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Joseph Pokkatt

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Drug Laws – Is there a case for reform ?

JOSEPH POOKKATT

National Law School of India University, Bangalore

To many of us the very word “drug” has sinister associations while for many young people to-day it signifies a revolt against established ideas and morals. The misuse and abuse of drugs is one of the world’s most widespread and critical problems. There are many fundamental reasons why despite intensified efforts to rid the menace, literally millions of people, of all socio-economic levels have voluntarily succumbed to the allure of drugs. But the solutions to these problems never seem to avalanche upon society.

People have taken drugs in one form or another for centuries and will probably continue to do so despite their knowledge that all drugs are inherently dangerous. The Indian public however in recent years has been increasingly aware that the use of illegal drugs is widespread. The number of youth addicted to drugs has grown ten fold in the last eight years. Drug abuse has reached such alarming proportions in

Bombay and Delhi where atleast a hundred thousand youth are said to be addicted in either of the two cities. Admittedly, drastic measures are needed to curb the menace, but are stiffer laws the only solution—?

The usual reason for making certain drugs illegal is that it is thought that society would be harmed if they were lawful. But is then the good of society the ultimate good? When talking about any drug we should weigh up the pleasures it offers as well as the harm it inflicts. A difficult issue to be considered is whether psychotropic substances or narcotic drugs deserve a ban? Is drug control the only way to stop people from taking drugs?

The case for reform takes 2 main forms—First, what right has the law to tell me what I can and cannot do in private? Isn’t the pursuit of happiness, the most basic right of the individual in our society?—a right which certainly lies within the penum-

bra of all other rights, why then should not a man be free to pursue his pleasure or alleviate his misery with drugs?

Secondly, drinking is not illegal, while alcohol is, known to be the direct cause of atleast 4 million deaths a year. Then why is pot smoking which is considered less harmful, banned? One reply is that by the act of smoking cannabis, I will encourage others to do the same; and law must protect society. Yet how far are we justified in this supposition? The risks to health from smoking are well documented, but so far no one has interfered with the individual's right to smoke.

To state a dilemma of this kind is not to find a solution. Rather, the purpose is to make people aware of the haphazard way in which certain drugs are branded as "GOOD" and others as "BAD" in the eyes of law.

The Narcotic Drugs and Psychotropic Substances Act, 1985 which is regarded, to-day as the most elaborate and explicit piece of legislation dealing with narcotic drugs covering a wide area of operation for purposes of prevention of illicit cultivation of narcotics, production, possession, sale, purchase, transportation, warehousing, concealment, use or consumption, interstate

import or export and import into India or export from here alongwith the powers divested in the state and central Government to effectively deal with it. Eight agencies, some with overlapping powers and jurisdiction are expected to effect this control, both on local use as well as the export trade. They include the customs, central excise, Directorate of Revenue Intelligence, the State Excise and Prohibition Board, the state police, the Central Bureau of Investigation (C. B. I.), the Border Security Force (B.S.F.) and the Narcotics Control Bureau (N. C. B.).

Government control over the legal availability of drugs are of considerable importance. The restrictions interfere with freedom, but the words of John Stuart Mill are too idealistic,—“liberty of the individual must thus far be limited, he must not make himself a nuisance to other people. Human nature is such that an uninhibited access to psycho-active substance would be disasterous”. It would be indeed argued that the relevant statutory controls render persons more free to choose ways of living that do not involve the hardships by unwise use of alcohol and drugs. The effectiveness of the legal ban on drugs in deterring people from using the substance considerably depends upon the maintenance of both difficulties in their actually getting hold of it, and using it with

fear of detection and consequent sanctions and difficulties in their justifying such use to themselves and others in a context where it is commonly regarded as physically dangerous and morally reprehensible. But it should be realized that the demonstrated effectiveness of deterrent measures at one time provides no guarantee of continued effectiveness.

In spite of supposedly immense quantities of drugs being seized in raids which are reported frequently by the press and rather elaborately on occasions by television the stable prices of narcotics as well as their consistent availability raise a barrage of disturbing questions. Does the stable price and ready supply reflect the huge quantity of drugs transiting through the country? What percent of the trafficked drugs are seized? Are seizure figures accumulating upto tonnes of narcotics provided by enforcement agencies accurate? Corruption – has it crept into the much vaunted drug enforcement agencies? and last but not least, do the seized drugs find their way back into the hands of drug traffickers for a price?

Conclusive answers are however not forthcoming. The wall of silence shrouding these enforcement agencies wherein “privileged information” is the excuse by which information that should be public know-

ledge is withheld. The other factor which requires incessant probing is whether the existing NDPS Act, 1985 and the subsequent NDPS Ordinance, 1988 are fully equipped to meet the exigencies when required. It is well known that most of the notorious smugglers who possess all the funds to hire the best lawyers and who have considerable political clout to amend laws as they please were once convicted, when they were small timers. The most critical act in neutralising the drug mafia is not making the seizure but obtaining a conviction in courts.

In circumstances wherein the chances of arresting the whole process without massively increasing police resources and legal penalties inevitably come to depend increasingly on the state’s ability to effect a clampdown on supply. In the book “A land fit for Heroin?”, Nicholas Dorn and Nigel South emphatically emphasize that the demand for drugs is that which must be wiped out and this is possible only when a concerted action is taken against supply. The sheer magnitude of the task the law-enforcement agencies have in their hands can be gauged from the realisation that narcotics is the third largest industry in the world to-day following arms and petroleum and it is a business generating billions of dollars in hard cash.

The argument that the only solution to the drug problem is to legalize illicit drugs has resurfaced time and time again in different parts of the globe with fury vengeance. Various theories have been advocated as to why drugs should be legalized; the old one dates back to the "swinging sixties" which argues that drug abuse should be allowed as a matter of individual liberty or that drugs are not that dangerous; drug laws are a plot devised to destabilize the country; people are attracted to drugs because of their illegality; drugs are not as addictive as alcohol; people are compelled to take drugs because of medical reasons; etc. Now it is not only the usual group of drug lobbyists but Senators in the United States and Parliamentarians in West European countries who are calling for the decriminalisation of drugs. The cost of enforcement, it is argued, outweigh the benefit society derives from such enforcements. But must we withdraw now and cut our losses? Can we cite the inability of law enforcement to single handedly solve the drug problem as evidence of the futility of imposing legal prohibition on drugs? The police must work on the assumption that the laws exist to be obeyed. As the law stands, it is an offence to possess or sell illegal drugs, or to allow people to use them in your home. Any one who breaks this law risks arrest.

But as millions of people are now taking this risk, how long can law function effectively?

What is the main objective in making certain drugs illegal? It is as most see it, to stop drugs of potential or known danger damaging too many people, particularly young people, until research has yielded more positive knowledge, and the slow process of constructive advice has taught us how to live with drugs. And to hold this position we must have a law!

To be caught with drugs in Malaysia which has the strictest anti-drug legislation is to be jailed or hanged. But do such draconian measures work? It is quite debatable, atleast so in Malaysia as 93,000 of its 15.7 million inhabitants are dependent on heroin and it is said to possess more heroin addicts per capita than the United States. Stricter penalties certainly do have deterrent effects but the fact that drug availability, consumption and drug related crimes have increased in spite of stronger law enforcement efforts, calls for reconsideration of the existing laws. Similarly it would be no understatement to say that repressive anti-drug legislation in the U.S. has contributed to one of the major social disasters of the country's development. It has intensified

the criminality associated with drug-use to a considerable extent.

Penalties for drug trafficking in India have also proved counter-effective; indeed some studies have shown that heavy sentences only consolidate the criminal enterprise and make it much more difficult to penetrate.

Do then drug addicts deserve to be treated as criminals? The question is usually put forward because persistently abnormal conduct does not respond to conventional forms of punishment. There cannot be a more harmful way of treating an addict than to send him to prison. It is this aspect of the law which concerns us the most. As the law stands at the moment, it is probable that every addict will go to prison. Courts should avoid prison sentences for a first or second offence and instead grant probation to addicts so as to allow them to readjust to life without drugs.

Legal proceedings concerning drugs are extensive, complicated and sometimes baff-

ing. This is not surprising. Society makes its laws with an eye to general welfare and to protect the rights of the individual, and to deter the would-be offender, and these aims may sometimes conflict. It would be naive to expect perfection from the law any more than from any other human endeavours. Mr. Akira Kawada, Chief of Interpol's drug division however insists that unified antidrugs legislation among all nations concerned would lessen the inconsistencies and anomalies in the laws relating to drugs. Most countries have signed an international convention banning drugs, but the application of the ban is by no means international.

For too long, policy makers have shunned this issue, but when one is dealing with a phenomenon that has affected the lives of so very many people in contemporary society and will without doubt continue to do so, such a state of affairs should surely not be tolerated. One of the chief areas in which efforts can be made and a measure of success guaranteed, is in ensuring the working of law and law - enforcement agencies.