

# Toward the eradication of Drug Menace: Effective Implementation of NALSA's Scheme

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## Abstract

The root of problems of Drug abuse and trafficking clutching to the Indian soil profoundly with time passing by had led the Legislature to launch National Legal Service Authorities' new scheme on Legal Services to the Victims of Drug Abuse and Eradication of Drug Menace on November 2015. Although the consumption and usage of drugs in India existed way back in the tradition, the alarming picture of youth being stuck in the pit of drug addiction is the dark sequel. Drug or substance abuse was initially considered to be a victimless crime and the abusers were not shown any compassion and were rather stigmatized by the society. This theory has however evolved over the years and so has the thinking of the society which is now more open to the theory that substance abuse is a disorder and not just an offence, which makes an offender a victim as well.

The Narcotic Drugs and Psychotropic Substance Act of 1985, the domestic legislation, imposed restrictions upon cultivation, imports, exports, sales, purchase and possession of any sort of drug or psychotropic substance other than those used for medical purposes. Amended last on 2014, the act brought up some changes like making death penalty for repeated offence discretionary and allowance of recognition and approval of treatment centres, but it still remains as harsh as the laws of most Asian countries.

With the growing population of nation being the victim of drug abuse and the issue being so sensitive, the concern should essentially be on eradication of the problem permanently rather than punishing the victims, who quest for nothing but help. Access to legal aid itself is a challenge in India as blotting out poverty is still a dream. Pro bono representation of the needy, on the other hand, is still shaping up. This paper analyses the cobwebs of the problem of drug menace and the domestic law that sways, illuminating the need of effective implementation of scheme along with bringing the changes that are vital in dealing with the problem. It also comprehends the kind of legal aid that is necessary for the victims to achieve triumph in the combat against drugs.

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## **Introduction**

Drugs in India have had their quiddity by the route of tradition for the interest of medication and celebration. India, being known as a land of sadhus and magic, and being a home to Hinduism which is one of the oldest religions of the world, has been witnessing the ritual intake of psychotropic drugs for all times. Out of the four earliest sacred religious texts of Hinduism, The Vedas, Atharva Veda acknowledges cannabis as amongst the five most sacred plants and a nectar of immortality.<sup>3</sup> Ayurveda also recognises Marijuana as a medicinal herb.<sup>4</sup> However, from forming an important part of tradition to being regulated as dangerous substances, the narcotic and psychotropic substances in India percolates along some incredible scales. Drug use turning into drug abuse in time is no stupefaction, the reasons to it could be peer pressure, relief from painful disease, emotional stress, frustration due to failure and attractive hippie culture. The cases of drug abuse in India has been rising alarmingly, especially in the states of Punjab, Maharashtra, Gujarat and UP.<sup>5</sup> The Ministry of Social Justice and empowerment has stated that 46410 cases of substance abuse by street children were reported in Delhi in previous year.<sup>6</sup> The Union Home Minister, Mr. Rajnath Singh, while addressing the closing ceremony of National Conference on Drug Law Enforcement said that India being located between two main Opium producing regions of the world which is Golden Triangle and Golden Crescent, has been a victim to drug trafficking time and again. The current regulating framework, Narcotic Drugs and Psychotropic Substance Act, 1985 was brought up under the international pressure for deterrence for trafficking and ensuring harsh punishments. Only after 2001 amendment of the act, it was realized that drug abuse was more of an illness that needed an aid and there was a difference between a pedlar and a person who held drugs for self-use. However, it still continued criminalizing possession and use of drugs, making a person both a victim to drug and a lawbreaker. A drug abuser already deals with issues of addiction and mental and physical health retrograde as a victim, putting him into the snarls of social isolation, medical and legal complications would be worse. The paper intends to talk about the importance of viewing the issue of drug abuse from an altogether different

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<sup>3</sup>RALPH T.H. GRIFFITH, HYMNS OF THE ATHARVA VEDA 58 (1<sup>st</sup> ed. 1985).

<sup>4</sup>Biljana Dušić, *Cannabis from the perspective of Indian Traditional Medicine, Ayurveda*, INSTITUTE ICANNA (JUNE 2, 2018, 11:30 PM), <http://www.institut-icanna.com/en/blog/23/Cannabis-from-the-perspective-of-Indian-Traditional-Medicine-Ayurveda>.

<sup>5</sup>Ashish Chauhan, *Gujarat 3rd-worst state in drug overdose deaths*, BENNETT, COLEMAN & CO. LTD. (Mar 30, 2018, 11:08 PM), <https://timesofindia.indiatimes.com/city/ahmedabad/gujarat-3rd-worst-state-in-drug-overdose-deaths/articleshow/63538544.cms>.

<sup>6</sup>Mirror Now Digital, *90 per cent of street kids in National Capital addicted to drugs, reveals MoS for Social Justice*, BENNETT, COLEMAN & CO. LTD. (Mar 29, 2018 4:52 PM), <https://www.timesnownews.com/mirror-now/society/article/street-kids-national-capital-addicts-drugs-mos-vijay-sampla/212167>.

perspective and considering not only legal but also social and medical outlook, which would help reduce the issue of drug menace overall. It also touches on the proper implementation of NALSA's Scheme on legal aid to drug abuse that would be the first step in the achieving the object.

### **Research Methodology**

For this research, a systematic web-based review of various journals, articles, newspapers, statutes, judicial decisions along with various government schemes and policies was conducted. An issue-to-issue reading of the abovementioned was done so as to find current as well as chronicle information on the topic.

For making the publication convenient, the study has been divided into following heads: Introduction, Research methodology, objectives, Description of research issues including Socio-Legal Analysis of the problem, Precedent and Judicial decisions, Impact and implications and Possible outcomes and the Solutions. The first head of the paper provides the reader with a transient understanding of the drug addiction and trafficking problem in the country along-with listing some of the legislations and schemes which have been enacted by lawmakers in order to deal with the subject. It also provides with a basic understanding of the authors opinion regarding the problem.

In the second and third head, the sources of information for the study and objectives of conducting the study is cited, respectively. The fourth head incorporates a detailed analysis of NDPS Act, 1985 and NALSA's Scheme, 2015 and interlinks them with the right to get legal assistance which has been enshrined in various provisions of the Constitution. The fifth head provides authors' interpretation of various important precedents and judicial decisions with the hope of making readers aware of the government's constitutional and legal obligation to ensure legal assistance is provided to the drug abusers and traffickers.

In the sixth head of the paper, the authors have pointed out the impact of drugs on the person, the family of such person and also the impact it has on the society in general. The final head has suggestions to the drug menace by authors. The citation form used is Bluebook 19<sup>th</sup> edition.

### **Objectives**

The object of the study focuses on

1. Arguing in favour of drug abusers being a victim to both drug abuse and domestic law governing the drugs and substances, by providing an insight the victimization of abusers and the overall impact of such victimization on society.

2. Studying the provisions of NDPS Act along-with NALSA's Scheme on eradication of drug menace and providing legal aid to victims of drug abuse and identifying the ways in which proper implementation of Scheme would help fight the problem.
3. Identifying the constitutional provisions that protect the rights of drug abusers and suggesting means that would help in fighting drug menace.

### **Research Issues Including Socio-Legal Analysis of the Problem**

The NDPS Act mainly focused on prohibiting supply and distribution of drugs and substances and marked disparity among an addict and trafficker only via Section 27 and 64A. A minimum punishment extending up to one year was made liable for an offender keeping in possession the substance of smaller quantity than the notified quantity by government, if he is able to prove in the court that such possession was for self-intake, according to Section 27. Section 64A states that any offender who was in possession of drugs in small quantity and is charged with an offence under Section 27 of the act may be freed from the prosecution if he is ready to seek treatment from de-addiction centre voluntarily. Section 50 of the act empowers the accused to be searched in the presence of magistrate or gazetted officer, so that there are no instances of harassment. But the question is, do these victims of drug abusers have any idea about such provisions?

Section 71 of the act empowers the government to establish centres for treatment, education and rehabilitation and social re-integration of addicts. It is not hidden that the object of this section too has been failed to achieve.

India being a country with poverty ratio of 67%, and legal assistance being expensive, it is the responsibility of the state to grant free legal aid to the victims. The Legal Service Authorities Act of 1987 has also been enacted for the similar purpose of assuring justice to weaker sections of society, however, it is disappointing that Section 12 does not include the victims of drug abuse in definition.

The Preamble of India sets a purpose to provide justice being socio, political or economic, to Indians and Article 38(1) of Constitution of India contends that state shall protect social order and justice for the motive of welfare of people. Article 21 of the Indian Constitution, also avowed as heart of the constitution, secures right to life and personal liberty of every citizen. The right to life here includes not merely living with availability of food, clothing and shelter but also includes right to health, legal aid, emergency medical aid and timely medical

treatment in government hospital.<sup>7</sup> Since a large number of Indian population is getting inclined towards drug abuse which is a risk to the society also, the issue shall be taken into consideration by all. Article 47 of Indian Constitution contains the duty of the state to prohibit intoxicating drinks and drugs for the improvement of public health. However, apart from a few states in the country, liquor consumption is not banned and no action has been taken to ban tobacco as well.

The NALSA's Scheme aiming to provide the legal aid to such victims and eradicating the problem of drug menace has various clauses that if worked upon efficiently, would pull out the problem of drugs from Indian soil albeit in long run. It is not only mentioning the ways to implement the plans but is also laying emphasis on creating awareness in society about the issue by educating them by various means. Clause 6 of the scheme consists of plan of action that each State Legal Service Authority were supposed to follow the plan of action by forming numerous special units, to keep in check the drug menace. The duty to train these special units were on District Legal Service Authority. This was to be done within a month of declaration of the scheme.

Under the scheme, the SLSA are also required to create a compilation of all existing policies, schemes, regulations and directives for the purpose of prevention, protection, rehabilitation and elimination of substance abuse, under Clause 7. Any policy or scheme, if introduced for drug eradication, the information shall be spread amongst general public, drug users and abusers. Clause 9 of the scheme is a preventive clause that provides for illicit substance of drug cultivation be destroyed to prevent its trafficking and intake. The scheme also includes the local bodies of the area to play an active role in fighting against drug menace and preventing the trafficking. The government of India has laid a very strong foundation to win a combat against drug menace by launching this scheme, although the victory depends solely on effective implementation.

### **Precedents and Judicial Decisions**

The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power defines victims as “persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are violations of national criminal laws or of internationally recognized norms relating to human rights.” In

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<sup>7</sup>Riya Jain, *Article 21 of the Constitution of India – Right to Life and Personal Liberty*, LAW OCTOPUS NEWS NETWORK (Aug. 13, 2018, 11:45 PM), <https://www.lawoctopus.com/academike/article-21-of-the-constitution-of-india-right-to-life-and-personal-liberty>.

case of drug abuser albeit the victim is taken to be an offender in eyes of law, he is the one who has suffered harm the most, be it physically, emotionally or psychologically. A victim who cannot afford legal services can avail free legal aid at the cost of state according to the case of *Hussainara Khatoon v. State of Bihar*<sup>8</sup> and the same should apply to victims of drug abuse.

The Supreme Court in *State of Maharashtra and Ors. v. Nagpur Distillers*,<sup>9</sup> unveiled the increasing liquor addiction and urged the government to work towards bringing down the ratio of consumption of liquor. Laws against the ill have mostly been given to the nation by virtue of Constitution, implementation and accomplishment of the targets have always been an issue.

To prevent the children of the country from being chained down by the clutches of drug menace, the Supreme Court of India in the case of *Bachpan Bachao Andolan v. Union of India and Ors*<sup>10</sup> directed the Central Government to form a national plan for children who have already fallen prey to drug addiction, substance abuse and intoxicating drinks, along-with introducing the means of recovery, counselling and rehabilitation for such children. Another important aspect of this case involves court's direction to open de-addiction centres for children in every district.

The Bombay High Court in one of its case depicted the compulsivity of proving that the intention of possession of substance has always been self-intake to avail the immunity under section 64A of NDPS Act. Even though the applicant fitted into the criteria to avail immunity under the section, she was denied so because she was charged with selling drugs at rave. The court has already made it clear that only those individuals who are dependent on drugs are provided such immunity and not those who merely try or take drugs occasionally in the case of *Fardeen Firoze Khan v. Union of India*.<sup>11</sup> In *State of Punjab v. Balbir Singh*,<sup>12</sup> Supreme Court held that police officer must inform the accused about his right to be searched in presence of the magistrate or the gazetted officer for ensuring adequate safeguards from harassment.

### **Impact and Implication**

The obscure aftermaths of drug menace are not only bounded to those who are a prey to it but also have its impact on the society as a whole. It is a much-rooted problem than it is viewed

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<sup>8</sup>(1980) 1 S.C.C 98(India).

<sup>9</sup>(2006) 5 S.C.C 112(India).

<sup>10</sup>(2001) 6 SCC 84(India).

<sup>11</sup>2010 (5) RCR(Criminal) 795(India).

<sup>12</sup>(1994) 3 S.C.C 299(India).

as it has direct correlation with increasing crime rates and escalating risks of physical and mental degradation. Going with the important findings of World Drug Report 2017, it is trusted that those who use drugs have vulnerability towards tuberculosis. It also mentions that approximately 12 million people are into injecting drugs, out of which everyone on eight persons is a patient of HIV and half of them are prey to Hepatitis C.

Drug intake for an addict becomes a sole means to vent out his frustration, sadness, anxiousness and despairs and leads to psychological and physiological changes in him. Although, these substances initially are an easy escape from the harsh realities of life, they are a sort of mental disorder that make the life uglier and cling to the victims making it nearly impossible for them to breathe free. The restlessness and continuous intake of drugs by victims may lead to health effects like change in normal schedule and appetite, chances of heart attacks, lung-related diseases, HIV/AIDS, depression, hepatitis, cancer and death as well.

The categorization of crimes related to drugs can possibly be made by determining the intent, influence and motive. First can be the crimes that are done with the intention to finance the urge of drug consumption and includes theft, chain snatching, pickpocketing and prostitution. On the other hand, crimes that are done in the state of inebriation or being stoned which are due to the influence of such liquor or drug intake and include much serious crimes. Last are the activities done with the motive to earn by means of illicit cultivation and drug trafficking that are against the laws of the nation.

A large number of prisoners in India have a history of drug abuse. These victims fall into the trap of addiction due to failure in their lives and lack of emotional support and are later victimised by the laws of the land. They find solace in their dark thoughts and restlessness when they are not under their own control, which is dangerous for the society.

Being born and brought up in India, it is clearly evident that people are not even open to accepting depression as a genuine health issue, the existence of problem of drug menace and the essentiality to go for its treatment for them is more of a western countries' problem. Drug abuse brings with itself the problem of domestic violence, financial instability and bad influence on the children in the family. It is also affecting the young generation of the nation, making them handicapped and ruining their lives.

Further, the condition of de-addiction centres is worse. The report submitted to Delhi High Court by Delhi State Legal service Authority depicts that in most de-addiction centres, victims were treated like slaves, being subjected to immense physical and mental torture and sexual exploitation.

### **Possible Outcome and Solutions**

To successfully eradicate the problem from the India, various initiatives can be taken by government. Effective implementation of NALSA's scheme on drug abuse can solve half the problem already. Free legal aid and pro bono representation can be made mandatory for the law firms earning more than a certain amount of annual income. The government can direct them to take up at least 14 such cases per year. In villages and towns of the nation, de-addiction centres and proper medication facilities should be provided.

Efforts should be made by educating the illiterate population of nation and government should encourage Bollywood and other regional film-making bodies to cover drug-related issue for public welfare and such films should be screened for free in villages and slum areas of cities. The border protecting agencies should be directed by government to keep a strict eye on any smuggling activity from across border. State government should make sure no illicit cultivation takes place. A regular check should be kept on activities of de-addiction centres to ensure that no victim is tortured. Seminars should be held at least twice in one year in educational institutions and the attendance should be made mandatory. The fight may be hard, but it is not unsolvable if adequate laws are made and implemented strictly.