal activity that involves the production, transportation, and sale of illicit drugs. It violates national laws and international treaties, and often includes other illegal activities such as racketeering, conspiracy, bribery, corruption, tax evasion, money laundering, smuggling, violence, and terrorism. The wide range of illegal and criminal activities associated with the drug trade poses a serious threat to law enforcement agencies around the world. The economic impact of drugs is also one that harms society, beyond just theft, the aforementioned criminal activities complementary to trafficking also harm the economy. The cost of providing for the crime-specific needs of law enforcement laboratories for forensic analysis and the rehabilitative homes for addicts are all part of public spending. Drug abuse often leads to other medical issues such as HIV/AIDS, hepatitis, and tuberculosis, all having a negative impact on society and may also result in death.

International Conventions on Narcotic Drugs 1912-1953

To control and regulate the supply of opium and other narcotic drugs, the following International Conventions were entered into between 1912-1953:

Single Convention on Narcotic Drugs, 1961

In the second half of the 20th century, white-collar crimes assumed alarming proportions. Under white-collar crimes, the 'drug addiction' and the 'illicit traffic in narcotic drugs and psychotropic substances' become such a menace that the dangers following illicit; traffic in narcotic drugs affected the world community and the same became the subject of international conventions. India is a party to the "Single Convention on Narcotic Drugs, 1961" the preamble of which briefly outlined the importance of effective measures against the abuse of narcotic drugs stating that the parties that are concerned with the health and wellbeing of mankind recognize that medical use of narcotics is indispensable and should be made available for such propose, however also noting that addiction constitutes a serious evil for the individual and is fraught with social and economic danger to mankind. It goes on to state that the duty of the parties is to prevent and combat this evil by way of coordinated universal action guided by the same principles and aimed at common objectives.

The Convention requires countries to take action against drug trafficking, including both preventive and repressive measures. Countries must designate a specific agency to coordinate this work, taking into account their own constitutional, legal, and administrative systems. The countries that agree to this treaty will help each other fight the illegal drug trade. They will work closely together and with international organizations to stop drug trafficking quickly and efficiently. When legal documents need to be sent to another country for a prosecution, they will be sent quickly to the appropriate authorities ^[4].

The Convention on Psychotropic Substances 1971

The Convention on Psychotropic Substances, to which India is also party, was adopted in response to concerns about the public health and social problems caused by the abuse of certain psychotropic substances. The preamble to the convention states that its objective is to prevent and combat the abuse of substances and the illicit traffic that they generate, and to use rigorous measures to restrict their use to legitimate purposes. The preamble acknowledges that the best way to combat drug abuse is through coordinated and global efforts, and that an international agreement is essential to achieve this goal.

In simpler terms, the Convention on Psychotropic Substances is an international agreement that aims to stop people from using these drugs illegally and to prevent them from harming themselves and others. India is among countries that has signed and ratified this convention;

Article 20 of this Convention speaks of the Measures against the abuse of Psychotropic Substances. The convention also provides for Action against illicit traffic of narcotic drugs ^[5] and further provides for penal provisions ^[6], both articles read similarly to the 1961 Convention.

The Protocol of 1972, amending the Single Convention on Narcotic Drugs (Geneva, 25.3. 1972)

With the passage of time, it was found that the illicit trafficking and illicit use of narcotic drugs is on the increase at the international level and, therefore, resolutions were adopted by the United International Conference to consider the amendment of the Single Convention on Narcotic Drugs 1961, had passed the following resolutions II and III:

Resolution II comprised of the Assistance in Narcotics Control. At the conference, it was established that assistance to developing countries is a concrete manifestation of the will of the international community to honour the commitment confined in the United Nations Charter to promote the social and economic progress of all people and declaring that the Parties to be more effective in their measures against drug abuse must be co-ordinated and universal; and that the fulfillment by the developing countries of their obligations under the Convention will be facilitated by adequate technical and financial assistance from the international community.

- Resolution III on the other side laid emphasis on the Social Conditions and protection against drug addiction. In the conference, the commitment to the preamble of the convention regarding the phrases "concerned with the health and welfare of mankind" and "conscious of their duty to prevent and combat" the evil of drug addiction, was reaffirmed. Due consideration was also given to the fact that, while drug addiction leads to personal degradation and social disruption, it happens very often that the deplorable social and economic conditions in which certain individuals and certain groups are living predispose them to drug addiction and recognizing that social factors have a certain and sometimes preponderant influence on the behavior of individuals and groups. The Resolution proposed the following recommendations - The parties should recognize that drug addiction is often caused by a negative social environment. They should take steps to improve the social environment for those who are most at risk of drug abuse.
- The parties should do everything they can to stop the spread of illegal drugs. They should implement

prevention programs and enforce drug laws.

- The parties should develop leisure activities and other programs that are beneficial to the physical and mental health of young people. This will help to provide young people with alternatives to drug use.

Apprehension about the sharp increase in drug problems during the late seventies led to the formulation by the General Assembly in 1981 of an International Drug Abuse Control Strategy and a five-year action program (1982-86). The convention established a series of policy measures to address various aspects of drug control, trafficking, and treatment of addicts. The six-point strategy called for, (i) improving the international drug control system through wider adherence to existing treaties; (ii) co-ordinating efforts to ensure a balance between supply and demand of drugs for legitimate use; (iii) steps for eradication of illicit drug traffic including finding income-producing alternatives for illicit drug producers; (iv) intensifying efforts to detect and dismantle clandestine laboratories and trafficking organizations; and (v) measures to prevent drug abuse and promote treatment, rehabilitation and social integration of drug abusers. The program of action set out specific activities for the UN and member governments to achieve these objectives. The Commission on Narcotic Drugs was asked to monitor and coordinate their implementation.

The 1984 Declaration on the Control of Drug Trafficking and Drug Abuse recognized that drug trafficking and drug abuse are serious crimes that pose a serious threat to the security and well-being of many countries and peoples. The Declaration called for a coordinated international effort, using all available moral, legal, and institutional means, to combat drug trafficking and drug abuse at the national, regional, and international levels. In simpler terms, the Declaration said that drug trafficking and drug abuse are a big problem that needs to be solved by everyone, working together. It identified the eradication of this evil as the collective responsibility of all States and affirmed the willingness of Member States to intensify efforts and coordinate their strategies in that area.

The convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988(Vienna, 20.12.1988)

Finally, the convention against illicit traffic in narcotic drugs and psychotropic substances was held by the United Nations in 1988 and the preamble to the said convention recalls deep concern on illicit traffic in narcotic drugs and psychotropic substances.

The preamble to this treaty expresses deep concern about the growing scale and increasing trend of illegal production, demand, and trafficking of narcotic drugs and psychotropic substances. These activities pose a serious threat to the health and well-being of people, and they have a negative impact on the economic, cultural, and political foundations of society. The preamble continues by discussing how the illegal drug trade is steadily infiltrating various social groups, especially children. In many parts of the world, children are being used as consumers of illegal drugs, as well as in the production, distribution, and trafficking of illegal drugs. This is a grave danger that cannot be overstated.

The preamble acknowledges that the illegal drug trade is linked to other organized criminal activities, which undermine legitimate economies and threaten the stability, security, and sovereignty of states. The preamble also

recognizes that the illegal drug trade is a serious international criminal problem that demands urgent attention and the highest priority.

The preamble goes on to state that the illegal drug trade generates large financial profits, which enable transnational criminal organizations to infiltrate, corrupt, and undermine government, legitimate businesses, and society at all levels.

The preamble expresses the intention and determination of the parties to deprive those involved in the illegal drug trade of the proceeds of their crimes, thereby eliminating their main incentive for doing so. The parties also intend to eliminate the root causes of the problem of drug abuse, including the illicit demand for drugs and the enormous profits derived from the illegal drug trade.

National Drugs and Psychotropic Substances Act, 1985 An overview of drug control laws in India

India's drug control laws have a long history, dating back to the Opium Act of 1857. These early laws were designed to regulate the use of specific drugs in limited contexts, but they were not comprehensive and did not provide adequate punishments for offenders.

After World War II, countries began to focus on human rights, together with the right to health. This led to the development of international instruments such as the Single Convention on Narcotic Drugs and the Convention on Psychotropic Substances, which emphasized the need to combat drug abuse.

To bring India's drug control laws in line with international standards and to implement the goals of these treaties, the government of India enacted the National Drugs and Psychotropic Substances Act (NDPS Act) in 1985.

The NDPS Act is a comprehensive law that covers all aspects of drug control, from production and trafficking to consumption and treatment. It provides for harsher punishments for offenders, and it also includes provisions for prevention and rehabilitation.

The NDPS Act is a landmark piece of legislation that has helped to reduce the accessibility and use of drugs in India. However, there is still much work to be done to address the problem of drug abuse.

The Act is generally seen as a law that bans the production, sale, and use of illegal drugs.

The Narcotic Drugs and Psychotropic Substances Act of 1985 (NDPS Act) was enacted to strictly control and regulate the production, transportation, and sale of narcotic drugs and psychotropic substances. The law also provides for severe punishments, including the forfeiture of property, for drug offenses. The Central Government is responsible for taking all necessary steps to prevent and combat drug abuse and the illegal drug trade.

NDPS Act, 1985 is a "Special Law". As such various provisions incorporated in the Act regulating the procedure to be followed for offences under the Act are applicable to the exclusion of Criminal Procedure Code, 1973.

The principal objectives behind enacting the NDPS Act, of 1985 were.

1. To provide for stringent punishment for the persons indulging in illicit drug trafficking as the maximum term of imprisonment under previous Acts was for a maximum period of 3 years (4 years in case of repeat offenses), and to take advantage of such laxity of law the international drug smugglers started operating from India;

2. To broaden the enforcement base by conferring the power of investigating of drug-related offenses on a member of Central enforcement agencies like customs, central excise, narcotic, revenue, intelligence, etc. also;
3. To fulfill the international obligations under various international treaties and conventions to which India is also party;
4. To bring the new drugs of addiction i.e. psychotropic substances under strict statutory control in the manner as described in the Convention on Psychotropic Substances 1971 which has been acceded to by India in 1975.

Establishment of specialized courts

When the NDPS Act was in its infancy, cases pertaining to the offenses delineated in the Act were dealt with by conventional session courts. However, this further exacerbated the problem of judicial overburden which has plagued Indian courts for decades. In order to remedy this problem, the Government of India vide an amendment to the NDPS Act in 1989 paved the way for the establishment of specialized courts to deal with offenses set out in the Act. The act empowers the government to set up as many Special Courts as it deems fit for the expeditious resolution of disputes^[7]. The Special Court consists of a single judge who is appointed with the concurrence of the Chief Justice of the concerned High Court and who must be a sitting Sessions Judge or Additional Sessions Judge at the time of his appointment^[8]. A Special Court has the same powers as the Magistrate when cases are forwarded to it. The Special Court is empowered to take cognizance of any offense under the Act on the basis of a report submitted to it by the relevant police authority or any complaint made by officers in the central or state government who are authorized to make such complaints. Even though Special Courts have played a pivotal role in the effective implementation of the NDPS Act, they have not been able to develop efficacious strategies for grappling with the systemic challenges that are faced by courts across the country. For example, even though Mumbai has 8 Special Courts, most cases come up for trial only after 2-3 years.

An overview of key offences and punishments

The severity of punishment under the Narcotic Drugs and Psychotropic Substances Act (NDPS Act) depends on the amount of drugs found. There are three categories of drug quantities: small, less than commercial, and commercial. The punishment for possessing a small quantity of drugs may be as low as one year in prison, while the punishment for possessing a commercial quantity of drugs may be as high as 20 years in prison. The Central Government specifies the amounts that constitute a small and commercial quantity of drugs.

The Act makes it illegal to grow opium, poppy, coca, or cannabis plants, as well as to produce, make, and distribute (including storing, transporting, buying, and selling) prohibited drugs and psychotropic substances.

The Opium Act prohibits the cultivation, financing, consumption, and harboring of opium offenders. Section 19 of the Act states that any farmer who cultivates opium legally but embezzles it (steals it) will be punished with 10 to 20 years in prison and a fine of 1 to 2 lakh rupees. In a nut shell, the law forbids farmers from stealing opium that they have been legally allowed to grow. If they do, they could face a long prison sentence and a hefty fine. The production,

manufacture, possession, sale, purchase, transport, import and export among states or use of narcotic drugs and psychotropic substances such as poppy straw, prepared opium, opium poppy, cannabis, etc shall result in:

1. In case of small quantity, rigorous imprisonment up to one year with/ without fine up to Rs. 10,000;
2. In case the quantity is between small and commercial, rigorous imprisonment up to 10 years and fine up to Rs. 1 lakh; and
3. In cases involving commercial quantity, rigorous imprisonment between 10-20 years and fines ranging between Rs. 1 and 2 lakh rupees.

The punishment for possessing ganja is less severe than for other drugs, but it can still be significant. You could face up to 5 years in prison and a fine of ₹50,000. The court may increase the fine if it deems it necessary. The term "possession" was dealt with by the Supreme Court in the 2015 landmark case of *Mohanlal v. State of Rajasthan*^[9]. The word "possession" in the context of drug abuse has two meanings: first, it refers to the physical control of drugs, and second, it refers to the mental intention to exercise control over those drugs. People who consume or possess drugs are often unaware of the legal consequences of their actions.

Punishment for repeat offences

As drug abuse is often a habitual problem for those who engage in it, the Act imposes a far stricter punishment on repeat offenders. Broadly speaking, the punishment for repeat offenses can be up to one and a half times the quantum of punishment for the first offense. As a result, the punishment would vary from 1.5 years of rigorous imprisonment to 30 years of rigorous imprisonment depending on the gravity of the offense. Similarly, the quantum of the fine for a subsequent conviction would also be up to one and a half times the fine for the first offense. One provision pertaining to punishments for second convictions which has been hotly debated pertained to the death penalty embodied in Sec. 31A of the Act. Before the 2014 amendment^[10], the Act provided for a mandatory death sentence if the number of drugs involved in an offense committed after the first conviction exceeded a certain threshold. For example, the threshold is 10 kg in the case of Opium and 1 kg in the case of Morphine and Heroin. However, in a move that was widely hailed by the human rights community, the 2014 amendment made it abundantly clear that the death penalty can be imposed as a substitute for the other punishments that have been set out in the Act for a repeat offender; its application isn't mandatory.

Procedural safeguards in the NDPS Act

Since the NDPS Act gives extensive powers to law enforcement agencies to clamp down on malpractices connected with drug abuse, it also seeks to put in place adequate safeguards to prevent innocent civilians from being unnecessarily harassed. Any person making an arrest or seizure under the Act is, therefore, required to make an extensive report containing all relevant details which must be sent to his immediate superior.

According to Section 100 of the Criminal Procedure Code (CrPC), a police officer cannot search a person without the presence of at least two respectable members of the community, known as *panchas*. This is to ensure that the search is conducted fairly and impartially. Thereafter, a statement containing the details of the search and seizure,

with the signature of the *panchas*, must be given to the accused for his perusal. Sec. 55 of the NDPS Act requires police officers to seize prohibited substances and keep them in a safe place. The substances must be sealed by the officer who seized them and the officer-in-charge of the police station. Sec. 50 of the Act gives the accused the right to be searched in front of a magistrate or a gazetted officer. This right has been upheld by the Supreme Court in the case of *State of Punjab V. Balbir Singh*^[11] where it was held that the police officer must, of necessity, inform the accused about this right. Finally, Sec. 58 imposes strict punishments on people making vexatious or frivolous complaints.

Access to medicinal drugs

Even though the Act carves out exceptions in all relevant places for allowing the use of drugs for scientific or medical purposes, it is dismaying to note that the Act has significantly undermined the ability of healthcare institutions to gain access to essential narcotic drugs for the benefit of their patients. This problem is primarily attributed to the fact that the Act requires these institutions to obtain licenses from a plethora of regulatory agencies that deal with issues related to excise, drug control, health administration, etc. The red tape involved in the grant of licenses coupled with their short tenure makes it very difficult for medical institutions to maintain large amounts of drugs that are often the only solution for lessening the pain of terminally ill patients. In order to circumvent this problem, the 2014 amendment seeks to put in place a single window clearance system in accordance with which every hospital that is in need of these drugs would be granted the status of a Recognized Medical Institution (RMI). It seeks to create a special category of drugs called Essential Narcotic Drugs whose use would be largely regulated by the central government. These provisions, it is hoped, will help in streamlining conflicting provisions that grapple with the acquisition of licenses and will go a long way in striking the right balance between 'availability' and 'control'.

Rehabilitation of drug addicts

Another area in where the law has been heavily criticized pertains to the limited importance that it attaches to the health of drug users who require special care and treatment. The law only focuses on reducing the supply of drugs; the argument goes, and not on putting in place a robust framework for reducing their demand which would be a more sustainable solution in the long run. In order to address this concern, the 2014 amendment seeks to strengthen existing provisions pertaining to the establishment and working of centres for the identification and treatment of addicts. The amendment focuses on how to help people who are addicted to drugs and sets up a system for the government to approve treatment centers. Treatment centers need to adopt global best practices and harm reduction techniques in order to deal with this problem in a systematic and holistic manner.

Agencies responsible for the effective administration of the law

The Department of Social Welfare is the government agency responsible for monitoring the efforts of public and private organizations to raise awareness about the harmful effects of drug abuse. The Narcotics Control Bureau is a central agency that oversees the activities of law enforcement agencies and ensures that India complies with the international agreements

it has signed on drug control. The Ministry of Welfare is responsible for taking appropriate steps to prevent the occurrence of circumstances that result in this menace. More specifically, it is responsible for disseminating information about drug abuse, undertaking drives at the local, state, and national levels to spread greater awareness and to form a broad coalition of various stakeholders to attack the problem at its root. It is also responsible for providing medical assistance to drug addicts and putting in place systems for identifying drug users at an early stage in order to take corrective measures. Finally, the Ministry of Finance looks into cases grappling with drug trafficking, money laundering and other offences which are closely linked with drug abuse.

The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (PITNDPS Act, 1988)

In recent years, India has been facing a problem of transit traffic in illicit drugs. The spillover from such traffic has caused problems of abuse and addiction. This trend has created an illicit demand for drugs within the country which may result in the increase of illicit cultivation and manufacturing of drugs. The government has taken a number of steps to prevent drug trafficking, including laws, regulations, and harsh penalties. However, drug trafficking is still a problem. Therefore, the government decided to pass a preventive detention law to stop drug traffickers in their tracks. The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 provides for preventive detention in relation to the smuggling of drugs and psychotropic substances, but it cannot be invoked to deal with persons engaged in the illicit traffic of drugs and psychotropic substances within the country. It was, therefore, felt that there is need of separate legislation and that should be enacted for preventive detention of persons engaged in any kind of illicit traffic in narcotic drugs and psychotropic substances. Accordingly, the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Ordinance, 1988 was promulgated by the President of India and ultimately, the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 was passed by the legislature which deemed to have come into force on 4th day of July, 1988 containing only sixteen sections.

This Act provides for the detention of not only those dealing in narcotic drugs or psychotropic substances but also those handing or letting any premises for the carrying on of any of the activities. The Narcotic Drugs and Psychotropic Substances Act (NDPS Act) covers a wide range of activities for the purpose of preventive detention. These activities include:

- Cultivating coca plants, opium poppies, or cannabis plants,
- Producing, manufacturing, possessing, selling, purchasing, transporting, warehousing, concealing, using, or consuming narcotic drugs or psychotropic substances,
- Importing, exporting, or transshipping narcotic drugs or psychotropic substances across state borders or into or out of India, under section 2(e) has been given to 'illicit traffic' in this Act.

Under Section 3 of the Act, the Central Government or a State Government or any officer of the Central Government, not below the rank of a Joint Secretary to that Government, or any Officer of a State Government, not below the rank of a Secretary to that Government, specially empowered for the

purpose of this section, can make an order for detention of a person with a view to prevent him from engaging in illicit traffic in narcotic drugs and psychotropic substances. The Act, under Section 9 has been made to constitute Advisory Boards by the central and State Governments, whenever necessary for seeking its opinion regarding sufficient cause for the detention of a person.

Major shortcomings of the law

Section 35 of the Act reverses the burden of proof in drug cases, meaning that the accused is presumed guilty until they can prove their innocence. This means that if drugs are found in someone's possession, they are assumed to have knowingly possessed them, unless they can prove otherwise. This is in stark contrast to the general principle of Indian law, which is that an accused is innocent until proven guilty.

Many people believe that the Drug Act does not adequately distinguish between different types of drug users and traffickers. They argue that the Act does not make a meaningful difference between casual drug users, hard addicts, petty peddlers, and seasoned drug traffickers. They also argue that the Act does not make a meaningful difference between hard and soft drugs, which can lead to drug users resorting to harder drugs because the punishments for using hard and soft drugs are often similar. Reports indicate that many criminal gangs have exploited these shortcomings in the law to the fullest extent possible and have formed a close nexus with law enforcement agencies. It would, therefore, not be incorrect to say that the law has created more problems than it has solved.

The strict nature of the Act has not been able to deter the drug traffickers as intended, the reason for this is the lack of government initiative and the confusion created by the inherent infirmities in the act itself.

Despite wide-ranging changes made twice in the twenty-year-old law, it is still as vague and deficient as it was at the time of the new enactment. The defects in the law have compounded with each amendment. Emphasis should always be given to drafting the law in an easy language not only to make it popular amongst the common masses but also with a view to eliminating the scope of different interpretations of the law by the public, investigating agencies, and judiciary. However, the case has not been so.

The Roadmap

These are indeed trying times. With news coming from various states such as Punjab and Delhi about the juvenile drug addiction crisis and videos of children from all across the country expressing their desire to get intoxicated and shirk all responsibilities at an all-time high, the time to act is running out. There needs to be greater social awareness of the dangers of drug consumption and stricter implementation of the laws relating to drug production. The desire to alleviate oneself from pain is understandable and relatable; however, drugs simply provide an illusion of happiness, a false haze of satisfaction. When the *ganja* smoke clears and the cocaine dust settles, all that we are left with is a broken home, an injured body, cases filed against us, and the moral decay of society.

Some suggestions to prevent and deal with the drug menace

1. Develop an effective mechanism to check the unrestricted production of drugs and sale in open markets.
2. Appropriate implementation of the existing laws dealing

- with drug trafficking.
3. Education of the masses about the negative effects of drug use and addiction
 4. Early detection of drug addicts and prompt treatment.
 5. Establish various support groups and de-addiction centers to help addicts manage their disease.

While we must condemn those who push drugs, we must also care for those who, often through no fault of their own, got pulled into drugs, maybe through peer pressure or media or simply their unwillingness to battle a difficult life. These are the victims of drugs though they are often seen as proponents. They require care, attention rehabilitation, and a chance to reintegrate them into society.

All of us must take an active role and observe the behavior of our friends and family in order to prevent them from falling into the rabbit hole that is the world of drug use. Only through care can we break this cycle of despair, one person at a time.

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