

Forensic Law: Alcohol and Narcotic Substances

By *Stuti Sharma*

PhD Research Scholar (LAW), Uttarakhand University, Law College, Dehradun, India

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Abstract

This research project deals with the issues of Alcohol and Narcotic Substances including the ways to conduct the alcohol test. The scope of this research project is to show that how law and science have not been static since its inception and we cannot just incorporate these scientific techniques that affect the fundamentality of legal systems. The 1961 Convention, which was expanded and strengthened by the 1972 Protocol, is considered a major achievement in international drug control because it consolidated all previous conventions and streamlined the international drug control machinery. The 1961 Convention establishes strict controls on the cultivation of opium poppy, coca bush, cannabis plant and their products, which, in the Convention, are described as "narcotic drugs" (although cocaine is a stimulant drug rather than one that induces sleep). Control is exercised over 134 narcotic drugs, mainly natural products, such as opium and its derivatives, morphine, codeine and heroin, but also synthetic drugs, such as methadone as well as cannabis and coca leaf. Parties to the 1961 Convention undertake to limit the production, manufacture, export, import, distribution and stocks of, trade in and use and possession of the controlled drugs so that they are used exclusively for medical and scientific purposes. The production and distribution of controlled substances must be licensed and supervised, and Governments must provide estimates and statistical returns to INCB on the forms supplied for that purpose, on the quantities of drugs required, manufactured and utilized and the quantities seized by police and customs officers. This whole process is controlled by pushing the suspected person into the state of hypnotic trance and monitoring the blood pressure and heart rate continuously.”

The control system established under the 1961 Convention functions well, and the system of estimates first introduced by the 1931 Convention is considered to be the key to that success.

The system of estimates covers all States, regardless of whether or not they are parties to the 1961 Convention. Each year, INCB publishes information about the licit movement of the internationally controlled narcotic drugs.

Keywords: Issues of Alcohol and Narcotic Substances, Scientific Techniques, Procedures of the Alcohol Test, Legal Framework and Legal Handling, Procedures to Submit the Application.

Introduction

Alcohol is a psychoactive substance with dependence-producing properties that has been widely used in many cultures for centuries. The harmful use of alcohol causes a large disease, social and economic burden in societies.¹ Alcohol consumption is a causal factor in more than 200 disease and injury conditions. A significant proportion of the disease burden attributable to alcohol consumption arises from unintentional and intentional injuries, including those due to road traffic crashes, violence, and suicides, and fatal alcohol-related injuries tend to occur in relatively younger age groups. A variety of factors have been identified at the individual and the societal level, which affect the levels and patterns of alcohol consumption and the magnitude of alcohol-related problems in populations.

Environmental factors include economic development, culture, availability of alcohol, and the comprehensiveness and levels of implementation and enforcement of alcohol policies. For a given level or pattern of drinking, vulnerabilities within a society are likely to have similar differential effects as those between societies. Although there is no single risk factor that is dominant, the more vulnerabilities a person has, the more likely the person is to develop alcohol-related problems as a result of alcohol consumption.

The health, safety and socioeconomic problems attributable to alcohol can be effectively reduced and requires actions on the levels, patterns and contexts of alcohol consumption and the wider social determinants of health.

Countries have a responsibility for formulating, implementing, monitoring and evaluating public policies to reduce the harmful use of alcohol. Substantial scientific knowledge exists for policy-makers on the effectiveness and cost-effectiveness of the following strategies:

- regulating the marketing of alcoholic beverages (in particular to younger people);
- regulating and restricting the availability of alcohol;
- enacting appropriate drink-driving policies;
- reducing demand through taxation and pricing mechanisms;
- raising awareness of public health problems caused by harmful use of alcohol and ensuring support for effective alcohol policies;
- providing accessible and affordable treatment for people with alcohol-use disorders; and
- Implementing, screening and brief intervention programs for hazardous and harmful drinking in health services.

The Supreme Court judgment on alcohol and narcotic substances gave a path breaking solution as to how law can be in pace with scientific advancements as they hold that compulsory administration of narcotic substances as unconstitutional and it also left open the scope of this technique by providing a narrow exception that information revealed from a voluntary administered test can be admitted as evidence.

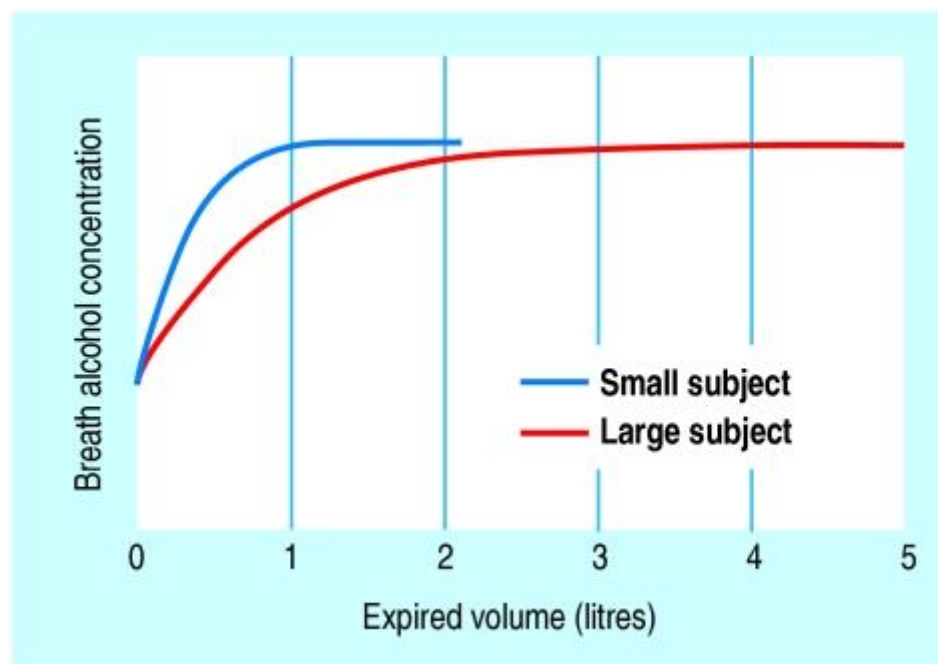
Alcohol Test

Drivers are initially tested for alcohol impairment at the roadside with a screening device. If this produces a positive test, evidential breath testing is performed at the police station. Motorists can be stopped and required to take a breath test by police at the scene of a road traffic accident, if a police officer suspects a motorist may be driving under the influence of alcohol, or if a motorist commits a moving traffic offence.

Screening devices are about the size of old fashioned mobile phones.ⁱⁱ The driver blows into a disposable mouthpiece for each test. The whole process takes about a minute for the device to record the result. Screening devices offer four result categories: “zero,” “pass,” “warn,” and

“fail”. Anyone who fails the test is arrested and is required to perform an evidential breath test at a police station.

A sample of the ambient air is tested as a blank check. This is followed by a check sample of an air/ethanol standard. This checks the calibration of the device.ⁱⁱⁱ The concentration of alcohol in the standard sample is 35 µg/100 ml air, which is the UK drink-driving limit.



Alcohol in the mouth gives a rapid peak in ethanol concentration on the evidential test. If the infrared cell that monitors the breath alcohol profile detects such a peak the test is aborted and a blood sample is required instead.

These devices sometimes register “interfering substances.” If this happens the test is aborted and a blood sample is required.

The maximum level of alcohol that may be accurately detected by evidential breath testers is 220 µg/100 ml air. The whole process takes 10 to 15 minutes with the fuel cell based instrument, and up to 5 minutes with the purely infrared based ones.

Different Techniques of taking the test:

Tests can also be manual or electronic. Most police use an electronic device about the size of a walkie-talkie. You blow into a mouthpiece, and it gives an immediate reading. You may be asked

to repeat this a few times so the officer can get an average reading. It takes about a minute, and it doesn't hurt.

The most common manual test includes a balloon and a glass tube filled with yellow crystals. You blow into the balloon and release the air into the tube.^{iv} The bands of crystals in the tube change color from yellow to green depending on how much alcohol is in your system.

Handling of narcotic drugs and psychotropic substances:

State Agency of Medicines is a governmental body under the Ministry of Social Affairs with the aim to ensure that narcotic and psychotropic substances and their precursors are used appropriately and in accordance with international conventions.

State Agency of Medicines is a Competent National Authority under the International Drug Control Treaties.

The control over narcotic and psychotropic substances is carried out according to the UN Single Convention on Narcotic Drugs of 1961, UN Convention on Psychotropic Substances of 1971.

The main legal act which regulates primarily the handling and preparation of narcotic drugs and psychotropic substances and precursors thereof is the Act on Narcotic Drugs and Psychotropic Substances and Precursors thereof. The scope of the Act is also to regulate the procedure regarding information and reporting on narcotic drugs, psychotropic substances and precursors and to regulate the procedures for inspection and identification, also to prevent of the spread of drug addiction and treatment and rehabilitation of drug addicts.

The specific requirements for handling of narcotic drugs and psychotropic substances for medicinal and scientific purposes and the maintenance of records and reporting, also the Schedules I-V of narcotic drugs and psychotropic substances are stipulated in the regulation of Minister of Social Affairs.

State vs Trimbak Dhondu Bhoir on 11 April^v

Whoever in any street or thoroughfare or public place or in any place to which the public have or are permitted to have access (1) is drunk and incapable of taking care of himself, or (2)

behaves in a disorderly manner under the influence of drink, or (3) is found drunk but who is not the holder of permit granted under the provisions of this Act or is not eligible to hold a permit under [Section 40](#), [41](#) or [46](#).

With regard to the first, which is Criminal Appeal No. 130 of 1955, which is the appeal of the State against acquittal, the only evidence of being drunk is that the accused smelt of liquor.^{vi} He has been convicted under [Section 85\(3\)](#) and as that evidence, as we have just decided, does not constitute an offence under [Section 85\(3\)](#), the appeal of the State must be dismissed and the order of acquittal passed by the Sessions Judge, Thana, must be maintained.

Raghubir Singh v. State of U.P. (1972) 3 SCC 79: 1972 SCC (Cri) 399]^{vii}

It was held that the prosecution is not bound to produce all the witnesses said to have seen the occurrence. Material witnesses considered necessary by the prosecution for unfolding the prosecution story alone need be produced without unnecessary and redundant multiplication of witnesses. In this connection, general reluctance of an average villager to appear as a witness and get himself involved in cases of rival village factions when tempers on both sides are running high, has to be borne in mind.

Narcotic Drugs and Psychotropic Substances and their Legal Handling

Legal framework:

In Estonia the field of narcotic drugs and psychotropic substances is regulated by the Act on Narcotic Drugs and Psychotropic Substances and Precursors thereof, which lays down the main handling requirements for such substances. The conditions and procedure for handling of narcotic drugs and psychotropic substances for medical and research purposes, also the conditions and procedure for maintaining records and reporting for these substances are established by regulation no 73 of the Minister of Social Affairs.

Narcotic drugs and psychotropic substances are divided into six schedules in Estonia, depending on the effect and misuse/dependence potential (Annex 1 of regulation no 73). The schedules of narcotic drugs and psychotropic substances are established on the basis of the

1961 United Nations Single Convention on Narcotic Drugs and the 1971 United Nations Convention on Psychotropic substances and also taking into account the degree of the risk of misuse and addiction of specific narcotic drugs and psychotropic substances.

Purposes for which Narcotic Drugs and Psychotropic Substances can be handled

Narcotic drugs and psychotropic substances are substances that affect the mood and behaviour of humans and their consumption is often accompanied by a heightened potential for abuse and dependence.^{viii} Depending on the effect, usage profile and abuse/dependence potential narcotic drugs and psychotropic substances are divided into six schedules in Estonia. The isomers, esters, ethers and salts of these substances and medicinal products containing such substances are also considered narcotic drugs and psychotropic substances.

The handling of narcotic drugs and psychotropic substances is prohibited except for medical or scientific purposes, to prevent, detect or combat criminal offences relating to narcotic drugs or psychotropic substances or for use for educational purposes.^{ix} “Handling” in this context means the owning, possessing, mediating, use, cultivation, gathering, preparing, manufacturing, processing, packaging, preserving, storing, loading, transport, exportation or importation, the application of the customs procedure of transit, and the supplying of narcotic drugs or psychotropic substances to third persons for or without charge.

There are general handling requirements that apply to all legal and private persons that handle narcotic drugs and psychotropic substances in the scope of their business and professional activities. Main requirements involve appointing a responsible person, conducting inner handling regulations, storage, record-keeping, receipt and dispensing requirements.

The following chapters explain any additional requirements that apply to manufacture and wholesale companies, pharmacies, holders an activity license for provision of the healthcare and pharmacy services and for educational or research institutions.

Handling narcotic drugs and psychotropic substances for scientific purposes:

Educational or research institutions that hold a license issued by the State Agency of Medicines can handle narcotic drugs and psychotropic substances and medicines containing them for scientific purposes. Educational or research institutions that have the right to wholesale purchase medicines, can obtain narcotic drugs and psychotropic substances directly from holders of an activity license for wholesale distribution of medicinal products.

Educational or research institutions that do not have the right to wholesale purchase medicines, can obtain medicines containing narcotic drugs and psychotropic substances from a pharmacy. In order to do that, an application for a permit in free form has to be submitted to the State Agency of Medicines, containing data on the specific medicine and the amount needed and also the pharmacy from which the purchase will be made. State Agency of Medicines sends the issued permit to the applicant and the pharmacy that will order and dispense the medicine for scientific purposes. The abovementioned general requirements also apply for handling narcotic drugs and psychotropic substances for scientific purposes.

Procedure to submit an application for the import and export of narcotic drugs and psychotropic substances:

The applications are submitted for the import and export of narcotic drugs and psychotropic substances via the Client Portal. The applications must be signed by the person responsible for the handling of these substances.

Conclusion

The Supreme Court judgment on alcohol and narcotic substances gave a path breaking solution as to how law can be in pace with scientific advancements as they hold that compulsory administration of narcotic substances as unconstitutional and it also left open the scope of this technique by providing a narrow exception that information revealed from a voluntary administered test can be admitted as evidence. The prohibition of alcohol, narcotic substances and drugs through sumptuary legislation or religious law is a common means of attempting to

prevent the recreational use of certain intoxicating substances. While some drugs are illegal to possess, many governments regulate the manufacture, distribution, marketing, sale and use of certain drugs, for instance through a prescription system. For example, amphetamines may be legal to possess if a doctor has prescribed them; otherwise, possession or sale of the drug is typically a criminal offence. Only certain drugs are banned with a "blanket prohibition" against all possession or use (e.g., LSD, a psychedelic that was once used medicinally). The most widely banned substances include psychoactive drugs, although blanket prohibition also extends to some steroids and other drugs. Many governments do not criminalize the possession of a limited quantity of certain drugs for personal use, while still prohibiting their sale or manufacture, or possession in large quantities. Some laws set a specific volume of a particular drug, above which is considered *ipso jure* to be evidence of trafficking or sale of the alcohol and narcotic substances. The health, safety and socioeconomic problems attributable to alcohol can be effectively reduced and requires actions on the levels, patterns and contexts of alcohol consumption and the wider social determinants of health.

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Endnotes

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