

“The Narcotic Drugs and Psychotropic Substances Act, 1985 and Terrorism”

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Introduction

In an era where countries compete with each other solely on the basis of trades and economic acquirements, it is therefore not a rocket science to predict that private individuals would also have a desire to reach monetary heights. For achieving monetary ambitions, certain individuals end up committing acts which are generally termed as crimes, not all of them have motives in harming a nation but they certainly assist groups which have ‘destruction’ as their sole motto. People are inclined towards consuming substances because such substances have addictive ingredients and thus makes a person consume them for more than one time. According to the The Narcotic Drugs and Psychotropic Substances Act, 1985 ‘addict’ means a person who has dependence on any narcotic drug or psychotropic substances¹. Such an addict thereafter becomes a fund generating source for the terrorist organisations.

Government of India on 16th September, 1985 enacted The Narcotic Drugs and Psychotropic Substances Act, 1985 to consolidate and amend the law relating to narcotic drugs, to make stringent provisions for the control and regulation of operations relating to narcotic drugs² and psychotropic substances, to provide for the forfeiture of property derived from, or used in, illicit traffic in narcotic drugs and psychotropic substances, to implement the provisions of the International Convention on Narcotic Drugs and Psychotropic Substances and for matters connected therewith.

Terrorism finds a very different way of entering the minds of vulnerable, it does so by using drugs as a main agent. For putting an end to terrorism, it is mandatory to eradicate drug trafficking. On March 17 of 1986 Federal Government thus initiated The Narcotics Control Bureau(NCB), which was instigated to completely initiate The Narcotic Drugs and Psychotropic Substances Act, 1985 and also to eradicate its transgression with the help of Prevention of Illicit Trafficking in Narcotic Drugs and Psychotropic Substances Act, 1988. Advent of modern technology has helped to identify and catch the trafficker and also simultaneously helped to reduce the drug menace as well, but all these has not being impressive enough to paralyse the underground drug world which is a tower of strength for terrorist organisations. Some parts of Narcotics world need a colossal reform, since there are always innocent lives at stake and its the responsibility of International and National authorities to put restraint on such activities.

United States of America has approximately 51.2 million adults aged 18 years or older (22.5 percent of adults) have experienced one or more Mental and Substance Usage Disorder in the

¹ The Narcotic Drugs and Psychotropic Substances Act, 1985, Section 2(i), available at https://eurasiangroup.org/files/documents/India_law/NDPS_india.pdf, accessed on 4th February, 2020.

² Section 2 (xi) of Narcotic Drugs and Psychotropic Substances Act, 1985.

past 12 months. Additionally, a roughly calculated 8.4 million adults of United States suffer from co-occurring Mental and Substance Use Disorder, that also means that they are also affected by mental disorders such as panic disorder and clinical disorders, as well as by a Substance Use Disorder such as alcohol abuse or illicit drug dependence³. This is where the main dilemma occurs, since people who are extremely addicted to using drugs are the ones who end up getting mental disorders, these mental disorders make certain individuals to conduct an act which intrinsically damages the social stability.

3. Reforms Required in the Act

In India, Cannabis⁴ has had a long history, it dates back to the Vedic times and it was being legally sold until 1985. In 1985 on the 14th of November, The Narcotic Drugs and Psychotropic Substances Act, 1985 Act was enacted, its enactment itself has a controversy attached to it. International Convention⁵ on Narcotic Drugs was held in 1961 and was specifically proposed by United States of America. India unlike others, was resistant to the convention. The convention was set on the decision and therefore gave India a time duration of 25 years to ban Cannabis in its all forms except for the fact that it could only be used for scientific and medicinal ambitions. The convention also ensured that the drug shouldn't be used for any other activities, which are not allowed and may provoke the guidelines of the rules given in the Single Convention. India back at that time was left vulnerable and was therefore pressurised in accepting and obligating to the international forum. Thus the long drawn history of cannabis in India came to an end, since the government totally banned the usage or consumption of cannabis.

This history isn't just a story but its a reality that made an act underdeveloped. The harsh and sudden decision taken in the 1980s was prone to mistakes. It also clarifies that this act was only enacted because the government was under extreme international pressure. The act combined soft drugs like *bhang* and *hashish* with hard drugs like cocaine and heroin. This also helped members of the drug world to earn huge profits because this act ultimately made the prices of these drugs sky-rocketed.

3.1 Reforms in The Narcotic Drugs and Psychotropic Substances Act, 1985

The Narcotic Drugs and Psychotropic Substances Act, 1985, is an act which sternly requires some imperative reforms, since the act to a great degree focuses on eradicating domestic network of the drug world. It also has its main hand in the name of Narcotics Control Bureau.

³Center for Behavioral Health Statistics and Quality. 2013 National Survey on Drug Use and Health: Mental Health Detailed Tables. Rockville, MD: Substance Abuse and Mental Health Services Administration; 2014.

⁴ The Narcotic Drugs and Psychotropic Substances Act, 1985 cannabis is defined in Section 2 (iii) of the act. Cannabis (hemp) is defined as:(a) Charas - a separated resin, in whatever form, whether crude or purified; obtained from the cannabis plant, which also includes the concentrated preparation and resin known as hashish oil or liquid hashish; (b) ganja - the flowering or fruiting tops of the cannabis plant, (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated; and (c) any mixture, with or without any natural material, of any of the above forms of cannabis or any drink prepared therefrom. Available at https://eurasiangroup.org/files/documents/India_law/NDPS_india.pdf, accessed on 4th February, 2020.

⁵ The Narcotic Drugs and Psychotropic Substances Act, 1985, section 2(ix) International Convention" means (a) the Single Convention on Narcotic Drugs, 1961 adopted by the United Nations Conference at New York in March, 1961, available at https://eurasiangroup.org/files/documents/India_law/NDPS_india.pdf, accessed on 4th February 2020.

Sixty years ago World declared war on drugs and so did India, but the implementation of the act by India was not at par with some other countries like United States of America and some European countries. There are many places where the act requires urgent reforms. Some of them are sensitive and won't be more effective in the short span but these reforms have a higher chances of being effective in the long run.

Section 27 : Section 27⁶ of The Narcotic Drugs and Psychotropic Substances Act, 1985 gives punishment for consumption of any Narcotic Drugs or psychotropic substance, which is unnecessary and completely unfair. Since neither the punishment brings any change in the mindset of the culprit nor does it reduce the drug trades. A teenager who is a bright student and falls in the wrong group and ends up consuming these substances and is further caught in the process of consumption, the court won't look at the emotional perspective of the story, all it does is that it checks whether or not the act was wrong in the eyes of law and whether or not it violates the section in the act. If the activity violates any code, undoubtedly the punishment would be imposed which will further ruin the life of an innocent teenager. Section 27 is not only wrong but it is harsh too. So the remedy for this section is to discard it unreservedly. Government should instead provide rehabilitation to the consumer. Government should increase the vigilance squad on the borders. Illicit Drugs when consumed may cause a person to perform activities which would harm the social stability. Proper grooming should be performed on such drug abusers. Making laws which have extreme punitive abilities is not going to remove deadly agents like illegal Drugs and Terrorism.

Section 18 : Section 18⁷ of the act, deals with punishment for cultivation of opium poppy. The punishment is of imprisonment for 6 months in the case of small quantity. The fine that is imposed on the culprit is ten thousand rupees. The punishment goes even higher when the quantity qualifies to be called as commercial quantity. The punishment then is imprisonment for 10 years which may extend to 20 years and the amount which needs to be paid is 1 lakh rupees it may extend up 2 lakhs. Now the reason behind this harsh punishment is because cultivation is the main reason why drug market get its products.

⁶The Narcotic Drugs and Psychotropic Substances Act, 1985 Section 27(a). where the narcotic drug or psychotropic substance consumed is cocaine, morphine, diacetylmorphine or any other narcotic drug or any psychotropic substance as may be specified in this behalf by the Central Government by notification in the Official Gazette, with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to twenty thousand rupees; or with both, available at https://eurasiangroup.org/files/documents/India_law/NDPS_india.pdf, accessed on 7th February, 2020.

⁷ The Narcotic Drugs and Psychotropic Substances Act, 1985 Section 18. Punishment for contravention in relation to opium poppy and opium. -Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, cultivates the opium poppy or produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses opium shall be punishable, (a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both (b) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees which may extend to two lakh rupees; Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees; (c) in any other case, with rigorous imprisonment which may extend to ten years and with fine which may extend to one lakh rupees, Available at https://eurasiangroup.org/files/documents/India_law/NDPS_india.pdf, accessed on 7th February, 2020.

Plan Columbia : In September 1999, Columbia set the Plan Columbia in motion, the plan was highly successful in eradicating the drug world from Columbia for that time period. Plan Columbia targeted the cultivators and sprayed on the lands with the helps of Helicopters. This is highly effective since the plan directly strikes at the source of the problem unlike other tactics which hope to eliminate the market instead of eliminating goods. Plan Columbia made the producers bend down on their knees⁸. The Narcotic Drugs and Psychotropic Substances Act 1985 also tries to do the same but it does not directly eliminate the producers. The reform that is critically required is of acquiring the land on which the cultivation takes place and converting the land into licensed drug producing land which shall be run by government or any other authority which the government feels fit. The land shall then be used only for producing drugs for medicinal purposes. This move will undeniably prevent terrorist organisations to have the financial assist that the felonious drug dealings provide. Whats more is that government would have control over geographical domains which are fraudulently used for growing drug crops which by and large are sent across borders. This move would not only reduce the chances of domestic terrorism in India but will also help in restraining violent activities of terrorist organisation on international grounds.

Decriminalisation : Decriminalising the possession of small quantity of drugs would definitely help the concerning authorities to focus on traffickers rather than on drug abusers. Decriminalisation doesn't mean that every drug related activity would be permitted. Drug trafficking, manufacturing and selling illegitimate drugs would still remain illegal and all other drug trade forms would still remain actionable. In India the justice administration system already has heavy burden, petty cases of drug usage would only increase the load on the already burdened system. Moreover huge amount of funds are also allocated for administrative activities. Decriminalisation would help in reducing the burden of judicial bodies as well as executive bodies.

Limiting Faulty Amendments : There have being three amendments in the act, first in 1989, second in 2001 and in 2014. The 1989 amendment made the laws stringent, the 2001 amendment faced lot of criticism because of the harsh punishment that the amendment brought with it, the 2014 amendment brought in new category of "essential narcotic drugs"⁹, one of the most major advancement that the amendment brought was that the death penalty was made discretionary for an offence which involves certain amount of drugs under section 31A, under section 31, the court further had an alternative to imprison the culprit for 30 years. The amendment also increase the punishment for small quantity offences.¹⁰ Problem

⁸Jenner, Matthew S. "International Drug Trafficking: A Global Problem with a Domestic Solution." *Indiana Journal of Global Legal Studies*, vol. 18, no. 2, 2011, pp. 901–927. JSTOR, www.jstor.org/stable/10.2979/indjglolegstu.18.2.901. Accessed 4 Feb. 2020.

⁹ Charles, M., Bewley-Taylor, D. & Neidpath, A. (October 2005), *Drug policy in India: Compounding harm?*, The Beckley Foundation Drug Policy Programme, Briefing Paper Ten, available at <http://reformdrugpolicy.com/wp-content/uploads/2011/10/Drug-Policy-in-India-Compounding-Harm.pdf>, accessed on 7th February, 2020.

¹⁰ Sections 15(a), 17(a), 18(a), 20(b)(ii)(A), 21(a), 22(a) and 23(a) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

isn't with the amount of amendments made, the problem is that all these amendments have not at all reduced the illegal drug trades. The 2014 amendment allowed the interference of private institutions for processing opium¹¹, since then private bodies have made huge profits out of the drug business, this move neither had positive impact nor negative thus became a massive failure for the law making body.

- Punishments are quantity based, which means that if a person who has originally smuggled and sold huge quantity of illicit drugs, if at the time of police raid has small quantity then court would be bound to punish the person according to the law and the law says that if small quantity of drug is found in the possession of a person, he would be sent in jail for 6 months and fine of Rs.10000 would be imposed. This turns into even more scary dilemma if a person unknowingly possessed larger quantity of illicit drugs and couldn't prove that he/she isn't the real owner.
- Death penalty was also imposed on the accuse if he/she is found in production, manufacture, possession, transportation, import and export involving a large quantity of drugs.¹² But the 2001 amendment lowered death penalty, but still the punishments are too harsh, drug offences aren't considered heinous offences but Indian government has been very strict about all the offences related to drugs. Punishment for production and trafficking of illicit drugs should be strict but other offences should be considered minor offences.
- As per the statistics only 122 government hospitals provide drug treatment, the number is at its stunted low. Therefore it is the duty of central government to provide adequate drug treatment. Satisfactory financial assistance should be given to the already existing government hospital, so that more government hospitals develop facilities for drug treatment.
- In consequent years of 2013-2014 some NGOs were funded by Ministry of Social Justice and Empowerment(MOSJE), 346 isn't a big number and some NGOs are privately funded, treatment centres are bind by no rules and regulations even when state governments have responsibility to do so. No license is required for the establishment of such centres, they have no code of conducts nor are they bound to have properly qualified physicians to treat drug abusers.
- People who use drugs for proper treatment are under the threat of getting sanctioned. Sanctions like imprisonment and criminal prosecution are harsh when the accused is innocent. Government should ensure that proper legal provisions should be enforced on drug treatment.
- Coordination between central government and state government should be improved, since both the bodies would be equally responsible for the drug menace. Both need to develop certain policies and try to successfully implement them.

¹¹ Section 2(iva) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

¹² Section 31A of the Narcotic Drugs and Psychotropic Substances Act, 1985.

3.2. Local Legalisation

India like other countries suffers from a disease, a disease which has no medicine to cure the patient. This disease is no one but the forbidden drug market. This disease will keep on increasing year by year, making the conditions even worse. The only solution the country is left with is legalisation on the local level. It means that every aspect of drug trade would be legal, trafficking selling, consuming, purchasing and possessing drugs everything falling in that bracket would be legal. This seems a bit unrealistic at first but legalising the illicit drugs would quickly result in reduced amount of violence on the local level. It would weaken the traffickers since the drug markets would be levied by the taxes and everything would happen under the watch of government authorities. The lands that are used for producing and smuggling drugs would now be under the watch of government. Terrorist organisation won't get any assistance from the massive drug market since the revenue would be shared by government. Proper vigilance system would be put in front for reducing the assist made by the market to terrorist organisations. Local legalisation means that only the quantities of drugs flowing in the country would be legal, drugs from the outer world would still be not allowed in the country as they will be termed as illegal, this would be possible because all the fund that goes in controlling the local havoc caused by the drug market, it would now be channelised into increasing the safety on borders, so that no outside world drugs come inside the boundaries of India. There have being lot of implementation of policies to control the flow of illicit drugs, nations have tried hard to stop the traffickers, some nations have being successful in doing so as well, but traffickers of the drug world have no end, these agents are replaced by the other lot of traffickers. Producers have being targeted in last 60 years but the products still come out in the market, people who consume these drugs are punished but the consumption still doesn't end. Mexico, Columbia and other countries have tried everything they could but there have being no major successes as of now. In this scenario local legalisation seems the only hope.

Conclusion

The world is beaming with drugs(illicit), illegal drug markets and drug lords, terrorism is on rise, and countries are busy developing laws and punitive framework for the local population. This is a sad fact since drug world is not at all related to just one country or region, it is a vast network which covers entire globe. It affects entire population one or the other way. Urban and rural regions are no different from each other, both the regions are equally affected by the underworld drug market. It affects urban teenagers as well as rural school going children. Main culprits of drug trafficking aren't roaming around looking for drugs, they are hiding and carefully planning to illegally export drugs into other nations. The solution consequently isn't hidden in local reforms. It requires international cooperation. Countries which have highest production rates of drugs, countries like Afghanistan, Mexico, Columbia and Pakistan need to cooperate with countries in which these illicit drugs are imported. International cooperation is mandatory for cleaning the world from agents like drugs and terrorism. Reforms developed in this research paper are subjective and vulnerable, but they have better

of bringing a required change in the current scenario. The theory of local legalisations looks ambitious and a bit utopian but it surely has a higher chance of bringing down the assist made by the illicit drug market to the terrorism. Reforms in NDPS act are essentials and when the question arises that whether or not it has helped in preventing the drug trades(illegal), the answer we get is not very specific and not really effective.

An eighteen year old consuming and possessing a small quantity of prohibited drugs would be punished and kept in a prison for 1 year. Now the question arises that whether this punishment results in preventing that teenager from consuming and storing drugs. Answer would be dependent not on the policy or law made regarding drugs but on that specific individual.