



A CRITICAL ANALYSIS OF DRUG TOLERANCE IN INDIA WITH SPECIAL REFERENCE TO DRUG TOLERANCE IN THE NETHERLANDS

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Abstract

Drug use has strong roots in India. For a long time, cannabis has been associated with Hinduism and is served as an offering to God. Cannabis was tolerated in a form where they were smoked or consumed by people only for spiritual purposes. This traditional use of the drug met a backlash with the enforcement of Narcotic Drugs and Psychotropic Substances Act, 1985 which is based on zero-tolerance. The Act is tough on drugs and attracts severe sanctions but in reality, it has numerous drawbacks and has even facilitated introduction of new drugs and illicit drug trafficking in the country. This paper studies the close association of cannabis with the Indian culture. This is followed by an analysis of the Indian drug policy, its enforcement and effects. In addition, Indian drug policies are also briefly compared to the more liberal policies of the Netherlands which are based on the rationale of harm prevention and harm reduction. The paper then concludes with a view that India would benefit from decriminalization of drugs due to the traditional association and the current inevitable prevalence of drug use in the country and also provides some recommendations towards decriminalization

and for facilitation of treatment for the drug users.

Key words

Drugs, cannabis, drug trafficking, tolerance.

I. Introduction

The term 'drug' refers to any substance capable of altering the way mind and body works when introduced into the body, regardless of medical or legal status. Indian history goes a long way with regard to the use of drugs. Although India has now criminalized cultivation, manufacture, purchase, possession, sale and use of drugs through the Narcotic Drugs and Psychotropic Substances Act of 1985 (NDPS Act), pursuant to international laws; history shows a close affiliation between certain drugs like cannabis and opium and Indian culture.¹

From what was once free and traditional use of drugs, India has recently seen a huge shift to the current 'zero-tolerance' policy, the pillar on which the Indian drug policies are built.² In spite of the Indian legislations being severely tough on drugs, the reality is quite different. The unspoken truth is that India facilitates drug trafficking and related organized crimes by being a geographically convenient transit route as well as provides a commercial market for the illicit drugs which are trafficked across nations.³

This paper aims to analyse the drug tolerance in India and the extent to which the Indian drug policies are effective in containing the prevalence of drugs in the society. For this purpose, this article focuses mainly on cannabis and its related Indian policies but

¹ Mia Touw, 'The Religious and Medicinal Uses of Cannabis in China, India and Tibet' (1981) 13 Journal of Psychoactive Drugs.

² Tripti Tandon, 'Drug Policy in India'.

³ *ibid.*



will also shed light on how these policies deals with drugs as a whole. Firstly, the historical background of cannabis in India is analysed to gain a better understanding on how its acceptance has changed over the years. This is followed by critically analysing the current Indian drug policies – how the policies came into force, the influence of international laws and the main tenets behind these. For a comparative understanding, Indian policies are then compared and contrasted with the drug policies in the Netherlands, a country renowned for its drug tolerance and decriminalization of drugs. Finally, the paper identifies the key challenges in the Indian policies and concludes with some recommendations to these.

II. Cannabis History in Indian

Cannabis, popularly known as marijuana, weed or ganja (in India) is a drug derived by drying the flowers or leaves of the plant Cannabis Sativa and has psychoactive properties – capable of affecting mind and body, due to the chemicals contained in various parts of the plant. The two main components of cannabis responsible for inducing the psychoactive properties are cannabinoid (CBD) which is non-intoxicating and is used to treat various illnesses and tetrahydrocannabinol (THC) which is intoxicating and the component sought for recreational use of the drug. Cannabis has been mentioned in ancient Hindu religious scriptures as one of five sacred plants, the others being neem,

sandalwood, jasmine and tulasi (holy basil); and is believed by Indians to have been bestowed on them by God himself.⁴ Cannabis is considered to be a holy plant and though primarily associated with Hindu God Shiva, the local Gods in every region were worshiped with offerings and imbibing of cannabis.⁵ This association of cannabis with Gods can be traced back to the Hindu mythological story known as Samudra Manthana. According to this episode which has been narrated in the Bhagavata Purana (one of the traditional Hindu literatures), it is believed that Lord Shiva drank a lethal poison from the ocean to protect the three worlds following which he consumed cannabis to ease the pain he felt from the poison. Even till date, some believe it is mandatory to use cannabis to please Gods and receive their blessings.⁶ Other uses of cannabis can also be noted in the Atharva Veda (one of the four vedic texts) in which cannabis has been glorified for curing illness and for warding off demons. In addition, cannabis played a pivotal role in the Indian traditional Ayurveda medicines, used as early as in 900 BC, where it was often used in combination with other herbal and natural products to treat various illnesses like food poisoning, diarrhoea, rheumatism, to reduce fatigue, to increase appetite and reduce insomnia.⁷

Until the 19th century, although there were no official rules to regulate the use of cannabis, there is also no record showing excessive use or abuse of the same. This is believed to be

⁴ Touw (n 1).

⁵ Indian Hemp Drugs Commission, 'Report of the Indian Hemp Drugs Commission' (1894).

⁶ SL Acharya and others, 'Cannabis, Lord Shiva and Holy Men: Cannabis Use Among Sadhus in Nepal' (2014) 3 J Psychiatric Association of Nepal.

⁷ Mohammed Kuddus, Ibrahim AM Ginawi and Awdah Al-hazimi, 'Cannabis Sativa: An Ancient Wild Edible Plant of India'.



so due to the socio-cultural norms which existed during that time, which made sure that the use was restricted only to cultural and spiritual purposes, especially as a group activity.⁸ Usage and consumption of cannabis was linked to religious festivals and was mostly restricted to male with the exception of 'bhang', a drink which uses little amount of cannabis leaves, which is allowed to be consumed by women and children but only during the Indian festival of Holi.⁹ Even till date, it can be observed that cannabis is mainly associated with meditation and religious ceremonies in parts of India and Nepal despite legal prohibitions.¹⁰ Apart from cannabis, opium also has strong roots in Indian tradition. Opium is derived from the unripe seedpods of the opium poppy and is a highly addictive narcotic drug, capable of inducing sleep, relieving pain and dumbing ones senses. Serving opium to guests who visit was a mark of respect and was once an age-old tradition in many parts of India.¹¹ Despite the strong connection with ceremonious context, the likelihood of drug abuse due to its easy availability could have played one of the major roles in restricting and regulating its use in India.

III. Indian Drug Policies

The traditional use of cannabis in India met a backlash when the British sought to regulate the cultivation and sale of it in the late 18th century. The popularity of cannabis in India astonished Englishmen and the British

Parliament passed a law to tax ganja and bhang. It is said that the rationale behind this move was for the sake of the natives' sanity and good health.¹² Until India's independence in 1947, the country faced various drug policies which were all commercially driven.¹³ The major shift from traditional drug use management to emphasis on eradicating all drug use and trade took place when India became a party to three of the United Nations drug conventions.¹⁴ The resulting inability to source licit drugs for traditional use has forced drug users to avail the same from the illegal market, which was facilitated by the rising popularity of new forms of synthetic drugs which were introduced through tourism.¹⁵ Criminalization of drugs thus led to not only acquiring them through illicit means but also to the development of organized drug trafficking.

i. Organized drug crimes

Drug trafficking has been recognized as a serious organized crime affecting India, mainly due to India being transnational in character. Organized crime gangs in India were initially involved in crimes such as laundering, human trafficking and extortion. Globalisation has led to the reduction of trade barriers and these gangs have taken the situation to their advantage and ventured into

⁸ Molly Charles, Dave Bewley-taylor and Amanda Neidpath, 'Drug Policy in India: Compounding Harm?'

⁹ *ibid.*

¹⁰ Acharya and others (n 6).

¹¹ Anand Grover and Rick Lines, 'Say NO to Death for Drugs' *The Hindu* (February 2012) <<https://www.thehindu.com/opinion/op-ed/say-no-to-death-for-drugs/article2920551.ece>>.

¹² Adrija Roychowdhury, 'Cannabis in India: A Rather Long Story, with Its Highs and Lows' *Indian Express* (September 2020) <<https://indianexpress.com/article/research/cannabis-in-india-a-rather-long-story-with-its-highs-and-lows-6592020/>>.

¹³ Tandon (n 2).

¹⁴ *ibid.*

¹⁵ Charles, Bewley-taylor and Neidpath (n 8).



illicit drugs business.¹⁶ One of the most notorious gang is of Dawood Ibrahim, having around 4000-5000 men who primarily smuggle gold and engage in contract killing. His gang is also well known for engaging in transnational drug trafficking.¹⁷ Thousands of gangs are believed to exist in India and they have been identified to follow loose structures unlike the Italian mafia, which are hard to trace.¹⁸ Despite their cognizance, there is no data confirming the exact number of organized gangs, their area of operation, membership or modus operandi.¹⁹ Moreover, apart from corruption at every bureaucratic level, poor governance in India has also affected the security pillars responsible for maintaining order and keeping crime under control.²⁰ As a result of this, the borders are left vulnerable to all sorts of crime. Most importantly, India's geographical location offers numerous advantages for those operating drug trades. On one side, it offers enormous coastline which assists in smuggling of drugs through the ports, while on the other side, it is flanked by regions internationally known as major sources of illicit opiates.²¹ Furthermore, factors such as poverty, lack of education and unemployment act as catalysts for transnational organized crime.²² In terms of drug trading, apart from the considerable amount of opium and cannabis produced in India, the country's trade also centres on heroin, hashish and methaqualone.²³ There

have been instances of many seizures, some of which has been of nearly 18,000 kg of heroin, the suspected source being Pakistan and South-West Asia.²⁴

ii. Draconian drug policies

India has no comprehensive laws to curb organized crime in all its manifestations and dimensions. Laws which deal with facets of organized crime are scattered across various Central and State statutes.²⁵ Even in the post-colonial period, the Indian Constitution follows the principle left behind by the British and provides Article 47, a directive which adopts a prohibitionist view towards intoxicating drinks and drugs.²⁶ In addition, there is also Section 120-A of the Indian Penal code penalises the act of 'criminal conspiracy' which relates to an illegal act to which two or more person agree to do; and an organized crime can well fit within the scope of this provision.²⁷ Significant drug related policy were framed to adhere to the United Nations drug control conventions – Single Convention on Narcotic Drugs, 1961; Convention on Psychotropic Substances, 1971; Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988; all of which aims at eradicating drugs from the society. The Single Convention on Narcotic Drugs, 1961 gave India a grace period of 25 years to phase out existing drug use and India found this period to be utmost problematic since all the necessary measures

¹⁶ Shankar Pratap Singh, 'Transnational Organised Crime: The Indian Perspective' 570 <https://www.unafei.or.jp/publications/pdf/RS_No59/No59_38PA_Singh.pdf>.

¹⁷ Madan Lal Sharma, 'Organised Crime in India: Problems & Perspectives' 82 <https://www.unafei.or.jp/publications/pdf/RS_No54/No54_10VE_Sharma.pdf>.

¹⁸ Singh (n 16).

¹⁹ *ibid*.

²⁰ Nafiu Ahmed, 'Transnational Organized Crime in India: A New Framework of Analysis' (2017) 2 European Journal of Social Sciences Studies.

²¹ Singh (n 16).

²² Ahmed (n 20).

²³ Sharma (n 17).

²⁴ Singh (n 16).

²⁵ Sharma (n 17).

²⁶ Article 47, Constitution of India, 1950.

²⁷ Section 120-A, Indian Penal Code, 1860



had to tamper with religious and cultural feelings of the natives.²⁸

India did little to regulate and gradually slow down the prevalence of drug use in the society during the grace period. At last, Narcotic Drugs and Psychotropic Substances Act, 1985 was enacted hastily, which enforced a sudden and stringent halt to the prevalence and use of drugs.²⁹ The NDPS Act primarily deals with 3 classes of substances – narcotic substances (covered under 1961 Convention), psychotropic substances (covered under 1971 Convention), and controlled substances which refers to the precursors. In simple terms, precursors are chemicals and other mixtures or natural products containing chemicals which are used to manufacture illicit drugs. The Act prohibits cultivation, possession, sale, any form of trade (import and export), use and consumption of substances except for ‘medical and scientific purposes’ in accordance with law.³⁰ This makes it evident that the Act focuses on curbing both the demand and supply of drugs. But it has to be noted that the Act neither defines the term ‘medical’ nor ‘scientific’. The Act was amended a few times, becoming more and more tough on drugs, again owing to the influence of the deliberations at South Asian Association for Regional Cooperation (SAARC) on the growing menace of drug trafficking.³¹

The amendment of 2001 classified grades of punishment based on the quantity of drugs involved – ‘small’, ‘intermediate’ and ‘commercial’, which are specified in the Act.³² Instead of providing more clarity, this classification has only led to inconsistent interpretations since the Act does not provide a method to ascertain the quantity in terms of purity versus the total weight.³³ In contrast, the Indian judiciary has affirmed that even if a trace of the offending drug is found in a mixture, the entire mixture will be declared as the offending drug.³⁴ Another drawback which has been observed is that using quantity-based sentencing fails to consider factors like motive and role of offenders, whether the person is sick, old or mentally infirm, whether one is socially or economically disadvantaged, nor is there any consideration towards those who act under duress.³⁵ For example, mere possession of certain quantity might attract the same penalty as distribution of the same quantity of drugs, equating users on par with traffickers.

Also, India considers narcotic offences to be more heinous than offences like murder since the former has deleterious impact on society at large while the latter affects only an individual.³⁶ This is the reason for NDPS Act providing for harsh, draconian measures like minimum sentence of 10 years for any form of involvement with cannabis, coca irrespective of the quantity and death penalty for certain repeat crimes – production, manufacture, transportation, possession, import and export, involving a large quantity

²⁸ Charles, Bewley-taylor and Neidpath (n 8).

²⁹ Tandon (n 2).

³⁰ Section 8, Narcotic Drugs and Psychotropic Substances Act, 1985.

³¹ Tandon (n 2).

³² Section 2, Narcotic Drugs and Psychotropic Substances Act, 1985.

³³ Tandon (n 2).

³⁴ Abraham Thomas, ‘SC Makes Anti-Drug Law More Stringent’ *Hindustan Times* (April 2020) <<https://www.hindustantimes.com/india-news/sc-makes-anti-drug-law-more-stringent/story-URSO4t4hMdwSvPtYndCTXM.html>>.

³⁵ Grover and Lines (n 11).

³⁶ Tandon (n 2).



as specified by the Act.³⁷ As opposed to this stringent legislation, the United Nations Human Rights Council (UNHRC) has clarified that drug trafficking is not the most heinous crime under international law. In addition, UNHRC has advised India to limit the number of drug related offences to which capital punishment would be pronounced, with a view to its gradual abolition. Furthermore, the United Nations Office on Drugs and Crime, the organ which oversees the global drug control measures has denounced capital punishment as a means to control illegal drug trafficking and has also asked the member states to abolish the granting of death penalty to drug related offences.³⁸ A more compelling issue under the NDPS Act is the presumption of guilt. One of the fundamental principles of common law is the presumption of innocence – any person accused of a crime is to be presumed innocent until proven guilty beyond reasonable doubt and the burden of proof lies thus on the prosecution. The NDPS Act carries a reverse burden of proof with a culpable mental state of the accused under sections 35 and 54 with regard to possession of drugs.³⁹ The accused is presumed to be guilty until proven innocent beyond reasonable doubt and the burden of proof lies on him. This lays bare the severe nature of NDPS Act and it is evident that the provisions are not in parlance with the fundamentals of common law.

Another downfall of the NDPS Act to be noted is that the Act does not distinguish between soft drug like cannabis and other

hard drugs (soft drugs are those with lesser risks and health hazards than hard drugs) and thus, offences involving both could attract death penalty. Capital punishment could be attached to the drugs under the NDPS Act but all of these drugs have different addictive and dependency potential, deleterious health effects or therapeutic value. Moreover, drug dependence albeit being a serious societal issue can be addressed with rehabilitative treatment, counselling and aftercare,⁴⁰ and these alternatives are ignored in most cases under the Act. Finally, NDPS Act was supplemented by the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substance Act, 1988 which provides for detention of people suspected or accused of involvement in drug trafficking.⁴¹ Although their punishment will be in line with the NDPS Act, this legislation aids in investigation and information gathering with regards to organized crime, a small step forward to tackling a larger issue. In spite of all the legislative efforts, it is an inevitable truth that the popularity of cannabis has hardly diminished. Moreover, in recent years, many activist groups and NGOs have come forward campaigning for the legalization of cannabis in India, only due to its high prevalence. In addition, it has to be remembered that though the British sought to reduce consumption of cannabis in India, they introduced alcohol (in the form it is consumed today) into the society which gained quick acceptance from the people who were looking for alternate drugs. Alcohol, being more dangerous to society and more addictive and harmful to health when

³⁷ Section 16, Section 20, Section 31-A, Narcotic Drugs and Psychotropic Substances Act, 1985.

³⁸ Grover and Lines (n 11).

³⁹ Section 35, Section 54, Narcotic Drugs and Psychotropic Substances Act, 1985.

⁴⁰ Grover and Lines (n 11).

⁴¹ Section 32, Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.



compared to cannabis,⁴² has found its way out of the ambit of the NDPS Act. The reasons why alcohol is excluded from the NDPS Act are manifold, some of which are – the social acceptance and usage grew so high that containing it would have posed a great challenge. Moreover, the prevalence of illicit and locally brewed undistilled forms of alcohol has been very high. In addition, the Government earns high revenues on the sale of alcoholic beverages.⁴³ This is the reason why every state in India has its own regulations with respect to production, manufacture and sale alcohol and its prevalence in the society is not curtailed by the NDPS Act.

iii. Prevalence of Cannabis Use

The aim of the NDPS Act is to completely eradicate the prevalence of drugs in India. As seen earlier, alcohol alone is not included in the prohibited drugs list under the Act. Complete prohibition of other drugs is not effective in eradicating its consumption since it paves way for people to source drugs through underhand and illicit means. Prevalence and use of drugs will still continue, but in a concealed manner, out of the purview of the criminal justice system. This can be supported by the report published by the National Drug Dependent Treatment Centre under AIIMS in 2019, wherein it was reported that 7.2 million people in India are addicted to cannabis.⁴⁴ In addition, it has been found through a survey conducted in 2019 that 14.6% of the Indian population uses alcohol. Next to alcohol, cannabis and

opium is most commonly used. 2.8% of the population have reported using cannabis, and 2.1% of the population reported using opioids in India. It must be remembered that this result is only from a sample of the population and moreover, there could be a high rate of underreporting. Thus, the real figures could be much higher. Overall, it has been observed that cannabis use has increased in the country by 30% in the last decade.⁴⁵ This clearly shows that in spite of the NDPS Act prohibiting consumption of drugs, reality is different and prevalence of drugs in the society is inevitable.

iv. Harm associated with cannabis

Studies have shown that not all people who use drugs use it in a problematic manner.⁴⁶ Pattern of harmful use would vary on the type of drug and frequency of use. In terms of cannabis, only around 0.25% of the Indian population use cannabis in a dependent pattern and 0.66% of those people need help with their cannabis use. This shows that cannabis does not have a high addictive property. In terms of harm, there is nearly no evidence to prove that cannabis could lead to cancer.⁴⁷ Cannabis is associated with motor vehicle accidents but there is no evidence linking the use of cannabis with death due to overdose or general occupational accidents. Furthermore, frequent users of cannabis could develop certain mental disorder such as schizophrenia and other psychosis but there is no proof of cannabis associated with any other form of mental disorders.⁴⁸ On the other hand, there is substantial evidence to show

⁴² Doug Sellman, 'Alcohol Is More Harmful than Cannabis' (2020) 133 *The New Zealand medical journal* 8.

⁴³ Saddichha Sahoo and others, 'Why Is Alcohol Excluded and Opium Included in NDPS Act, 1985?' (2007) 49 *Indian Journal of Psychiatry* 126.

⁴⁴ Roychowdhury (n 12).

⁴⁵ Ministry of Social Justice and Empowerment, 'Magnitude of Substance Use In India, 2019' (2019).

⁴⁶ *ibid.*

⁴⁷ The National Academies of Science Engineering, 'The Health Effects of Cannabis and Cannabinoids.' (2018) <<http://www.dictionaty.com/browse/weight>>.

⁴⁸ *ibid.*



association between cannabis and respiratory diseases, although it is free of nicotine which is present in tobacco.⁴⁹

In comparison, India sees 18.5% of the population dependent on alcohol and 5.2% of this population need help for their dependence. This shows that a fair proportion of alcohol users engage in problematic consumption. Alcohol can damage many organs of the body and even cause pre-mature deaths. To be more specific, alcohol could lead to cardiovascular diseases, liver diseases and cancer.⁵⁰ A good proportion of these people also engage in day time consumption, involve themselves in physical fights and meet with road traffic accidents.⁵¹

This brief comparison shows that cannabis is associated with some harm but it is not severe and problematic compared to effects of many other drugs like alcohol which is dangerous to both the individual's health and the society's as a whole. It has to be noted that these statistics could largely vary due to the possibility of underreporting and depending on the availability and access to drugs.

IV. International Comparison

This section compares the similarities and differences in the drug policies of India and Netherlands. As seen in the earlier sections, Indians followed a form of tolerance toward cannabis as it was associated with religious use.⁵² Netherlands also has a form of

tolerance which operates with a view to prevent youngsters from experimenting with hard drugs, which could lead to deadly effects on health, and thus has enforced decriminalization of drugs.⁵³ Currently, India is nowhere near decriminalization, let alone legalization of drug use. Although this situation in India greatly varies compared to the Netherlands, both countries have criminalized the supply side, though this also varies in terms of severity of punishments.

In the 1900s when the world was enforcing measures to curb drug demand and supply, the Netherlands was initially complacent – they were ignorant of the depth of drug issue. Moreover, the mid-1900s saw a cultural revolution and parents wanted police to look away when their children indulged in smoking.⁵⁴ In light of this, the Dutch drug policies are based on the acceptance that drug usage is an inevitable reality.⁵⁵ On the demand side, the Dutch policies follow a substantial degree of decriminalization. It allows individuals to possess specified minimum quantity of both soft and hard drugs.⁵⁶ Policies also focus on public health and harm reduction and distinguish between primary and secondary prevention efforts, thereby not criminalizing drug users. Primary prevention intervention is aimed at minimizing risk and harm to health associated with use of drugs, while the secondary prevention interventions are to reduce the number of users among the high-

⁴⁹ Mack Alison and Joy Janet, *Marijuana as Medicine? The Science Beyond The Controversy* (National Academy of Sciences 2000).

⁵⁰ World Health Organization, 'Harmful Use of Alcohol' 1.

⁵¹ Ministry of Social Justice and Empowerment (n 45).

⁵² Acharya and others (n 6).

⁵³ Justus Uitermark, 'The Origins and Future of the Dutch Approach Towards Drugs' [2004] *Journal of Drug Issues*.

⁵⁴ Ybo Buruma, 'Dutch Tolerance: On Drugs, Prostitution, and Euthanasia'.

⁵⁵ Marianne Van Ooyen and Edward R Kleemans, 'Drug Policy: The "Dutch Model"' [2015] *Crime and Justice*.

⁵⁶ Buruma (n 54).



risk groups.⁵⁷ NGOs in Netherlands have paved way to the establishment of Drugs Information and Monitoring System (DIMS), which checks pills for harmful substances, when brought by a consumer, without ever penalizing the person.⁵⁸ Needle and syringe programmes have also been established wherein used needles and syringes are exchanged for new ones, aiming to prevent health issues which could arise by reusing needles.⁵⁹ In addition, drug consumption rooms have also been established in major cities to provide a safe space, so that people need not smoke or consume drugs in public.⁶⁰ On the supply side, the Dutch policies fall within the context of the Single Convention, 1961 which targets the supply side of the drug problem. Dutch law in general, criminalizes the supply of drugs but it attracts minimum penalties with as less as 4 to 5 years in prison.⁶¹ The Netherlands have established several coffeeshops, which refers to places which are licenced to sell soft drugs to customers after verifying their age. Drugs can be bought from coffeeshops and can also be consumed within their premises. This rationale behind this kind of establishment is to prevent consumers of soft drugs from coming into contact with hard drugs. These coffeeshops are not prosecuted and can possess and sell specified amounts of soft

drugs in accordance with provisions under their Opium Act, 1976.⁶²

Such tolerance comes with downfalls. Cannabis use is highly prevalent in the Netherlands followed by MDMA, popularly ecstasy, a harmful synthetic drug. Relaxations to consumption of drugs lead to easier availability of these drugs and open more ways to procure them. But the increasing trend in the use of ecstasy is observed to have reduced in the recent years.⁶³ Moreover, even if this paves way to new kinds of drugs and problematic drug use, the leniency allows more drug users to come forward for drug check or treatment, which provides for a better monitoring system and reduction of harm.

Comparing the Dutch laws and Indian laws, it can be understood that the Indian drug laws are more severe and criminalize both the demand and supply side similarly. Dutch laws entirely focus on harm prevention and reduction by accepting the prevalence of drugs in the society. In contrast, the NDPS Act, though it provides draconian measures, also provides for treatment as an alternative to and independent of criminal measure for users of small quantities of drugs, while being silent about users of larger quantity of drugs.⁶⁴ The discretion to sentence a drug

⁵⁷ ACM Jansen, 'Between Prohibition and Legalization: The Dutch Experiment in Drug Policy'.

⁵⁸ Laura Smit-Rigter and Daan van der Gouwe, 'The Drugs Information and Monitoring System (DIMS): Factsheet on Drug Checking in the Netherlands' (2019).

⁵⁹ European Monitoring Centre for Drugs and Drug Addiction, 'Netherlands: Country Drug Report 2017' (2017).

⁶⁰ van Dijk Jan J.M., 'The Narrow Margins of the Dutch Drug Policy' [1998] European Journal on Criminal Policy and Research Publication.

⁶¹ Laura van Gelder, 'Why Drug Criminals Are Headquartered in the Netherlands' (*Univers*, 2018) <<https://universonline.nl/2018/10/09/drug-criminals-headquartered-netherlands>> accessed 14 November 2019.

⁶² Buruma (n 54).

⁶³ European Monitoring Centre for Drugs and Drug Addiction (n 59).

⁶⁴ Section 39, Narcotic Drugs and Psychotropic Substances Act, 1985.



user to prison or to direct him for treatment is left to the court.⁶⁵ Also, it is important to note that despite enacting the legislation in 1985, it is only by the amendment of 2014 that provisions for recognised treatment centres and evidence-based medical interventions were added. This shows lack of planning and poor construction of the NDPS Act. Despite statutory responsibility and regulations stipulated by the amendment, a huge number of unauthorized 'de-addiction' centres have been established and in the name of providing medical care, patients are severely tortured.⁶⁶ Ironically, the more pressing issue is that the treatment provisions itself have neither been prioritized nor applied by courts most of the times.⁶⁷ This could be due to the fact that Indian drug approach is law-enforcement led with limited resources for treatment.⁶⁸ Moreover, the National Policy on Narcotic Drugs and Psychotropic Substances which was introduced in 2012 portrays harm reduction in negative and incorrect terms. It has been observed that the policy displays a lack of understanding of effective treatments and diminishes the true meaning and scope of 'harm reduction' by just defining it as 'a step to de-addiction'.⁶⁹ Most of the de-addiction treatments are provided for users of alcohol and not for users of other drugs. With regard to the supply side, as observed earlier, the legislations allow for licenced and regulated production and distribution of substances only for medicinal and scientific purpose. Any other form of supply – production, sale,

export and import are met with harsh sanctions or even death penalty for certain repeat offence.

V. Recommendations

With regard to societal impacts of the legislations, the NDPS Act seems to have had the opposite effect of what it aims to do – contrary to eradicating the use of drugs; it has facilitated a shift to use hard drugs and riskier modes of consumption.⁷⁰ Similarly, drug use by women has also increased which was not the case when the cultural norms were in force.⁷¹ In contrast, the age of initiation to drug use has fallen, meaning that not many people indulge in drugs at an early age as was the case prior to the legislations.⁷² To add to the downside, only one national survey estimating the extent of drug use had ever been conducted in India, nearly 2 decades ago. This creates a problem as there is no recent statistical data detailing the current demand situation or the number of people affected by disease and infections.⁷³ Research suggests that Indian socio-cultural norms are more efficient in drug control and also have fewer negative side-effects than legislation inspired by global norms.⁷⁴

India would benefit by following current trends of decriminalization similar to the Netherlands, especially due to India's cultural history and close affinity with drugs like cannabis. Decriminalization would also bring forth and tackle the inevitable reality

⁶⁵ Ibid.

⁶⁶ BM Tripathi and Atul Ambekar, 'Minimum Standards of Care For the Government De-Addiction Centres' (2009).

⁶⁷ Tandon (n 2).

⁶⁸ Charles, Bewley-taylor and Neidpath (n 8).

⁶⁹ Atul Ambekar, Ravindra Rao and Alok Agrawal, 'India's National Narcotic Drugs and Psychotropic Substances Policy, 2012: A 20th Century Document in

the 21st Century' (2013) 24 International Journal of Drug Policy 374
<<http://dx.doi.org/10.1016/j.drugpo.2013.01.001>>.

⁷⁰ Charles, Bewley-taylor and Neidpath (n 8).

⁷¹ Ibid.

⁷² Ibid.

⁷³ Tandon (n 2).

⁷⁴ Charles, Bewley-taylor and Neidpath (n 8).



and high usage of drugs in the society which are otherwise hidden under the blankets of criminalization. The following are some of the recommendations for adapting decriminalization policies:

- India should adopt harm reduction principles which aim at reducing the harms associated with the use of drugs. This can be done by first removing the harsh and disproportionate criminalization of drug use. Checking of drugs for lethal components and exchanging used needles for new ones are few of the harm reduction measures which can be implemented.
- Indian policies should adopt traditional forms of control. This can be done through regulated supply by licenced producers and sellers; and monitored consumption of cannabis only for religious purposes at specific places similar to coffeeshops. Similar approaches could be adopted for other drugs as well. Even now, this fleetingly exists in India since criminal justice authorities turn a blind eye to sadhus and ascetics who smoke cannabis in a smoking circle in many parts of India. One of the reasons for this could be that these people pose no threat to society, they are considered godly and they smoke only to achieve spirituality.⁷⁵ Where the Sadhus procure cannabis from, is an area which requires more research.
- Establish regular data collection on drug use and dependence and adopt treatments and counselling sessions which are evidence-based. Such treatment and de-addiction centres must be licenced and monitored. Users of drugs should be enabled easy access to treatments and counselling sessions without the threat of criminal prosecution and

punitive sanctions, thus encouraging more people to come forward to get treated.

- Develop separate measures to identify and tackle cross border drug trafficking. This can be done by strengthening borders and sea ports and by strengthening tracking systems. This will prevent new forms of hard drugs from seeping into society. Tourism is another area to closely monitor to prevent new drugs from being introduced into the country.
- More awareness programs must be conducted to people of all age groups regarding the potential harm caused by different drugs and the treatment measures available for those who suffer harm due to drug use.

VI. Conclusion

The Netherlands has taken cognizance of the reality that drug crimes and harm caused by drugs will only go unnoticed if severe sanctions are enforced and thus has resorted to a method of tolerance through decriminalization and focuses on harm reduction on the demand side and reduction of supply. On the other hand, India has resorted to a strict zero-tolerance stance towards both demand side and supply side of drugs. India is failing to recognize the inevitable high prevalence of drug use within its own borders and also have inadequate resources to tackle drug trafficking. This is because of being guided by the United Nations conventions which in reality is not suitable for India due to its deep religious association with cannabis. Contrary to the objectives of NDPS Act, the prohibition of drugs has led to the formation of illegal drug trafficking and organized crimes instead of eradicating drugs altogether. This is because those who are dependent on drugs seek other ways to procure them when one way is

⁷⁵ Roychowdhury (n 12).



blocked. In addition, the provisions under the NDPS Act apply to only certain kind of drugs and do not apply to alcohol.

Although legalizing or decriminalizing the use of drugs is a farfetched dream for India, the present zero-tolerance, draconian measures do not prove effective. India's drug policies are flawed and inconsistent as they are not evidence-based.⁷⁶ Having been hastily enacted, the NDPS Act has many drawbacks. Furthermore, punishing people who are dependent on drugs rather than providing treatment is more harmful to the person and the society as a whole. In some cases, repeat offences also attract capital punishment though drug crimes are not as heinous or a worrisome problem compared to other offences such as rape and murder which attract capital punishment for the rarest of rare cases. Reiterating the aim of this paper, it can be concluded that India would benefit from decriminalizing the use of drugs which would aid in harm reduction and facilitating treatment to those affected by the consumption of drugs. In addition, India should further regulate the sale of alcohol which is more harmful to health than cannabis and also because it serves only recreational purpose and had no religious affiliation unlike cannabis. Also, the easy availability of alcohol has paved way for teenagers and other youngsters to procure and consume them with ease. Regulating and monitoring the sale of alcohol will benefit by protecting people from indulging in drug consumption from a tender age. India must also strengthen its monitoring system and formulate independent framework in order to effectively tackle the issue of growing drug harm in the society and drug trafficking.

⁷⁶ Ambekar, Rao and Agrawal (n 69).