

**“Drugs: Not a Crime but Health Crisis”***\*Farhat Naim**Delhi Metropolitan Education,  
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Noida***Abstract**

With the outbreak of the disease government's revenue and economic growth is at sharp decline. But recently the government of India opened the alcohol stores for sale explaining the past statistics of alcohol contributing upto thirty percent of the state revenue. If alcohol could used to revive the economy at the time of pandemic then why drugs should not be legalized for revenue of the state and for the economy. Arguments on legalization resulting in unstable environment and increased crimes are disproven and explained in the paper. Legalization by regulation and taxation is a tool to provide higher tax revenue and a new economic impact according to the economic theories. The conclusion explains the policy and channels that should be taken into consideration before legalization of drugs, regarding effective ways in which drugs can be provided to people. Legalization demands best policy implementations. In order to minimise the number of people consuming the drugs we must legalize it, legalization would not mean endorsing it, it means taking the responsibility of the risk that it possess as the only purpose of legalization is to moderate the intake of the buyers of drugs.

**Introduction**

Drug, a mind altering substance, is not new to mankind, Its use can be traced five thousands year before the birth of Christ by the people of lower Mesopotamia and Iraq. They cultivated opium to extract its juice:jil , which means “joy” and “rejoicing”<sup>1</sup>. The first use of opium can be traced from 7<sup>th</sup> century B.C., Assyrian medicine tablets<sup>2</sup>. On the clay tablets of Sumerians it is written that the juice of opium was collected in the early morning<sup>3</sup>. In India, hemp has been used for time immemorial to stimulate mental ability and sexual powers<sup>4</sup>. Use of drugs in India is not just because of its euphoric effects but it has a deep connection with religion and society too. India's response to drug flow along an extraordinary spectrum of tradition and modernity of widespread and stringent enforcement, of tolerance and prohibition, of production for medical use to lack of medical access to opiates. Datura, a sacred fruit and a wasteland weed, also used by ancient Greeks, can be cultivated in India for daily rituals for prayers to Lord Shiva<sup>5</sup>. In festivals like Holi, cannabis seeds are served as ‘bhang’ and they are treated like analgesic to provide ultimate relief and relaxation to the body.

**History**

Opium was extensively cultivated in India during the Mugal Era<sup>6</sup>, but after the fall of the empire in 1757 the monopoly of trade also fell into the hands of British East India Company where Warren Hasting took whole opium trade under the British government and exported it

to China. In 1930, the Dangerous Drugs Act was enacted and sought to extend and strengthen control over drugs derived from coca, hemp (cannabis) and poppy plants by regulating the cultivation, possession, manufacture, sale, domestic trade and external transactions through licenses and penalizing unlicensed activities. There were no offences attached to cannabis or to drug consumption. The framework of the Dangerous Drugs Act continues to prevail in the current legislation, especially the statutory definitions for coca, opium, hemp and their derivatives, the category of “manufactured drugs” and the division of rule-making powers between the central and state governments.

After Independence of India centre made Centre Bureau Narcotics, headed by Narcotics Commissioner, in 1970 to control the licit cultivation of poppy. Albeit the production of poppy is guided by international obligation as India is a signatory to International Convention on Narcotics Drug, 1966 and a party to United Nations Drug Convention, 1988<sup>7</sup>. The NDPS Act came into force on 14 November 1985, replacing the Opium Acts and the Dangerous Drugs Act. The 1940 Drugs and Cosmetics Act, 1940, however, continues to apply. The NDPS Act prohibits cultivation, production, possession, sale, purchase, trade, import, export, use and consumption of narcotic drugs and psychotropic substances except for medical and scientific purposes in accordance with the law.

Narcotic drugs include according to the Narcotics Drug and Psychotropic Substances Act, 1985:

- **Cannabis:** plant; resin or charas and its concentrated variant called hashish; dried flowering or fruiting tops of the plant, that is, ganja and any mixture of charas or ganja. Importantly, bhang or the cannabis leaf is excluded (in accordance with the 1961 Convention) and regulated through state excise laws.
- **Coca:** plant: leaf; derivatives include cocaine and any preparation containing 0.1% of cocaine.
- **Opium:** poppy plant; poppy straw; concentrated poppy straw; juice of opium poppy; mixture of opium poppy juice; preparations with 0.2% morphine; derivatives include heroin, morphine, codeine, thebaine, etc.. The NDPS Act lays down the procedure for search, seizure and arrest of persons in public and private places.

### **Why is there a need for liberalization?**

John Locke said ‘man has a property in his own person’ that justifies that he has a right to take decisions for his own body but the decisions he take must not be affecting the surrounding. Ban is not an effective solution to the problem of drugs. People always find a way to get these products. From a survey<sup>8</sup> in year 2013, 2.6 million people use illicit drugs (over the age of 12) and 19.8 million people use Marijuana. India is a vulnerable place for the ban since it is wedged between the two illicit area of opium production, the Golden Crescent and the Golden Triangle, making India a place of destination as well as transit route for the opium produced in these regions being supplied to other countries. In India

approximately 1.3 crore people (1.2%) are observed to consume illegal cannabis products, Ganja and Chras. Other categories of drugs such as, Cocaine (0.10%) Amphetamine Type Stimulants (0.18%) and Hallucinogens (0.12%) are used by a small proportion of country's population, also, opioid use in India is three times that of global average<sup>9</sup>. Last June, the Customs Department at Attari Integrated Check Post had nabbed a whopping 532-kg of heroin, which had made its way from Pakistan in a consignment of rock salt. In January this year, the anti-drug Special Task Force (STF) seized 194-kg of heroin from a rented house in Amritsar, which was used to refine the drug by engaging an "expert" from Afghanistan. According to the Cannabis Price Index, Delhi is third after New York and Karachi to consume most of cannabis products and Amsterdam, where it is legal to consume pot, is ranked as 56<sup>th</sup> to consume cannabis. Mumbai, India stands at rank sixth. Also, Delhi is one of the cheapest places to buy marijuana with an average price of 4.38 dollar per gram. What conclusion can we draw from the given fact?

### **Emergence of Cartels**

From the above stated facts we can conclude that prohibition never works and if the government is failing to provide these products from legal markets then Black Market will emerge and the supply will be met by the demands of people. The drug mafia seems undeterred by the state's war on drugs and Punjab remains a preferred destination for drugs smuggled not only from across the border with Pakistan, but also through sea, road and air route. Since, Black markets are not regulated by the government the quality of the products would not be checked, the quantity consumed by the people has no limit, price can be as high as the supplier wants and, most importantly, minors can get these products.

Since employment rate in India is so low, black marketing seems to be an easy way to earn money and it will induce more minors to get indulged in this illicit business as drugs is a profitable business and we must not forget that education would not prevent illicit drug use as ignorant is not the cause of use, so, the illicit trade would not just indulge children from lower class people having financial problem but to all the other sections of the society. A total of 368 out of 2,831 subjects were below the age of 20 years. In addition it was seen that the mean age of initiation to drug use was around 19 years. The data from Chennai described drug abuse by street children, who used a variety of substance including inhalants, cannabis, alcohol and heroin. Some of these children were involved in drug dealing<sup>10</sup>.

These cartel activities are interconnected for consideration, drug trafficking leads to increase in drug profit, which leads to increase in contraband revenues, due to which arm purchases and cash smuggling will increase. North America and 27 European Union account for more than eighty percent of the total value of global cocaine market which is estimated to be \$88 billion in year 2008<sup>11</sup>. A huge amount of citizen's money is going in the pockets of these drug cartels that government has no control over.

### **Regulation of the quantity and quality by the government**

The main psychoactive compound in marijuana that gives it a euphoric sensation is THO (tetrahydrocannabinol), also, it is related to psychosis. There is another compound in Marijuana named as CBD (cannabidiol) which is non-psychoactive compound. These are no side-effects of CBD and it can be used for the treatment against psychosis and anxiety<sup>10</sup>. With legalization of drugs, government can insist to increase the amount of CBD and can regulate the quality of the drugs sold in the market. People would not mind paying taxes because when government legalizes it, drugs are available, assessable and also affordable.

### **Curbing Crime with Legalization**

People in favour of the drug legalization claims that with legalization crime rate will increase but the money the government can earn from taxation on drugs only is going to cover all the cost to control the crime and how is the crime even better, people are using drugs anyhow. We must not forget about the gang wars, people who sell drugs have their territories to sell illicit drugs and on to basis of territory gangs are made and to invade the territory of other gang these groups are in continuous fight and that increases crime and many times there bloodshed on public areas and innocents are killed, so in any way crime is increased in which government has no control. This gang wars have caused cartel related violence. These cartels increase the corruption among the public officials and government personnel by bribing them and let their work happen without any problem. According to the Transparency International Corruption Perception Index in 2019, India scored 2.8 and was ranked 80 rd in terms of level of perceived corruption considering police to be the most corrupt public agency, followed by the health and power sectors<sup>12</sup>.

### **Increased in Sexually Transmitted Disease**

Another result of the illegal trade in trafficked women and girls is the spread of HIV/AIDS. Most of the trafficked girls die very young (the average life span is estimated to be only 30 years) mainly from HIV/AIDS, but also from malnutrition, abuse, neglect and sexually transmitted diseases. The total number of people living with HIV (PLHIV) in India is estimated at 21.40 lakhs in 2017. Social stigma and debt bondage are among the commonest consequences for the individual trafficked. It is already clear that the HIV/AIDS situation in Nepal is strongly linked to the question of trafficking in Nepalese women and girls into India.

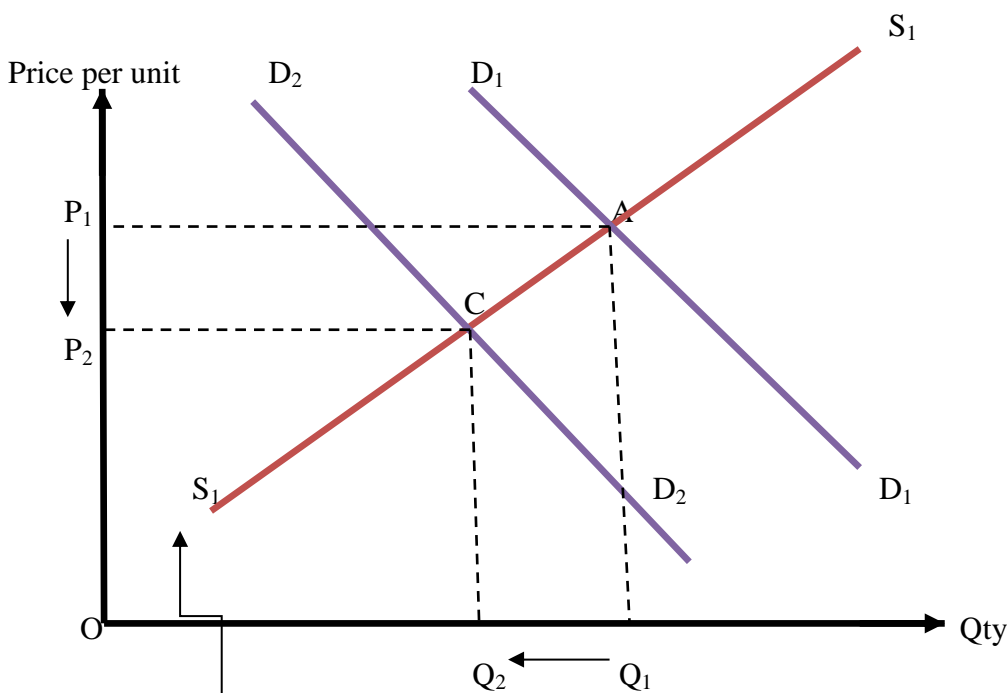
### **Economic Ways to Control Consumption**

There are two ways to control the consumption of drugs. It's either you decrease the supply or you control the demand of the people. If we decrease the supply, that is, criminalization, the demand for the drugs will remain same and people will somehow manage to get it which will create a black market. It can be agreed that after decriminalization demand for the drugs will increase the reason could be cancellation of potential risk of criminal charges, more availability of drugs and the sudden excitement of people for legalization will undoubtedly increase the demand of the drugs but this increase in demand will be for short term only.

Moreover, we are talking about controlling the market demand of the dangerous good as the other way, that is, of decreasing the supply did not work and proved to of no use by the entire world.

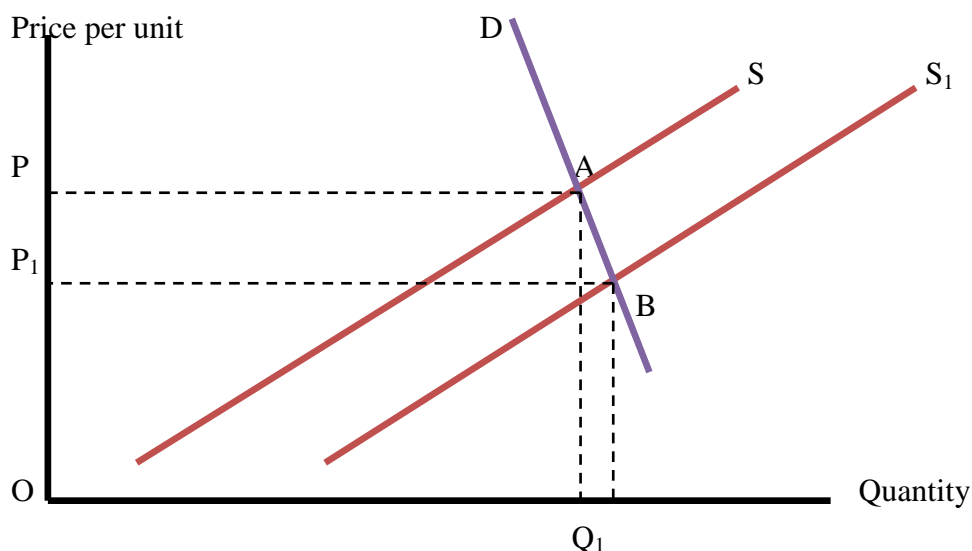
In the graph given below,  $D_1D_1$  is the demand curve, that is a downward curve, and  $S_1S_1$  is the supply curve, that is an upward curve. When the demand for the commodity is decreased from  $D_1D_1$  to  $D_2D_2$  the price of the commodity decreased from  $P_1$  to  $P_2$ . Due to the reduction in price of the commodity, sale of the commodity automatically decreases as now the seller cannot have much profit and the consumption of the good will decrease significantly.

**Reduction of DEMAND**



Consumption decreases significantly. Revenue from selling drugs decreases when demand is reduced. Dealers will drop out because of less profit.

**Reduction of DEMAND after LEGALIZATION and TAX imposed on it**



Legalization of drugs will increase the supply of drugs in the market, that is, S to S<sub>1</sub> since the government will stop spending that much money for enforcing marijuana laws. The basic micro economics rule of supply will be followed, as supply increased, prices will decrease. What is needed to understand is that demand of drugs is inelastic, the demand of drugs will not be affected by change in the price or it will be a minute change. The demand of the drugs is inelastic or not sensitive towards the price, so the consumption of drugs does not increase as much as the supply curve did.

And after all this, money spent for keeping these criminals and increased burden on judiciary (courts) are never mentioned also the amount spend for spy organizations, FBI, CIA, Computer geeks analysts, these agencies perpetually ask their budget to increase. The tax collected by the government from sale of drugs could now be used to reduce the demand by opening rehabilitation centres.

**Different prospective towards the problem of drugs**

Use of drugs should be considered as health problem not a crime. The money we're spending to keep them in prisons, to have trials in court rooms should be spend on their treatment.

Nearly 35,000 cases were registered and over 42,000 persons arrested under the Narcotics Drugs and Psychotropic Substances Act, 1985 in the last three years by various state agencies. Think of the time, energy and money we could have saved if consumption was legalized. These cases belong to the people who were arrested because they consume illicit drug as they were consumers with small quantities and they were bailed after 20-30 days. But the same question remains same "Is this helping to deal with the drug problem?" increasing numbers of FIRs does not mean the problem is

solved. Supply chains need to be broken and the nexus of bureaucrats-politicians-policeman-drug smugglers needs to end.

Harpal Singh Cheema, Leader of Opposition and AAP MLA: “It is the addicts who create the demand. The focus should be to bring a large number of addicts to treatment facilities. Also, the approach to tackle drugs should also focus on prevention because if there are fresh cases of youth getting hooked to drugs, it would render the exercise to treat already addicted youth a futile one,” said the functionary.

**Punishment as of now:**

Anyone who contravenes the NDPS Act will face punishment based on the quantity of the banned substance.

- where the contravention involves a small quantity, with rigorous imprisonment for a term which may extend to 1 year, or with a fine which may extend to Rs.10,000 (US\$140) or both;
- where the contravention involves a quantity lesser than commercial quantity but greater than a small quantity, with rigorous imprisonment for a term which may extend to 10 years and with fine which may extend to Rs. 1 lakh (US\$1,400);
- where the contravention involves a commercial quantity, with rigorous imprisonment for a term which shall not be less than 10 years but which may extend to 20 years and also a fine which shall not be less than Rs. 1 lakh (US\$1,400) but which may extend to Rs.2 lakh (US\$2,800).

The table below lists the current definition of *a small quantity* and a commercial quantity for some popular drugs.

Drug	Small quantity	Commercial quantity
Amphetamine	2 grams (0.071 oz)	50 grams (1.8 oz)
Charas	100 grams (3.5 oz)	1 kilogram (2.2 lb)
Cocaine	2 grams (0.071 oz)	100 grams (3.5 oz)
Ganja	1 kilogram (2.2 lb)	20 kilograms (44 lb)
Heroin	5 grams (0.18 oz)	250 grams (8.8 oz)
LSD	2 milligrams (0.031 gr)	100 milligrams (1.5 gr)
Methadone	2 grams (0.071 oz)	50 grams (1.8 oz)
Morphine	5 grams (0.18 oz)	250 grams (8.8 oz)
Opium	25 grams (0.88 oz)	2.5 kilograms (5.5 lb)

### Death penalty

Internationally, drug offences are not considered to be the ‘most serious crimes’ for which capital punishment may be invoked. The Indian Drug Quantity and Punishment Small Quantity Punishment Quantity greater than small but lesser than commercial (Intermediate) Heroin 5g Maximum of 1 year rigorous imprisonment or a fine up to Rs 10,000 or both 250g Rigorous imprisonment from 10 years (min) to 20 years (max) and a fine from Rs 1 lakh to 2 lakhs Opium 25g 2.5kg Rigorous imprisonment that may extend to 10 years & fine that may extend to Rs 1 lakh Morphine 5g 250g Ganja (cannabis) 1000g 20kg Charas (cannabis resin) 100g 1kg Coca leaf 100g 2kg Cocaine 2g 100g Methadone 2g 50g Amphetamine 2g 50g THC 2g 50g LSD 0.002g 0.1g 6 government, however, maintains that a narcotic offence is more heinous than murder because the latter affects only an individual while the former leaves its deleterious impact on society.

The government also contends that other Asian countries impose the death penalty for offences involving lower drug quantities and that the International Narcotics Control Board (INCB) had never objected to the same.

### Criminalization of people who use drugs

Consumption of drugs is illegal and results in a jail term of up to six months or one year and/or a fine, depending on the substance consumed. The consumption of heroin and cocaine will lead to a lengthier sentence of imprisonment while cannabis will lead to a less severe



sentence. The category of “possession of small quantity intended for personal consumption” was done away with in 2001 and presently, possession of small amounts attracts uniform punishment, irrespective of intent. Harm reduction presently, there are an estimated 200,000 people who inject drugs in the country and HIV prevalence among them is estimated at 7.14%. Prevalence in some states is reported to be much higher, in Punjab, 21.1% of people who inject drugs are believed to be infected with HIV, while in Manipur prevalence reaches about 12.9%. Nationally, HIV trends among people who inject drugs are reported to be stable.<sup>74</sup> Rates of hepatitis B and C infection are believed to be high but no official surveillance has been carried out, whether at national or state level, to estimate the burden of blood-borne infections among people who inject drugs.

UNODC would advocate and assist the countries in reviewing and improving national legislations and policies concerning narcotic drugs, criminal justice, prison management and HIV, including the protection of young people who use drugs, and women. A supportive legal and policy environment can facilitate the provision of comprehensive services to drug users together with the Governments, civil society networks and other development partners.

#### **Punjab wages a ‘war on drugs’**

Drug use and dependence is high in the northern Indian state of Punjab. No official survey has been conducted but the media reports that nearly 75% of the youth in the state are affected by drug use. The issue took on political dimensions during national elections in early 2014 and the state government began a clampdown on people who use drugs, with mass arrests, seizures and interdictions under the NDPS Act. Over 14, 564 persons were arrested under the NDPS Act in a span of 8 months and more than one third of prisoners in the state are reportedly facing drug-related charges. ‘Special drives’ were launched against people who use drugs, who were either arrested or forced to take admission in ‘de-addiction’ centres. While the authorities have announced plans to expand treatment and rehabilitation facilities, policy alternatives which approach drug use as a health rather than a criminal issue (such as increasing the availability of harm reduction measures and the decriminalization of drug use) were not considered. On the contrary, harm reduction practitioners, particularly doctors who prescribe and dispense OST in private clinics have been threatened with legal sanctions. This demonstrates the incongruous nature of drug policy – while the law embraces harm reduction, drug enforcement agencies continue to abandon it<sup>15</sup>.

**Points for consideration**

In response to the policy challenges outlined above, the following reform possibilities are proposed to the government of India for consideration:

- After legalization, advertisement of drugs on any channel should be prohibited as our aim is not to promote the use of drugs by the people but to curb the demand of intoxicating material.
- Privatization should strictly be prohibited as private companies only care about their profit maximization. The committee should never involve private companies.
- License to be provided to whom drugs is an indispensable part of their life. That license should be attached to their adhar card or voter ID or any other identification card. It should specify the Name, Age, Quantity of Drugs approved to him, Type of drug and other related information.
- License to be created by one specific body who is independent of its action. Drug not be provided to any other person but the license holder.
- Review the harsh and disproportionate sentencing structure under the NDPS Act, and remove the criminalization of drug use and imposition of the death penalty for drugs offences.
- Ensure that the legal provisions on drug treatment are adequately applied in a way that enables people who use drugs to access evidence-based treatment services without the threat of punitive sanctions such as criminal prosecution and imprisonment.
- Adopt and enforce minimum quality standards to ensure that the treatment programs are scientifically proven and respect the human rights of people dependent on drugs.
- Expand access to narcotic and psychotropic medicines necessary for treating a range of medical conditions, with practical safeguards against illicit diversion.
- Improve coordination between government departments with a clear remit for each state agency on developing and implementing policies and practices relating to drugs.
- Consult with civil society groups, including representatives of people who use drugs, medical professionals, academics and patient groups specializing in drugs issues in drug policy formulation.
- Establish regular data collection on drug use, dependence and related health implications such as HIV and viral hepatitis prevalence amongst people who inject drugs.
- Apply harm reduction principles to drug policy formulation with the objective of reducing the harms associated with drugs, instead of being guided by the unachievable goal of creating a ‘drug-free’ society...

**Conclusion**

Use of drugs should not be considered as a crime but health crisis, that why there a need for legalization of drugs. People who talk against legalization wants people to stop the use of drugs that is harmful for them, but restricting the supply is not favourable and efficient. We want the same but not by restricting the supply but by controlling the demand of the drugs. Solution to the drug problem is to cut the roots of the problem, kill the urges of people to consume something intoxicating and provide a rehab to recover.

The aim is to empower capacities of governmental bodies and civil society already active in the region to scale up and enhance their ongoing work, to cover a wider area and offer a fuller spectrum of activities that aim at reducing demand for, as well as harm from drugs. The cartels need to starve so that the money they have been filling in their pockets with could be used to help people recover from their addiction. Providing license is really necessary so that the legal drug channels are not misused. Advertising should be prohibited, for not only the drugs we are asking to legalize but also for alcohol. Legalization would reduce or eliminate criminal behavior and corruption in national police, national armies, and national governments. Legalization would radically reduce violence and save lives but the condition remains same,

**Legalization Demands Best Policy Implementation.****References:**

- 1) Supra n.2 at p.1. See ,also Alfred R. Lindensmith, *Addiction and Opiates*, p.207.
- 2) It was first mentioned by Barbosa in 1511, and its cultivation appears in the same century, 1See, Chopra and Chopra, *Drug Addition with Special Reference to India* (SCIR, New Delhi, 1965) p.264.
- 3) Alfred Burger, *A Brief History of Drugs*.
- 4) Sudip Kumar Chaudhari, *Drug Addiction Among the Youth in Calcutta* (1998), p.13. Opium has also been used for medicinal purposes among the Rajputs in Rajasthan and Gujarat; Molly Charles, Dave Bewley, Taylor and Amanda Neidpath, *Drug Policy in India: Compounding Harm?* p.3. Opium like cannabis is also offered at the harvest festival in a ceremony called akha teej, intended to strengthen family marital clan bonds and put aside old feuds. In South India Kaskasa, a form of opium poppy is used to make the sweet dish – “payasam”, See Supra.n.17.  
Also used for socio-cultural reasons in different parts
- 5) Agharkar S.P. 1991, *Medical Plants Bombay Presidency*, Scientific Publishers, Jodhpur (India) p. 88-89
- 6) Ibid. Abul Fazal stated in *Ain-i-Akbari* that poppy was cultivated in Fatehpur, Allahbad and Gaziabad.
- 7) Government of India, Ministry of Finance, Central Bureau of Narcotics.
- 8) A survey conducted by Substance Abuse and Mental Health Services Administration (SAMHSA) in year 2013

- 9) South Asia Regional Profile, Central Bureau of Narcotics
- 10) Dr. Philip McGuire, King's College London, 2017.
- 11) Youth RAS
- 12) United Nations Report on Drug and Crime, World Drug Report 2010
- 13) Transparency International Corruption Perception Index, 2003
- 14) National aid control organization
- 15) References: Mansi Cholsi, 'Heroin Trafficking from Pakistan Into India Is Crippling an Entire Generation', 4 Dec 2014; Rohan Dua, 'Drug-related crime reported highest in Punjab: National Crime Records Bureau' 1 July 2014, <http://timesofindia.indiatimes.com//city/chandigarh/Drug-related-crime-reported-highest-in-Punjab-National-Crime-Records-Bureau>.