

WHY WE ARE LOSING THE WAR ON DRUGS: THE INEFFICACY OF INDIA'S DRUG ABUSE LEGISLATION

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The topic of drug use - amongst teens, amongst racial and geographical groupings, amongst rural populations - is one that has been the subject of much discussion. The major question that has been pondered amidst all the discourse is how best to prevent it. India, in 1985, passed the Narcotic Drugs and Psychotropic Substances Act⁴¹ for the express purpose of such prevention. This paper will attempt to review firstly, the need for such legislation; secondly, examine the extent of efficacy of such legislations; thirdly, based upon an analysis of the above, provide possible reasons for such efficacy or lack thereof; and finally, provide possible alternatives to the current strategies employed by the government for the purpose of curbing the perceived menace.

The demerits and dangers of drug use, and more significantly, drug abuse are many and well documented and India has made several firm international commitments to restrict and reduce drug use. The NDPSA talks about the drugs cannabis, coca plant derivatives (primarily cocaine), opium, morphine, codeine, and heroin. The use that is attempted to be controlled by the legislations passed is generally narcotic, psychotropic and recreational use of such drugs, since many of them often have medicinal effects. These drugs, by the generally accepted definition, have the effect of altering the state of the body and mind by their consumption. There is a vast variety of types of drugs divided upon several parameters including source of derivation (plant based or otherwise), effect (narcotic, psychotropic, hallucinogens etc.) and usage (medical, recreational or other). Effects, apart from the usual medical effects, include increased risks of infection by diseases such as transmission of HIV and a linking between drug usage and violent crime, since the highly addictive nature of drugs induces people to utilize any means possible to ensure a continued supply of them.

However, despite the relatively stringent legislations in force – the NDPSA provides for mandatory imprisonment of at least ten years, going upto twenty, with fines of between

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41 Futhermore NDPSA

one and two lakh rupees—drug abuse is rampant and continues unchecked. The failure of these legislations lies in a series of causes that remain to be examined. A lack of respect for such legislations due to their laxity of enforcement at both at executive and judicial level and a failure to keep in mind the socio-economic conditions prevalent are just two of an extensive list of reasons which make the inefficacy of such legislations nearly a certainty.

The path we are attempting to travel down at the moment has been traversed before by the United States, in the much-vaunted "War on Drugs". However, the War on Drugs through means of heavy imposition of criminal sanctions has been officially acknowledged as a failure.

In the late 1960s and early 1970s, possibly as a fallout of the hippie culture sweeping the nation, the United States perceived itself as having drug addiction problems that were steadily going out of control. State police saw an increase of nearly 32% in drug related arrest by 1972. To begin with, Governor Nelson Rockefeller of New York initiated treatment based programs, but when these turned out to be too expensive and largely ineffective, the calls for harsher drug penalties grew more difficult to ignore. Thus, Albany enacted legislation creating a mandatory 15 year sentence for those found in possession of more than four ounces (120 grams) of marijuana- the same sentence as for second-degree murder. Although these laws did lead to increased drug-related convictions, there was no measurable drop in other levels of crime, which was the major purpose of restriction on drugs, it being otherwise largely considered a victimless crime. These legislations were criticised for many reasons including that they criminalised what in essence is a public health problem one that revolves around criminal law, incarcerating those (usually nonviolent offenders) who would otherwise be able to contribute fruitfully to society if rehabilitated through treatment, without costing the state the massive amount it does currently to keep such offenders in prison. The total number of those imprisoned in the U.S. for non-violent drug related offences exceeds by 100,000 the total incarcerated population of the E.U. despite the E.U. having a greater population by 100 million. The proportion of those in jail for drug related offences reached a peak of 35% in 1994, according to the New York state correction office, with the surge mainly attributed to those small-time non-violent offenders who were addicted and selling to maintain their habit.

These laws, although draconian, were merely a reflection of the larger country-wide movement of drugs. There were primarily two wars on drugs, the first declared by President Nixon in 1969, later echoed by President Reagan (and his wife Nancy with her "Just Say No" campaign) in 1982. Until 1986, there was no federal-level legislation

in the United States⁴², but individual states kept enacting harsher laws, including a law which confiscated the property of any individual wherefrom the sale of drugs was taking place, irrespective of knowledge of the sale. A large feature of these laws was the removal of judicial discretion through mandatory sentencing policies. In 1978, Michigan passed a law dictating that those caught with more than 650 grams of narcotics would be mandatorily sentenced to life imprisonment. In 1986, the Reagan administration began to hand out mandatory sentences based upon certain fixed criteria. However, this move was hugely lobbied against and in 2004, George Pataki signed the Drug Law Reform Act, significantly lessening conviction guidelines from a minimum sentence of 20 years to 8 years, however, there are still calls for greater reforms.⁴³

The War on Drugs has been considered a prime example of moral policy making, where the true reasons for the criminalisation of drugs was lost in the creation of panic about drug use and abuse by a generation.

The National Caucus of Black Legislators in 2004 passed a resolution condemning the War on Drugs through the imposition of sanctions saying that it had been largely ineffective, very expensive and generally pointless. The cost of incarcerating an offender in New York per year is nearly \$45,000 per year and the total cost of imprisoning drug related offenders is \$ 24 billion, while the cost of treatment and drug rehabilitation is a fraction of that amount, and has been proven repeatedly more effective in preventing repeated drug use.⁴⁴

Similarly, in Canada, in 1994, 28% of people reported trying illegal drugs at least once in their life, while the percentage went up to 45% in 2004 where above 70% of the drug prevention spending in the country went to law enforcement rather than treatment or other related areas.⁴⁵ The continued easy availability of drugs despite the laws made certain that there exists very little impact of prohibition laws.

Several economists including three Nobel laureates recently wrote an open letter to the Bush administration, talking about how, according to the laws of supply and demand,

42 CYNDI BANKS, CRIMINAL JUSTICE ETHICS, http://books.google.co.in/books?id=kwOHPCNaInoC&pg=PA181&lpg=PA181&dq=war+on+drugs+legislation&source=bl&ots=L8ydtSCLp8&sig=DUCvQHmBxMHOL8AY4sDMu4Hsj_Y&hl=en&ei=a2ziSfruOcXJtgf-vPW3DA&sa=X&oi=book_result&ct=result&resnum=5#PPA181,M1 (last visited on 13th March, 2009.)

43 Madison Grey, "A Brief History of New York's Rockefeller Drug Laws", <http://www.time.com/time/nation/article/0,8599,1888864-2,00.html>, (last visited on 12th March 2009).

44 http://www.efficacy-online.org/news_story3.html (last visited on 12th March 2009).

45 <http://www.cbc.ca/canada/british-columbia/story/2007/01/15/drug-strategy.html> (last visited on 12th March 2009)

if the supply of certain drugs is managed to be reduced without a similar reduction in demand (only truly possible through drug de-addiction treatment) the laws of supply and demand will ensure the fact that the price of drugs will rise, ensuring greater profits for dealers, thus inducing more dealers to enter the market.⁴⁶

All these point to the fact that drug prohibition and increasing criminal sanctions for drug related offences are strategies that are and have been historically unlikely to come to any effect. Thus, it may be seen that there exists a problem on two levels with India's legislations as well as general policy on drug use.

First, the legislations passed are ineffectively implemented as well as being filled with loopholes, particularly with regard to use of unconventional drugs for the purposes of immediate reductionism in drug usage and are also not in consonance with the various socio-cultural practices of the country. Secondly, even if the legislations extant were adequately implemented, there exist fundamental issues in the policy that criminalisation and prohibition of drugs will cause any long term reductionism in drug usage patterns through the country. The second issue has been dealt with relatively in-depth already but the first issue needs scrutiny.

It is heartening to note that in keeping with India's international commitments, and in consonance with the obligations of the State under article 51(c) legislations have been passed. No doubt, such directive principles of state policy are non-justiciable, but the importance of this provision of the Constitution has been recognised by the Supreme Court⁴⁷ itself. In fact these principles, as per article 37 are "fundamental to the governance of the country." Section 12 of the NDPSA further affirms this commitment by providing for a check on transactions being conducted from Indian territory in foreign countries. Section 10 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988⁴⁸ must also be noted since it specifies certain border areas among those which are "highly vulnerable to such illicit traffic." The single minded focus of the framers on the prevention of any trade in addictive drugs is seen in section 30 which punishes even preparation of the crimes enlisted in the same Act, even if they are not carried through.

But the legislations are, by no means, perfect and fool-proof.

April, 2005 saw newspaper reports of a BSF Assistant Commander being tortured and killed creating a sensation. It was alleged that he might have opposed that smuggling

46 <http://www.prohibitioncosts.org/endorsers.html> (last visited on 12th March 2009).

47 *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802

48 Hereinafter referred to as PITNDPSA.

of addictive cough medicines that goes on between India and Bangladesh with the implicit consent of the Bangladesh Rifles (BDR)⁴⁹, an insinuation that was strongly rebutted by BDR.⁵⁰

The NDPSA deals majorly with drugs derived from the coca plant, opium poppy and the cannabis plant. This in itself is its fatal flaw.

Studies have proven that even substances such as dextromethorphan (DXM), a component of cough medicines that are readily available over the counter, can prove to be addictive when taken in excessive quantities. Unrestricted consumption can lead to hallucinations that are used by victims to get 'high.'⁵¹ Typically, teenagers cannot believe their good fortune in having found an escape route they never thought existed in the wildest of all their fantasies. They start with a few pills at a time and slowly build tolerance. At this initial stage itself there are casualties. A lot of people are unaware of the drastic repercussions of consuming, out of the blue, the requisite number of drugs that must necessarily be taken in for the psychotropic drug to take effect. Effects include, *inter alia*, dehydration, seizures, liver problems, and even cardiac arrest. The solution is clearly elusive. The Drugs and Cosmetics Act, 1940 does allow the Government to prohibit manufacture of certain drugs in the interests of the public under section 26 but the feasibility of applying such a provision for medicines such as cough syrups is highly debatable, if not outright impractical. Reflections of the problem can be gauged from the fact that with drug inspectors coming down heavily on chemists and pharmacologists in Maharashtra, the availability of these medicines was heavily affected with befuddled customers often being turned away.⁵² Along the same lines are anti-epileptic medicines like Eptoin and 'Iodex sandwiches' that are now increasingly gaining in popularity.⁵³

The easy availability and reduced prices of such drugs are exploited by addicts. Every time victims are unable to procure or afford a hard drug such as heroin, they flock to chemists for this convenient substitute. Although codeine is regarded as an opium derivative under the NDPSA, its ready availability in cough syrups and pills is exploited to the hilt by addicts.

49 <http://timesofindia.indiatimes.com/articleshow/1081835.cms> (last visited on 12th March 2009).

50 <http://www.bdr.gov.bd/index.php?node=node/nero> (last visited on 12th March 2009).

51 <http://www.msnbc.msn.com/id/4608341/> (last visited on 12th March 2009).

52 http://timesofindia.indiatimes.com/Business/India_Business/Cough_syrup_OTC_sale_under_lens/rssarticleshow/3805905.cms (last visited on 12th March 2009).

53 <http://timesofindia.indiatimes.com/articleshow/msid-920132,prtpage-1.cms> (last visited on 12th March, 2009).

The problem is two fold. For one, chemists are either unaware of or unwilling to give due weight to a prescription before the sale of drugs. Secondly, for a country whose major concern at the moment is fake passports, fake prescriptions are relatively easy to secure.

While narcotic and psychotropic drugs can still be and are regulated to some extent, an added dimension has emerged in the south Gujarat, with people developing an addiction for scorpion stings which no one could ever have conceived including in the definition addictive drugs.⁵⁴ Even those who minimal few who take into account the effect of such deterrent legislation then turn to other sources of readily available intoxicants such as paint, glue, varnish and petrol which provide a "high" when they are sniffed.⁵⁵ These are perceived as being safer alternatives to intravenous drugs, and also are much cheaper for the street children who are major users. However, these also causes damage to the heart, lungs, brain and myocardium, and within six months permanent and irreversible brain damage can be caused. An explicit prevention of these forms of drug abuse is necessary to both promote public health and create consistency in the laws but this has not been done, and also, for the reason of practical exigencies, cannot be done.

Yet another lacuna is that the legislations revolving around drug abuse fail to take social realities into account. For instance, a problem arises because drugs derived from cannabis, in the form of *bhang* have not been criminalized⁵⁶ owing to their association with Hindu deities.⁵⁷ *Bhang*, which is associated with Lord Shiva is freely ingested in all parts of the country in spite of the fact that intake of *bhang* is every bit as deleterious as the other forms of cannabis that have been criminalized. The use of drugs made of cannabis has been associated with both the Hippie Culture and with Sufism (for the hippie, it was marijuana while for the Sufi it was hashish). It is another story that Sufi leaders today have gone on to deny any support to such 'instant enlightenment'.⁵⁸ In fact, even today, many young people fall prey to drug abuse in an attempt to be part of an entire cult that seems to regard drugs as the route to intellectual salvation. This is one of the factors that fans the flames of drug abuse among tourists.

54 <http://timesofindia.indiatimes.com/articleshow/44894466.cms> (last visited on 12th March,2009).

55 http://www.dailytimes.com.pk/default.asp?page=2009%5C03%5C31%5Cstory_31-3-2009_pg3_5 (last visited on 12th March,2009).

56 *Arjun Singh v. State of Haryana*, 2005 Cri. L.J. 253 (P&H).

57 <http://www.azadindia.org/social-issues/Drug-Abuse-in-India.html> (last visited on 12th March 2009).

58 <http://www.druglibrary.org/schaffer/hemp/history/first12000/2.htm> (last visited on 12th April2009).

The fact that socio-cultural factors have been blatantly ignored is especially true of Himachal Pradesh where the religious order of 'Gosains' prevails to this day. They have traditionally monopolized opium and cannabis drugs, in terms of both trade and cultivation, and the passing of legislations has done nothing to dent their brisk trade. If anything, the international crisis surrounding drug abuse has been employed by them to consolidate their network all over the world.⁵⁹

Opium was cultivated on a large scale to fill in the coffers of the British pre-Independence. The reverberations of the exploitative colonial order can still be felt in the persistence of the trade despite such strict criminalisation.

We need to analyse as to whether penalizing drug abuse is the answer in the first place. The victim in most cases has already reached a point of no return. Very little matters to him or her. In fact, most victims who try quitting completely at a single point of time relapse because the withdrawal symptoms inflict such excruciating pain on the victim—in common parlance, referred to as 'cold turkey'. In such a frame of mind, the threat of penalties will hardly act as a deterrent. It is more important in these cases, to couple the punishment with therapeutic processes that will be more beneficial for the victim as well as for the society. We often refer to ourselves as a 'welfare state' with immense faith in the maxim of *salus populi suprema lex*. Such a welfare state cannot shirk the responsibility of restoring the victim to a healthy citizen who contributes in a productive manner to society.

In fact, this is not just a moral obligation of the state. The right to health has been recognised as an intrinsic part of the right to life under article 21. It receives support from articles 39(e) and 42 which provide for the health and strength of the citizens as one of the major duties of the State.

This is coupled with the fact that there seems to be a general lack of respect for laws in the country. There is a gulf between the enactment of law and its enforcement that lies at the root of most laws in the country. The venality of our system in fact induces the social reaction to laws which prevails today. Apathy on the part of both the people and their Government complement each other to act as a major roadblock in the way of any success that might be achieved while dealing with drug abuse laws.

One such illustration of the corruption in today's context is street-level drug dealing in opiates in Mumbai. Ninety percent of the drugs for such trade come from licit production.

59 Molly Charles, 'Drug Trade in Himachal Pradesh: Role of Socio-Economic Changes', Vol. 36, No. 26 (Jun. 30 - Jul. 6, 2001), pp. 2433-2439.

The convenient access to drugs can also be inferred from the low rates of such drugs. The cost of raw opium can be approximated at fifteen rupees for 1 g while the average daily consumption varies from 1 to 10 g.⁶⁰

What is even more alarming is that often lawbreakers are allowed to get away with impunity because proper procedures are not applied in bringing them to task. We have as an example the case of *Raj Bahadur Verma v. State of UP*⁶¹ in which all proceedings were vitiated on account of the fact that there was undue delay in submitting the proposal to the State Government, for passing a detaining order under section 3(1) of the PITNDPSA. The allegations put forth against the plaintiff thus remained unexamined.

It has been observed that section 68F of the NDPSA requires that for an officer to seize or freeze an illegally acquired property, *i.e.*, a property which has been purchased using the "tainted money" earned from the dubious acts forbidden by the aforementioned Act, he must have "reason to believe" that such property has been illegally acquired. Such reason to believe has been construed by the apex court in consonance with the principle laid down in *Phool Chand Bajrang Lal v. ITO*⁶² according to which an Income Tax Officer has the jurisdiction to open proceedings if there has been an omission or failure on the part of the assessee to make a true and full disclosure of all material facts necessary for his assessment during the concluded assessment proceedings. Similarly, in the judgement of the case of *Aslam Mohd. Merchant vs. Competent Authority and Ors.*⁶³, it was held that a "reason to believe" the illegality of an impugned property could only be established if there had been an attempt to deliberately conceal facts material to the case. Also, the reasons had not been placed on record by the competent authority. While the latter aspect still merits some validity, it is submitted that the dynamic standard of reasonableness was overlooked by the Supreme Court in taking the former matter into consideration. The Supreme Court itself acknowledged that after a show cause notice had been served, the independent income with which the property had been purchased could not be justified by the appellants but since there had been procedural impropriety, the case fell.

Another classic example of this is the case of *State of Himachal Pradesh v. Pawan Kumar*⁶⁴

60 <http://laniel.free.fr/INDEXES/PapersIndex/INDIAMOLLY/DRUGSDYNAMICSININDIA.htm#IX> (last visited on 12th April 2009).

61 2004 Cri. L.J. 2401 (All)

62 (1993) 4 SCC 77.

63 2008 Cri L.J. 3621.

64 AIR 2005 SC 2265.

in which it was held that since section 50 of the NDPSA mentions searching a “person” and not any bags or briefcases he might be carrying with him, the said section was inapplicable in this case. This was decided despite the fact that opium was actually found in the briefcase of the accused.

It is submitted in this regard that the principles of natural justice are of paramount importance and must not be ignored in any case.⁶⁵ To this extent, procedure plays a role of utmost importance. However, it would be more effective to provide for compensation in cases of minor procedural improprieties and delays. A clean chit cannot be given to lawbreakers simply because procedure has not been strictly adhered to.

A large scale programme to make the appropriate officers aware of the proper procedure to be adopted while seizing property or arresting wrongdoers is the need of the hour. Without this, the vicious circle of arrests and acquittals will continue, compounding the inefficacy of the laws.

The true impact of the legislation cannot be measured unless its application in the courts of law is observed and the interpretation given to the letter of the law, as it stands is examined. An assessment and analysis of judgement shows an excessively high rate of acquittal among the accused under NDPSA.⁶⁶

Section 8A of the NDPSA also warrants attention. It prohibits purchase of property using money acquired through production processes or sales revolving around drugs but fails to keep in focus that not all money is spent on purchase of property. The Act must recognise that such black money can also be used in purchasing services and other intangible assets.

Moreover, article 31A of the NDPSA provides for death penalty in case there already has been a previous conviction under the mentioned provisions. To begin, this is a disproportionate measure when the Supreme Court has already held that death penalty must only be awarded in the “rarest of rare cases”.⁶⁷ Also, no criteria have been established for picking out those provisions from the rest and reducing the longer list of provisions under this section that was provided until the amendment of 2001.

Section 40 provides for publication of the names of the convicted for certain offences as

65 *State of Punjab v. Baldev Singh*, (1999) 157 CTR (SC) 3.

66 *State of Orissa v. Laxman Jena*, JT 2002 (5) SC 1; *Beckodan Abdul Rahiman v. State of Kerala*, AIR 2002 SC 1810

67 *Bachan Singh v. State of Punjab*, [1980] 2 SCR 864.

have been provided for in the NDSPA. There can be no justification for such a provision which serves no purpose but the malicious one of punishing socially a person who already has to face legal punishment.

Further, the Juvenile Justice Act, 1986 in section 43 provides for punitive measures that must be undertaken if one is found to have given or caused to have been given any narcotic drug or psychotropic substance as defined in NDPSA.

The Single Convention on Narcotic Drugs, 1961, and the Convention on Psychotropic Substances, 1971 are the two major international conventions ratified by India in relation to drug abuse. India has done much by way of legislation to abide by its obligations under this agreement. Yet, there remain pitfalls in the various legislations. Too drastic a change has been sought by way of too ambitious a legislation. We need to step back a little and remind ourselves that law cannot operate in vacuum. Society's rule is both indispensable and essential. The policies suggested by these conventions have also been criticised for not fitting correctly into India's socio-cultural context. The legislation was enacted to follow up the commitments created by the signing of the 1961 and 1971 conventions on Narcotic Drugs and Psychotropic Substances without taking into consideration or making any attempt to change India's long-held attitude towards drugs and drug usage.⁶⁸ Several traditional medicines and drinks such as thandai tend to contain cannabis, or extracts thereof; to change these traditional patterns of usage, the need of the hour is education. But also it must be said that a blanket ban may not be a useful thing, since these traditional uses are protected and moreover cannot be said to be causing any significant degree of harm, rather are an acknowledgement of the ancient medical traditions of the country, which provide relief to those not in a position to acquire modern medical technology.

India is exposed to a large number of drugs, being located as it is at the confluence of two major drug producing hubs- the Golden Crescent and Golden Triangle, and thus many drugs are trafficked through the region. India believes a very large percentage of their illegal drugs enter the country through Myanmar⁶⁹ and Goa⁷⁰, with a large part of the country's drug culture in the states of the north-east and the Kullu valley.⁷¹ Procurement of drugs in any urban city for those in the correct circles is a matter of

68 Molly Charles, 'Drug Trade Dynamics in India', http://www.mamacoca.org/FSMT_sept_2003/en/doc/charles_drug_trade_dynamics_in_india_en.htm", (last visited on 13th March 2009).

69 <http://www.indoburmanews.net/archives-1/2009/march-2009/burma-main-source-of-illegal-drugs-in-india-says-report/> last visited on 13th April 2009).

70 <http://www.liveindia.com/goa/26jan08.html> (last visited on 13th April,2009).

71 nisd.gov.in/pdf/drug_free_india_300307.pdf (last visited on 13th April,2009).

course, and college students frequently partake of such drugs in rave parties where materials such as ecstasy and LSD are used.⁷² There exists a downwards trend regarding the age of average users of such drugs, with the median age of first users of opioids being around 20, with the onset of dependency by around age 22 which used to be between 23-30 years of age in prior studies, indicating the distinct failure in application of drug-related laws.⁷³

The most current estimate of drug users in India stands at about 11 million users, primarily of opioids and cannabis, with relatively low use of the more expensive injectibles such as heroin, where about 23% of the users may be classed as dependent users.⁷⁴

Historically India has been a heavy user of various forms of drugs, primarily opium, a fact which has not changed with the introduction of the NDPSA. Between the 1990s and 2004, there has been an increase by nearly 4 million of opium users in the country, a not-inconsiderable sum. In the late 1980s the use of injected drugs also became more popular, accompanied by an epidemic of HIV, first noticed in the north-eastern state of Manipur.⁷⁵ There was a surge in the city areas of the state from levels of HIV of 61% in 1994 to the shockingly high level of 88% in 1998.⁷⁶

The drug-terrorism nexus makes it all the more imperative that these laws be fruitfully enforced. The instance of Bangla Bhai comes up in this regard. This self proclaimed Bangladeshi *khadim* (slave) of Allah hit the headlines in 2004 for insisting that he had turned to the true teachings of Allah to protect the youth from crime, extortion and drug abuse among other things. Ironically, it is the money from illegal drug trade from various countries that is used to fund militant terrorists outfits such as the one he so strongly advocates—*Jagrata Muslim Janata, Bangladesh* (JMJB).⁷⁷ International obligations, expressed through various Security Council resolutions and General Assembly

72 http://timesofindia.indiatimes.com/India/Pune_rave_party_Revellers_test_positive/articleshow/1872039.cms (last visited on 13th April 2009).

73 <http://www.indianjpsychiatry.org/article.asp?issn=0019-5545;year=2007;volume=49;issue=2;spage=126;epage=128;aulast=Sahoo> (last visited on 13th April 2009).

74 icmr.nic.in/bulletin/english/2008/bulljan-mar08.pdf (last visited on 13th April, 2009).

75 *Supra*, n. 73.

76 M A P. The Status of HIV/AIDS/STI Epidemic in Asia and the Pacific. Monitoring the AIDS Pandemic Provisional Report, 2001.

77 <http://www.hinduonnet.com/fline/fl2113/stories/20040702000506000.htm> (last visited on 13th April 2009).

resolutions, make it incumbent upon states to combat the threat of terrorism with restrictive mechanisms.⁷⁸ Admittedly, such resolutions are not often regarded as concrete sources of international law under article 38 of the Statute of the International Court of Justice. But various eminent jurists have held that both state practice and *opinion juris*, the two prerequisites of an international custom can be inferred from such soft law.⁷⁹

India, at the nerve centre of a region charged with terrorist threats⁸⁰ and the nearest possible neighbour of the Golden Crescent of drug abuse is in an extremely vulnerable situation. Any steps must be taken with utmost caution.

However, the 2001 amendment to the NDPSA takes a step in what may be called the "right" direction, with attempts to make it less of a punitive statute. The amounts of drugs required for prosecution prior to the amendment have been raised, and section 39 of the Act provides an interesting provision wherein at the discretion of the court, offenders may be released on probation if they agree to undergo de-addiction training and submit a report of the same within a period of one year.

One possible solution that might be employed is the decriminalisation of such "soft" drugs as marijuana. If there is an acknowledgement that to all intents and purposes, the prevention of supply of drugs such as these has failed, it might be to the interests of all parties involved to decriminalise in small quantities the use of cannabis. The reason given by the government for not including within the purview of the act the eminently harmful substance of alcohol is that there is a large generation of revenue. Marijuana addiction tends to be psychological, rather than biological (as in the case of "hard" drugs such as heroin). The taxation of marijuana in the open market would allow for its regulation, provide revenue, and possibly allow for greater levels of control of supply, etc. Furthermore, if regulated, risks of adulteration and unsafe drug-related behaviour would likely decline.

One thing to be kept in mind is that in the Indian social context, the majority of drug users tend to be young and ill-informed with very few holding even basic educational

78 SC/1373, article 4 of SC/1269, article 3 of SC/1368, article 5 of A/RES/49/60, articles 4 and 5 of A/RES/46/51, A/RES/36/109.

79 Soft law being regarded as customary international law has been recognised by: Joel R. Reidenberg, 'The Privacy Obstacle Course Hurdling Barriers To Transnational Financial Services', 60 *Fordham L. Rev.* S137; Smita Narula, 'The Right To Food: Holding Global Actors Accountable Under International Law', 44 *Colum. J. Transnat'l L.* 691.

80 <http://www.thisislondon.co.uk/standard/article-23593777-details/Threat+in+India+is+increasing/article.do> (last visited on 13th April,2009).

qualifications, especially for softer drugs. Thus, the role that increasing levels of education about the dangers of drug use can play must not be denigrated.

It might seem contradictory that the more expensive drugs like heroin tend to have a more educated user base.⁸¹ But a distinction needs to be drawn here between literacy and the specific awareness relating to the perils of drug abuse. A parallel can be drawn here with the skyrocketing levels of untouchability being practised in Kerala and its status as the most literate state on the country. While the importance of literacy is by no means being denied, the acuteness and the exigency of the social menace of drug abuse require us to adopt awareness camps that deal solely with the manner in which this problem jeopardises public health and well being.

The danger posed to individual and State by drug abuse cannot be stressed upon enough. A shift needs to be made to more sensitive, practicable laws. It doesn't end there. Hollow adherence to principles of abstinence by the government is hypocritical to the point of being a state sponsored crime in itself. We need to review the laws in the light of social realities and come up with a way of combating this threat in a manner consistent with the ideals we claim to stand for platonically.

Drug abuse laws have been passed all over the world. Methods have been tried and tested. The lessons from these failures must be realised immediately in the form of more effective means of combating this virulent problem.

81 http://www.unodc.org/unodc/en/data-and-analysis/bulletin/bulletin_1985-01-01_2_page004.html (last visited on 13th April,2009).