

CONTROLLING DRUG MENACE IN INDIA- A COMPARATIVE ANALYSIS WITH US AND UK

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ABSTRACT

There has been huge loss to society due to the drug addiction. More than many lives lost, there has been incalculable harm to families and society. Today, legislation formally restricts drug use in most societies, and religious and social controls too continue to exert an influence. The paper analyses the international controls over the drug menace or at global platform along with the controlling patterns in India, US and UK.

KEYWORDS: Controlling Drug

INTRODUCTION

Just as every society has discovered and used pharmacologically active substances, so does each society control their use. The earliest limitations to drug use stemmed from religious practices and social mores. Today, legislation formally restricts drug use in most societies, and religious and social controls too continue to exert an influence. At present, drug laws exist at international, national, state or provincial and local levels. Laws in most of the countries restrict or limit the production, distribution, prescription, availability and administration of these drugs. These laws also provide the nomenclature of the drugs restricted. They not only consider the sale, consumption, distribution etc., as illegal but also consider them as offence and punitive in character.

International Controls

International drug controls are mainly based on the treaties and agreements among the countries through diplomatic conferences. Several bodies within the United Nations are involved in drug control in the territories of its member countries as well as between them. The Commission on Narcotic Drugs was established by the United Nations Economic and Social Council (ECOSOC) in 1946. Its predecessor, the Advisory Committee on the Traffic in Opium and Other Dangerous Drugs, was established by the first Assembly of the League of Nations on December 15, 1920. The Advisory Committee held its first meeting from May 2 to May 5, 1921, and continued its activities until 1940¹. In addition, three secretaries within the UN provide the control of drugs: the UN Division on Narcotic Drugs, the International Drug Control Board Secretariat and the World Health Organization Drug Dependence and Alcoholic Secretariat.

The Commission on Narcotic Drugs and the World Health Organization were empowered to add, remove, and transfer drugs among the treaty's four schedules of controlled substances provided under the Single Convention of 1961². The International Narcotics Control Board was put in charge of administering controls on drug production,

¹ Laurel A. Eisenhauer, Lynn W. Nichols, Roberta T. Spencer, Frances W. Bergan, Clinical Pharmacology and Nursing Management, fifth edition, p.20

² http://polis.osce.org/library/details?doc_id=3216&_ru=%2Flibrary%2Fdetails%3Fdoc_id%3D3215

international trade, and dispensation. The United Nations Office on Drugs and Crime (UNODC) was delegated the Board's day-to-day work of monitoring the situation in each country and working with national authorities to ensure compliance with the Single Convention. This treaty has since been supplemented by the Convention on Psychotropic Substances, 1971, which controls LSD, Ecstasy, and other psychoactive pharmaceuticals, and the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which strengthens provisions against money laundering and other drug-related offenses³.

India

The Narcotic Drugs and Psychotropic Substances Act 1985 (NDPS Act) sets out the statutory framework for drug law enforcement in India. This Act consolidates the erstwhile principal Acts, viz. the Opium Act 1857, the Opium Act 1878 and the Dangerous Drugs Act, 1930. The NDPS Act also incorporates provisions designed to implement India's obligations under various International Conventions. Certain significant amendments were made in the Act in 1989 to provide for the forfeiture of property derived from drug trafficking and for control over chemicals and substances used in the manufacture of narcotic drugs and psychotropic substances. In order to give effect to the statutory provisions relating to these substances, an order, namely the N.D.P.S. (Regulation of Controlled Substances) Order, was promulgated by the Government of India in 1993 to control, regulate and monitor the manufacture, distribution, import, export, transportation etc., of any substance which the Government may declare to be a 'controlled substance' under the Act. The statutory regime in India consequently covers drug trafficking, drug related assets as well as substances which can be used, in the manufacture of narcotic drugs and psychotropic substances. Some further amendments were incorporated in the NDPS Act in 2001, mainly to introduce a graded punishment⁴.

The administration of the NDPS Act, 1985, as was with the predecessor Acts namely the Opium Act and the Dangerous Drugs Acts falls within the domain of the Department of Revenue, in the Ministry of Finance and the Ministry of Home Affairs. Various enforcement agencies under the Central Government namely the Border Security Force (BSF), Customs & Central Excise, Revenue Intelligence, Central Bureau of Narcotics and the central Economic Intelligence Bureau are involved in the administration of this Act⁵. Designated agencies under the NDPS Act to effect seizures of drugs are Narcotics Control Bureau, Directorate of Revenue Intelligence, Directorate of Revenue Intelligence, State Police, State Excise and Central Bureau of Investigations. Empowered agencies under the Customs Act, 1962 to interdict drugs include Coast Guard, Border Security Force, Indo-Tibetan Border Police, and Central Reserve Police Force⁶. In order to achieve the coordination of the multiple disciplines, Narcotics Control Bureau was created under the authority the aforesaid Act⁷, by a Government notification of 17.3.1986. The Ministry of Home Affairs on April 2, 2010 sanctioned two new zonal units for the Narcotics Control Bureau (NCB) at Bangalore and Patna⁸. Drug traffickers can be detained to prevent their illicit traffic through an executive order issue under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.

³ http://en.wikipedia.org/wiki/Commission_on_Narcotic_Drugs

⁴ www.narcoticsindia.nic.in/NCB_DrugControl.htm

⁵ <http://drugslaw.blogspot.in/2007/02/drug-law-enforcement-course-by-sharada.html>

⁶ <https://sites.google.com/site/hsinghjudgementscom/home/ndps-act---sc-rulings>

⁷ Chapter II of NDPS Act, 1985

⁸ <http://www.thehindu.com/news/national/narcotics-control-bureau-gets-zonal-units-in-bangalore-patna/article365010.ece>

United States

The regime of drug control in the US begins with the introduction of Pure Food and Drug Act, 1906, which regulated labeling of products containing certain drugs including cocaine and heroin. This was further extended with the Harrison Narcotics Tax Act, 1914, regulating opiates and cocaine. It then continues with the Marijuana Tax Act, 1937, providing taxation of marijuana, Convention on Narcotics Treaty, 1961, to control marijuana and Controlled Substances Act, 1970, scheduling list for drugs⁹. The Controlled Substances Act follows the Single Convention's lead in granting a public health authority a central role in drug scheduling decisions. It also includes a provision mandating that federal authorities control all drugs of abuse at least as strictly as required by the Single Convention¹⁰. The U.S. Psychotropic Substances Act of 1978 was signed into law on November 10, 1978 as Public Law providing various classifications of psychotropic substances. The Anti-Drug Abuse Act of 1988 was signed into law on November 18, 1988. Among its provisions, it established the Office of National Drug Control Policy¹¹. Bureau of International Narcotics and Law Enforcement Affairs (INL) was formed with the strategic goals: (1) to reduce the entry of illegal drugs into the United States; and (2) to minimize the impact of international crime on the United States and its citizens¹². The Bureau manages the Department of State's Narcotics Rewards Program in close coordination with the Department of Justice, Department of Homeland Security, Immigration and Customs Enforcement (ICE), the Drug Enforcement Administration (DEA), Federal Bureau of Investigation (FBI), and other interested U.S. agencies¹³.

Department of Homeland Security Counternarcotics Doctrine was formed in the year 2010. The counternarcotics mission was to interagency, inter-departmental, and international in scope. Within the Department of Homeland Security (DHS), the counternarcotics effort crosses component lines, with U.S. Customs and Border Protection, the U.S. Coast Guard, and U.S. Immigration and Customs Enforcement playing major roles, and other components actively participating as well. Each DHS Component approaches its counternarcotics efforts as a subset of its broader mission¹⁴. The U.S. Office of Drug Control Strategy releases the various strategies and policies such as U.S. Drug Control Strategy 2012 report on April 17, 2012, National Northern Border Counternarcotics Strategy in January 2012, National Drug Threat Assessment, 2010 February 2010. The other empowered agencies include U.S. Coast Guard U.S. Customs and Border Protection, U.S. Department of Homeland Security, U.S. Department of Agriculture, U.S. Department of Defense, U.S. Department of Justice, U.S. Marshals Service, U.S. Secret Service and World Justice Information Network.

The Drug Enforcement Administration (DEA) was established on July 1, 1973, by Reorganization Plan No. 2 of 1973. It proposed the creation of a single federal agency to enforce the federal drug laws as well as consolidate and coordinate the government's drug control activities. As a result, the Bureau of Narcotics and Dangerous Drugs (BNDD), the Office of Drug Abuse Law Enforcement (ODALE), and other federal offices merged to create the DEA.^[3] The DEA is headed by an Administrator of Drug Enforcement appointed by the President of the United States and confirmed by the U.S. Senate. The Administrator reports to the Attorney General through the Deputy Attorney General. The Administrator is assisted by a Deputy Administrator, the Chief of Operations, the Chief Inspector, and three Assistant Administrators (for

⁹ http://en.wikipedia.org/wiki/Pure_Food_and_Drug_Act

¹⁰ www.tumblr.com/tagged/single-convention-on-narcotic-drugs

¹¹ <http://www.cfr.org/border-and-ports/national-northern-border-counternarcotics-strategy-january-2012/p27255>

¹² www.state.gov/j/inl/index.htm

¹³ en.wikipedia.org/wiki/Narcotics_Rewards_Program

¹⁴ <http://www.dhs.gov/department-homeland-security-counternarcotics-doctrine>

the Operations Support, Intelligence, and Human Resources Divisions). Other senior staff include the Chief Financial Officer and the Chief Counsel¹⁵.

Various institutions and services of the Government including the Narcotics Affairs Section (NAS), U.S. Embassy in Guatemala and other stations, National Criminal Justice Reference Service (NCJRS), National Institute on Drug Abuse (NIDA), National Institutes of Health, Substance Abuse and Mental Health Services Administration (SAMHSA), U.S. Department of Health and Human Services.

The US laws and enforcement agencies are well equipped and developed with the proactive stages of combat. The National Institute on Drug Abuse fulfills the function of limitation on production and distribution. NIDA administers a contract with the University of Mississippi to grow a 1.5 acre (6,000 m²) crop of cannabis every other year; that supply comprises the only licit source of cannabis for medical and research purposes in the United States¹⁶.

United Kingdom

The United Kingdom's Misuse of Drugs Act 1971 were designed to fulfill treaty obligations Single Convention. Like the United States', United Kingdom's Misuse of Drugs Act of 1971 include analogous schemes of drug scheduling, along with similar procedures for adding, removing, and transferring drugs among the Schedules. Also the Act is the first one to control the narcotics in the UK. The timely view of enactments goes like this: Misuse of Drugs Act 1971, The Medicines (Products Other Than Veterinary Drugs) (Prescription Only) Order, 1983, Drugs (Penalties) Act, 1985, Drug Trafficking Offences Act, 1986, Act of Sederunt, (Rules of Court Amendment No. 1) (Drug Trafficking) 1987, The Drug Trafficking Offences (Enforcement in England and Wales) Order, 1988, The (Designated Countries and Territories) (Amendment) Order, 1992, Drug Trafficking Act, 1994, Public Entertainments Licences (Drug Misuse) Act, 1997, Drugs Act, 2005, Drug Trafficking Offences Act, 1986, Misuse of Drugs (Supply to Addicts) (Amendment) Regulations, 2012, Misuse of Drugs Act, 1971 (Amendment) Order, 2012, Misuse of Drugs (Amendment No.3) (England, Wales and Scotland) Regulations, 2012 Misuse of Drugs (Designation) (Amendment No.2) (England, Wales and Scotland) Order, 2012¹⁷.

The Home Office is a Ministerial department of the Government of the United Kingdom responsible for immigration, security, and law and order. For instance, drug licensing- companies, doctors and individuals need to apply for Home Office for domestic licenses if they wish to produce, supply or possess controlled drugs. FRANK- FRANK provides a friendly, confidential and non-judgemental service to anyone wanting help, information or advice about drugs. FRANK is available 24 hours a day, 365 days a year¹⁸. The Serious Organised Crime Agency (SOCA) was set up in April 2007. Serious Organised Crime Agency tackles organised crime that affects the UK and its citizens just like the DEA in the US. It includes drugs, people smuggling, human trafficking, major gun crime, fraud, computer crime and money laundering. SOCA officers can have the combined powers of police, customs and immigration officers. They also have a substantial range of tools and legislation to target criminals with – everything from the ability to recover assets through to Serious Crime Prevention Orders¹⁹. The Agency has been formed from the amalgamation of the National Crime Squad

¹⁵ <http://www.archives.gov/federal-register/codification/executive-order/11727.html>

¹⁶ http://www.experiencefestival.com/a/Single_Convention_on_Narcotic_Drugs_-_Regulation_of_cannabis/id/2119022

¹⁷ <http://www.legislation.gov.uk/>

¹⁸ <http://www.homeoffice.gov.uk/drugs/drug-law/>

¹⁹ www.soca.gov.uk/about-soca

(NCS), National Criminal Intelligence Service (NCIS), that part of Her Majesty's Revenue and Customs (HMRC) dealing with drug trafficking and associated criminal finance, and a part of UK Immigration dealing with organised immigration crime²⁰(UKIS).

The UK Drug Policy Commission which has finished its work which ran between 2007 and 2012 as an independent body has provided objective analysis of the evidence concerning drug policy and practice. According to the report of the commission, up to 80% of problem drug users are unemployed, yet work has been shown to be an important component of rehabilitation and reintegration into society, reducing the likelihood of relapse²¹. The Advisory Council on the Misuse of Drugs (ACMD) is a British statutory and non-executive, non-departmental public body, which was established under the Misuse of Drugs Act 1971²². The drug strategy, 'Reducing demand, restricting supply, building recovery: supporting people to live a drug-free life', was launched in December 2010. The first annual review of the drug strategy was released in May 2012. The National Drugs Control System (NDS) is used to administer the import and export licensing regime of the United Kingdom. NDS is designed to improve the processing times for licence applications and to assist in the capture of data for monitoring trade²³.

CONCLUSIONS

The drug laws and control in India seem to be on par with those of US and UK. But several other questions arise in the Act such as the in case of actual offence a person is about to commit and offence committed, the differentiation is quite difficult. For example, when a person has 20 grams of heroin which he can either consume or sell, is he liable for offence he is about to commit i.e. selling of heroin or possession of heroin or consumption of heroin? When the accused is charged with an offence involving small quantity, does he have to admit/prove that the same is for personal consumption, in order to seek immunity from prosecution under Section 64A of the Act? The immunity granted to offender of small quantity when he does not de-addict himself, how can he be discharged of this, at what stage of the proceedings can immunity from prosecution be removed and what punishment to be given at that time he has discontinued to de-addict himself are unclear and debated topics. The Act seems to be a mere formality to the International Conventions. The Supreme Court alone cannot be expected to frame answers to these questions. There has been a constant failure on the part of the Government to provide adequate legislature in this field as well as overcoming its political trauma in the interest of the public.

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