

ROLE OF JUDICIARY IN CONTROLLING DRUG ABUSE IN INDIA

Written by Towfeel Ahmad Mir

LL.M Scholar, Department of Law, University of Kashmir

ABSTRACT

In a diverse state like India, the judiciary has always played an active role when it comes to dealing with all sorts of social menaces. Among such social menaces drug abuse is one. Drug abuse has proved to be one of the most difficult and challenging menace for our society. India has been the vulnerable transit point in international traffic in narcotic drugs as situated between two major global sources of illicit drugs, the Golden Triangle (Thailand, Myanmar and Laos) and the Golden Crescent (Pakistan, Afghanistan and Iraq). Heroin smuggled into India from these places is transported to U.S.A. and other European Countries. The menace of narco-terrorism is wreaking havoc in the valley of Jammu and Kashmir and in the North Eastern States and threatening peace and stability of our nation. The judiciary of our country has not been ignorant of this fact. With the help and coordination of legislature by making laws for special courts to deal with the menace of drug abuse, the courts in India have also tried to make some significant changes in the present scenario. This paper will try to find out how much role the judiciary can play in order to curb this menace in India and how far the Indian judiciary has been sincere in their efforts to control the problem of drug abuser in India.

INTRODUCTION

Taking of Intoxicants have a long history on this planet. They have been used by human beings from times immemorial. Though used in continuum its purpose varied from time to time and civilization to civilization. Drugs have been consumed for spiritual, medicinal and recreational purposes in India since the classical era. The earliest documented references to drug date back to 2000 B.C. Drug abuse is a social evil. It destroys not only the society but also affects the economic growth. Drug abuse is growing at an explosive rate and has spread its tentacles to almost every part of the globe. The worst thing about drug abuse today, is that it is trapping young men and women who constitute the best source of a particular country. Today, there is no part of the world that is free from the curse of drug trafficking and drug addiction.

India is no exception to this generalization. In India millions of drug addicts are leading miserable lives between life and death. India is caught in this vicious circle of drug abuse, and the numbers of drug addicts are increasing day by day. Cannabis products, often called charas, bhang, or ganja, are abused throughout the country. The International Narcotics Control Board in its 2002 report released in Vienna pointed out that in India persons addicted to opiates are shifting their drug of choice from opium to heroin. The origin and development of the Indian drug trafficking scenario are closely connected with the well-planned and geographical location of India which has large inflow of heroin hashish from across the Indo-Pak border originating from 'Golden Crescent' on the north-west comprising of Iran, Afghanistan and Pakistan. It is again one of the largest sources of illicit opium in the world. The processes of industrialization and urbanization are changing the social attitude. They are contributing to the increasing of drug abuse. The problem of drug trafficking posed a greater national challenge. Some economic, political and logistical determinants made Mumbai an important focal point in the international trafficking of narcotics and intoxicants such as heroin and hashish.

STEPS TAKEN TO CONTROL THE DRUG ABUSE

Our founding fathers of the nation were well aware with this coming menace in the country. They took cognizance of the devastating effects of the drug menace in the constitution of India. It called upon the State (Article 47) prohibit consumption of intoxicants which are injurious to health. Pursuant thereto certain prohibition laws attempted to deal with the drug transactions. But they were more keen in introducing a licensing and permit system in order to have state

control over the transactions. The government also could not disregard the revenue being earned through excise duty. However the drug menace went ahead without formidable legislative obstructions. The genesis of drug laws in India can be traced back to the Opium Act of 1857. This was followed by the opium Act of 1878 and the Dangerous Drugs Act of 1930. These laws were designed to regulate and monitor the use of some specific drugs in limited contexts; they were not based on any well-defined principles and did not contain any provisions to grapple with the problem of drug abuse in a holistic manner. Moreover, they provided meager punishments for their contravention which were to the tune of three years imprisonment for the first time offenders and 4 years imprisonment for repeat offenders. In order to bring India's drug laws at par with international standards and to effectuate the goals of these treaties, the Narcotic Drugs and Psychotropic Substance Act, 1985 was enacted by the Parliament of India. The Narcotic Drugs and Psychotropic Substances Act, 1985 consolidate and amend the existing laws relating to narcotic drugs, strengthen the existing controls over drug abuse, considerably enhance the penalties particularly for trafficking offences, and make provisions for exercising effective control over psychotropic substances.

However in spite of all laws which have been enacted for the purpose of preventing and controlling drug abuse in India, we find that these laws have failed to achieve the desired objects. We see that the menace of drug abuse is taking an ugly shape in the country in spite of there being a number of laws against it. Therefore the burden has shifted on to the judiciary. The judiciary has to play and is playing an important role in eradicating the menace of drug abuse in India.

ROLE OF JUDICIARY

Judges contribute in two different ways viz-a-viz prevention of drug abuse. One is within the court premises wherein they acting as judicial officers, they interpret and apply law as contained in statutory enactments. But in an adversarial system, this role is a bit limited given the fact that judges cannot go beyond what is pleaded before them by defence and prosecution. But outside courts, judges in their own wisdom, acting as a resourceful persons and participating in various seminars, workshops, symposiums, and conferences give valuable suggestions and recommendations which affect the policy decisions and law making process by enactments and legislatures accordingly.

Some of the opinions given by judges outside the courts regarding drug abuse hold a inspirational value. For example, the Chief Justice of India T.S. Thakur said in a recent judicial conference on “*Drug Menace in India: Overview, Challenges and Solutions*” that was held in Manali, that

“India needs enforcement of strict laws against drugs. Drug problem has become a serious issue. A total of 67% population of Punjab is addicted to different kinds of drugs. What worries the most is that 60% population of India is young and 67 per cent youth are addicted to drugs. What surprises him the most, he said, is that usually investigating agencies catch Nepalese nationals or poor drug peddlers, but kings of the trade remain out of reach. The judiciary and government need to introspect that whether we are headed in the right direction and are we doing justice to people? We need to think of ways to root out drugs from the society seriously and effectively.”¹

On the same occasion Himachal Pradesh high court’s chief justice Mansoor Ahmad Mir said, *“Complete eradication of drugs is necessary, rate of drug addicts in the country has touched an alarming heights. Drug abuse by our young generation is a serious issue. Increasing economic stress and disintegration of families are leading to drug abuse. Drug business around the world is as an annual turnover of 500 billion dollar, which is next to petroleum and arms trade. India has one million registered heroin addicts.”* He said, *“Pharmaceutical products containing narcotics drugs are increasingly being abused and stopping this menace is a big challenge. Figures show that nearly 50% students have tried one of the drug or narcotic substance at least once by the time they reached class IX”²*

In the National Seminar organized by Delhi High Court in collaboration with Government of Delhi, Justice Y.K. Sabarwal said,³

“Drug abuse is a social evil. It destroys not only vitals of the society but also adversely affects the economic growth of the country because this is a trade which generates large un-accounted money which, in turn, leads to adoption of several means of money laundering. The money generated is used for various purposes including anti-national and terrorist activities and even clandestine trading in arms and ammunition. Drug trafficking activities have sharply increased

¹ Times of India 05 June 2015 or Available on <http://m.timesofindia.com/why-do-kings-of-drug-trade-remain-out-of-reach-asks-SC-judge/articleshow/47637131.cms> (accessed on 24-07-2017)

²Ibid

³36th Chief Justice of India in 2005.

over the years and unscrupulous persons dealing in drugs have flourished despite hard punishments provided under the law because they have been able to evade the process of law. Just as any virus, use of drugs and drug trafficking knows no bonds or limitations. It spreads all over a country; from nation to nation; to the entire globe infecting every civilized society irrespective of caste, creed, culture and the geographical location. Unfortunately, the kingpins and the carriers of these drugs at the international and national level are concerned with only large undue financial gains and not with massive ill effects of use of drugs on society. In recent times, there has been significant development of the communication systems and means of transportation. This has also led to considerable increase in Narcotics drug trafficking.

The drug traffickers have been able to flourish despite stringent punishments provided under the 'Narcotic Drugs & Psychotropic Substances Act'. They are able to evade the process of law and cause great harm to the social and economic growth of the country and particularly the young generation. This resulted in seriously hampering the socio-economic growth and multi-dimensional development of the country. The punishment for drug trafficking became more and more stringent by the passage of time, but it has not been able to provide real solution to the basic problem. Today, world opinion and effort is united in fighting illicit production, trade and trafficking in drugs as the view is unanimous, that its effects are disastrous. In recognition of the need to globally check the menace and for international cooperation for investigation, chasing the offenders, prevention and punishment, countries across the globe have joined hands and subscribed to conventions and conclaves convened under the aegis of the United Nations. India is also a party to the United Nations Single Convention on Narcotic Drugs, 1961 and the U.N. Protocol, 1972 amending the Single Convention and the U.N. Convention on Psychotropic Substances, 1971. The United Nations Convention against illicit trafficking in Narcotic Drugs & Psychotropic Substances which was held in Vienna, Austria in 1988 was perhaps one of the first international effort to take action against the illegal proceeds of drug trafficking throughout the comity of nations and manifested the desirability of mutual legal assistance between Member States to deal with the menace so as to provide for confiscation of the moneys and for extradition of the offenders. The Government of India has ratified the Convention. India has long recognized the problems of drug trafficking and abuse. The Opium Act of 1857 and of 1878 and the Dangerous Drugs Act, 1930 manifest the same. As a result of experience gained on account of India's participation in various international conventions and realizing gravity of the problem and the need to enact laws in tune with times,

the Narcotic Drugs and Psychotropic Substances Act of 1985 was passed by Indian Parliament as a comprehensive legislation on narcotics, providing for stringent and long term prison sentences and heavy fines for offenders. Offender under this Act includes the cultivator, supplier, seller as well as the drug consumer".⁴

Similarly Addressing an awareness meeting on drug abuse at R.V.S. College of Engineering and Technology Tamil Nadu Principal District and Sessions Judge R. Poornima said, "*Drugs corroded basic structure of society, destabilizing growth, reducing productivity and weakening human resources and strength of nation. Recent statistics revealed that 25,426 people committed suicide owing to drug addiction and related problems across the country in the last one decade. Suicides due to drug-related problems exceeded those related to dowry, poverty and dearth of money. The country had an estimated 3.4 million drug abuse victim. Depression, anxiety, bipolar disorder, attention deficiency, hyperactivity disorder and antisocial personality disorder were some of the prominent disorders found among drug abusers. Youths should say no to drugs for successful career and good health*⁵".

Contribution of judges inside courts:

Judges being part of the judicial organ are normally expected to apply law made by the legislature to the facts brought before them. But in its practical realities as evidenced by the "realism" the job of judges is more than that. Judges in the process of applying law interpret the law and mould and refine it while applying it to the fact situation. Thus in the process of interpretation judges do make laws though the function is essentially to be performed by the legislature. In case of socio-economic offences like those committed under NDPS Act. Judges have played activist role not only following the deterrent theory of punishment but being the respectable citizens of the society, they have adopted sociological approach to contain the problem of drug abuse. To curb the menace of drug abuse, the judiciary has come hard to take every step, which can help in eroding the practices of drug abuse in India. In 2012, a bench headed by Justice Thakur ordered an official operation to trace the data of narcotics confiscated in the last 10 years. This was the first official exercise of this kind. The three year long operation

⁴ *Ibid*

⁵The Hindu 06 July, 2016 or Available on <http://www.thehindu.com/news/national/tamil-nadu/Drugs-abuse-corrodes-basic-structure-of-society/article14473928.ece> (accessed on 21-07-2017)

finally revealed that only 16 lakh kg, out of the 51.4 lakh kg of narcotics confiscated over the last 10 years, was destroyed.

On 14 December 2016, the Supreme Court asked the Centre to put in place within six months a national action plan to curb the rising drugs and alcohol abuse cases among school children, observing they are encouraged to become "drug peddlers once they get addicted". A bench comprising Chief Justice T. S. Thakur and D.Y. Chandrachud also asked the Centre to conduct a national survey on the substance and alcohol abuse and use of psychotropic substances among children in schools across the country. The bench also favoured a re-look on the curriculum to make school children aware about substance abuse and its ill-effects. The directions were passed on a 2014 PIL filed by NGO Bachpan Bachao Andolan of Nobel laureate Kailash Satyarthi.⁶

Similarly in order to clear the doubts about the interpretation about drug laws, in *State of Punjab v. Balbir Singh*,⁷ the Supreme Court of India has given the following guidelines for the Trial Courts dealing with offences under N.D.P.S. Act:

1. If a police officer without any prior information as contemplated under the provisions of N.D.P.S. Act makes a search or arrests a person in the normal course of investigation into an offence under the provisions of Cr. P. C. Section 50 of the N.D.P.S. Act would not be attracted.
2. Under Section 41(1) of N.D.P.S. Act an empowered Magistrate can issue warrant for the arrest or for the search in respect of the offences punishable under chapter IV of the said Act, when he has reason to believe that such offences have been committed or such substances are kept concealed in any building, conveyance or place. If such arrest or search is made under the provisions of N.D.P.S. Act by anyone other than the empowered officers, the same would be illegal.
3. Under Section 41(2) of N.D.P.S. Act only the empowered officer can give authorization to his subordinate to carry out the arrest of a person or search mentioned therein. Any contravention of the said provision of law would affect the prosecution case and vitiate the conviction.

⁶ Available on <http://www.theindiapost.com/headline/bachpan-bachao-andolan> (accessed_on15-07-2017)

⁷ AIR 1994 SC 1872

4. Under Section 42(1) of N.D.P.S. Act the prior information received by the empowered officer should necessarily be taken down in writing. If he has reason to believe from personal knowledge that offences under chapter IV of N.D.P.S. Act have been committed or materials which may furnish evidence of commission of such offence are concealed in any building etc., he may carry out the arrest or search without a warrant between sunrise and sunset, and this provision does not mandate that he should record his reasons of belief. However, if such officer has to carry out search between sunset and sunrise, he must record the grounds of his belief. The provisions are mandatory to the extent mentioned above and any contravention of the said would affect the prosecution case and vitiate the trial.
5. Under Section 42(1) of N.D.P.S. Act the prior information received by the empowered officer should necessarily be taken down in writing. If he has reason to believe from personal knowledge that offences under chapter IV of N.D.P.S. Act have been committed or materials which may furnish evidence of commission of such offence are concealed in any building etc., he may carry out the arrest or search without a warrant between sunrise and sunset, and this provision does not mandate that he should record his reasons of belief. However, if such officer has to carry out search between sunset and sunrise, he must record the grounds of his belief. The provisions are mandatory to the extent mentioned above and any contravention of the said would affect the prosecution case and vitiate the trial.
6. If a police officer being an empowered officer conducting investigation into offences under provisions of Cr. P.C., fails to comply with provisions of Section 100 and 165 Cr. P. C., such failure would only amount to an irregularity.
7. If an empowered officer under Section 41(2) of N.D.P.S. Act carries out a search, he would be doing so under Section 100 and 165, Cr. P.C., and if there is no strict compliance with the provisions of Cr. P.C. the search would not per se illegal and would not vitiate the trial
8. It is obligatory on the part of empowered officer or authorized officer acting under Section 41 or 42 of N.D.P.S. Act to inform the person concerned of his right under Section 50 of the said Act before conducting search of the person and non-compliance would affect the prosecution case and vitiate the trial.

CONCLUSION

The efforts to contain and prevent the drug abuse in India lay with the legislature, but the courts supplement the legislative efforts in order to make India a drug free society. The courts in Independent India had not been slow to recognize the evil of drug abuse and were not oblivious of the need to adopt themselves to meet the same within the framework of enacted law. The judges have not only tried to deal with drug abuse cases inside the court rooms, but the judiciary has also acted outside the courtrooms in order to take all required steps for eradication of this menace from our society. We must appreciate the efforts of the judiciary in this regard. On the one hand they are strictly dealing with the issue of drug abuse, but at the same time the courts are also conscious of the fact that given a free hand the investigating agencies may misuse their powers, and in order to prevent such misuse of power the judiciary has laid down guidelines in various cases from time to time for the investigating agencies so that such cases could be properly investigated and disposed off on the priority basis. Secondly where the laws enacted for this purpose fails to achieve us the desired results due to faulty language; it is the judiciary which has come to the rescue of legislatures, by interpreting those laws in a way which ultimately gives us the intended results.