



LAW RELATING TO ABUSE OF DRUGS - A COMPARATIVE PERSPECTIVE

Dr. N. Krishna Kumar Research Supervisor, Himalayan University.

George Johnson Research Scholar, Himalayan University, Arunachal Pradesh.

ABSTRACT:

The narcotic drugs and psychotropic substances Act, 1985 was framed with the objective of using narcotic drugs and psychotropic substances in controlled manner for medicinal and scientific purpose without in contravention to the obligations to UN, Conventions. In 1875, San Francisco was the first Western city to pass anti-drug abuse legislation forbidding opium smoking. In UK First legislation which effectively addressed to control drugs was the Dangerous Drugs Act 1920. The Act makes it illegal for an occupant to intentionally allow the premises to be used for the manufacturing or supply of a restricted substance, the preparation of opium for smoking, or the smoking of cannabis, cannabis resin, or prepared opium. Free treatment is the principal goals of the Code of Public Health 1970 of France. In Canada offenders can be diverted to treatment or community service, but this does not reduce the caseload in the court system or affect the outcome of a conviction. In that country, a person caught with cannabis faces a maximum penalty of a fine if there is no criminal record against him and if he chooses to enter into an agreement for treatment or community service programme. India should think whether these are replicable models.

KEYWORDS: Addict, controlled delivery, narcotic drug, psychotropic substance, recreational users.

INTRODUCTION

The narcotic drugs and psychotropic substances Act, 1985 was enacted to consolidate and amend the law relating to narcotic drugs, to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances, [to provide for the forfeiture of property derived from, or use in, illicit traffic in narcotic drugs and psychotropic substances, to implement the provisions of the International Conventions on Narcotic Drug and Psychotropic Substancesⁱ and for matters connected there with.

The Act is framed with the objective of using narcotic drugs and psychotropic substances in controlled manner for medicinal and scientific purpose without in contravention to the

obligations to UN, Conventions. It regulates and controls the abuse of drugs trafficking through its stringent provisions and also empowers the competent authority for the supervision of the operation related to narcotics drugs and psychotropic substances. The Act prescribes stringent punishment, this a balance must be struck between the need of the law and the enforcement of such law on the in hand and the protection of innocent from oppression and injustice on the other.ⁱⁱ

The provisions relating to certain procedural aspects like search and seizure have certain deficiencies due to which the law enforcement efforts against illicit drug entry, search, seizure, etc., in respect of offences relating to controlled substances and for tracing, freezing, seizing and forfeiture of illegally acquired property upon the empowered officers.ⁱⁱⁱ

Certain obligations, specially in respect of the concept of “controlled delivery” arising from the United Nations Convention against Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances to which India acceded, also require to be addressed by incorporating suitable provisions in the Act.^{iv}

THE DRUG ABUSE LEGISLATIONS IN OTHER COUNTRIES

(1) DRUG ABUSE LEGISLATIONS IN USA

In 1875, San Francisco was the first Western city to pass anti-drug abuse legislation forbidding opium smoking. The Harrison Act, the first piece of federal anti-drug law, was passed in 1914. It mandated that anyone dealing in narcotics including opium, morphine, heroin, cocaine, or any derivatives thereof must register with the federal government and pay tax. And make it clear that drug smugglers who do not register will face consequences. However, because addicts could still get their hands on drugs with a doctor's prescription, the rule was deemed useless.

According to the ruling in *Webb vs. United States*, so-called "maintenance" programmes for substance abuse only serve to prolong dependence and are therefore not considered treatment. Consequently, the supply of heroin dried up.^v The Marijuana Tax Act was enacted in 1937 and imposes a levy on cannabis sales as well as penalties for noncompliance.

Many narcotics became illegal under federal law. Once the Boggs Act was passed in 1951. Heroin was taken off the list of substances considered to have medicinal value as a result of the Act, and it was mandated that all pharmaceutical forms of heroin be withdrawn from the market.

Sales of heroin to those under the age of eighteen became a capital offence after the passage of the Narcotic Control Act of 1956, which also criminalised drug trafficking and possession. Regardless of the judge's personal beliefs, all obligatory minimum sentences must be enforced. Sales convictions, as well as subsequent offences, do not qualify for probation or sentence suspension.^{vi}

After the adoption of the Import and Export Act, imports of narcotic medications were prohibited. Any importation possession and dealings of heroin was deemed to be criminal per se.^{vii} Later The Opium Control Act was created which prohibited production, transfer

or possession of the opium poppy without licence.

The Uniform Narcotics Drug Act, 1967 outlaws the possession and sale of opium, its derivatives cocaine and marijuana save for doctors who are permitted to distribute in good faith. The federal government's present-day enforcement actions are based on the 1970 Comprehensive Drug Abuse Prevention and Control Act. Title II of the Act includes Controlled Substance Act (CA) which has five schedules which classify psychoactive chemicals according to their degree of psycho activity and abuse potential.^{viii}

Anti Drug Abuse Act was passed by congress in the year 1988 and its major purpose was to create a "Drug Free America".^{ix} The Act enhanced penalties for "recreational" narcotics users. The law imposed legal liability against convicted "recreational" users for possession of even tiny amounts of drugs and also withheld federal benefits such loans, contracts and licences, to convicted drug offenders.

(2) DRUG ABUSE LEGISLATIONS IN UNITED KINGDOM

First legislation which effectively addressed to control drugs was the Dangerous Drugs Act 1920. The Act has provisions to limit narcotics including opium, cocaine, morphine and diamorphine (heroin), or compounds having similar properties. There are procedures to take licence for import and export of drugs, and unlicensed possession of substances is a criminal offence. Records have to be kept for inspection and complete safety regulation drawn up.^x

Dangerous Drugs Act 1965, coupled with the Dangerous Drugs Act 1967 came into force to give effect to the Single Agreement on Narcotic Drugs, 1961. The Act encompasses drugs like opium their derivatives, cocaine and cannabis.^{xi}

One of the key illicit drug legislation in the UK is the MDA^{xii}. The legislation and associated regulations known as abuse of Medications Regulations 1985 contain a list of drugs comprising medical drugs and drugs with no therapeutic value. The Act established out the scenarios under which it is allowed to import, produce, supply and possess drugs.^{xiii}

Schedule 2 of the Act categorised substances into A, B or C in to show the degree of harm they cause to the individual or society when misused. The consequences for each level of infraction vary. Drugs in Class A are considered to be more dangerous, hence the penalties for possessing them are more severe. This class encompasses among others, heroin, morphine, methadone, cocaine, opium and hallucinogens such as Ecstasy and LSD and also includes liquid cannabis likehashish oil, cannabinal and cannabinal derivatives and any class B substance prepared for injection.

In Class B, you will find substances like marijuana and hashish, cannabis resin, less powerful opioids like codeine, powerful synthetic stimulants like oral amphetamines, and tranquillizers (barbiturates). Class C medications, which include sleep aids, moderate stimulants, and opioid analgesics, provide the least risk to users. Possession, distribution, manufacture, and importation of controlled substances are all illegal under the legislation. Cultivation of cannabis is considered as a separate violation under the Act.^{xiv}

The Act makes it illegal for an occupant to intentionally allow the premises to be used for the manufacturing or supply of a restricted substance, the preparation of opium for smoking, or the smoking of cannabis, cannabis resin, or prepared opium..^{xv}The Act

provides a series of offences related to opium including smoking or otherwise using opium.^{xvi} Sections 18 to 21 create offences dealing with incitement to commit an offence under the MDA.

(3) DRUG ABUSE LAWS IN FRANCE^{xvii}

The French law on illegal drugs is derived from the Code of Public Health (code de la santé publique), the Penal Code, the Code of Penal Procedure, and the Customs Code. The Law of 1970, which revised the Code of Public Health and established a legal framework dependent on the implementation of both repressive measures and health-related dispositions, is the primary Law dealing with illegal narcotics.

In addition to outlaw narcotics and providing addicts with access to confidential, free treatment, the principal goals of the 1970 law were to reduce drug-related crime and violence and to protect vulnerable populations from the stigma associated with substance abuse. France has ratified the UN conventions on drugs—the Single Convention on Narcotics (1961), the Convention on Psychotropic Substances (1971), and the Convention against Illicit Trafficking of Narcotics and of Psychotropic Substances (1975)—international law governs French law (1988).

A new law has been passed to redirect consumers of soft substances like cannabis away from the criminal justice system, enhance penalties for trafficking, and tighten controls on trafficking. The majority of the Law of 1970, which was originally drafted into the Public Health Code, has been incorporated into the new penal code which came into effect in 1994. However, the Public Health Code provides penalties for drug-related offences.

(4) DRUG LAWS IN AUSTRALIA^{xviii}

Poisons Standard, a legal document, specifies the parameters under which a chemical may be controlled. The Therapeutic Goods Administration (GA) oversees and routinely revises such medications through public consultation. Schedules indicate how and where various drugs can be obtained. To give only one illustration:

Schedule 3 substances can be purchased at a pharmacy without a prescription but must be destroyed after use. Drugs that are illegal to possess or use are placed in Schedule 8. Inappropriate possession of them constitutes a criminal offence. Substances that are illegal are listed in Schedule 9.^{xix}

Severe drug crimes are addressed in the Criminal Code Act of 1995. The laws and rules pertaining to drugs are compiled by the Office of Drug Control. The court has the authority to decide the appropriate punishment for drug-related crimes. Those found guilty of the most serious crimes face possible life sentences in prison and penalties of up to \$250,000. The Drugs of Dependence Act 1989, the Criminal Code 2002, and the Commonwealth Criminal Code 1995 are also relevant pieces of legislation.

(5) DRUG LAWS IN CANADA^{xx}

The Controlled Substances Act (CSA) is the primary federal law addressing illegal substances. It regulates six common offences, including possession, trafficking, cultivation, import/export, and "prescription shopping" The Act updates Canada's drug control policy

and brings it into the modern day. It covers crimes involving the property or proceeds of drug crimes and complies with various international norms. The most significant change brought about by the CDSA was the establishment of distinct courts and prescribing criminal penalties for cannabis possession, cultivation, and distribution.

Canada's cannabis policy aims to improve the efficacy of the country's attempts to control the drug's use while decreasing the dangers to public health and safety, societal costs, and negative personal consequences. There are good and bad reasons to change cannabis laws, but the *de facto* leniency of penalties for possession has been brought about by the police and the courts, not by legislation. Offenders can be diverted to treatment or community service, but this does not reduce the caseload in the court system or affect the outcome of a conviction.

(6) PORTUGAL^{xxi}

For personal use without a prescription, it became authorised in Portugal in July 2001. If the amount in possession was little more than a ten-day supply, the charge was downgraded from a criminal one carrying a prison sentence to an administrative one in conformity with the *de facto* Portuguese drug policy. Instead of giving addicts a pass or fining them, the policy used to mandate community service or rehabilitation programmes. Despite the elimination of criminal sanctions, the amendments do not make drug usage acceptable in Portugal. Drugs are illegal in Portugal, and anybody caught with them face criminal penalties. Despite this, between 2001 and 2015, the number of drug traffickers convicted and imprisoned decreased by approximately 50% because of new regulations. The police will submit a drug user to a "Dissuasion Commission" if they catch them with even a trace amount of drugs. After the commission determines how severe their addiction is, they are offered counselling or other suitable care. When the state recognises a drug user, they do not view them as a criminal but as a patient. They assert that under the system, both mortality and the number of persons receiving treatment for addiction have decreased steadily.

Drug policies and legislation can differ significantly from one nation to the next. The purpose of establishing and evaluating drug laws in these countries is to lessen the negative effects that drugs and drug policies have on society as a whole. Some legal systems, such as Portugal's drug laws, even experiment with a post-prohibition stance by decriminalising narcotics. The drug was originally legalised in Uruguay in late 2013, making it possibly the first country in the world to do so.

Illicit opium cultivation in Afghanistan is so lucrative that a stable, non-corrupt central administration is extremely difficult to establish. International efforts to discourage opium cultivation in Afghanistan have failed because the well-funded Taliban are able to meet the needs of farmers in a way that the government is unable to. As the world tries to figure out how to deal with these problems, ideas like legalising marijuana to curb violence in Mexico's drug war, allowing the export of Afghan opium crops for medical use, and emulating Portugal's drug laws gain traction.^{xxii}

CONCLUSION

Critics have argued that, despite CDA's apparent focus on cracking down on major drug traffickers, the law in Canada will still be used to punish little cannabis possession. A variety of new drug crimes involving stimulants, depressants, and hallucinogens were enacted. Another complaint is that there is no balance in drug scheduling between the risks caused by medicines and the penalties for possessing them. Even while the Act asserts the necessity for compliance with international conventions and treaties, it does not take into account any of the alternatives to conviction and penalty that are included in those documents.

In Canada, a person caught with cannabis faces a maximum penalty of a fine if there is no criminal record against him and if he chooses to enter into an agreement for treatment or community service programme. India should think whether these are replicable models. Agreement among nations to make drug possession for personal use is no longer a crime is an issue to be addressed immediately. Users are more exposed to the risks of taking drugs that have been tampered with or are of unknown potency because the Act retains the specific enforcement authority for arrest, search, and seizure in drug cases. Since violence has long been intertwined with Canada's drug trade, this new law may help to ensure that it continues, while also exacerbating the worst excesses of the country's drug policy.

Despite the best efforts of national and international law enforcement organisations, trafficking and smuggling remain serious problems. In addition to other possible factors, the lucrative nature of this illegal commerce may be a major factor in its continued existence and rapid expansion.

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