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Alcoholism & Drug Abuse and Its Impact on Modern Indian Society: A Legal Analysis

Dr. S. A. K. Azad

Principal, University Law College, Utkal University, Bhubaneswar, Odisha, India

Abstract

An analysis on alcoholism, drug addiction and resultant crime in the modern society is a great threat to the Indian society. As part of the contemporary dynamic of globalization, there has also been an increased use of drugs, which has now reached mammoth proportions. The use of both licit drugs such as alcohol and tobacco and illicit drugs such as cannabis, cocaine and opioids has been acknowledged to have multiple consequences to health, society and economy. As a counter to this problem the existing Indian legal frameworks along with the judicial stands are discussed and analysed to combat this growing form of crime.

Key Words: *Drugs, Drugs Addiction, Alcoholism, Crime, Legislatives.*

Introduction: Different forms of alcohol have been used in various human societies at least since the beginning of recorded history. As part of the contemporary dynamic of globalization, there has also been an increased use of drugs, which has now reached mammoth proportions. The use of both licit drugs such as alcohol and tobacco and illicit drugs such as cannabis, cocaine and opioids has been acknowledged to have multiple consequences to health, society and economy. According to estimates made by the World Health Report¹, at least ten thousand million people throughout the world regularly use alcohol and about 13.5 million people use opioids. In India too, the problem is slowly increasing and it is estimated that 75 million people are alcohol users and nearly three million are opioid users/of which a majority require medical treatment and rehabilitation².

Meaning of Drug: A drug can be defined as a substance that causes euphoria or a change in mood, promotes a sense of well being, and stoppage of which causes severe withdrawal symptoms.

¹ Report of World Health Organisation, 2012.

² Ibid.

Classification of Drugs: The International Convention on Drugs³ to which India is a signatory has classified drugs under two categories:

(A) Narcotic Drugs (B) Psychotropic Substances

(A) Narcotic Drugs: The main drugs covered under this head are the following:-

- (i) Opium and its derivatives like brown sugar, heroin and codeine
- (ii) Cocoleaf, cocaine
- (iii) Cainabis, cannabis resin, extracts and tinctures,
- (iv) Methadene, pethedine, hebaine

(B) Psychotropic Substances includes valium, diazepam, tidijesic, morphine etc.

Meaning of Drug Abuse: The meaning of Drug abuse is the excessive, maladaptive, or addictive use of drugs for mm medical purposes despite social, psychological and physical problems that may arise from such use⁴. Abused substances include such agents as anabolic steroids, which are used by some athletes to accelerate muscular development and increase strength and which can cause heart disease, liver damage.

Alcoholism: The term "alcoholism" refers to a disease known as alcohol dependence syndrome, the most severe stage of a group of drinking problems which begins with binge drinking and alcohol abuse.

Types of Alcohol problems: Alcohol problems occur at different levels of severity, from mild and annoying to life-threatening. Although alcohol dependence (alcoholism) is the most severe stage, less severe drinking problems can also be dangerous. Officially, drinking means having five or more drinks in one session for men and four or more for women: Another definition drinking is simply drinking to get drunk. It is the most common drinking problem for young people, under age 21.

Alcoholism, Drug Addiction and Crime: Alcoholism and drug addiction may be conceptualized as crime without victim, i.e. addict himself is the victim who becomes a prey of its misuse. This devastating melody is eroding the roots of social, economic and cultural fibre of Indian society. It. gives rise to criminality and criminal behaviour, which eventually leads to social disorganization.

Alcoholism and drug related offences being victimless crime; they fall in the category of public order crimes or consensual crimes. Siegel has defined victimless crime or public order crime² as "crime which involves acts that interfere with the operations of society and the ability of the people to function efficiently". It must, however, be noted though alcoholism and drug addiction are victimless crime, they do carry with them secondary

³ United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, available at https://www.unodc.org/documents/commissions/CND/Int_Drug_Control_Conventions/Ebook/The_International_Drug_Control_Conventions_E.pdf

⁴ See Encyclopedia Britannica, available at <http://www.britannicaindia.com>.

victims such as family, dependants, friends, acquaintances etc⁵.

Alcoholism and drug habituation has been prevalent in most societies over the ages because of their allegedly pleasurable and relaxing effects or as a means of relieving physical tensions, fatigue and as stimulant to withstand adversities. However, with the unprecedented expansion of pharmaceutical industry, the use, abuse and misuse of alcohol and drugs have increased leaps and bounds covering almost all sections of society⁶.

Alcoholism and drug addiction are indicative of the irresponsibility and weakness of the character of the persons using these intoxicants. The relation between alcoholism and various aggressive and criminal acts is often confirmed by police records and prison statistics which indicate that in the present day there is a considerable increase in such alcoholic-criminal episodes⁷. Experience has shown that various preventive and punitive measures such as fine, imprisonment or detention for drunkenness and other disorderly behaviours have failed in eliminating this menace.

It has been generally agreed that criminality in human beings is to be attributed to their mental depravity. Persons with balanced emotional and physical health normally do not indulge in criminality or aggressive conduct, nor do they take to alcoholism beyond control. Investigations made by sociologists and criminologists on alcohol-crime relationship reveal that there is a close resemblance between the structure of alcoholics and criminals. This proposition brings us to the following conclusions regarding the impact of alcoholism and drug-addicts on criminality:

- (1) Crimes are often planned in liquor shops and bars where alcohol is sold;
- (2) Offenders generally consume liquor and alcohol or drugs to overcome their inhibitions and emotional strains;
- (3) The booty and gains of crime are often distributed and shared in liquor or wine-shops;
- (4) Alcohol and narcotic drugs help to remove the element of self-criticism from the criminal in relation to himself and his acts;
- (5) Juvenile delinquency and drinking are intimately connected;

Impact of Drugs and Alcohol on Society: In a national survey conducted by the Ministry of Social Justice and Environment and the United Nations Office of Drugs and Crimes, it was stated that abuse of different drugs is prevalent in different States of India. Rajasthan has the highest proportion of opium users (76.7%), followed by Haryana (58.0%). So far as heroin is concerned, 43.9% of its users are found in Uttar Pradesh while Orissa and Himachal Pradesh, at 43.9% and 37.3% respectively top in alcohol consumption. This indicates not only the dimension and diversity of the social problem that is facing the

⁵ Some other public order crime (or victim less crime) is prostitution, homosexuality, pornography, vagrancy, public drunkenness etc.

⁶ J. K. Mason: Forensic Medicine for Lawyers, 1983, p. 25

⁷ Rebert Seligers articles on "Alcohol and Crime", Journal of Crime Law and Criminology XLV (May-June, 1950), p.p. 24-31.

Country, but also that the problem does not relate only to investigation and law in relation to drug abuse and drug-related crimes⁸.

The statistics released by the Narcotic Bureau of India also indicate the magnitude of the problem faced by the nation. Let us see last ten years track record. From the year 1996-2006, amongst others 21895 kgs of Opium, 855667 kgs of Ganja, 48278 kgs of hashish and 10147 kgs of heroin have been seized by various enforcing agencies. In the cases arising from these seizures, a total of 142337 persons were involved including the foreigners. Out of these, 38030 persons stand convicted for offences while 44656 persons have been acquitted. The rate of acquittal has, varied from 27.7% to 59.1% annually during this period.

In its annual press conference, the Central Jail, Tihar, indicated that amongst the under trials and convicts (both male and female) arrested under the NDPS Act, there are 10.70 % male under trials and 5.37% male convicts and 16.12% female under trials and 13.28% female convicts. There are nearly 340 NGOs run or aided by the Ministry of Social Justice and Empowerment, Government of India, to take reformatory and remedial steps. Increase in de-addiction centres is an encouraging step taken by the concerned authorities.

The Narcotics Control Bureau was set up in May 1986 as a primary enforcement agency to deal exclusively with drugs. This high powered body which is controlled by a Director General has direct liaison with the United Nations Narcotics Control Bureau and other international agencies working against drug trafficking. A number of the other enforcement agencies have been provided effective support with the Narcotics Control Bureau acting as a nodal agency to enforce the law which includes the central excise, customs, border security force, CBI, Directorate of Revenue Intelligence and Food and Drug Control officers.

Legal Framework: In the international scenario India is a signatory to all the three UN Drug Control Conventions, namely, the Single Convention on Narcotic Drugs 1961 (as amended by the 1972 Protocol), the Convention on Psychotropic Substances, 1971 and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.

Constitutional Provisions: National policy on Narcotic Drugs and Psychotropic Substances is based on Article 47 of the Directive Principles of State Policy, of the Constitution of India, where the 'Duty of the State [is] to raise the level of nutrition and the standard of living and to improve public health'. It directs, inter alia, that the "...the State shall endeavour to bring about prohibition of the consumption, except for medicinal purposes, of intoxicating drinks and of drugs which are injurious to health". The government's policy on the subject which flows from the above said constitutional provision is also guided by the International Conventions on the subject. However, India does not have a national drug control policy or an apex organization in respect of drug control. The

⁸ National Survey conducted by the Ministry of Social Justice and Environment and the United Nations office of Drugs and Crime, 2010.

NDPS Act, 1985 lays down the focus and direction of drug control strategy in the country. This Act made an express provision for constituting a Central Authority for the purpose of exercising the powers and functions of the central government under the Act. In exercise of the powers, the "Narcotics Control Bureau (NCB)" was constituted with Headquarters in Delhi on 17th March 1986. Though the master plan has not been formally adopted, many of its provisions have been absorbed into subsequent National Five-Year Plans.

Legislations: The broad legislative policy on narcotic drugs and psychotropic substances is contained in the three central Acts. These are:

- Drugs and Cosmetics Act, 1940,
- The Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act, 1985), and
- The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.

Basic Features of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act): The NDPS Act 1985 sets out the statutory framework for drug law enforcement in India. The main elements of the control regime mandated by the Act are as follows:

- a) The cultivation, production, manufacture, possession, sale, purchase, transportation, warehousing, consumption, inter-State movement, transshipment and import and export of narcotic drugs and psychotropic substances is prohibited, except for medical or scientific purposes and in accordance with the terms and conditions of any license, permit or authorization given by the Government⁹.
- b) The Central Government is empowered to regulate the cultivation production, manufacture, import, export, sale, consumption, use etc of narcotic drugs and psychotropic substances¹⁰.
- c) State Governments are empowered to permit and regulate possession and inter-State movement of opium, poppy straw, the manufacture of medicinal opium and the cultivation of cannabis excluding hashish¹¹.
- d) All persons in India are prohibited from engaging in or controlling any trade whereby narcotic drugs or psychotropic substances are obtained outside India and supplied to any person outside India except with the previous authorisation of the Central Government and subject to such conditions as may be imposed by the Central Government¹².
- e) The Central Government is empowered to declare any substance, based on an assessment of its likely use in the manufacture of narcotics drugs and psychotropic

⁹ Section 8 of the NDPS Act, 1985.

¹⁰ Section 9 of the NDPS Act, 1985.

¹¹ Section 10 of the NDPS Act, 1985.

¹² Section 12 of the NDPS Act, 1985.

substances as a controlled substance¹³.

f) Assets derived from drugs trafficking are liable to forfeiture¹⁴.

g) Both the Central Government and State Governments are empowered to appoint officers for the purposes of the Act¹⁵.

The NDPS Act is in effect a comprehensive code not only for the control and regulation of Narcotics Drugs and Psychotropic Substances; but also for the control of selected chemicals commonly known as precursors, which can be used in the illicit manufacture of narcotic drugs and psychotropic substances, as well as for the investigation and forfeiture of drug related assets.

Enforcement: Given India's size and the federal nature of the polity, a number of agencies both at the Centre and in the States have been empowered to enforce the provisions of the Act. These agencies include the Department of Customs and Central Excise, the Directorate of Revenue Intelligence, the Central Bureau of Narcotics and the Central Bureau of Investigation at the Central level and State Police and Excise Departments at the State level. The Union Ministries of Social Justice and Empowerment and Health are responsible for the demand reduction aspects of drug law enforcement which broadly covers health care and the deduction, rehabilitation and social reintegration of addicts.

Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act: This Act is a preventive detention law. Persons who indulge in drug trafficking can be detained through an executive order passed by designated authorities. The Joint Secretary (Revenue) in the Central Government is empowered to issue such detention orders. Similarly, relevant authorities are also designated to act in this capacity by the State Governments.

Role and Functions of the Narcotics Control Bureau: The Narcotics Control Bureau was created in March 1986 in terms of Section 4 (3) of the Narcotic Drugs and Psychotropic Substances Act, 1985, which envisages an authority for taking measures with respect to such matters under the Act as may be specified by the Central Government, subject to the supervision and control of the Central Government. The notification dated 17-3-1986 constituting the NCB sets out the following charter for the Bureau:

1. Coordination of actions by various officers, State Governments and other authorities under the principal Act, the Customs Act, 1962, the Drugs and Cosmetics Act, 1940 and any other law for the time being in force in connection with the enforcement of the principal Act.
2. Implementation of the obligations in respect of counter-measures against illicit traffic under various international conventions.
3. Assistance to the concerned authorities in foreign countries and concerned international organizations with a view to facilitating coordination and universal action for prevention and suppression of illicit traffic in narcotic drugs and

¹³ Section 9 (A) of the NDPS Act, 1985.

¹⁴ Chapter V-A of the NDPS Act, 1985.

¹⁵ Section 4, 5 and 7 of the NDPS Act, 1985.

psychotropic substances.

4. Coordination of actions taken by the Ministry of Health and Family Welfare, the Ministry of Welfare and other concerned Ministries, Departments or Organisations in respect of matters relating to drug abuse.

While the notification sets out the broad charter of the Narcotics Control Bureau, the detailed functions of the Bureau were elaborated in O.M.No.50/71/86-Ad.I dated 2nd Feb, 1987 issued by the Department of Revenue. Subsequently after the NDPS Act was amended in May 1989 to inter- alia provide for control over precursor chemicals, the implementation of domestic controls over precursors was also assigned to the Bureau. In addition to these functions, the Narcotics Control Bureau is also responsible for the enforcement of the provisions of the NDPS Act which it does through its ten zonal and regional offices.

Indian Penal Code, 1860: The Act provides that when a person is incapable of judgment by reason of intoxication caused against his will nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to Law; provided that the thing which is intoxicated him was administered to him without his knowledge or against his will¹⁶.

Further the offence requires a particular intent or knowledge committed by one who is intoxicated in cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will¹⁷.

Judicial Stands: The Supreme Court of India, in Dawood Lama's case¹⁸ confirmed the conviction of the accused a foreign national under the Narcotic Drugs & Psychotropic Substances Act, 1985 and sentenced him to 10 years rigorous imprisonment and to pay a fine of Rs. 1, 00,000.00 and in default further undergo rigorous imprisonment for two years. In this case brown sugar was seized from the accused which is a narcotic drug and not a psychotropic substance. The Court further ruled that under NDPS Act the police officer taking search is duty bound to inform the person arrested that if he so desired he shall be searched in the presence of a Gazetted Officer or a Magistrate.

In *Birendra Kumar Rai v. Union of India*¹⁹ the Supreme Court further held that, in a case falling under the Prevention of Illegal Traffic in Narcotic Drugs & Psychotropic Substances Act, 1988 the accused should be sternly dealt with under Section 3 of the Act and provisions of Article 22 (5) of the Constitution of India are not attracted in such cases. Therefore, the detention of the accused under the Act shall not be held arbitrary.

¹⁶ Section 85 of the Indian Penal Code, 1860.

¹⁷ Section 86 of the Indian Penal Code, 1860.

¹⁸ *Wilfred Joseph Dawood Lama v. State of Maharashtra*, 1990, Cr LJ 1034.

¹⁹ AIR 1993, SC 942.

In *State of Maharashtra and others v. Nagpur Distillers*²⁰, a two judge Bench of the Supreme Court took a serious note of liquor addiction among the younger generation and urged the Government to work towards gradually reducing the consumption of liquor. The Apex Court directed that the goal of prohibition of liquor as enshrined in Article 47 of the Constitution casts a duty on the State at least to reduce the consumption in the State gradually so that the objective of prohibition may be achieved during limited period of time.

The Court further observed that more and more of the younger generation in this country is getting addicted to liquor. It has not only become a fashion to consume liquor but it has become an obsession with very many youngsters. Surely we do not need “indolent nation”. The Court lamented as to why the States in face of Article 47 of the Constitution of India should encourage unrestricted trade in liquor. Indeed, it is something that it is difficult to appreciate. The only excuse for the State for not following the mandate of Article 47 is that this trade generates huge revenue income and such revenue is being used for meeting the financial needs of the State²¹.

While disposing of special petition filed by the State of Maharashtra against an interim order of the Bombay High Court which had stayed the recovery of license fee due from the Nagpur Distilleries for the manufacturing and sale of Indian made foreign liquor under the Maharashtra Distillation of Spirit and Manufacture of Potable Liquor Rules, 1996 the Supreme Court directed the Company to pay 50% of the fee by December 31st of every year till the High Court decides the matter finally²².

The decision of the Apex Court calling upon the States to bring about prohibition of the consumption of intoxicating drinks and drugs which are injurious to public health is a welcome step in implementing the Gandhian ideology of prohibition and the State Governments must initiate appropriate step to comply with this mandate.

In order to make the point clear it would be prudent to refer to the observations made by the Court of Appeal in the famous case of *Director of Public Prosecutions v. Majewski*²³. The facts of the case in brief were:

In this case M a drug addict took about 20 tablets of deszedrine and the next evening he took about eight tablets of barbiturate then he went into a bar to take drink. There was a disturbance and the landlord began to escort M’s friend to the door. The friend cried he is pulling me out. M got up abused the landlord butted him in the face and punched a customer. The landlord and the customers ejected the pair from the bar but they re-entered by forcing the other door and breaking a glass panel. M then punched the landlord and started swinging a piece of broken glass and injuring him. When the police arrived a fierce struggle took place to get him out. He shouted at the police you pigs I will kill you all and

²⁰ 2006(5) Scale 77.

²¹ *Ibid.*

²² *Ibid.*

²³ 1997, AC 443.

kicked two of the officers. M said he could remember nothing of this incident. The court found on facts that M was able to respond to a request for assistance by his companion he was able to direct his violence and he was able to utter abuses and issue threats before he attacked. Therefore on these facts his plea of intoxication was rejected.

In R V. Tandi the accused a woman who was habitually taking Yarmouth or barley brand of moderate alcohol daily consumed full bottle vodka a highly intoxicant variety of liquor on the day of incident. Having lost control over herself and her emotions and in a fit of aggression she strangled her eleven years old daughter to death. She raised the plea of insanity in her defence. But the Court disallowed her plea and observed that she had deliberately and voluntarily consumed a heavy dose of highly intoxicant vodka instead of her usual mild drink in order to lose her mental ability to think and act rationally. Therefore, it was a clear case of voluntary intoxication for which the defence of insanity must fail.

The High Court of Madhya Pradesh in *Jethuram Sukhra Nagbanshi v. State*²⁴ disallowed the defence of involuntary intoxication to the accused under Section 85 of IPC and held that neither since the accused drank liquor at persuasion of his father to alleviate pain the intoxication was neither without his knowledge nor could it be said to be against his will. The Court observed that Section 85 lays down the principle of English law formulated by Baron Parke in *Pearson v R.* wherein it was held that voluntary drunkenness is no excuse for crime. If a party be made drunk by strategies or the fraud of another he is not responsible Likewise this defence may be allowed to a person who had been made drunk by the fraud of another or through ignorance or coercion practiced by his friend or foe.

The Indian case of *Manindra Lal Das v. Emperor*²⁵ is yet another illustration of Court attitude towards the defence of intoxication. In this case the accused a police officer shot a prostitute with whom he was friendly and wounded her. He was charged with the offence of attempt to commit murder under Section 307, IPC and voluntarily causing grievous hurt under Section 326. He set up the defence of intoxication. The trial judge in his direction observed:

“If an act is done in a state of intoxication and that intoxication is voluntarily incurred he is equally liable before the law as if he had done that act in a state of sobriety”.

Conclusion: While all round efforts are being made for prevention and containment of drug abuse in our society, a long journey is yet to be covered before we can draw some satisfaction. The problem having transactional causes and implications shall require Herculean efforts on the part of all the institutions. The empowerment of society through sensitisation and awareness is the only solution to support the efforts of enforcement agencies in containing the proliferation of drug trafficking and drug abuse.

Stringent laws and severe punishments have been able to control the menace to some

²⁴ AIR 1960, MP 242.

²⁵ AIR, 1937 Cal. 432.

extent but still it is one of the most pertinent threats in the progress of any developing country. In this context it becomes necessary to examine the need for a comprehensive legislative change or to suggest from implementation of existing laws with greater precision and concerted effort by all concerned to resolve this issue. Laxity or pathetic attitude from any quarter in dealing with this issue is bound to prove disastrous for the society.

The situation needs remedial measures at once so that rule of law and effectiveness of the criminal justice delivery system are not only maintained but improved.