
ANALYSIS OF THE RELATIONSHIP BETWEEN CRIME AND DRUGS

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ABSTRACT

There could be no denial of the fact that consumption of drugs often leads to the commission of heinous crimes like murder or rape. One who is addicted to these substances is frequently found in the trafficking and smuggling business to pay the cost of the materials. After studying the various research works, it could be sufficiently said that there is a plethora of evidence that supports this theory. Thus, in order to curb this menace at the very root level, a number of legislations came into existence throughout the globe. This includes the Narcotic Drugs and Psychotropic Substances Act, enacted by the Indian Government in 1985. However, the latest trends of increasing crime rates by drug consumers show that the Act hasn't been able to fulfill its goals. Through this paper, the author would analyse the various shortcomings in this Act as well the other legislations dealing with this issue. He would try to find out what are the basic nuances of this problem that the law is unable to tackle. The paper would not be limited to chaos catalysed by hard-core drugs like heroin or cocaine but also extends its study to complications created by intakes of soft drugs like marijuana and hashish. The aim is to provide a few exhaustive suggestions that could be implemented to mitigate the consequences of this relationship. The author accepts the contention that this subject needs a pan-world solution but owing to the need of paper, he would close his investigation only to India so that he may have a proper focus on the work. The paper would conclude with the simple and short-term advice that should be implemented in the near future.

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1. INTRODUCTION

"Since we can't manage to keep crime under control, why just not legitimize that and then tax this out of existence?" said Will Rogers

The drug business has expanded into a source of wealth, comprising cultivation, local trading, and worldwide trafficking.

Drug smuggling is a global problem. For many years, India was primarily a drug transit country, but it is now also a drug-consuming country. The Narcotic Drugs and Psychotropic Substances Act, 1985 was adopted in India to address the problem, however despite the passage of such a strict law with provisions for deterrent penalties and fines, drug trafficking and misuse in India remains intact.³

India, a republic and democratic located in Southern Asia, is the world's seventh biggest country by surface and the world's second most populated country, with over 1.2 billion people. According to The Global Youth Help Desk, India will be the world's youngest nation by 2020, with 64% of its populations in the working age population. The majority of India's youngsters are transitioning from adolescence to adolescence. Adolescence is a transitory era in physical and mental growth, as we all know.⁴ As a result, any substance addiction at this stage is likely to affect normal growth and development that may have long-term consequences.

Career, work satisfaction, friendships, and amusement are all vital aspects of one's life, yet young have practically no chance of getting a respectable career, while unemployment and poverty rates are also high among some of the youth. It is an irrefutable reality that youngsters have played a vital part in the growth of the nation, as evidenced by the fact that this has been the case over the previous three decades.

Unemployment, rising prices, poverty, lack of education, and other concerns have remained prominent among lawmakers during Parliamentary and Assembly elections. Politicians continue to target the majority of the youth population, who are from the middling class. In the next few years, politicians' thoughts will be preoccupied with the ever-growing young population.

³ Bagchi, Debasis, *Narcotics Drugs and Substance Abuse, Solace and Misery* Vol.1-3, (Gyan Publishing House, New Delhi 2005).

⁴ Kumar, P, *Narcotic Drugs and Psychotropic Substances Act, 1985* (Ashoka Law House, Allahabad, India, 1989).

They were always attempting to entice the youth by allocating votes to the youth branches of political parties in order to maintain the younger population with them, and they were mostly vilified as a result. As a result, anti-drug or drug-free-state concerns have gradually been part of election campaigns or politics. Career-oriented, non religious, utterly meaningless, ethically and morally weak, and so on have formed the image of today's young. Some of the worst claims that will be hurled against the youngsters include drug and alcohol misuse, sexual freedom, and lack of sensitivity to societal concerns. “According to the Crime in India Statistics 2014 report published, India has confiscated a total of 1723229.133 kgs plus 1109515.436 liters of narcotics”.⁵

The geographical position of India, or its vicinity to two of the world's most important opium-growing locations, the Golden Crescent (Pakistan, Afghanistan, and Iran) as well as the Golden Triangle (Pakistan, Afghanistan, and Iran), has been cited as a reason for the high number of seizures (Laos, Myanmar and Burma).⁶ The problem of drugs has not just afflicted India; it has also afflicted industrialized countries throughout the world. However, based on a detailed examination of global drug records, it can be concluded that illicit drug cultivation is mostly limited to three geographical locations. All of the illicit opium producing locations were mostly located between the cancer tropics. The temperature and other essential conditions are mild in this zone, making it ideal for opium cultivation.

According to the 2016 World Drug Report, there has been a rapid decline in the amount of opium consumers at the point of law enforcement agencies' tough actions against drug traffickers. On the other hand, it is stated that there has been a shift and growth in the intake of Heroin addicts. From this remark, two conclusions may be drawn: both natural and synthetic drugs are misused in society, and (ii) prohibition legislation simply will have little effect here on the illicit drug trafficking industry.

The scenario is rapidly evolving, since not only organized criminal gangs but also insurgent groups and terrorist organizations have begun to deal in illicit drugs to support their insurgencies.

⁵ Das, Puspita, “Drug Trafficking in India: A Case for Border Security”, Institute of Defence Studies in Asia, June 2012.

⁶ Chin, K, “Into the thick of it: Methodological issues in studying the drug trade in the Golden Triangle”, Asian Criminology 2007.

Both organized crime and illicit drug trafficking have indeed been classified as socio-economic problems that endanger the social fabric and stability of societies and governments, respectively. The law and security conditions in society would always worsen if the socio-political system was damaged, thus legislators established more stringent rules to protect peace and strength. Not only persistent criminals, but also first-time offenders, may have their fundamental liberties violated by some strict laws. Dr. Molly Charles' work, which she explicitly highlighted in her paper, was used to buttress the researcher's claim.⁷

The Organized Criminal Groups (OCGs) provide governments with grounds to subvert the rule of law and degrade individuals' fundamental human rights to freedom and security. OCGs provide a reason for the government gaining vast authority while destroying civil society's rights through the enactment of harsh legislation.

After reviewing the considerable literature, it can be concluded that organized criminals and their unlawful operations have existed since the 1920s, under alternative titles (viz. thugs, dacoits etc). However, “the Maharashtra Control of Organized Crime Act 1999 (MCOCA)” offered the first statutory definition for the word Organized Crime. Organized criminal activity was limited to certain regions and participated in extortion on a small scale.⁸

“Karim Lala's group, Haji Mastan's group, Varadharajan's group, Dawood group, Amar Naik group, Arun Gawli group, Dholakia group, Chota Rajan group, Chota Shakeel group, and Abu Salem group are among the organized criminal groups that evolved and established themselves in Mumbai from the 1960s to the late 1990s”.

1.1. SIGNIFICANCE OF THE STUDY

Organized criminal gangs ran a variety of illegal operations, including gambling, extortion, protection rackets, bootleggers, black marketing, prostitutes, human and weapons trafficking, and drug trafficking. Because of the large profit margins, drug trafficking has remained a financially feasible activity for Organized Criminal Groups. One kg of heroin may be made from ten kilos of opium sourced from within the nation. Because of the hazards and fierce competition, only a few people enter the sector.

⁷ ibid

⁸ Singh, Kamaljeet and Vikram Singh, “Transnational Organized crime: The Indian Perspective”, Civil and Military Law Journal, vol. 47 number 3, 2011.

Today, the roots of organized crime and the issue of drug trafficking are so deep that practically every country is concerned about the situation. At both the international and national levels, continuous attempts were made. At various times, a number of international treaties pertaining to illicit substances, as well as organized criminals, have been convicted²⁶. India has passed two distinct laws, the Narcotic Drugs and Psychotropic Substances Act 1985 and the Maharashtra Control of Organized Crime Act 1999²⁷, to meet its international obligations and to combat nefarious activities. Both Acts have tough restrictions and strong teeth to combat or control organized crime, particularly drug trafficking.⁹

The prosecution and sentencing of socio-offenders were the topic of the Law Commission of India's 47th report. According to the Law Commission of India's report, it has mostly dealt with socio-economic offenses. Detailed examination of criminal culpability, corporate offenses, and the applicability of reformation concepts including such probation and amnesty. The limitations limiting the court's ability to take cognizance of the issue were also examined in the report. Not only has the report addressed the issues of investigation, prosecution, trial, and punishment in relation to the socio-economic offenses, but it has also addressed the issues of inquiry, prosecutorial, court hearing, and punishment.¹⁰

The subject of expedited investigation and prosecution of criminal proceedings against powerful public figures was mentioned in the Law Commission's 239th report.¹¹

1.2. STATEMENT OF PROBLEM

It is clear from the following research that mankind's growth process is an essential phase of progressive transformation. This period has also had a detrimental influence. Typically, urbanization, industrialization, and modernization are blamed for spreading the seeds of numerous crimes and organized criminal enterprises (particularly drug trafficking). Organized criminals begin their illegal activity shortly once prohibition is imposed. Organized criminals, in addition to legal governments, administer their own unlawful governments in their various regions. As a result, a research study is required to determine why and how criminal gangs and drug traffickers arise, expand, and function in India's quickly rising cities. The ongoing inefficiency of acts and regulations that are enacted in response to the situation but are not

⁹ Dutta, R.K, "Genesis of Organised crime in India, Its International Ramifications and Its Hold over the society, politics and the economy of the country", CBI Bulletin, March,13, 2022.

¹⁰ Dikshit, R.C, "Organised Crime-The Concept and The Characteristics", CBI Bulletin, March 2022.

¹¹ Law Commission 239th Report.

successfully executed, as well as the different flaws in statutes that have not yet been modified to reflect changing circumstances.

1.3. LITERATURE REVIEW

There are several research and assessments on the international illicit drug trade, but only a handful are empirical and local in scope. As a consequence, such research and assessments on the sale, use, and regulation of banned drugs have not been able to present us with a practical answer, and as a result, we find that the problem persists despite significant efforts from the top down to the national level. Even the United States of America's war on drugs, which began in 1968 and cost a vast amount of money, has failed. In reality, after understanding the ground level realities that lay behind such difficulties, the remedy may be found at the local level.

Ms. Debajani Nayak (2016) performed a non-experimental descriptive research to measure adolescent substance abuse knowledge and practice. It was shown that a greater majority of teenage guys used narcotics to relieve tension and anxiety. Students were influenced to use drugs and alcohol by their parents, television exposure, or peer pressure. The majority of students were firmly in favor of drug addiction prevention and treatment. For such groups, healthcare education is a vital method for preventing and controlling drug usage. When teenagers get addicted to drugs, parents, instructors, and peer groups play a significant role in counseling and educating them.¹²

A British assessment of marijuana use in India was included in the Indian hemp Drugs Commission Report (1894).¹³ The commission was established on March 2, 1893. The Commission reached the following conclusions in Chapter XVIII, paragraph 740 of the Commission report.

D. Mohan, Professor and Head of the Department of Psychiatry, All India Institute of Medical Sciences, New Delhi, revealed that 49 percent of 2032 boys and 840 girl students used painkillers, 12.7 percent alcohol, 6.4 percent tobacco, tranquilizers 3.5 percent cannabis, 04 percent, and amphetamines, barbiturates LSD, opium cocaine, and pethadine 1 percent only.¹⁴

¹² Ms. Debajani Nayak (2016) Debajani Nayak. Knowledge and practice of substance abuse among the adolescent group - A descriptive study. Int. J. Nur. Edu. and Research 2016.

¹³ Indian hemp Drugs Commission Report (1894)

¹⁴ D. Mohan, Professor and Head of the Department of Psychiatry,

Masihi (1998), Rao (1998), and Siddiqui (1998) gave vivid instances of the cultural underpinnings of drug use in modern India in their studies and reports on the application of various drugs (opium and cannabis). According to historical evidence, drug use was granted cultural approval in various sections of the country at various times.¹⁵

Kumar P, Basu D. (1998), "Substance abuse by medical students and doctors"*, Drug Addiction and Treatment Centre, Department of Psychiatry, Postgraduate Institute of Medical Education and Research, Chandigarh, found that doctors were vulnerable to substance abuse/addiction because they had easy access to the substances of abuse.¹⁶

1.4. RESEARCH QUESTIONS

1. How far India is successful in tackling issue of organized criminal syndicates operations which possess a severe damage to the society?
2. In India, there is a lack of governmental will and commitment to regulate banned organized criminal gangs and syndicates moreover, familiarity with the specific areas of action of organized crime syndicates in general, as well as the many features of narcotic narcotics, as well as what are their important aspects?

1.5. OBJECTIVES OF THE STUDY

The current study's aims are as follows:

1. To follow the progression of organized crime and drug trafficking.
2. To investigate the factors that have contributed to the rise of organized crime and its impact on India.

1.6. HYPOTHESIS

A research hypothesis is a presumption about what a researcher expects to happen in his or her investigation. Following the development of a statement, the researcher searches for logical reasons to evaluate it against previously produced assertions. Either the assertion is tested and proven, or it is not tested and proven. In summary, a hypothesis is a conjecture or proposed

¹⁵ Masihi (1998), Rao (1998), and Siddiqui (1998)

¹⁶ Kumar P, Basu D. (1998),

explanation developed on the basis of little data as a guideline for future inquiry, according to the Oxford definition. In this investigation, the following hypotheses were proposed:

1. Organized crime and drug smuggling have existed since antiquity.
2. Organized criminal syndicates get assistance or favor from law enforcement agencies, politicians, and the courts.
3. There is a lack of efficient coordination among some of the different agencies.
4. Corruption among officials of the criminal justice system's administration continues to be the primary cause for the inability to prosecute members and supporters of organized crime groups.
5. Organized criminals conceal their illegal activities, particularly drug trafficking, behind respectable enterprises.
6. Organized criminal syndicates' operations pose a severe danger to India's domestic security since money produced from drug trafficking is utilised by insurgent groups and terrorist organizations.
7. In India, there is a lack of governmental will and commitment to regulate banned organized criminal gangs and syndicates.
8. Illegal organized criminal activities, particularly drug trafficking, will have a significant socio - economic and political influence.
9. The executive's ability to function is harmed by the judiciary's inconsistent execution of legislation.
10. Organized criminal activity does not stay inside the borders of a single country; it becomes international.

The preceding hypotheses will be tested to see whether they can be proven or disproven based on the findings of this inquiry.

1.7. SCOPE AND LIMITATION OF THE STUDY

To put it another way, criminal gangs and drug smuggling is a huge topic with a lot of different parts and issues to examine. As a result, a solitary researcher without even a team would be unable to cover the whole scope of this phenomena. Due to the complexity of the situation, the

wide-ranging operations of organized crime syndicates, the nation's huge continental area, and a lack of reliable data, it is difficult to cover all or even significant organized crime syndicates functioning in the country in the current research.

The current research is primarily focused on the structure and dynamics of organized crime groups in Mumbai and Delhi, as well as other cities.

The scope of the current research, as far as drug traffickers are concerned, has been broadened beyond members of organized crime groups who were previously restricted to India's borders. Suggestions from different respondents actually belonged to other classifications, such as representatives of Law Enforcement Agencies, Legal System, Politicians, Cross Section of the Society, and Workforce combating cases under NDPS Act recommendations made into numerous global reports, have been considered to make this research more beneficial and impactful.

1.8. RESEARCH METHODOLOGY

The primary goal of this study is to develop a viable research design. The current investigation is extremely sensitive and tries to uncover organized criminal behavior in India, particularly drug trafficking. When it came to selecting a proper research approach for this study, a slew of issues arose. Although there have been studies on this topic, there has yet to be a genuine and in-depth research on organized criminals in the Indian setting, which might aid in the development of an appropriate research design. The study is theoretical and doctrinal, based on earlier findings. Efforts were made to get primary data from the agencies and officers tasked with combating drug trafficking as a type of organized crime.

To better comprehend the problem of organized crime, descriptive and explanatory research has been employed; descriptive because it aids in understanding organized crime, which we know little about, and explanatory because it explains why it occurs. The research also includes a content analysis of old records, journals, government documents, conferences, law commission reports, law reporters, reference materials, scientific papers in both articles and books and e-journals, magazine articles, series of documentaries videos online, newspaper articles, national parliament debates, and so on. The issue of drug trafficking is being investigated using an interdisciplinary perspective. The research is based on both primary and secondary data.

1.9. RESEARCH GAP

The COVID-19 pandemic has had a variety of effects throughout the world. The virus has had an influence on society and occupations, as well as their lifestyles. This is why the researcher was unable to obtain firsthand data and integrate empirical research in his study because of a research gap in the paper.

1.10. RESEARCH TOOLS

Docear for material organization, SpellCheckPlus for grammar and phrase corrections, MindMup for graphically portraying thought and ideas, Bibme for adding citations, and Turnitin for plagiarism reporting were the most widely used tools in this study

2. THE DRUG MAFIA IN INDIA: FROM TRANSIT TO ABUSE

Cannabis products such as bhang, ganja, charas, marijuana, hashish, and opium have a long history in India. However, these compounds were almost never utilized as medications in India. Cannabis leaves were extensively utilized as a psychoactive plant, especially during joyous events.¹⁷ There were few cases of widespread drug abuse in the past, but presently India's truth of the matter has just about definitely transformed, and India became a target of drug trafficking both in ways: a massive percentage of Indians, especially youths, are becoming drug addicts, and so this amount is regrettably increasing from year to year; and India became a drug transport hub.

“Drug trafficking has found a new home in Delhi. In a massive investigation in July 1988, the Delhi police named 32 international drug kingpins, notably Bureaux Bhiriyan, Jindo Malhotra, Aziz Ahmad, Narendra Pal Singh, and others. Bhiriyan is claimed to have established strong ties in Pakistan. He is said to acquire most of his supplies from the Golden Triangle. For the past two decades, the international drug mafia has utilized India as a drug transit zone. In 1971, the United States warned India suspected Nissiem Zanieve of Philadelphia's Lizard Imports were trafficking marijuana and hashish into the United States through India. The intelligence was authentic, and the Indian authorities would have every reason to accept it”.¹⁸

¹⁷ Dutta, R.K., “Genesis of Organised crime in India, Its International Ramifications and Its Hold over the society, politics and the economy of the country”, CBI Bulletin, March 2022.

¹⁸ Kethineni, S, R. Fennick, and L. A. Guyon, “Drug use in India: Historical traditions and current problems”, International Journal of Comparative and Applied Criminal Justice, 1995

The Indian drug mafia had grown pretty powerful. It is sometimes discovered to be more powerful than the Indian police. It has been successful in obtaining the most up-to-date armaments for its defense, as well as forming an unholy alliance with politicians and police.¹⁹ "With massive resources of men, money, and brute strength, and with the support of their fast rising political influence, Mafia leaders have already been striving to exert control over lawmakers and the police," says Madhu Mehta, coordinator of the Hindustani Andolan. They are acquiring bureaucrats and have made friends with members of the legal profession and the court. A number of them have grown so strong that they no longer require political protection. In fact, in a number of significant Indian states, they are effectively operating parallel governments in a number of cities.²⁰

India is the nation's biggest licit opium producer and the only country that is permitted to employ the gum technique of opium manufacturing for medicinal applications. This type of manufacturing is suited for India's labor-intensive economy, but it is inherently more difficult to police in order to prevent diversion. It further stated that cannabinoid compounds and other banned narcotics, and also licit active pharmaceutical ingredients and prescription medications including psychotropic compounds, are diverted. As a traditional supplier of the opium poppy, India must combat the issue of opium migration from legal to illegal routes.

3. PSYCHOTROPIC SUBSTANCES AND NARCOTIC DRUGS ACT,1985

The International Day Against Drug Abuse and Illicit Trafficking is observed every year on June 26. The day acts as a reminder to work toward the aim of creating a drug-free international society. The United Nations Office on Drugs and Crime has chosen a theme for the campaign every year since 2000. The topic for last year, i.e. 2016, was "Listen First," which is a program to strengthen support for science-based drug prevention and therefore a beneficial expenditure in the well-being of children and young people, their households, and their societies.²¹

On the celebration of the 'International Day against Drug Misuse and Illicit Trafficking,' even India's first citizen, Shri Pranab Mukherjee, declares that two vices, drinking and drug abuse, have wreaked havoc in our country's and the world's social lives. Numerous studies have shown

¹⁹ Nanjapa, V. (2011), India- Pak talks: Why emphasis on drug smuggling, <http://www.rediff.com/new>, last accessed on 13 March 2022.

²⁰ Chattoraj, B.N., "Transnational Organised Crime: Prevention and Control Strategies", The Indian Journal of Criminology and Criminalistics, Vol. XXVI Issue No.3, Sept.-Dec. 2005.

²¹ Gosden, A.A. Blaze, "Drug Abuse", The Police Journal, Vol. LVII No.3, April-June 1984. Jagadamba, G

that terrorism, smuggling, and drug trafficking are all linked, according to the President. Fighting all three will be challenging until these ties are severed.²² Though the President's assertion that numerous research have been undertaken on the drug problem cannot be denied, there are many other shades of grey where scientific, sociological, or clinical investigations are necessary to achieve a tangible answer to the drug trafficking problem.

As per Dr. Pushpita Das, India is currently a transit point for heroine and hashish formed in the 'Golden Triangle' and 'Golden Crescent,' rather than the end user. For the past three decades, as a result, lawmakers adopted the Narcotic Drugs and Psychotropic Substances Act 1985 (NDPS Act) to fasten the shackle screw and bolt and achieve the method described in Article 47 of the Indian Constitution.²³ It was then changed numerous times, with the most recent revision occurring in 2014. This Act outlaws the creation, manufacturing, trade, consumption, and distribution of narcotic narcotics and psychotropic substances, save for medicinal or research purposes.

It is a gratitude for the opportunity to state that the concept on which three international conventions [the Single Convention on Narcotic Drugs, 1961, the Convention on Psychotropic Substances, 1971, and the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988] were founded had already been given place and enunciated in the Indian Constitution two decades before. Article 47 forbids or restricts the use of medications and intoxicating beverages that are harmful to one's health, but does not prohibit their use for therapeutic purposes.²⁴ Though India is today isolated or taken for granted by UNODC authorities in terms of drug control, Article 47 of the Constitution plainly shows that Indian Constitution authors were fully aware of the repercussions of drug addiction.

Addiction to drugs has a cascade impact on one's own health and life, as well as the lives and wellbeing of others, a state's economy, a rise in crime, and other societal issues.

Furthermore, the National Policy on Narcotic Drugs and Psychotropic Substances is based on the Directive Principles of State Policy, which are found in Part IV, Article 47 of the Indian Constitution²⁵, and instruct the state to work toward the prohibition of intoxicating drugs that

²² Kaur, Kawal Deep, "Balancing Act: An Analysis of India's National Narcotic Policy", Asian Journal of Social Sciences and Humanities, Vol. 2 No.1, March 2022.

²³ Chalk, P, "Southeast Asia and the Golden Triangle's heroin trade: Threat and response", Studies in Conflict & Terrorism 2000

²⁴ Mittal, Sandeep, "A strategical road map for prevention of drug trafficking through internet", The Indian Journal of Criminology and Criminalistics, Vol. XXXIII, July- Dec. 2012.

²⁵ Article 47 of the Indian Constitution

are dangerous for health, except for medicinal reasons. International treaties on the issue also shape the government's policy on the subject, which is based on this constitutional clause. Even Prime Minister Narendra Modi mentioned it in his 'Mann Ki Baat' radio broadcast.

That is a difficult notion that will necessitate overcoming a number of challenges, particularly in the state (Punjab) wherein narcotic usage is the most severe.

Another crucial factor to consider is that the drug problem is no longer only a legal issue; it has evolved into a socio-legal, financial, psychological, or political issue. As a result, a multidisciplinary strategy is essential to address this critical problem. Drug misuse is intimately linked to socioeconomic developments such as commercialization, urbanization, sparsely populated, the relaxing of informal social control, and an increase in life pressures and tensions. Previously, drug trafficking was mostly connected with organized criminal operations, but today, political players, terrorists, and military organizations all play a part in the spread of the drug trade.

Drug trafficking has evolved into a huge industry. According to the United Nations Office on Drugs and Crime, the worldwide illicit trade encompassing the planting, manufacture, dispersion, and selling of substances was approximated to be a \$32 billion industry in 2012. However, an unconscionable number of drug users globally continue to die prematurely, with just an approximate 187,100 drug-related mortalities in 2013, and there are currently 32. million opiate users worldwide. It is quite disappointing that India alone has kept track of alcohol addicts and has failed to take drug abusers seriously. There is little and fragmented data on drug abusers, which is useless. Because this dispute has no end, I will begin my discussion on the Narcotic Drugs and Psychotropic Substances Act by summarizing all of my points (NDPS Act).²⁶

The Ministry of Health and Family Welfare, as well as the Ministry of Home Affairs, have been working hard to overcome the threat posed by drug trafficking. All relevant ministries have joined forces to combat drug trafficking and misuse. The Juvenile Justice (Care and Protection of Children) Act, 2015 (Section 77 and 78 of the newly updated JJ Act 2015) are the legislation that deal with crime and other psychoactive drugs.²⁷

²⁶ Jai, Janak Raj, "Terrorism, Drug Trafficking and Mafia", Amity Law Review Vol.3 Part 1, January- June, 2002.

²⁷ Juvenile Justice (Care and Protection of Children) Act, 2015

3.1 OFFENSES AND PENALIZATION

Even general legislation (Indian Penal Code) has provisions, such as Ss.274, 275, and 276 that penalise people who alter the nature of a medicine used for medicinal purposes.²⁸

The Opium Act of 1857, The Opium Act of 1878, and The Dangerous Narcotics Act of 1930 were used to exert statutory control over narcotic drugs prior to the Act of 1985. Following independence, a criminal administration think tank highlighted that legislation combating illicit drugs and substance use lacked harsh punishments and merely empowered police officers to take action against wrongdoers, among other things. Apart from these flaws, the most essential aspect of these statutes that was missing was confiscation of property. Although the Congress had already passed the Forfeiture of Property Act in 1976 to confiscate smugglers' unlawfully acquired property.

4. THE NDPS ACT

The Central Government established the Narcotics Control Bureau (NCB) in 1986. It is the highest coordinating agency, reporting directly to the Central Government and working under its supervision and direction. NCB was founded with the objective of coordinating the activities of various government agencies involved in drug law enforcement, fulfilling India's obligations to implement various international conventions, and working in collaboration with international institutions and foreign governments to prevent and inhibit illicit narcotic drug and psychotropic substance smuggling. NCB's current headquarters are in Delhi, and it operates through a network of regional offices, zones, and sub-zones around the country.

The zonal and sub-zonal offices acquire information on narcotic drug and psychotropic substance seizures, investigate trends and methods, gather and distribute intelligence, and collaborate closely with Customs, State Police, and other law enforcement authorities. Returning to the issue, a simple study of the NDPS Act reveals that the legislature is concerned with apprehending not just drug traffickers, but also those who harbor them and consumers of narcotics and psychotropic substances.²⁹

²⁸ Ss.274, 275, and 276 of Indian Penal Code, 1860

²⁹ Sharma, Pankaj, "Safeguard under Section 50 NDPS Act regarding 'Search of a Person' whether meaningful and effective?" Criminal Law Journal, 2009.

When we examine the scheme or design of the NDPS Act, we find that it appears to be a complete law. This is because it virtually covers or accomplishes all domestic and international goals. However one objective is enshrined in Article 47 of the Indian Constitution, which states that "the State shall regard the raising of the standard of nutrients and the benchmark of living of its citizens, as well as the promotion of good health, as being among the its main responsibilities, and, in particular, the State shall continue to strive to bring about prohibition of the intake of intoxicating drinks and drugs that are harmful to health, with the exception of medicinal reasons".³⁰

In India, drug legislation is divided into two categories: licensing and prohibition. An unlawful conduct would be the provision of authority to exercise a specific right without such authorization, whereas prohibition entails the placement of a legal constraint. In today's society, licenses and prohibitions have become key tools or weapons in the hands of governments to manage a wide variety of continuing human sectors such as production, health care, agriculture, and commercial services, among others. Although not all tasks involve a license, many activities do require a license before they can begin operations. Before anybody may cultivate an opium plantation, they must first get a license from an opium production and manufacturing unit. Before they could start running their units, pharmaceutical companies needed a license.³¹

The NDPS Act is an excellent example of law that has both licensing and restriction provisions. On the one hand, the Act grants permission to develop opium plantations, while on the other, it penalizes individuals who divert genuine opium production away from the farms or consume narcotic narcotics and psychotropic chemicals.

The purpose of the NDPS Act is to monitor, regulate, and limit the threat of drug addiction in general, and in children in particular. To achieve this goal, Section 4 of the Act authorizes the Central Government to adopt measures to prevent and combat narcotic drug misuse and unlawful trafficking.

In the case of *Tofan Singh v. The State of Tamil Nadu*³², the apex court of India on 29 October 2020, held that the officers with the power of Section 53 of "The Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS)", will be considered as "police officers". Further the Supreme Court while interpreting the meaning of section 25 of the Evidence Act,

³⁰ Sharma, M.L., "The Organised Crime in India Problems and Perspectives", CBI Bulletin, August 1999.

³¹ Sen, Sankar, "Drug Menace in India", CBI Bulletin, Vol. IV, No. 9-11, September-November, 1998.

³² *Tofan Singh v. The State Of Tamil Nadu*, (2021) 4 SCC 1

mentioned that, "within the meaning of Section 25 of the Evidence Act and, therefore, any confessional statement made before them would attract the bar of Section 25 of the Evidence Act and cannot be taken into account to convict an accused".

4.1 THE NATIONAL FUND FOR THE CONTROL OF DRUG ABUSE

The National Fund for the Control of Drug Abuse was established under Section 7-A of the Act to ensure the smooth operation of the committees, bureaus, and other administrative entities established under the Act. Under Section 7-B of the Act, additional accounts must be kept, and at the conclusion of each fiscal year, a notice in the official gazette detailing the activities sponsored under Section 7-A must be published.³³

Section 8 of the Act is founded on the maxim *nemo potest mutare consilium suum in alterius injuriam*, which states that no one has the authority to change his thoughts in order to cause harm to others. Further, legislation should be understood prospectively rather than retrospectively, so that vested interests are preserved.

4.2 THE NDPS ACT'S OFFENSES AND PENALTIES

The Central Government is empowered under Sections 9 to 14 of the Act to allow, control, and govern the agriculture, manufacturing, production, exports and imports, and grant of licenses for opiates, opium poppy, illicit substances and psychotropic drugs cannabis, and any other psychoactive substances. In addition, the Act's Sections 15 to 40 deal with offenses and punishments. On a cursory reading of the Sections, it is clear that legislators were totally dedicated to the International Conventions, as evidenced by the enactment of such strict legislation, which includes the mandatory death sentence.³⁴ Even (Amended) Act 9 of 2001 establishes a graduated structure of punishment, with the severity of the penalty varied according to the amount of drug or substance implicated in a case.

The Act provides for a minimum of 10 years and a maximum of 20 years of imprisonment, as well as a minimum fine of one lakh rupees and a maximum fine of 2 lakh rupees, for violating the Act's provisions. Although the Act also provides for a 6 month minimum sentence or a fine in circumstances where anybody is found in unlawful possession of a minor quantity of narcotic narcotics or psychotropic substances for personal usage. It is also unlawful under the Act to

³³ Section 7-A and 7-B of the NDPS Act

³⁴ Singh, Kamaljeet and Vikram Singh, "Transnational Organised crime: The Indian Perspective", Civil and Military Law Journal, vol. 47 number 3, 2011.

harbor offenders and finance illicit trafficking, as well as to attempt, complicity, conspiracy, and preparations to conduct an offence and is punishable under Chapter IV of the Act.

In the case of *Indian Harm Reduction Network v Union of India*, the Supreme Court held that section 31 A is unconstitutional and that it should be construed as a directory by reading down the expression shall be punishable by the death penalty as may be punishable by the death penalty in relation to the offences covered by section 31 A of the Act. In the sixty-fifth year of the Republic of India, Parliament amended Section 31 A in response to the Bombay High Court's decision. The words "shall be punished with death" have been replaced with "shall be punished with a punishment not less than the punishment prescribed in Section 31 or with death."³⁵

The legislature has consistently played a key role in enforcing the international commitment to combat both organized crime and the drug threat. Both the MCOCA and the NDPS Act have indeed been changed several times since its establishment, and both are now agencies with expanded powers. The judiciary has performed a vital role in the proper execution of the Acts. The Supreme Court and various High Courts of India have issued judgments on various occasions, attempting to close loopholes in the relevant Acts so that society is not subjected to faulty investigations, arbitrary detention, seizure of property, phone tapping, rejection of bail, and other violations of the statutory language. Furthermore, when crafting laws/amendments, the legislature has drawn cues from court observations.

4.3 IN BAIL MATTER, WHAT ROLE DOES THE SUPREME COURT PLAY?

As previously indicated, the Apex Court has the authority to consider a case under its Article 136 jurisdiction in order to prevent abuse of power and protect the rule of the legal system. As a result, petitioners who were denied bail and those who were granted bail but the prosecution objected to it all had the right to appeal or seek the Supreme Court under Article 136.³⁶ In the current research, the Supreme Court evaluated fifteen cases involving bail and issued the following judgments/orders: in one case, the Supreme Court granted bail, and in another case, the High Court ruling was thrown aside and in two cases, accused were freed owing to procedural errors, even though they had previously served eight years in prison, the volume of

³⁵ Sinha, Minakshi, "An overview of Transnational Organised Crime: Constraints and Solution", *The Indian Journal of Criminology and Criminalistics* Vol. XXVII Jan-April 2007

³⁶ Article 136 (Special Leave Petition)

opium was smaller or for individual use exclusively, and they were protected by S. 79 of the NDPS Act, among other things.

It is completely obvious from the speech of the Act and its interpretation by the courts that, in order to combat the threat of illicit substances infiltrating Indian society, law has stated clearly that anyone accused of violating the NDPS Act must not be granted bail during their trial; this is a mandatory condition set forth in section 37 of the Act. When granting the accused's bail application, subordinate courts shall not present any legitimate justification to follow the aforementioned command. Instead of seeking to take a comprehensive picture of the detrimental socio-economic, repercussions, and health concerns that would follow unlawfully trafficking in deadly narcotics, the Supreme Supreme court issued observations on the subject.

4.4 PROCEDURE REQUIREMENT UNDER SECTION 50 OF THE NDPS ACT

After reviewing the text of the various judgements, the question that must be examined is whether Section 50 of the NDPS Act is a required obligation or not. The answer to this issue is dependent on the details of each instance, and there is no such thing as a broad generalization or a one-size-fits-all formula.

The Supreme Court has expressed conflicting opinions on Section 50 of the NDPS Act, first with regard to its interpretation and then with reference to the dicta given down by the constitutional court in *State of Punjab v. Baldev Singh*.³⁷ The question that must be asked prior to actually going through this process is whether the concerned law enforcement officer should simply ask the suspect regardless of whether he wants to be manufactured before a Magistrate or Gazetted Officer for the objective of search or whether the accused should be informed of his legal rights in this regard.

It was repeated that the harsher the punishment, the more care must be taken to ensure that all of the statute's protections are strictly implemented. If the empowered officer refuses to fulfill the Act's obligations, the prosecution will bear the penalties (society will suffer).³⁸ If the courts have been seen to tolerate conduct of lawlessness committed by the investigating agency throughout search procedures, the validity of the trial system may be questioned. This might

³⁷ (1994 (3) SCC 299)

³⁸ Sharma, M.L, "The Organsied Crime in India Problems and Perspectives", CBI Bulletin, August 1999.

weaken respect for the law and have the unintended consequence of jeopardizing the judicial process.

5 SUGGESTIONS

The Supreme Court correctly observed that "in a homicide investigation, the accused murder one or two people," whereas "those who come to terms in narcotic drugs are influential in causing the death or trying to inflict death-blow to a number of young young victims, who seem to be defenceless; it has negative impacts and fatal impact on society". Following are the recommendations that the researcher believes would assist to enhance the administration of the criminal justice system after reviewing legal aspects and court pronouncements:

India's strategic location has proven to be a plus factor for illegal drug traffickers; consequently, in order to regulate illicit trafficking as well as all activities from another side of the border states, the Indian government needs maintain a high level of monitoring.

The Indian Constitution ensures that both public and private basic rights are protected. As a result, it is worthwhile to advise that, in order to maintain a wider public interest, criminal opium poppy production and wild cannabis growth be detected and exterminated. However, legislators must first come up with a realistic solution to ensure that artisans in hilly areas do not lose their livelihood. Currently, the NDPS Act and Parliament are both quiet on these issues, thus they must be addressed.

Acts regulating and controlling drug activities needed to be reconsidered and amended because almost all of them (the Information Technology Act, the NDPS Act, the Drugs and Cosmetics Act, The Pharmacy Act, the Drug and Magic Remedies Act, and the Medicinal and Toilet Preparation Act) are silent on pharmaceutical abuse and the global network of online pharmacies.

Efforts should be focused on demand reduction strategies among disadvantaged populations, as well as countermeasures for smuggling drugs, as well as the smuggling of guns and explosives, which encourage subversive acts. Drug manufacture is carried out illegally throughout the country.

When doing their duties, law enforcement officers must remember to differentiate between their professional duties and personal bias. They should also refrain from showing favoritism in the name of fairness or doing justice.

The various national and state governments should establish and amend awareness programs linked to health behaviors and the harmful effects of drug misuse on a regular basis. The centrally supported Demand and Supply reduction programs should be given special attention. Furthermore, our country's kids should be involved in and devoted to such programs. To keep the youth occupied and productive, more liberal education policies and minimum time span employment guarantees should be made accessible.

6 CONCLUSION

Drug addiction and illegal drug trafficking have reached such frightening levels throughout the world that they have harmed not just an individual's health but nearly the entire planet. As a result, efforts have been undertaken at both the international and national levels. It is important to highlight that efforts to control drugs have already been going on for a long period of time, but the very first international convention to regulate and control the distribution of opium as well as other narcotics was assembled in 1912. Over 10 international treaties and protocols have indeed been assembled since 1912 to fight drug traffickers and implement effective measures to remediate substance abusers.

It's also been discovered that organized criminals coexist with legal governments in running parallel regimes. Unlike terrorists and local thugs, organized crime never clashes with the state's law enforcement apparatus. They collaborate with the genuine business community on the one hand, and bureaucrats and politicians on the other.

Under the pretense of respectable firms, organized criminals amass vast amounts of illegitimate riches, which has a significant influence on a country's economy.

Organized criminals have been proved to have a negative impact on the nation's economic and social fabric, as well as constituting a significant threat to future generations. Drug misuse is a subtle evil that functions in secret, and it is frequently only discovered by others after the user has gone beyond the end of the road. Drug addiction is caused by a variety of circumstances including experimentation, curiosity, a terrible environment, a lack of parental care, a lack of discipline, and an exciting experience. Drug addiction may have major consequences not just for the body but also for the psyche, according to the Law Commission's findings. Other nations are fighting the drug war on our soil using our soldiers, money, and resources.