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PSYCHOACTIVE SUBSTANCE AND INDIAN CRIMINAL LAW: AN ANALYSIS OF LEGAL CONTROLS AND HUMAN RIGHTS ISSUES- Dr. Santosh Choubey¹**ABSTRACT**

This abstract explores the many facets of the complex world of psychoactive drugs, including their varied nature, historical background, reason for India being a perfect location, social ramifications, and reason and the effect of such practice. The paper will also try to include the legal provisions under the Indian as well as International criminal law in curbing this harmful practice. The paper will also analyze the drug implications on human rights issues and will try to provide an amicable solution to this growing problem.

KEYWORDS

Drugs, Psychoactive substances, trafficking, legal, methods

OBJECTIVE OF THE STUDY

- 1- To understand the power of the government in formulating policies for curbing these practices.
- 2- To address critical issues that are leading to the consumption of more psychoactive substances in India.
- 3- To study the human rights violations related to psychoactive substance
- 4- To suggest recommendations for ways to address the issues surrounding the NDPS Act.

RESEARCH QUESTIONS

- 1- What is the consumption of psychoactive substances before and after COVID era?
- 2- What are the various ways in which the NDPS Act can be improved in the country?

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- 3- Why these practices are increasing in the nation even after so many steps were taken by the government?
- 4- Whether the environment in which a child is brought up play a crucial role in framing his character?

HYPOTHESIS

The problem of consumption of psychotropic substances and issues is gradually increasing in the nation. The various Acts passed by the government and Indian and International organizations have carved out a path that would surely help in eradicating this problem.

METHODOLOGY

This study will employ a qualitative research design to test the previously proposed hypothesis. It is based on qualitative data because the aforementioned study is most suitable to examine the variables that contributed to the rise in the use of psychotropic substances and how they relate to criminal legislation.

The general public and medical professionals working on issues about psychotropic substances will be the study's target group.

The majority of the respondents who provide the data are from the medical field, including practitioners, chemists, scientists with expertise in this area, and the general public. The methodological instrument used to collect the data was a survey. There is a sample survey used in this survey design tool. Non-random simple sampling should be used in the study to determine the experiences of the specific group of well-known scientists and medical professionals.

A 6-item structured questionnaire related to the study problem will be mailed to each respondent as the data collection method. A portion of the data analysis will involve investigating subjective beliefs and viewpoints.

RESEARCH FINDINGS

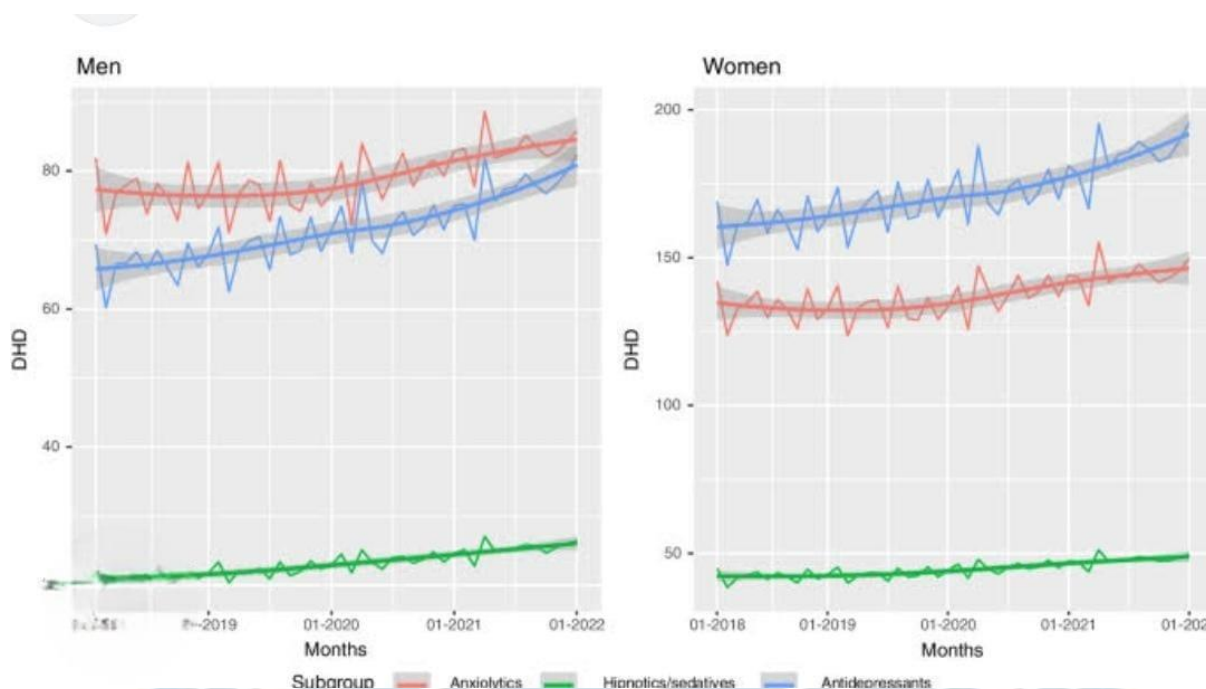
Research analysis is the process of looking at and assessing a specific topic or research problem using data and collected statistics as a base, analyzing these facts and statistics to formulate conclusions and judgments. The process of gathering, modeling, and supporting

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decision-making is known as data analysis. In this case, the gathered data would have been analyzed. Here, the survey data are presented and examined.

The first graph shows that how the consumption patterns of people have changed after the COVID era.



INTRODUCTION

Like the heads and tails of a coin, which we are all acquainted with, the universe is expanding on one side while collapsing on the other. The main contributing factor to this accident is drugs. Drugs were used for medical purposes in ancient times but with the ever-evolving economy of the state, the use of drugs has gone in a completely inaccurate direction. Before moving forward, we should understand the basic definition of Drugs. The drug is a chemical or medication that readily mixes with users' blood, and excessive consumption of it hurts how the human body functions, seriously harming both physical and emotional health. Drug misuse is a pervasive phenomenon in the society of India. Millions of Indians are addicted to alcohol, cannabis, opium, morphine, heroin, etc. Drug trafficking is a serious problem in most of the world's countries and unfortunately, India is also a major victim of it. The business of trafficking drugs is so profitable that a person can easily earn a million in a very short period. Drug trafficking is deeply related to other crimes such as Murders, Kidnapping, Prostitution, Human Trafficking, and various other heinous crimes. It is so hard for authorities to trace the

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full chain of drug traffickers due involvement of Government authorities, politicians, and businessmen. To resolve this issue the Government of India structured, the Narcotic Drugs and Psychotropic Substances Act, of 1985² which contains the rules, regulations, and power of courts to punish the offenders involved in this type of activity. To control drug trafficking in India Central Government also set up a model agency to look into matters of drug misuse or Trafficking named Narcotic Control Bureau (NCB) under the Ministry of Home Affairs.

HISTORY OF DRUG USAGE IN INDIA

According to all reports, substance misuse is almost a pandemic in India and other parts of the globe. India has a long history of using drugs in everyday life and sacred ceremonies, despite being a major supplier of legal drugs for the pharmaceutical industry. This traditionally drug-rich nation has only recently experienced a rise in drug addiction in recent years. The illegal trafficking of drugs leads to an increase in the number of drug addicts and secondly, the sale of illicit drugs proved to be a lucrative industry, and many businesspeople engaged in it. The government was making particular efforts to limit drug trade and crime, but the efforts were not very successful. There was a sudden rise in the consumption of drugs among the population of the state and this led to the import of drugs various drugs from other states. Cocaine came from Mexico and Colombia, while marijuana was brought from Latin America. Another widely used illicit substance is heroin, which was first grown in Southeast Asia's Golden Triangle. Additionally, opiates were shipped from Mexico and Afghanistan.³

WHY INDIA WAS THE PERFECT LOCATION FOR ILLEGAL DRUG TRAFFICKING

After the drugs were started importing into India it was also used as a trade route for moving illegal drugs throughout the world due to its strategic location on the map. India is a more susceptible country because it is situated between the two major routes used for the drug trade. They are referred to as the Golden Crescent and Golden Triangle. We need to understand what these two terms refer to here and how they acted in a catalyst way to promote illegal drug trafficking in India.

Golden Crescent

² Narcotic Drugs and Psychotropic Substance Act, of 1985 (Act No 61 of 1985)

³ Legal Provision about substance abuse and selling of the same (Jus Corpus, 17th November, 2021)
<<https://blog.ipleaders.in/legal-provisions-in-relation-to-substance-abuse-and-selling-of-the-same/>>
(Last visited on 24th January)

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One of Asia's two major centers of poppy cultivation is known as the "Golden Crescent." The intersection of central, south, and western Asia is where you can find the Golden Crescent. The areas occupied by Afghanistan, Iran, and Pakistan by the three nations are contiguous.

According to the UNODC, Afghanistan is the country that produces the most hashish in the world and nearly 90% of the world's non-pharmaceutical quality heroin. Opium is illegally transported from this path to Russia, as well as from the Balkan route to Turkey, Greece, and Bulgaria.⁴

Golden Triangle

In Southeast Asia's golden triangle, where Thailand, Laos, and Myanmar meet the Mekong River and the Ruak River, heroin is also produced. Myanmar is the 2nd biggest opium exporter. The Golden Triangle was once the biggest producer worldwide of opium, but today artificial drugs are produced there. According to UNODC Methamphetamine and other synthetic drugs are produced here and transported to Australia and New Zealand.⁵

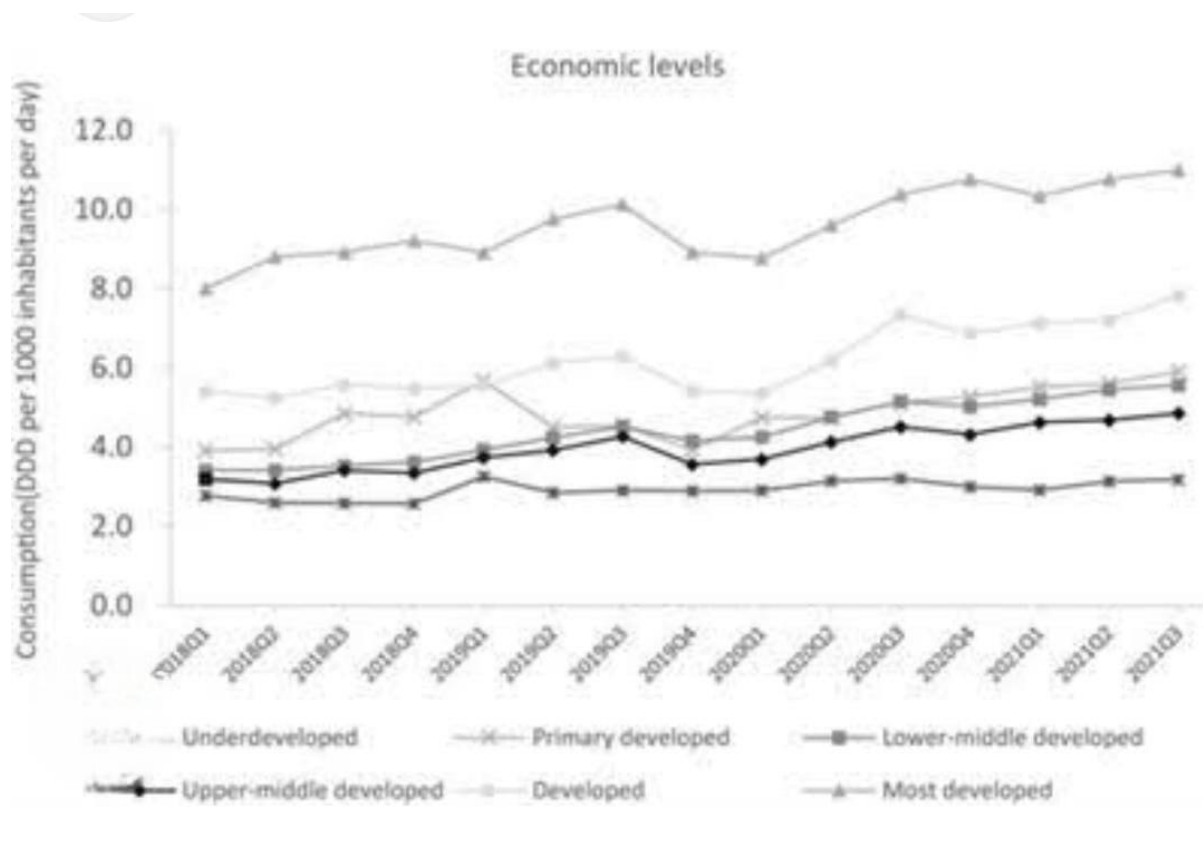
The below graph shows a sharp rise in drug consumption, influenced by various socioeconomic factors such as the proximity to the Golden Triangle and Crescent, two major drug-producing regions globally. These elements have significantly added to the increase in drug consumption, in addition to the challenges of being unemployed and living in poverty. A lot of individuals, particularly the youth, resort to substance abuse as a means of avoiding the difficult truths of poverty and lack of employment. Due to India's location, drugs are readily available, worsening the situation and requiring immediate action to combat addiction and social struggles.

⁴ Drug Trafficking in India (Legal Services India, <https://www.legalserviceindia.com/legal/article-2839-drug-trafficking-in-india.html>) (Last visited on 24th January)

⁵ United Nations Office on Drugs and Crime [https://www.unodc.org/pdf/india/publications/south Asia Regional Profile Sept 2005/10 india.pdf](https://www.unodc.org/pdf/india/publications/south%20Asia%20Regional%20Profile%20Sept%202005/10%20india.pdf) (Last Visited on 12th January)

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REASONS FOR THE RISE IN ILLEGAL DRUG TRAFFICKING

1- Corruption

India has been a country where corruption is the most common practice which is almost carried out in almost all government departments. Corruption is the result of the greedy nature of humans to grow and become rich without involving physical and mental activity on their behalf. Corruption has also affected illegal drug trafficking as many government officials take bribes from the importers of drugs and let them move their drugs from India. According to reports of the Corruption Perception Index, India has been ranked 85 out of 185 countries which shows the pathetic condition of our nation. These ranking are not solely based on myths there have been many instances that show the practice of corruption at a large scale such as the video leaked of Army Personnel involved in such types of activities. The police are not lagging in such types of activities but the difference is only that it is engaged in the movement of a small quantity. Even rich wealthy and affluent businessmen man are involved in drug trafficking as it renders much profit without any effort on their effort.

2- Poverty

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Poverty in our nation has always been a constant problem. Even with time and with the efforts of numerous governments the nation has not been able to solve the problem of poverty. Poverty has been defined as a situation in which an individual fails to earn sufficient income to buy bare means of subsistence. India is the world's most populous country and managing this huge population is not an easy task the government is not able to provide employment opportunities to everyone which leads to no income for the individual due to which he has to engage in such types of activities.

3- Rising Unemployment

Unemployment may be defined as a situation when a person is not gainfully employed in a productive activity and thereby does not work or earn. Unemployment in India has been always a major problem for the economic growth of the nation. The low unemployment rate in the nation is the major reason for all these types of illegal or illicit type of activities. If the youth of the nation have no work to do then they will be surely engaged in any activity which lures them or gives them money. As stated, the illegal trafficking of drugs furnishes a hefty amount of profit which leads to the engagement of an unemployed person in such type of illegitimate activities. It is well quoted that an empty mind is a devil's house, therefore to prevent the unemployed person to involved in such types of activities it is necessary to take proper precautionary measures.

4- Lack of Effective Government Control

The Government has initially failed to act properly and systematically to solve a big issue as it will have an indirect effect on many other things that are related to it. The Government after seeing many effects of this problem tried to implement an Act and set up a separate nodal agency that would only deal to stop the illegal trade practices related to drugs. But it was too late in framing a proper act and agency as the activity has only spread its foot in deviating the nation's goals and minds of the young people which were to be utilized more effectively.

EFFECT OF ILLEGAL TRAFFICKING

1- Deviating the youth from their goal

According to the reports, 22% of the youth population consumed drugs at least a week to escape real-life issues and cope with emotional distress and family issues. According to

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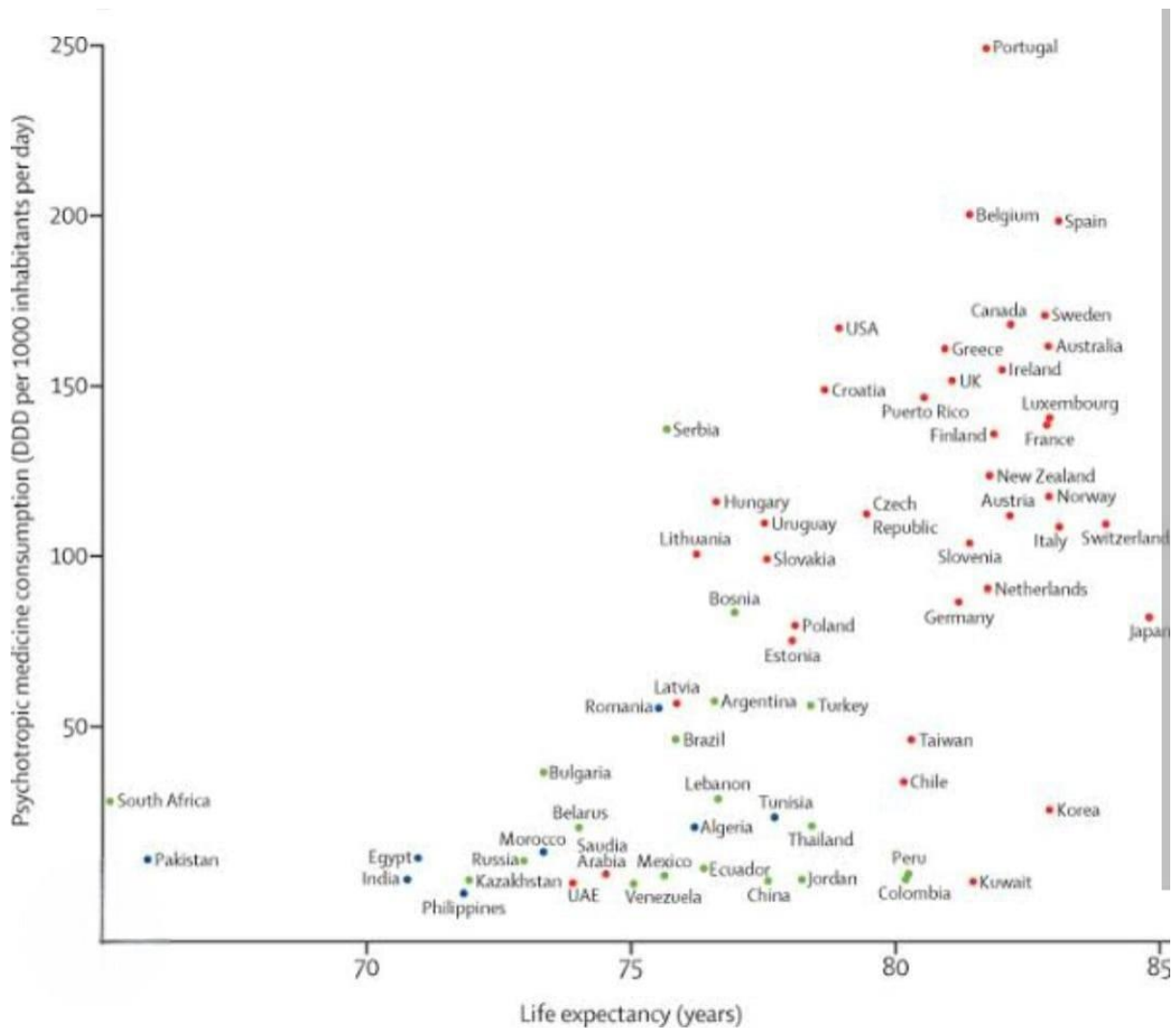
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reports by the United Nations 13% of drug abuse victims in India fall below the age of 20 years which shows the increasing consumption of drugs and decreasing age for consumption of drugs. The youth of the nation is considered to be a factor that can help the nation to prosper and grow at a rapid rate but the use of drugs at an early stage of their life usually deviates from their goal. India has the youngest population in the world where approximately 65% of the population is below 35 years of age which can be utilized in a more effective way rather than consuming such types of products. The consumption of such substances deviates the youth from the young from their education and what they want to achieve in their life, therefore, hampering the growth of the nation.

Drug use is becoming a bigger worry among young people in India, with 22% turning to drugs every week to avoid facing their real-life problems, and 13% of those affected are under the age of 20. With 65% of its population under the age of 35, India's potential for growth is at risk due to this trend. Beginning to use drugs at a young age can disrupt educational pursuits and aspirations, shifting focus from personal and societal progress. In order to address this issue, India needs to enforce tougher regulations on drugs and offer strong support systems, such as mental health services and education, to prevent addiction and ensure that young people contribute to the country's success.

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2- Increase in Crime Rates

The increased consumption of drugs is directly related to increases in the number of crimes such as Kidnapping, Murder, Prostitution Human Trafficking, etc. When a person is under the influence of intoxication, he does not remember the activity he is doing and usually commits any punishable crimes.

3- Impact on Health and Body

Drug usage and misuse can result in specialized treatment, ED trips (which can occasionally result in fatalities), the acquisition of illnesses, and lengthy hospital admissions. It will have an impact on his physical and mental well-being. If he consumes drugs to an excessive degree, his body will experience several health problems. If he skips a prescribed amount of time, his mental well-being will deteriorate as well.

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4- Adverse impact on society

There are many ways that drugs have a detrimental impact on society. They disrupt cardiac and respiratory function and redirect dopamine in the brain. Employees who consume drugs seem to be less productive in their work and have a high chance of losing their work due to their low efficiency. The loss of jobs is a drawback for the nation as the employee who contributes towards the growth of the nation is unemployed at present.

5- Impact on the Family

The use of drugs by one person at the home is the upshot for the rest of the family. The family members have to distress or eliminate that member for the well-being of the whole family. It can keep kids away from their parents. Children may choose to start taking drugs if they witness their parents using them. The future population, who are referred to as the country's future, will be impacted by this move. It may also be difficult for parents to deal with a kid who is addicted to drugs. They run the danger of leaving their child alone for long periods. Potential visitors who would damage the property or make fun of their parents for their child's state could be invited over.

LEGAL PROVISION UNDER NDPS ACT, 1985

The contour of the aforementioned Act regarding its

Chapter-4 rubric as OFFENCES AND PENALTIES in which sheaf of section 15 to section 40 is there.⁶

Narcotics control bureau is made under section 4(3) of the N.D.P.S Act,1985⁷

The provisions under these sections talk about the punishment of offenses related to contravention of illicit substances for example- poppy straw, coca plant, and its leaves, opium, etc. The manufacturing, procuring, cultivation, and trading of these substances are prohibited under these sections. The nature of offenses whetherailable or non-ailable is also discussed in these sections and these sections also empower courts to deal with these types of cases.

⁶ The Narcotic Drugs and Psychotropic Substances Act, 1985 (Act No 61 of 1985), s 15 to 40

⁷ The Narcotic Drugs and Psychotropic Substance Act, 1985 (Act No 61 of 1985), s 4(3)

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Under section 36⁸ of this act, special courts are constituted. All cases under this act will be dealt with by these special courts only

The import and export of the illicit substances discussed above are prohibited under section 23 of this act. This act bifurcated the number of illicit drugs into three types

- 1- Small quantity – If the captured substance is under the small quantity, then the rigorous imprisonment of a maximum of up to 1 year or a fine up to ₹10000 or both can be awarded.
- 2- Intermediate quantity- if the captured substance is under a small quantity, then the rigorous imprisonment of a maximum of up to 10 years or a fine of up to ₹100000 or both can be awarded.
- 3- Commercial quantity - If the captured substance is under a small quantity, then the rigorous imprisonment of a maximum of up to 20 years or a fine up to ₹200000 or both can be awarded but here minimum fine will be ₹100000.

STEPS TAKEN BY THE GOVERNMENT TO CURB ILLEGAL TRADE

- 1- The Narcotic Drugs and Psychotropic Substances Act (NDPS Act)⁹, which is in force in India, forbids the production, ownership, selling, and usage of drugs. This legislation also resulted in the formation of NCB. According to this law, the sentence may be increased from one to twenty years.
- 2- This law includes measures for punishing both financiers and dealers of illegal substances.
- 3- The government has the right to confiscate, sequester, and revoke any property that was purchased with money obtained from the drug trade.
- 4- Another important aspect is border control. Rajnath Singh, India's Minister of Defence, has started the "Electronic Border Surveillance Project" at the frontier with Bangladesh to gain control over this illegal commerce. This initiative is being carried out as part of an extensive integrated border management system that currently makes use of microwave transmission, optical fiber cable, security cameras, digital mobile fiber, etc. With the aid of a fast reaction team, this cutting-edge timepiece records,

⁸ The Narcotic Drugs and Psychotropic Substance Act, 1985 (Act No 61 of 1985), s 36

⁹ The Narcotic Drugs and Psychotropic Substance Act, 1985 (Act No 61 of 1985)

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unlawful border activity and notifies border security forces. The unsavoury frontier traffic will be stopped.

- 5- The Indo-Pak frontier has also been equipped with a "Virtual Fence" or "smart fence" system that uses thermal and laser alert systems. This barrier at the Indo-Pak frontier is built with the aid of an infrared alert system.
- 6- To stop the trade of drugs and coordinate efforts to avoid these security risks, India and its neighbours have inked numerous mutual agreements.
- 7- India also ratified all three UN agreements on combating illicit drug traffic.
- 8- To stop drug use and trafficking in different areas of the nation, India has also been nurturing alliances with voluntary organizations like NGOs, civic societies, municipal boundaries, etc.

INTERNATIONAL CONVENTIONS

The problem of the illegal trade of drugs is not only present in India but is widely spread across the globe and is affecting the world at large. Due to this, the United Nations formed three international treaties that lay down the framework of the global drug control regime. The Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol, the Convention on Psychotropic Substances, 1971, and the Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988. These accords seek to create globally applicable control measures to guarantee the availability of psychotropic drugs for medicinal and scientific applications while preventing their diversion into illicit channels. The accords also contain broad guidelines on the use and trade of psychotropic drugs.

UNITED NATIONS AGENCIES ASSOCIATED WITH CONVENTIONS ON DRUGS

The three agreements give the World Health Organization, the International Narcotics Control Board, and the Commission on Narcotic Drugs specific responsibilities.

- **Commission on Narcotic Drugs**

With 53 nations as members, the CND is the legal and policy-making entity that supports the Council in monitoring the implementation of the worldwide drug control accords. Additionally, it provides the Council with guidance on all issues about the management of narcotics, psychoactive compounds, and their constituents. The Commission on Narcotic

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Drugs is tasked with crucial legal duties by worldwide drug control accords. These include the power to investigate all issues about the meetings' goals and guarantee their observance.

- **International Narcotics Control Board**

The INCB is in charge of policing the lawful production, distribution, and use of narcotics. The INCB works with governments to make sure that there are sufficient drug supplies for medicinal and scientific purposes and that there is no drug diversion from legal to illegal channels. Additionally, INCB keeps an eye on the substances that governments are allowed to control and helps them stop such substances from being diverted into illegal trafficking.

- **World Health Organization**

The WHO's job is to evaluate a chemical's therapeutic potential from a public health standpoint use the best available data and balance the reasons for and against regulating its use. The WHO ought to strike a compromise between the need for a drug to be accessible for medicinal use and the potential harm that its unauthorized use might cause to human health.¹⁰

HUMAN RIGHTS VIOLATIONS RELATED TO PSYCHOACTIVE SUBSTANCE

Human rights breaches connected to psychoactive drugs are a complicated and varied subject. Violations can affect people on several levels, as well as groups and even entire countries. The following are some frequent domains where psychoactive chemicals are linked to violations of human rights:

1-Penalization and Criminalization:

Mass Imprisonment: Making drug use illegal can result in mass imprisonment, which disproportionately affects communities of color and those from low-income backgrounds.

Strict consequences: Drug-related offenses carry harsh consequences in several nations, such as lengthy jail terms or even the death penalty.

2-Violence and Extrajudicial Killings:

¹⁰ United Nations Office On Drug and Crime

https://www.unodc.org/unodc/fr/commissions/CND/Mandate_Functions/Scheduling.html (Last Visited on 12th January)

Extrajudicial Executions: In some areas, authorities have the authority to execute suspected drug criminals without following the proper legal channels.

Drug Trade Violence: Because the drug trade is illegal, there is a potential for violence that affects not just the traffickers but also innocent bystanders caught in the crossfire. A perfect example is of drug cartels that operated in Colombia and Mexico in the 80th.

3-Stigmatization and Discrimination:

Social Stigma: Users of psychoactive substances, especially illegal narcotics, may experience extreme marginalization, discrimination, and social stigma.

Denial of Healthcare: Stigmatized People may not be able to receive treatment for substance use disorders or other healthcare services.

4-Insufficient availability of treatment and harm reduction:

Criminalization Impederata Treatment: People with drug use problems may be deterred from seeking assistance by criminalization if they are afraid of facing legal repercussions.

Restricted Access to Harm Reduction Services: Strict drug laws may make it more difficult to access services that reduce harm, such as supervised consumption centers and needle exchange programs.

5-Infracton of Right to Privacy:

Mass Surveillance: Certain nations may violate people's right to privacy by conducting mass surveillance on anyone they suspect of engaging in drug-related activities.

Illegal Searches and Seizures: Law enforcement authorities may engage in illegal searches and seizures in the name of drug control.

6-Forcible Removal of Crops:

Environmental Impact: Forcible crop eradication efforts to stop the manufacturing of some psychotropic drugs may result in environmental harm and community uprooting.

7-Violations of Children's Rights:

Child Exploitation: In addition to being involved in unlawful activities and forced labour, children may be exploited in the manufacturing and trafficking of psychoactive drugs.

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CONCLUSION

At last, we can say that the illegal trade of drugs should be prohibited and should be put to an end so that the drugs can be utilized in the best way possible such as through healthcare facilities rather than injuring life or increasing the death of the person. The Government is taking appropriate measures and it should implement them in the best and most effective way so that it can show an immediate effect on the people, society, and economy. The Government is also a member of the International protocols; therefore, it should abide by the rules and regulations set out in the protocols if it wants to achieve its goal faster and accurately. As all things are interconnected with one another if drug trafficking is controlled, then all the activities will be within the control of the government and then the government can work for the betterment of society. Another major issue is protecting human rights violations which include damage reduction, and public health as the three main foci of a comprehensive strategy to address breaches of human rights caused by psychoactive drugs. Many supporters support legalizing or decriminalizing certain drugs in addition to placing more of a focus on harm reduction and treatment. Additionally, initiatives to advance evidence-based policies that put human rights and wellbeing first should be established, as well as to lessen the stigma and prejudice associated with drug use human rights and wellbeing first should be established, as well as to lessen the stigma and prejudice associated with drug use.

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