

**LGJ****LAWYERS GYAN
JOURNAL**

Online Quarterly Journal

LAWYERS GYAN PRESENTS

LAWYERS GYAN JOURNAL

on Law and Multidisciplinary Issues.**VOLUME 1 - ISSUE 1****AUGUST 2024**

LGJ is a peer-reviewed Online Quarterly Journal. The aim is to promote legal research work, enhance legal academics, and to promote legal writing among law students and young academicians.

EDITED BY:LAWYERS GYAN JOURNAL
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**“MEASURES TAKEN BY CENTRAL GOVERNMENT
FOR PREVENTING AND COMBATING ABUSE OF
AND ILLICIT TRAFFIC IN NARCOTICS DRUGS”**

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ABSTRACT

This paper talks about the harsh use of substances and drugs by the public, which causes a nuisance, and the rate of crime is also going to increase day by day. The paper also talks about the Legal effect and Judicial activism between sections 49 and 50 of the NDPS Act. The main question it deals with is that the laws are not so rigid and not effectively working like the NDPS Act. The paper also speaks that if the effective amendments made to the laws dealing with the drugs and substance, their abuses will go down, and so will the crime rate.

As a result, to provide comprehensive legislation on narcotic drugs and psychotropic substances, which, among other things, should consolidate and amend the then existing laws relating to narcotic drugs, make provisions for exercising effective control over psychoactive materials. It also covers the use of forensic science in many ways to solve crimes related to drugs and psychotropic substances.

SCOPE & OBJECTIVES OF THE PAPER

The paper focuses on the laws of drugs and psychotropic substances primarily, points out its shortfalls and disadvantages, and recommends reforms and encourages amendment regarding said loopholes. The paper also majorly focuses on the role of different Jurist and the Court's opinions. Throughout the years, it has passed individual judgments that have helped shape the Structure of the laws.

RESEARCH QUESTION

Do the laws which are existing in different countries and In India are sufficient to curb out the abuse of drugs and psychotropic substances. If it is adequate, there is a conflict between the provisions of International and Domestic laws related to Drugs and Psychotropic Substances? How is the Forensic toxicology used in evaluating the crime related to drug abuse and evil in the world and India? Can measures be taken to make the public aware of the abuse of the drugs and psychotropic substances?

INTRODUCTION

Every day the new types of drugs are introduced in the market to cause harm and destroy the culture of the society. Illicit medicine has multiple consequences to health, community, and the economy. These consequences embrace health, mortality, morbidity, treatment, and physical disorders, accidents, absence, family disintegration, vice crime, gangland, and economic finances spent on developing services, drain on national resources, loss of productivity, etc. This issue is complicated and diverse, requiring each health measures and efforts to manage trafficking/smuggling and manufacture of illicit drugs and psychotropic substances¹."

The Narcotics Drugs and Psychotropic Substances Act talks about the regulation of drugs. It also talks about the punishment prescribed for the trafficking of illicit drugs without the permission of the government given under the prescribed quantity under the NDPS Act. Section 4 of the NDPS Act talks about the Central Government Preventive measure that had introduced for curbing out the use of drugs and psychoactive drugs and substances. This section also explains all steps as it seems necessary or desirable for preventing and combating the abuse of illicit drugs and psychotropic substances through the region².

Section 4 of the narcotics drug and psychotropic substances Act talks about the international convention and treaties for controlling and combating the illicit and abuse of drugs and contrabands all over the globe³.

The identification method is used by forensic science for finding out drugs level in the body by many means like urine tests, tissues, hair, vitreous humor, and other samples. It also talks about stimulants, synthetic and other derivatives of narcotics drugs, and their identification method under the law of forensics in the criminal system⁴.

INTERPRETATION OF LEGAL PROVISIONS OF THE NDPS ACT

This issue is complex and multifaceted, requiring both health measures and efforts to control trafficking/smuggling and manufacture of illicit drugs. A reduction in the demand for drugs of addiction, both legal and illegal, is required.⁵

¹ M Srinivasan And M Kannappan, *A Study On Consumption Of Drugs In India After The Amendment Of NDPS Act*, 119 International Journal Of Pure And Applied Mathematics 2018.

² Section 4 Of Narcotics Drugs And Psychotropic Substances Act 1985.

³ Supra, Footnote 2.

⁴ B R Sharma , *Forensic Science In Criminal Investigation & Trials* 880-926 (6th Ed. 2020).

⁵ Malhotra,A., Mathur.R.S., Basu.D. & Mattoo,S.K. (1997) *Primer Of Addiction Drug Deaddiction And Treatment Centre*. Postgraduate Institute Of Medical Education And Research, Chandigarh.

Our forefathers have contemplated the menace which could be caused due to drug trafficking, ergo have enacted the Article 47 in the Constitution of India⁶, which forbids the state to endeavor to bring about prohibition of the intoxicating alcohols and drugs, except for the medicinal purpose. The responsibility of the Central as well as State government to fulfill the constitutional obligation, being signatories of various UN Conventions to tackle drug abuse and the growing menace of the drug trafficking and violence in India, led the government to enact comprehensive legislation, i.e., NDPS Act, 1985.

In addition to that,⁷The activities related to drugs and psychotropic substances speak that the provisions of the Act should read with strict meaning for curbing out the crimes related to drugs, which is creating havoc in the society by instigating in crime committing and other offenses. But the provision should also not be arbitrary, which violates any person's fundamental right.

INTERNATIONAL CONVENTION AND REGIONAL CONVENTION FOR PREVENTING ILLICIT TRAFFICKING OF NARCOTIC DRUGS AND CONTRABAND

The protocol⁸of December 1946 was one of the first such transfers, and in many ways, served as a model for following agreements. The United Nations established the commission on narcotic drugs⁹and continued the world of the permanent central opium board and the drug supervisory body, which had functioned. They would, each in respect of the instruments to which it was a party and following the provisions of this protocol, attribute full legal force to them.¹⁰

By this convention, the cultivation of plants grown as raw material for natural narcotic drugs placed under control. Existing controls relating to the production of opium and its derivatives like morphine, heroin, and codeine retained. At the same time, coca bush and cannabis were subject to international control, obliging governments to limit the production of these drugs equivalent to a quantum required for medical and scientific purposes.

⁶ India Const. Art. 47.

⁷Ray R, The Extent, Pattern And Trends Of Drug Abuse In India-National Survey, Ministry Of Social Justice And Empowerment, Government Of India And United Nations Office On Drugs And Crime, 2004.

⁸ United Nations Status O F Multilateral Narcotics Conventions, Bulletin On Narcotics. Geneva, October-December, 1957, Pp. 55-57.

⁹ Herbert L. May, The Evolution O F International Control On Narcotic Drugs, Bulletin On Narcotics, (New York: United Nations, 1950), Pp. 1-12.

¹⁰ Supra Foot Note No 23.”

To handle the menace of drug abuse, the world community has joined hands and subscribed to conventions and conferences under the United Nations ¹¹. UN convention of psychotropic substances, 1971 and United Nations Protocol, 1971 were accepted for international cooperation to investigate, chase, control, prevent drug trafficking and arrest as well as punish the traffickers. India being party to all these conventions, has enacted the NDPS Act, 1985¹².

METHODS OF FORENSIC INVESTIGATION AND FORENSIC TOXICOLOGY IN NARCOTIC CASES

I FORENSIC TOXICOLOGY

Postmortem forensic toxicology entails analyzing body fluids and organs from demise cases and decoding that fact. Sudden and unexplained deaths become coroner's cases or fall underneath the jurisdiction of the medical expert. Forensic toxicologists paintings with pathologists, health workers in supporting to establish the function of alcohol, drugs, and poisons within the causation of demise.

1. The toxicologist identifies and quantifies the presence of medication and chemical substances in blood and tissue samples. This has done through using the kingdom of the art chemical and biomedical instrumentation capable of detecting small quantities of poisonous substances, positively figuring them out, and accurately measuring how a lot is present.
2. Accuracy, validity, and reliability are crucial, as these statistics were used inside the willpower of reason and way of demise.
3. Accurately establishing the actual cause and means of death has critical implications for public health and public protection, and forensically dependable toxicology is an essential element of that process. Death research toxicology has accomplished through each public and private laboratories, and many non-public forensic laboratories provide specialized knowledge and services now in government laboratories.

II. DOPING CONTROL

Governing bodies of most aggressive and intramural sports have derived rules regarding performance improving drug use to guard the health and welfare of the beginner and professional athletes, to preserve a fair and even competitive fashionable, and avoid wagering fraud. This applies to both human and animal sports activities and athletes. International groups

¹¹ S.V. Joga Rao, Drug Addiction: Penal Policy, Journal Of The Indian Law Institute, Vol. 32. 1992, At Page 2-3.

¹² Id.

such as the International Olympic Committee (IOC), the World Anti-Doping Agency (WADA), and the International Federation of Horseracing Authorities (IFHA) work to update and hold those lists as styles of drug use trade.

Forensic toxicologists on this field use a few of the similar high overall performance analytical techniques to discover present-day and ancient use of banned materials, such as stimulants, anabolic steroids, and diuretics. These are trying out occurs in industrial and public authorized laboratories around the arena. However, there may also be testing of high college, university, and different athletes that takes place in private laboratories.

III.FORENSIC WORKPLACE DRUG TESTING

The use of medicine through human beings inside the place of work has extended protection and monetary consequences. Consequently, in lots of states, workers in safety touchy positions are prohibited from the usage of recreational capsules or taking sure medicines without a prescription. Notably, in the latest years, there was improved emphasis on trying out personnel to ensure that they're no longer using drugs while on the task.

This testing began with employees in touchy situations or folks that worked in dangerous environments, which includes cops, locomotive engineers, pilots, etc., too many other occupations. However, the testing need has to do through some implementing requirements (that need to be made with the aid of legislation thru forensic departments) that require pre-employment, random, and for-cause drug was trying out, consisting of following a coincidence or a transportation collision.

LEGAL CONTROVERSIES IN SECTIONS 42 AND 50 OF THE NDPS ACT AND LEGALIZATION AS A SOLUTION TO THE PROBLEM OF NARCOTIC DRUGS

Liberty, equality, and fraternity, the essential part of the principle of one's life, are also monumental elements of social democracy. Such Liberty also includes economic democracy, and both are inseparable. The widespread sell, trafficking, consumption of drugs, narcotics, and illegal psychotropic substances not only corrupts such principles but also feeds every element of social democracy and economic democracy. To tackle the problem Indian government passed the Narcotics Drugs and Psychotropic Substances Act, 1985.

Under the Act chapter, five¹³ comprehensively deals with the procedural safeguards which have to be followed by the designated officers while issuing a warrant, conducting search and seizure, making an arrest, etc. Since the officers so elected under the Act have been given full

¹³ Narcotic Drugs And Psychotropic Substance Act, 1985, No. 61, Act Of Parliament, India, Chapter 5 (1985).

powers and duties but not arbitrary, the non-compliance of specific statutory provisions provided under chapter 5 of the law will make such broad powers and duties arbitrary and unlawful.

Section 42¹⁴ of the Act deals with the powers of the officer under clause (1) of the Article to entry, search, seize and arrest without warrant and authorization and procedural safeguards which the officer has to follow. Section 50¹⁵ of the Act deals with conditions under which search of persons shall conduct, which is nothing but the procedural safeguards that have to be followed by the officers while carrying personal investigation.

Through various landmark judgments and precedents, it has been well established that both the sections have to be drafted, keeping in mind the personal Liberty of the person has to be searched, which can violate if the procedural safeguards under the parts did not strictly comply with¹⁶.

Expression reason to believe enshrined under section 42 has been a matter of legal controversy and judicial activism in various landmark judgments¹⁷. Courts have coherently held that the expression shall strictly follow as a mandatory procedural safeguard, or else it will lead to illegal arrest and, therefore, miscarriage of justice¹⁸. The feeling has inherently corroborated with good faith and not mere pretense. Otherwise, the full search can be subject to the benefit of the doubt, and the entire trial can vitiate.

Similarly, in the State Of Punjab v. Baldev Singh¹⁹, the difficulties in the investigation and then prosecution of the accused under the Act, if procedural safeguards under section 50 have not Complied Strictly was ascertained by then Chief Justice of India. In the case, it had held that non-compliance of section 42 and section 50 of the Act being a gross failure of the officer would ultimately lead to vitiating of trial and acquittal of the accused.

It is a well-settled principle under the criminal justice system that investigating officers should unequivocally collect evidence to be presented before the Court to leave no loopholes. The action of the state must be mainly in collection and admissibility of evidence, which can do if

¹⁴ Narcotic Drugs And Psychotropic Substance Act, 1985, No. 61, Act Of Parliament, India, Section 42 (1985).

¹⁵ Narcotic Drugs And Psychotropic Substance Act, 1985, No. 61, Act Of Parliament, India, Section 50 (1985).

¹⁶ J. Starmi, Conceptual Issue Relating To Drug Addiction In India: With Special Reference To Section 42 And Section 50 Of The Ndps Act – A Critique, 2013 Pl July 64, At Page 68 (2013).

¹⁷ Id.

¹⁸ State Of Punjab V. Balbir Singh, (1994) 3 Scc 299 : Ali Mustaffa Abdul Rahman Moosa V. State Of Kerala, (1994) 6 Scc 569 : Karnail Singh V. State Of Punjab, Air 1954 Sc 204.

¹⁹ State Of Punjab V. Baldev Singh, (1999) 6 Scc 172

proper search and seizure have taken place²⁰. Both sections 42 and 50 are clear, unambiguous, and well settled in these positions in such a way that they cannot be ignored or avoided²¹.

CONCLUSION

Even though the short-comings of forensic toxicology persists in some spheres, still its role in delivering justice and solving criminal cases has been highly appreciated and relied on. Yet after the limitations, the Court and society at large depend on the findings of the forensic examination and reports. The crime presents itself in different forms.

On the one hand, it has enacted stringent anti-drug laws, co-opted various voluntary organizations, and sought to strengthen the physical security of its borders by multiple means. On the other hand, it has been asking the cooperation of its neighbours and other countries through several bilateral and multilateral agreements. These efforts have only been partially successful in dealing with the problem. For achieving tremendous success in preventing drug trafficking, a few suggestions put forth :

Prevention of drug trafficking has to be accord a more significant priority. At present, it forms part of the broader mandate of the border guarding forces to prevent smuggling and any other illegal activity. Special measures have to formulate to check the trafficking of drugs through the barriers.

The issue of corruption among the border guarding forces, as well as in other concerned agencies, has to be dealt in pragmatically way. While officials found guilty of drug trafficking should be punished severely, suitable reward systems should also have introduced to provide incentives to the personnel to work diligently towards preventing drug trafficking.

A database on production, trade, and consumption of various drugs at the national level needs to be prepared to ascertain the extent of the problem. The government should provide viable alternatives to farmers to wean them away from illegally cultivating poppy and cannabis.

Non-compliance of Sections 42 and 50 of the Act could lead to a violation of fundamental rights since illegal arrest will have an impact on legal proceedings and could lead to a miscarriage of justice. NDPS Act being penal legislation. All the statutory provisions have to

²⁰ J.K Mathur, Critical Analysis Of Section 41, 42 And 50 Of The Narcotic Drugs And Psychotropic Substances In The Light Of Relevant Judgments: Procedural Safeguards, (1997) 6 Scc J-12, At Page 13 (1997) : State Of Punjab V. Baldev Singh, (1999) 6 Scc 172.

²¹ Id.

follow strictly; otherwise, it will lead to an unfair trial²². The arrest being made by the officer by omitting the statutory provision will lead to a violation of Article 21²³ of the person.

In *Man Bahadur v. the State of HP*²⁴, the Supreme Court held that omission of section 50(1), i.e., accused being made aware of his/her right to be searched before a gazetted officer or magistrate will lead to an unjust and unfair trial. This scheme has also enshrined under Article 21 of the Constitution. Thus, every action of the authorities must construe having regard to the provision of the Act, which would lead to a fair trial of the accused.

What now remains to see is the effectiveness and impact of the various measures initiated. It is imperative to have an evaluation and subsequent modifications of plans and policies based on sound research. Without any systematic review, ideas would be just that - plans.

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²³ India Const. Art. 21.

²⁴ *Man Bahadur V. State Of H.P*, AIR 2009 SC 369.

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