



DRUG ABUSE AND CRIME: JAIL VERSUS TREATMENT

Radhika Dev Varma

Assistant Professor (Law), University School of Law, Rayat-Bahra University, Mohali.

Introduction

Illicit drug use cause permanent physical and emotional damage to users and negatively impact their families, associates, friends, peers, and many others with whom they have contact, often leading to sickness and disease. In many cases, users die prematurely from drug overdoses or other drug-associated illnesses. Some users are parents, whose deaths leave their children in the care of relatives or in foster care. Alcohol use being legal and pervasive; it plays a particularly strong role in the relationship to crime and other social problems.

Drug law violations constitute a substantial proportion of incarcerations and represent one of the most common arrest categories. The consequences of illicit drug use impact the entire criminal justice system, taxing resources at each stage of the arrest, adjudication, incarceration and post-release supervision process. Substance abuse within the criminal justice population also remains pronounced and widespread.

Addiction or Habituation

Drug abuse can lead to drug dependence or addiction. It includes both the terms “addiction” and “habituation”. Addiction defined as a chronic, relapsing disorder characterized by compulsion to take a drug (craving) resulting in physical, psychological and social harm, and continued use despite evidence of that harm. Drug habituation is a condition resulting from the repeated consumption of a drug, in which there is psychological or emotional dependency on the drug¹.

Association between Drug Usage and Crime

Relationship between drug and crime is multidimensional. Most directly, it is a crime to use, possess, manufacture, or distribute drugs classified as having a potential for abuse such as cocaine, heroin, marijuana, and amphetamines. Drugs are also related to crime through the effects they have on the user’s behaviour and by generating violence and other illegal activity in connection with drug trafficking. However, it is difficult to count offenses of violent behaviour resulting from drug effects, stealing to buy drugs, or violence associated with the drug trade.

Many addicts who come to the notice of criminal justice authorities do so for crimes committed while under the influence of drugs and, especially, alcohol. Generally it is agreed that substance use often accompanies interpersonal violence, but beyond that point, there is little agreement that substance use can (or cannot) be thought of as a cause of violent crime. Some people think that drinking and drug use is a cause of violence but many are wary of describing the relationship between substance use and violence as causal. This disagreement is largely a function of different conceptions of causality. The causal connection between alcohol and violence is often simply assumed such that “many members of the public accept it as a common knowledge.” This view is prevalent in most of the States of India, where “alcohol or substance use is seen as the basic cause of problems” and has been considered a root cause of violence amongst the people by many sections of the society including the police and the political leaders. This is supported by the oft repeated frequency of alcohol and/or drug involvement in criminal acts. From this perspective, the higher the proportion of cases categorized as involving alcohol or drugs, the stronger the link between substance abuse and crime. However, measures of such occurrences cannot be used to establish causation. At best, they indicate how often criminal acts are preceded by substance use. Alcohol, more than any illegal drug, is found to be closely associated with violent crimes, including murder, rape, assault, child and spousal abuse. Many violent crimes such as homicides and assaults are committed when the offender, victim, or both have been under the influence of alcohol. Among violent crimes, with the exception of robberies, the offender is far more likely to have been drinking alcohol than under the influence of other drugs.

The relationship between drugs and crime therefore is complex. However, there is an economic factor at play which actively fuels criminality. The squeezing of supply in a demand-led market has two key “criminal” effects, resulting mainly from enforcement increasing price. The first is the creation of a vast opportunity for criminal entrepreneurs. The second is acquisitive crime committed by low-income dependent drug users to support their habits. Also drugs and drug-using behaviour are linked to crime in several ways. First, it is a crime to use, possess, manufacture, or distribute drugs classified as illegal. Second, the effects of drug-related behaviour that leads to violence, influencing the society in everyday life. One

¹ See <https://profiles.nlm.nih.gov/ps/access/NNBBNK.pdf>.



question is whether drug use leads people into criminal activity or whether those who use drugs are already predisposed to such activity. Many illegal drug users commit no other kinds of crimes, and many persons who commit crimes never use illegal drugs. However, at the most intense levels of drug use, drugs and crime are directly and highly correlated and serious drug use can amplify and perpetuate pre-existing criminal activity.² There are essentially three types of crimes related to drugs:

- (a) **Psychopharmacological Crimes:** It refers to intoxication by drugs which are recognized as undermining judgment and self-control, causing paranoid thoughts or distorting inhibitions and perceptions. These are crimes that result from or involve individuals who ingest drugs, and who commit crimes as a result of the effect the drug has on their thought processes and behaviour. Although all drugs that have an impact on the nervous system may cause these kinds of reactions, the scientific literature suggests that some drugs are more strongly associated than others with violence of this type. Those drugs include alcohol³, PCP (phencyclidine), cocaine, amphetamines⁴ and barbiturates⁵. Inversely, heroin and cannabis are generally associated with a weaker desire to use violence to resolve disputes⁵.
- (b) **Economic Related Crimes:** It suggests that drug users commit crimes to generate illicit income to support their drug habits. These include theft, robbery, burglary, fraud and prostitution etc. It is applicable to individuals who have developed dependence on expensive drugs and assume that the large amounts of money associated with frequent use of certain illegal drugs constitute an incentive for criminal action. Drug addicts have three main sources of income: social assistance, acquisitive crime, and the illegal drug market. For addicts, dependency will very often have the effect of increasing their involvement in crime. However, it must be understood that this involvement will to a large extent be determined by their circumstances, the drug they use, their lifestyle, their attraction to certain types of activities, and their economic and social resources⁶. In general, the crimes favoured by users are those not requiring any particular expertise and for which there is a minor risk of prosecution such as shoplifting, theft of small items etc. Major drug users get involved in reselling illegal drugs in exchange for either money or drugs. Women tend to engage in prostitution to a greater degree than do men.
- (c) **System Related Crimes:** It suggests that crime among illegal drug users is linked to the drug market. They include production, manufacture, transportation, and sale of drugs, as well as violence related to the production or sale of drugs.⁷ Those with a drug use dependency are more likely to be arrested for acquisitive crimes such as burglary or shop theft, or for robbery and handling stolen goods i.e. crimes often related to “feeding the habit.” There are also close links between drug use and women, men and children who are involved in, or exploited by, the sex trade, many of whom are caught up in the criminal justice system.

Violence is an integral part of the illegal drug distribution market⁸. It exists mainly because the drug market affords no legal way of obtaining justice when rules are violated. Accordingly, in this relationship between drugs and crime, the profit opportunities perceived by the various players in the market and the fierce competition in this illegal environment encourage involvement in crime, such as: disputes between dealers, problems involved in recovering debts, protection rackets, etc. While legally regulated markets, such as those in alcohol or pharmaceuticals, have recourse to legitimate authority to resolve disputes and set standards for fair competition, those involved in an illegal, high profit market resort mainly to force⁹. Crime in the drug world is often caused by rivalries among individuals attempting to corner the market. This violence may involve various players – including traffickers, importers, merchants or dealers – and may be intended to control various territories,

²National Institute on Drug Abuse, *Principles of drug addiction treatment: A Research-based Guide* 117-123 (DHHS Publication, Bethesda MD, National Institutes of Health, 1999).

³ Paul J Goldstein, “The Drugs/Violence Nexus: A Tripartite Conceptual Framework”, Vol. 39, *J Drug Issues* 143-174 (1985).

⁴ S. Wright and H. Klee, “Violent Crime, Aggression and Amphetamine: What are the implications for drug treatment services?” Vol. 8 No. 1, *Drugs: education, prevention and policy*, 73-90 (2001).

⁵ H.R. White, “The Drug Use-Delinquency Connection in Adolescence,” in *Drugs, Crime and the Criminal Justice System*, R.A. Weisheil, ed., *Highland Heights* 215-256 (1990).

⁶ Lyne Casavant, Chantal Collin, “Illegal drug use and crime: a complex relationship, *Political and Social Affairs*” Division Canada, Oct. 3 2001.

⁷ *Supra* note 3.

⁸ *Ibid.*

⁹ P. Erickson, “Drugs, Violence and Public Health: What Does the Harm Reduction Approach Have to Offer? *Sensible Solutions to the Urban Drug Problem*”, *Fraser Apr.* 21 1998.



such as a neighbourhood, street or school. Violence is then used as an organizational management strategy. Its use is easily understood when one thinks of the high economic stakes involved in the illegal drug market.¹⁰

India's Drug Policy Dilemma

India's geographical location makes it highly vulnerable to the problem of drug abuse. Being a country with significant volumes of licit and illicit drug cultivation, a transit route as well as a consumer market, India's drug policy dilemmas span 'demand' and 'supply' control. Its large chemical and pharmaceutical industry draws the country into deliberations on the illicit manufacture of drugs and precursor control as well as the nonmedical use of prescription drugs. India's harsh drug control laws in particular the criminalization of drug use and the imposition of the death penalty for certain drug offences, conform strictly to prohibition.

In 2004, UN office on Drugs and Crime (UNODC) and the Ministry of Social Justice and Empowerment of India, in its joint Survey Report showed that the numbers of chronic substance-dependent individuals were: 10 million (alcohol), 2.3 million (cannabis) and 0.5 million (opiates).¹¹

Children - The National Household Survey on Drug Abuse surveyed 40,697 males of whom 8,587 were children (aged 12-18 years). Of these, 3.8% were using alcohol, 0.6% cannabis and 0.2% were using opiates. About 70% of these drug users were initiated to substance use before the age of 20 years and as many as 70% - 85% children reported that they were addicted to one substance or another.¹²

Students- In a survey carried out, it was found that the use of alcohol/drugs among students varied from 56% to 81%. Common drugs abused were alcohol, tranquillizers and opiates. Reasons cited for drug use included, "to relieve stress", "to feel good" and "heightened sexual experience."¹³

Women/spouses - Women are affected by drugs and alcohol abuse in various ways. The survey carried out in Mumbai, Delhi and Aizawl showed that 31% single, 32% separated and 67% employed women have taken to heroin, propoxyphene, sedatives and alcohol.¹⁴

Prisoners- In India, 70% of prison inmates are 'under trials,' moving in and out of the prison settings until they are convicted or discharged, leading to prison overcrowding. The long judicial process increases the exposure of prisoners in remand to the risk of drug abuse. Drug dependent individuals comprise about 8% of admissions in Tihar Jail, New Delhi, of which about 10% of prisoners are utilizing treatment services for drug dependence.

Legal Framework

Drug laws encompass the laws created to deal with illegal drug possession, use, manufacture, trafficking and other related transactions. This refers to both the medical drugs controlled and regulated by the State and UN institutions, and the other for non-medical drugs controlled by organised criminals, insurgents, separatists and paramilitaries. There is a striking comparison to be made in the level of criminality associated with production and supply in these parallel trades. The legal medical opiate market, for example, accounts for around half of global opium production¹⁵ but entails none of the organised crime, violence and conflict associated with its illicit twin. India is a signatory to three United Nations Conventions, namely:

- (a) Single Convention on Narcotic Drugs, 1961;
- (b) Convention on Psychotropic Substances, 1971; and
- (c) Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.

India therefore, has an international obligation inter alia, to curb drug abuse. Consequently, the Narcotic Drugs and Psychotropic Substances (NDPS) Act 1985, was enacted with stringent provisions for the control and regulation of narcotic drugs, psychotropic substances including controls over cultivation, delivery and use. The Act was amended in 1989 that brought people caught with small amounts of drugs to face long prison sentences and hefty fines; unless they could prove that

¹⁰ D.C. Mc Bride, "Drugs and Violence," in J. Inciardi, ed., *the Drugs-Crime Connection*, 113 (1981).

¹¹ UN office on Drugs and Crime, *National Survey: The Extent, Pattern and Trend of Drug Abuse in India* (New Delhi, 2004).

¹² *Ibid.*

¹³ P Kumar P and D Basu, "Substance Abuse by Medical Students and Doctors", Vol. 98 (8), *Indian Med. Assoc.* 447-52 (2000).

¹⁴ *Supra* note 11.

¹⁵ Based on International Narcotics Control Board figures for legal opium and UNODC figures for illicit opium.



the drug was intended for personal use (in that case, the offender would be subjected to six months or one year in prison depending on the drug).

Criticism of this harsh and disproportionate sentencing structure led to further amendment in 2001 wherein punishment were graded on the basis of the quantity of drugs involved – that is, “small”, “commercial” or “intermediate”. In early 2014, the NDPS Act was amended for the third time and the new provisions came into force on 1 May 2014. The Act envisages a minimum term of 10 years imprisonment extendable to 20 years and fine of INR 1 lakh extendable up to INR 2 lakhs for the offenders. The harshness of the NDPS Act is demonstrated by the inclusion of the death penalty for certain repeat crimes (production, manufacture, possession, transportation, import and export) involving a large quantity of drugs.¹⁶ Internationally, drug offences are not considered to be the ‘most serious crimes’ for which capital punishment may be invoked. The Indian government, however, maintains that a narcotic offence is more heinous than murder because the latter affects only an individual while the former leaves its deleterious impact on society.

Drugs and Cosmetics Act 1940- This Act continues to apply.¹⁷ However, draft (Amendment) Bill, 2015¹⁸ envisages "Any new drug or investigational new drug in contravention of section 4A and the rules made there-under shall be punishable with imprisonment which may extend to three years or fine which may extend to INR five lakh or both. Whoever, having been convicted under section 4K, is again convicted under that section, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and shall also be liable to fine which shall not be less than INR 15 lakh,".

Drugs and Cosmetic Act, 1940 and Rule, 1945: Governs, inter alia, the licensing and regulation of medicines containing narcotic drugs and psychotropic substances which are specified under the Schedules of the NDPS Act 1985. Also, provide for labelling of medicines for conspicuous display if it contains a substance specified in Schedule H.

Section 71 of The Act empowers the Government to establish centres for identification, treatment, education, after-care, rehabilitation etc., of addicts and for supply of narcotic drug and psychotropic substance to addicts, where such supply is a medical necessity.

National AIDS Prevention and Control Policy (NAPCP), 2002: Under this policy, the Government of India has adopted harm reduction as the key strategy to prevent and control transmission of HIV among Injecting Drug Users (IDUs) due to sharing of needles and syringes while administering drugs. Harm minimization under this policy aims to reduce rates of HIV infection, minimise the intake of drugs that will lead to gradual elimination of their use.

Article 47 of the Constitution provides that “The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.”

Drug Abuse: Treatment Measure

Though guided by prohibition, the NDPS Act does provide room to accommodate use of drugs, in medical as well as non-medical contexts. Through their rule making powers, the Central and State Governments can prescribe conditions for supplying narcotic and psychotropic drugs to a select class of persons, which include patients, foreign nationals, registered “addicts” and persons undergoing treatment for drug dependence. In the latter category, the NDPS Act supports treatment both as an alternative to, and independent of penal measures. Arguably, for drug users, addiction treatment is part of the right to health, which the Supreme Court has recognized within the constitutional guarantee of life and liberty¹⁹ and international human rights law.²⁰ Treatment provision must then be guided by principles of non-discrimination, participation, quality and evidence informed standards that characterize the right to health.²¹ Following points merit consideration:

¹⁶ Section 31A, NDPS Act.

¹⁷ Section 80, NDPS Act.

¹⁸ [http://cdsco.nic.in/writereaddata/D&%20C%20AMMENDMENT%20BILL\(1\).pdf](http://cdsco.nic.in/writereaddata/D&%20C%20AMMENDMENT%20BILL(1).pdf)

¹⁹ *Paschim Banag Khet Samity v. State of West Bengal* (1996) 4 SCC 37.

²⁰ Article 12 of *International Covenant on Economic, Social and Cultural Rights*, 1966.

²¹ *General Comment No. 14 to Article 12 of International Covenant on Economic, Social and Cultural Rights*, 1966.



- (a) **Behaviour Management**- The systematic application of behavioural management principles underlying reward and punishment can help individuals reduce their drug use and criminal behaviour. Rewards and sanctions are most likely to change behaviour when they are certain to follow the targeted behaviour, when they follow swiftly, and when they are perceived as fair. It is important to recognize and reinforce progress toward responsible, abstinent behaviour. Rewarding positive behaviour is more effective in producing long-term positive change than punishing negative behaviour. Indeed, punishment alone is an ineffective public health and safety intervention for offenders whose crime is directly related to drug use.²²
- (b) **Diversion from Prison to Treatment**- Section 39 of the NDPS Act confers powers on the Court to direct “addicts” convicted for certain low-grade offences to treatment. Instead of sentencing a drug dependent offender to jail, the Court can, after assessing his/her background and health status and obtaining consent, remand him/her to a treatment facility maintained or recognized by the Government. Treatment access is contingent upon undertaking an oath not to commit drug related offences including use and submission of medical reports²³. On completion of treatment, the Court may defer the sentence and release the offender on a bond.
- (c) **Enrolments in Treatment and Protection from Prosecution**-Drug dependent persons who opt for medical treatment are entitled to relief from prosecution, provided the charge is that of consumption or involves a minor quantity of drugs²⁴. For people who use drugs, this provision de-penalises personal use and possession of small amounts on the condition that they accept and complete treatment. Criminal proceedings may be reinstated if treatment is left halfway. The application of this clause however, is ambiguous. Unlike Section 64 which confers powers on the Central or State Government to tender immunity to accused persons who offer to assist the State in prosecuting drug offences, this provision does not specify the authority that can waive criminal proceedings. In *Shaji vs. Kerala State*,²⁵ the Kerala High Court ruled: “*whether a person is entitled to the immunity provided in Section 64A of the Act, being a person undergoing treatment for de-addiction, is a matter to be specifically urged and proved by production of sufficient evidence by the person concerned.*” In holding that addiction be proved to the Court’s satisfaction, the decision may be undermining the legislative intent of the section, which is to discourage criminalization of drug dependent persons and encourage treatment seeking. Seeking Court’s permission will not only cause delay in treatment, but would impact adversely on the lives of the first time users as they cannot be exempted from punishment, unless they falsely testify as being drug dependent. This flies in the face of reason and good practice, which demands that, naive/experimental users be educated on drug use and related harms. By committing such persons to prison, the system is blighting more lives than drugs themselves.
- (d) **Drug Treatment Deserve its due Importance**- Being a criminal statute, welfare provisions of the NDPS Act have remained under-emphasized. Over the last two decades, drug law enforcement has relegated treatment to a mere paper provision. This must change. Statutory sections beneficial to persons who use drugs are as much a part of drug policy as those proscribing drugs.
- (e) **Substance Use and Mental Disorder**- It is important to adequately assess mental disorders and to address them as part of effective drug abuse treatment. Many types of co-occurring mental health problems can be successfully addressed in standard drug abuse treatment programmes. However, individuals with serious mental disorders may require an integrated treatment approach designed for treating patients with co-occurring mental and substance use disorders.
- (f) **Criminal Justice with Correctional Supervision** - The coordination of drug abuse treatment with correctional planning can encourage participation in drug abuse treatment and can help treatment providers incorporate correctional requirements as treatment goals. Treatment providers should collaborate with criminal justice staff to evaluate each individual’s treatment plan and ensure that it meets correctional supervision requirements as well as that person’s changing needs, which may include housing and childcare; medical, psychiatric, and social support services; and vocational and employment assistance. For offenders with drug abuse problems, planning should

²² CG Leukefeld, TK Logan, et. al., “Drug use and AIDS: Estimating Injection Prevalence in a Rural State”, Vol. 37, NCBI 767-782(2002).

²³ The NDPS (Execution of Bond by Convicts or addicts) Rules, 1985.

²⁴ Section 64 A, NDPS Act, 1985.

²⁵ 2004 (3) KLT 270.



incorporate the transition to community-based treatment and links to appropriate post release services to improve the success of drug treatment and re-entry as a useful member of the society.

Suggestions

Supply and demand reductions are the two main pillars of all policies that aim to combat the drugs problem. The former deals with the supply of controlled drugs such as cultivation, production and illegal transfer; whereas the latter deals with the prevention of drug misuse and the treatment of drug abusers. The laws and regulations provide for strict punishment for the cultivation, production and trafficking in controlled drugs with long term imprisonment and/or capital punishment. However, these policies are based on the recognition that the typologies of drug abusers vary considerably; some deserve therapeutic intervention, whereas others require treatment as offenders. Therefore, a drug offender should receive compulsory treatment prior to the execution of a penalty and the period of treatment be counted as a part of their imprisonment. An offender should then serve the sentence after his/her completion of the treatment.

India, in order to firmly deal with the situation should, evolve a strategy from imposing on all drug related offenders severe penalties to establishing a comprehensive drug strategy that includes prevention and treatment of drug abusers. Punishing abusers does not necessarily reduce the number of abusers. Treatment rather than punishment for drug abusers should be prioritized under the criminal justice system. Since combating misuse of drugs requires a variety of reactions measures from prevention and law enforcement to aftercare, it is necessary to establish a strong network among relevant organisations and groups that deal with the problem.

In order to maximise the drug abusers chances of recovery, it is desirable to identify them as early as possible for specialized interventions, to separate them from other drug related offenders such as producers and traffickers at the earliest stage of the criminal justice process; and to provide intensive and continuous treatment till recovery. The institutional treatment of drug abusers should be carried out by the correctional departments under the criminal justice system.

The treatment system can be introduced at different stages of the criminal justice process. (a) At the investigation/arrest/framing of charges by the police or a specialized investigation agency, (b) At the time of indictment, (c) At the time of sentencing, (d) While undergoing institutional treatment and (e) In the follow-up at the community-based treatment (condition of probation, parole, drug treatment order, etc.). The important issue, in order to manage this system effectively, is how to enrich and diversify the contents of treatment. Criminal justice agencies (CJA) could be treatment providers but from a practical point of view it may not be possible or appropriate for them to provide all the types of treatments necessary. Drug abuse problems are based on multiple causes and the CJA are unable to deal with the root causes of these problems alone. Therefore, establishment of a multidisciplinary approach and cross agency coordination and collaboration of CJA, health, welfare, education, labour and other agencies/ organizations and private bodies is of vital importance to tackle these problems.