

Comparative Legal Analysis on Drug Trafficking

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Abstract:

Narcotic drug and psychotropic substances have been used in the world in different form since long time. Similarly trading in these substances has been carried on over a considerable period of time. Narcotic drug and psychotropic substances have been regarded as one of the worst enemies of the humans since centuries and it is same in this scientific and technological age. Drug trafficking and abuse is a global phenomenon and has acquired the dimension of epidemic, affects the economic policy of the state, corrupt the system and is also detrimental to the future of the Country. The illicit trafficking and abuse of these drug is raising at alarming rates and if the trafficking of these substances are not prevented then the same will bring big disaster and mismanagement in the system of governance, as well as future of mankind would be questionable. The drugs are cultivated and manufactured in some parts of the globe and are trafficked to other parts of the world by international criminal syndicates to satisfy the demands of the consuming public. Trafficking in narcotics is, therefore, a big challenge faced by the world community and the same needs to be addressed in order to find some practicable and long lasting solution. In spite of the concerted efforts by various enforcement agencies both at the national and international level, the problem of trafficking continues to remain a big issue. There are a number of reasons for this illicit trade to continue and thrive unabated and it is believed that the most important factor which makes trafficking in narcotics a highly attractive proposition is that it is a high profitable criminal activity.

1. INTRODUCTION

Narcotic drug and psychotropic substances have been used in the world in different form since long time. Similarly trading in these substances has been carried on over a considerable period of time. Narcotic drug and psychotropic substances have been regarded as one of the worst enemies of the humans since centuries and it is same in this scientific and technological age. Drug trafficking and abuse is a global phenomenon and has acquired the dimension of epidemic, affects the economic policy of the state, corrupt the system and is also detrimental to the future of the Country. The illicit trafficking and abuse of these drug is raising at alarming rates and if the trafficking of these substances are not prevented then the same will bring big disaster and mismanagement in the system of governance, as well as future of mankind would be questionable. The drugs are cultivated and manufactured in some parts of the globe and are trafficked to other parts of the world by international criminal syndicates to satisfy the demands of the consuming public. Trafficking in narcotics is, therefore, a big challenge faced by the world community and the same needs to be addressed in order to find some practicable and long lasting solution. In spite of the concerted efforts by various enforcement agencies both at the national and international level, the problem of trafficking continues to remain a big issue. There are a number of reasons for this illicit trade to continue and thrive unabated and it is believed that the most important

factor which makes trafficking in narcotics a highly attractive proposition is that it is a high profitable criminal activity.

Drug trafficking is the source of many other problems in human life. It introduces chronic diseases, poverty, unemployment, violence, economic disparity and change in life style of a human being. In this way it destroys vitals of the society adversely affecting the economic growth of a Country. This trade generates large un-accounted money which, in turn, leads to adoption of various malpractices and triggers money laundering. Anti-national and terrorist activities, even clandestine trading in arms and ammunition are funded by this black money. This has launched a new concept of Narco- Terrorism in International sphere. The huge amount of money earned through the drug trafficking activities are being used by the terrorist organizations for their illegal activities in various parts of the world. Despite existence of stringent laws and punishment, these activities are quickly mushrooming over the years everywhere. This has only been possible because the existing process allows a way out to evade punishment some way or the other. The Activist who have figured this are spreading there reach both nationally and internationally. Like any other infectious disease it knows no caste, creed, culture, geographical boundaries. It is going to engulf the entire civilization and increase organized and unorganized crime creating chaos and disorders. This is high time to retrospect and improvise the processes to prevent such activities, close any possibility of evasion.

Here it becomes essential to discuss about globalisation and its impact as trade is considered one of the leading forces in globalisation. Globalisation has played imperative role not only in movement of people but also it made easy excess of goods, product and services beyond boundary. World has become a small village in terms of technology and traditional goods. Trade is now interdependent between developed and developing country. Narcotic Drug Trade is therefore transnational in character and dangerous organised crime which would affect our young generation as well as indigenous section. If we speak about India, it is located between the nation of Golden Crescent and Golden Triangle as a consequence it became a gateway for spreading narcotic substance worldwide.

To curb illegal practices of trade, UN organisation started forcing state Governments to come up with the stringent Act. As a result, India came up with the NDPS, Act 1985. Despite the enactment of such stringent Act, drug trade and smuggling continues to rise unabated in India and all over the world.

Cultivation of narcotic substance provides locals lucrative opportunities, specially to those regions where people have tough time managing their livelihood. People living in extreme poverty find this an easy way to earn and solve the miseries of life. Therefore, transnational organized crime (TOC) has evolved considerably in a way that it is hard to find the actual culprit which outpaced the global demand on the governance. The governance so far has fuelled violence, corruption, and instability in producing and transit countries. The markets destined for consumption have also shifted drastically over time by pushing cultivation¹ from one place to another which help in reshaping the illicit narcotic drug market.

India produce licit amount of cannabis and opium and distribute to the illicit market with the help of the people below poverty line whose livelihood based in daily wages. In Europe, 60% of cocaine users are from the United Kingdom, Spain and Italy, while in Latin America the top consumer countries are Brazil, Argentina and Chile [1].

Seizure data indicate that a substantial proportion of the total quantity of drugs seized is confiscated from maritime modes of conveyance or has been transported by sea. The trafficking of narcotic drugs by sea has virtually become an industry comprised of many individual enterprises of varying size and organization. The maritime medium is one of the main ways by which drugs may enter some countries.

In response to the problem, various sophisticated anti-trafficking offensives and strategies have been established or contemplated in certain geographical areas. The shipment of drugs to the primary consuming countries has not been curbed, however, and there is every indication that the overall movement of drugs is still unimpeded [2].

As per UN Convention on Human Right, health approach system is more efficient than a coercive sanction. Though UN Convention mandates the criminalisation of several action, such as possession, purchase, cultivation, sale, importation of drugs with the objective to avoid illegal drug trafficking. But states do not have absolute obligation to criminalise such actions, but do have general obligation to provide the highest level of health for all people, including drug users. Therefore, the criminalisation of drug use possession for personal use is a disproportionate restriction of this human right. To ensure the enjoyment of right to health the procedure for prosecuting drug abuser or addict should be more flexible, and focus more on the protection of individual than the number of narcotics carried by accused. As noted, drug treaties stipulate that in these circumstances, the state should apply alternative measures such as treatment, education, social rehabilitation etc. The states have several restrictions to criminalise drug users because the physical and mental treatment and the rehabilitation of the drug users and addict is state's obligation under the right to the highest standard of health. It would not be wrong to say that drug use in itself is not an absolute criminal offence under the convention. International law does not only encourage nation to provide physical and mental support to drug users as a substitute of conviction, but it establishes that these treatments are mandatory state obligations [3]. Despite the fact that the balance between the protection of human rights and drug control is a difficult scenario for States like India to maintain. It is challenging not only in the legal arena, but also in a much broader sense on drug use and its causes and effect. Even though it has to consider not only legal problems, but also social, cultural, economic, and political dilemmas faced by the people involved in such trafficking. As we know that even after formulation of stringent laws, not much could be changed in India specially. The saddest part is that only vulnerable part of the society getting affected through these laws, who have only a minimal contribution in these transactions but fail to hold accountable the master minds behind these acts. Hence it is felt that there is a huge gap between the existing laws and its implementation. In today's era it demands a proper analysis on this subject matter as whole trial procedures that are followed are not effective. As the real culprit never comes into the trial procedure event in this era of advance technology. Hence, a proper strategic team is the need of the hour. The individual who is found carrying the substance needs to be traced discretely. At this stage at least we need a proper training agency, so as trained seizing officials, supporting staffs having knowledge of mobile communication. We have less branch offices and inadequate seizing equipment and very few test labs. We need administrative support to bring eye witnesses before the Ld. Court. It's evident that eye witnesses hesitate to come forward to unravel the truth. This makes investigation tough and incomplete most of the time for the Government Officials, resulting punishment to the possession holder only.

2. EXISTING LEGAL SITUATION IN INDIA

- Customs Act, 1962.
- The Opium Act, 1857
- The Opium Act, 1878
- Dangerous Drug Act, 1930.
- The Narcotic Drug Psychotropic Substances Act, 1985.

- The Prevention of Illicit Traffic in Narcotic Drug Psychotropic Substances Act, 1988.
- The Narcotic Drug Amendment (Cannabis) Regulation, 2018.
- Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA).
- Juvenile Justice (Care and Protection of Children) Act, 2000.

3. LITERATURE REVIEW:

1. Nafiu Ahmed, "Transnational Organised Crime In India; a new framework of analysis"

This article help us to understand how this organised crimes like drug trade became transnational organised crime with the advent of globalisation. There are few factors that play immense role for committing such crime are globalisation, poverty, unequal wealth distribution, technological innovation, corruption, inadequate governance, geographical location etc. As India is geographically located in between principal produced country and its illicit foreign markets surrounded by the various foreign country due to which it became easy to supply these illicit items to the western country. Mainly there are five major narcotic substances like hashish, opium, heroin, methaqualone, and cannabis that are used for illegal drug trafficking in India. Somehow this article highlight basic understanding of the whole system of governance and its loopholes due to which such crime are rampant in country like India.

2. Molly Charles, "Drug Trade in Himachal Pradesh Role of Socio-economic Changes, Economic and Political Weekly", Vol. 36, No. 26, Jun. 30 - Jul. 6, 2001, pp. 2433-2439.

This article talks about customary practices of drug uses by the local people in the name of God as well as making it available to attract tourist in the tourist season are discussed.

3. Cristina Elena Petcu, "Globalization and Drug Trafficking", The New School University Course: Theories, Histories, Practices of Development Professor: Sheba Tejani Date: May 15, 2017.

In this article author accepts the huge positive impact of globalisation in interconnected economic growth and new economic order but at the same time she also point out uncontrollable growth which is biggest challenge in our global world. He also point out globalisation as one of the important factor for transnational organised crime. This article also speaks for creation of new market to hide the crime from noted place.

4. Yasir Latif Handoo, AB Latif Wani, Fareed Ahmad Rafiqi, "A critical appraisal of law & policy on prevention and control of narcotic drugs and psychotropic substances in India", ISSN: 2455-2194, Volume 4; Issue 2; March 2018; Page No. 304-310.

The main theme of this article is on elucidation of the present system of law and policy framework for prevention and control of offences committed under the NDPS Act, 1985, and the PIT NDPS Act. Authors in this article gives appropriate suggestion to improve the present situation as well.

5. Bajaj Rahul, "A Detailed Analysis of the National Drugs and Psychotropic Substances Act", September 26, 2014.

This article mainly speaks about the provisions of NDPS Act, 1985 and the changes brought by amendments etc. Author here also gave an overview of entire Act,1985 with that it also discussed shortcomings in the above Act. As per him drug abuse viewed as a far more serious problem than other

social evils because it is inseparable with other offences like organised crimes, human trafficking and money laundering as well as health hazards such as HIV- AIDS. Author also discussed long history of use of cannabis and opium for the purpose of social, spiritual, and medicinal contexts in India. He traced the problem through released statistics of the National Crime Record Bureau which disclose that worth approximately Rs. 37 Crore seized in 2010 and 2009. Punjab and Manipur are the two states where problem is more serious as the number of intravenous drug users are high here. Considering all the discussions made by the author it is no wrong to say that it is a detail analysis of the National Drugs and Psychotropic Substances Act.

6. Singh Shankar Pratap, “Transnational Organized Crime: The Indian Perspective”, Resource material series no. 59.

The article here speaks about criminals and their activity that connects worldwide transactions. Frequent change of a stay from one country to another as per the convenience of laws of countries. In the name of business, they take globalisation as licence to criminal activity worldwide. Hence it is a suggestion given by author that unless crime in one particular country is recognised as crime worldwide and treated as criminal worldwide in the case of transnational organised crime specially. The author here says that illicit drug trafficking as TOC became a serious issue for developing as well as developed countries. After having stringent laws in the most country also the drug abuse continues which affected the quality of life as well as social, economic, and cultural development of the country. Indian geographic situation was also one of the major reasons of increasing drug trafficking in and around the India. Except Prominent legislation for punishment i.e., NDPS Act, 1985 there are other important acts like for application of preventive detention of drug traffickers under COFEPOSA, notification of certain chemicals under Customs Act etc are on implications. The creation of Narcotic Control Bureau as an apex coordinating and enforcement agency at the national level is one of the prominent measures taken by the Government. As the drug delivery to the countries are through 'controlled delivery' [4] technique describe in convention, the originating country and recipient country should discuss in toto the entire operation for the authenticity of evidence of transporting. Though it is very tough to maintain authenticity as different countries involve in the transaction and their laws are also different for traffickers as a consequence illegal trafficking may take place in such procedure itself.

7. Singh Ningthoujam Koiremba, Nunes William, “Drug Trafficking and Narco-terrorism as Security Threats: A Study of India’s North-east”, Indian Council of World Affairs (ICWA)SAGE Publications in 2013, India Quarterly 69(1) 65–82.

This article attempts to explore the dynamics and security implications of narcotics trafficking in North-east India, particularly Manipur, and the relationship between drugs, narco-terrorism, transnational crime and implications for non-traditional security threats. Non-traditional security threats like terrorism and illicit drug trafficking have become widespread enough to pose threats to the security and well-being of states in particular and the regions in general. Drug trafficking is considered to be the largest international crime problem in the world. Drug trafficking is also connected to other categories of transnational crime that include money laundering, illegal immigrations, terrorism, etc. The global trade of illicit drugs is believed to be worth as much as US\$400 billion a year; this figure is almost comparable to the tourism industry. The United Nations office on drugs and crime estimates that 200 million people consume illegal drugs world-wide, mostly cannabis. The drug trade occurs in a global

market narcotic are transported from a producing country to transit states and then to their final destinations. Drug cartels operate across national boundaries and produce, process, transport and distribute illicit drugs. The drug trade based on a complex transnational structure that includes farmers growing coca, opium poppies and cannabis, heroin and cocaine producers, manufacturers of amphetamine-type stimulants, smugglers, corrupt officials, distributors, wholesalers and small local traders. The laundering of drug money depends on accountants, lawyers, bankers and other actors.

8. Danny Kushlick, Emily Crick and Nicky Saunter, “The war on drugs: undermining peace and security”, Counts The Cost Of The War On Drug.

This article mainly speaks about non-medical use of certain drugs, which results into threat to international and national security and against humankind. Because of this threat UN came up with three conventions. The preamble to the 1961 UN Single Convention on Narcotic Drugs starts by placing drugs in a health and welfare of mankind. The 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substance identifies threat posed by criminal organisations involved in the illicit drug trade, recognising link between illicit traffic. It is very clearly articulated here that the above two conventions are two distinct drug wars being fought, in parallel. The first is the fight against addiction which criminalises those who use, supply or produce drugs for non-medicinal purposes. The second drug war was fought against these criminals who were enriched by the proceeds of the initial prohibition to the point where they threaten the security of the state and its citizen. Using increasingly militarised enforcement tried to eliminate these entrepreneurs, and the illicit market in which they operate, then further undermines security via combination of inter-linked direct and indirect impacts. The article also discusses the UNODC's World Drug Report 2008 which describes unintended consequence of global drug control system. It also discuss criminal organisations power to destabilize society and governments. The illicit drug business is worth billions of dollars a year, part of which is used to corrupt government officials and to poison economies. Drug cartels and spreading violence in Central America, Caribbean. West Africa is under attack from narco-trafficking. Collusion between insurgents and criminal groups threatens the stability of West Asia, the Andes and parts of Africans, fuelling the trade in smuggled weapons, the plunder of natural resources and piracy. Similar conclusion was reached by the international institute for strategic studies in 2012 report. Security council has also concluded that this illicit trade passes a threat to international security. His article also speaks about UN drug control system itself as a threat to international security. UNODC describes the process of enforcing prohibition creates regional insecurity. Thus, war on Drug resulted into.- 1. Significant threat to International Security, 2. Procedure and transit countries face unenviable choice between allowing their institutions to become corrupted or embarking upon what is effectively a civil war in order to defeat them. UN drug control system itself as a threat to international security and it undermines peace and security.

The UN drug control system undermines the security of UN member states Asia, Central Asia, West Africa, East and South Africa , North America, South America, Sahel, Caribbean and others. The article also speaks about 70% involvement of government officials involvement in drug trafficking and in worldwide from low level police officials to high-ranking politicians and the military, individuals are routinely corrupted, through bribery or threats to either turn a blind eye to, or actively participate in illicit actively. They are rarely brought to trial, neither prosecuted and punished. In Mexico the death toll from drug undermines rule of law. Most importantly in 2015 the Indonesian government moulded a

revival of their Shoot to kill policy for dealing with drug smugglers and dealers which it describes as ruthless.

9. Miguel Antonio N Unez V Aladez, “Drug use and right to health : An analysis of International law and the Mexican case”, Mexican Law Review, Vol.VI, No. 29

The author in this article has analysed International and Mexican law regarding the prohibition of drug use and right to health. It argues decriminalisation of personal drug use in domestic legislation is not prohibited by the 1961 Single Convention on Narcotic Drugs and 1988 United Nation Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substance. It is an obligation as per normative content of right to health under international law. Accordingly, Mexico has ratified international convention on economic, social and cultural rights and right to health is a constitutional right, the criminalisation of personal use and possession therefore comes under the violation of the international convention on economic, social and cultural rights. The article is divided into four parts in which 1st part speaks about international convention and worldwide consumption ratio, 2nd part speaks about whether under international there is a mandatory obligation for states to criminalise the consumption or possession for personal use. In 3Rd part the author explained the normative content of human rights to health whether it protects from being criminalise for personal use. In the final part practical examination of Mexican legislation on drug use and the right to health. This essay shows that under international law States should at least take this right into account in every decision regarding drug control. The right to the highest standard of health, including people that commit illegal actions, deserves careful government analysis. This right is not a programmatic privilege, but an essential human right.

10. Damon Barrett, Senior Human Rights Analyst, “Is the decriminalisation of possession of controlled substances for personal use consistent with international law?” International Centre on Human Rights and Drug Policy & International Harm Reduction Association; International Centre on Human Rights and Drug Policy, International Harm Reduction Association; 4 February 2011.

This article speaks about decriminalisation of drug users and possession holder. There are countries like Spain, Portugal and Italy, do not consider 'possession of drugs' for personal use as punishable offence. But in the Netherlands and Germany, 'possession for personal use' is illegal, but guidelines are established for police and prosecutors to avoid imposing punishment. Some Latin American countries including Brazil, Mexico and Argentina have decriminalised possession for personal use, either by court decree or through legislative action. In 2001, Portugal decriminalised all possession for personal use and has seen important successes in terms of health and reduced numbers of people coming into contact with the criminal justice system. Therefore, analyst in this article had tried to highlight positive outcome of decriminalisation as it is reformative as well as constitutional right of individual.

4. DRUG TRADE IN INDIA

It was early 19th Century when an illegal drug trade in China emerged. With increase in trade the number of Chinese Opium addicts grew from four million to twelve million, which forced the Chinese government to enforced ban on import and export of Opium. This led to the First Opium War between UK and China from 1839 to 1842. This war did not benefit the Chinese as UK won and China was forced to allow British merchants to sell Indian grown Opium.

As trading in Opium was lucrative opportunity for the Chinese, many people joined in this trade which made smoking of Opium common. It was around 1856, again a war broke out but this time French joined the British. The British Crown, asked for the compensation via the treaties which obligated Chinese government to pay large sums of money for Opium that they had seized and destroyed. In the history of beginning of drug trade specially marijuana, cocaine and hashish among Asia, North America and European Country, these wars had played vital role and it was also an emergence of drug trade in India in the form of Opium. By 21st Century it flourished entire North America and Europe [5].

5. PROCEDURAL ASPECTS UNDER THE NDPS ACT

Chapter V of the NDPS Act gives detail procedure for the investigation. There are some mandatory procedures and some directory procedure. The administrative and legislative setup of Narcotics is accordance to the spirit of the UN Conventions. Various Ministries and Departments under the Government of India as well as the State Governments exercise various functions pertaining to drug demand and supply reduction. The Narcotics Control Bureau (NCB) is the chief law enforcement and intelligence agency of India responsible for fighting drug trafficking and the abuse of illegal substances. It was designed on 17th March 1986 to enable the execution of the Narcotic Drugs and Psychotropic Substances Act, 1985 and fight its violation through the Prevention of Illicit Trafficking in Narcotic Drugs and Psychotropic Substances Act, 1988. India's position as regards to the action taken against persons involved in Drugs Trafficking can be realize by a given data of last 10 years.

5.1 Procedural safeguards and immunities under the Act

The Narcotic Drugs and Psychotropic Substances Act, 1985 views drug offences very seriously and prescribes stiff penalties. The Act follows a graded system of punishment with the punishment varying with the quantum of punishment being dependent upon whether the offence pertains to small, commercial and intermediate quantities of Narcotic Drugs and Psychotropic Substances. For offences involving commercial quantities of drugs, a minimum penalty of ten years rigorous imprisonment is prescribed, which may extend to twenty years. Repeat offences attract one and half times the penalty and in a few cases even the death penalty. Alongside these stringent provisions, the Act has procedural safeguards as follows:

Personal search: Any person being searched has a right to be searched before a Gazetted Officer or a Magistrate [6]. The officer searching the person has to explain to the person that he has a right to be searched before a Gazetted Officer or a Magistrate and if the person wishes to be searched before a Gazetted Officer or a Magistrate he should be taken to the Gazetted Officer or the Magistrate and searched. However, if the officer has reason to believe that it is not possible to take him to a Gazetted officer or a magistrate without giving him a chance to part with the drug, controlled substance, etc., he can search him under Section 100 of the Cr.P.C.[7]

Searches: Gazetted Officers of the empowered Departments can authorize searches [8]. Such authorization has to be based on information taken down in writing. Searches can be made under certain circumstances without a warrant from a magistrate or an authorization from a Gazetted Officer [9]. In case of such searches, the officer has to send a copy of the information taken in writing or the grounds of his belief to his immediate official superior within 72 hours.

Arrests: The person who is arrested should be informed, as soon as may be, the grounds of his arrest [10]. If the arrest or seizure is based on a warrant issued by a magistrate, the person or the seized article should be forwarded to that magistrate [11]

The officer who arrests a person has to make a full report to his official superior within 48 hours [Section 57].

5.2 Immunities for drug offences

Officers acting in discharge of their duties in good faith under the Act are immune from suits, prosecution and other legal proceedings [12]. Addicts charged with consumption of drugs [13] or with offences involving small quantities will be immune from prosecution if they volunteer for de-addiction. This immunity may be withdrawn if the addict does not undergo complete treatment.

Central or state governments can tender immunity to an offender in order to obtain his evidence in the case. This immunity is granted by the Government and not by the Court [14]. This is one of the important immunities so far we have studied and if the immunity used properly or in most of the cases then definitely we can achieve our object but in very rare case this immunities are used due to lack of administrative support to the investigating Officials.

Juvenile offenders who are below 18 years of age will be governed by the Juvenile Justice (Care and Protection of Children) Act, 2000.

5.3 Procedure under NDPS Act

Every officer empowered under Section 53 and every officer in-charge of a police station shall, on receipt of information, proceed to trace and identify the illegally acquired properties [15]. The officer may issue an order seizing the properties and if it is not possible to seize, freezing the properties he shall, send a copy of the order within 48 hours to the Competent Authority. The Competent Authority has to confirm the order within 30 days, else, it will not be valid. The Competent Authority issues a Notice to the affected person and after considering the reply and other records of the case, passes an order forfeiting the properties or otherwise. If the person is only arrested, the issue of Notice and subsequent forfeiture will proceed only after his conviction or after an order of preventive detention is issued. The Burden of Proving that the properties are NOT illegally acquired is on the affected person. Appeals against the orders of forfeiture lie with the Appellate Tribunal for Forfeited Properties. Seized or forfeited properties are managed and disposed by the Administrators as per Illegally Acquired Property (Receipt, Management and Disposal) Rules. So far, the Government of India appointed officers as Competent Authority cum Administrator.

5.4 International travellers requiring NDPS for medical use

Narcotic Drugs and Psychotropic Substances have medical uses. However, the medical use of all narcotic drugs and psychotropic substances is permitted in all countries. In India, narcotic drugs and psychotropic substances listed in Schedule I of the NDPS Rules, 1985 are prohibited.

However, international travellers may require narcotic drugs and psychotropic substances for their medical use (including some which may be prohibited in India). International travellers wishing to bring any narcotic drug or psychotropic substance may, well before their departure from their country, seek permission of the Narcotics Commissioner to import the drugs. Their application should be accompanied

by the prescription and any other relevant papers. After obtaining permission, they may bring the drugs with them.

5.5 Import and Export of narcotic drugs and psychotropic substances

Narcotic drugs and psychotropic substances can be imported and exported subject to the following restrictions:

1. Import and export of narcotic drugs and psychotropic substances listed in Schedule I to the NDPS Rules is prohibited.
2. Import of opium, concentrate of poppy straw, and morphine, codeine, thebaine and their salts is prohibited except by the Government Opium Factory. However, certain manufacturers who require these substances only for export, and importers of samples of these substances up to 1 kg in a year can import the substances after following the due procedure, provided they are notified by the Government to do so.
3. Export of some psychotropic substances is not permitted to specific countries. These substances and the countries to which each substance cannot be exported are listed in Schedule II of the NDPS Rules, 1985.
4. To import any narcotic drug or psychotropic substance, one should apply for and obtain an import certificate from the Narcotics Commissioner for each consignment.

5.6 Import and Export of Precursors: Regulation of Precursors (Controlled Substances)

Precursors are chemicals which can also be used to manufacture narcotic drugs and psychotropic substances. These substances also have a number of legitimate uses. Hence, these chemicals are regulated balancing the need for their legitimate trade with the need to prevent their diversion to illicit channels. The Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985, clause (vii d) of section 2 *ibid*, empowers the Central Government to declare any substance as ‘controlled substance’ after considering its possible use in the production or manufacture of NDPS. Earlier five substances (Acetic anhydride, N – Acetylanthranilic acid, Anthranilic acid, Ephedrine and its salts, Pseudoephedrine and its salts) were declared as ‘controlled substance’. *Vide* notification S.O. 834(E) dated 26.03.2012, twelve (12) more substances, and the preparations of Ephedrine and Pseudoephedrine have been notified as ‘controlled substance’.

Power to control and regulate controlled substances is provided in Section 9A of the NDPS Act. Accordingly, *vide* notification G.S.R. 191(E) dated 26.03.2013, a revised NDPS (Regulation of Controlled Substances) Order, 2013 has been notified by replacing the earlier Order of 1993. The Order dated 26.03.2013 has been further amended *vide* notification G.S.R. 649(E) dated 23.09.2013. Some of the salient features of the Order, as amended, are as under:

All the controlled substances have been divided into three categories in three Schedules and are subject to varying degrees of control.

Manufacture, distribution, sale, purchase, possession, storage, and consumption of a controlled substance included in Schedule-A (these are the five substances declared as ‘controlled substance’ prior to the notification of 26.03.2013) are subject to registration with the Narcotics Control Bureau (NCB).

Government or autonomous institutions, Schools or Colleges or Universities recognized by the Government, registered Scientific Societies and Hospitals using any controlled substance in Schedule-A for educational, scientific and analytical purposes have been exempted from such registration.

No fee is payable for registration. Application for registration and issue of registration are required to be in the Forms attached to the Order. Registration number to be issued within 30 days of receipt of application; otherwise reason to be informed to the applicant.

5.7 Provision for destruction of controlled substance on receipt of such request.

‘No Objection Certificate (NOC)’ from Narcotics Commissioner prior to export / import of substances in Schedule B / C. No fee for obtaining NOC for export / import. NOC to be given in 21 days otherwise reasons to be communicated.

Preparations of Ephedrine and Pseudoephedrine have been placed in Schedule B / C only. Thus, monitoring of their international trade only is envisaged in the Order.

6. SINGAPORE AND MALAYSIA

In Singapore and Malaysia, two nations with mandatory death sentences for offenders convicted of drug trafficking offences, it is estimated that more than half of those executed annually are convicted of drug-related offenses. There are, however, no government reports documenting the annual number of executions in these countries. The International Harm Reduction Association reports that Singapore has the highest execution rate in the world, noting that the Singapore government has executed 326 death-row inmates for drug offenses since 1991. Additionally, in Singapore, about 76 percent of those executed between 1994 and 1999 were convicted of drug-related offenses.

William Schabas further reports that between 1999 and 2003, 110 out of 138 death-row prisoners whose executions were carried out in Singapore were for drug-related offenses. However, in recent years, the number of executions in Singapore has declined significantly. The number of those executed for drug offences in 2011 was two. In addition, Singapore’s legislative body has recently reconsidered the application of the death penalty for drug offenses. Amendments to their Misuse of Drugs Act specifying two conditions where capital punishment will not be mandatory for drug trafficking were adopted in mid-2012. This legislation allows traffickers to apply to have their execution sentence changed to life imprisonment if having satisfied two conditions. Specifically, the two conditions are (1) “the trafficker must have only played the role of courier and must not have been involved in any other activity related to the supply or distribution of drugs and (2) discretion will only apply when either the trafficker has cooperated with the Central Narcotics Bureau in a substantive way or he or she has a mental disability, which substantially impairs his appreciation of the gravity of the act” [16].

7. UNITED STATES OF AMERICA

The US plays an important role in addressing the international narcotics problems by utilizing the Anti-Drug Abuse Act of 1988 to set up new programs, activities or even new standards for all countries, which have problems with the production, manufacturing and trafficking of narcotics. In particular, the US has both mandatory and discretionary sanctions available for countries that have problems associated with illicit drug production or transportation and who do not pass specific requirements discussed below. Possible sanctions include loss or reduction of US foreign aid, as well as trade sanctions, including the denial of preferential tariff treatment to a country’s exports under GSP or refusal of loan requests from international institutions. By contrast, countries passing the requirement are qualified to receive full assistance.

The requirement of the international policies influenced by the Anti-Drug Abuse Act of 1988 allows the US to impose sanctions against countries determined by the extent to which they fully cooperate with the US in controlling narcotic production, transportation and trafficking. For countries reported to be major narcotics producers, there are three essential steps required before being certified as cooperative. These steps include “(1) putting a great deal of effort in preventing legal narcotic from being diverted into the illegal market, (2) maintaining narcotics at the level of legal demand, (3) preventing the illegal cultivation and production of this commodity”. This process, called certification, usually starts at the beginning of each fiscal year under consideration by the US President. After the US President identifies which countries are not eligible to receive full aid, the US Congress has 45 days of continuous sessions to assess the US president’s determinations.

Accordingly, it cannot be denied that the Anti-Drug Abuse Act of 1988 not only has had a significant impact on narcotic legislation and policies among Southeast Asian nations, but on those of other countries with drug-related problems, as well.

Starting from the concept of national security in the broad sense, this thesis exposes the reasons why drug trafficking represents a common threat to South American countries, characterized by elements of vulnerability of a comparable nature, and undergoing the pressure of the same external hegemonic actor (the United States). The central argument of this work is that the militarized policies carried out (spontaneously or under pressure from the United States) in order to suppress drug trafficking can only aggravate the threats to the security of producing countries (Colombia and Bolivia) and neighboring countries (Venezuela, Argentina) [17].

8. ASSOCIATION OF SOUTH EAST ASIAN NATIONS (ASEAN)

In 1967, the Association of South East Asian Nations (ASEAN) was founded with the main purpose of fostering cooperation among all member states in terms of drafting common legislation, policies, strategies and activities in economic, cultural, scientific and, more importantly, law enforcement areas. Specifically, the ASEAN principles responding to drug trafficking problems were first declared in Manila, Philippines, in 1967. To put these principles into practice, ASEAN holds an annual Drug Experts Group Meeting to facilitate the exchange of information on effective legislation, as well as law enforcement policies combating narcotic drug trade in Southeast Asia. Moreover, in 1982, all member countries agreed to establish the ASEAN Narcotic Desk with two objectives: (1) providing information related to narcotic issues to ASEAN Secretariat and (2) organizing activities and programs that can enhance performance level in fighting drug trafficking problems.

The UNODC reported that the ASEAN Narcotic Desk plays an important role in improving cooperation among Southeast Asian countries, sometimes known as the drug-producing region, in solving narcotic-trafficking problems. Based on the severity of the narcotic problems in Southeast Asia, ASEAN member countries seem likely to respond to drug-related problems by increasing the penalties available for those committing drug offenses. An example of activities responding to drug trafficking developed by ASEAN is the incorporation of “preventive detention, the seizure of major drug traffickers and the confiscation of passports of convicted drug traffickers” into their member states’ anti-narcotic domestic legislation. Consequently, it is not surprising that in this region, capital punishment is commonly used as a method to keep the narcotic drug trade from getting out of hand.

9. INDONESIA

Unlike Singapore and Malaysia, the Indonesia legal system involves the civil law system, which is largely based on French and German legal traditions, as well as incorporating elements of Islamic law. That is, Indonesia does not use the jury system; instead, decisions of both civil and criminal cases are made by a panel of judges, usually consisting of three judges. Also, in Indonesia, the doctrine of stare decisis and the system of precedent is not applied to the judicial system¹⁶. Further, unlike the US, which uses an adversarial system, the Indonesian legal system employs an inquisitorial model of legal decision making in which judges play an important role in investigating the case, questioning witnesses, as well as making guilt/innocence and sentencing decisions. In Indonesia, there are 250 courts of first instance (Pengadilan Negeri), 20 high courts or courts of appeal (Pengadilan Tinggi) and the Supreme Court (Mahkamah Agung), which is the highest court in Indonesia. There are also many special courts in Indonesia, since in the civil law system, a judge often has to have specific knowledge in that case (e.g., military courts, religious courts, commercial courts and Constitutional court).

Furthermore, the executive branch in Indonesia consists of the President, Vice-President and the cabinets. In Indonesia, the President has overwhelming power, since the government, as well as the armed forces, are under control of the President [61]. For the legislative branch, the House of People's Representatives (Dewan Perwakilan Rakyat (DPR)) has the major authority in the law-making process and monitoring of the President and the cabinets. In addition, the People's Consultative Assembly (Majelis Permusyawaratan Rakyat (MPR)) is the supreme institution empowered to amend the Constitution.

9.1 Law No. 22 of 1997

The objective of the Law No. 22 of 1997 was to eradicate illicit drug trafficking, to help drug abusers and to promote drug use for therapeutic and scientific purposes (see Article 3 of Law No. 22 of 1997). In Indonesia, narcotics are classified into three categories, namely category I (e.g., cocaine, marijuana, heroin and coca leaf), category II (e.g., morpheridine and racemethorphan) and category III (e.g., acetyldihydrocodeine, codeine and propiram). There is no mandatory capital punishment for those convicted of drug trafficking offenses; instead, the death penalty is available according to judicial discretion in sentencing as the maximum penalty. That is, capital punishment for drug-related offenses is not triggered automatically based only on the quantity of illicit drugs, like in Malaysia and Singapore, but rather, the decision is based on case-specific circumstances and the judges' opinions. Below **Table 1** presents the judicial discretion in sentencing for main narcotic types in Indonesia [18].

Table 1. Indonesian judicial discretion in sentencing for drug trafficking offenses.

Narcotic	Penalty
1. Cocaine	- the death penalty; or - a life sentence; or - imprisonment of no more than 20 years; and/or - a fine of no more than IDR 1,000,000,000 (one billion rupiahs)
2. Heroin	- the death penalty; or - a life sentence; or - imprisonment of no more than 20 years; and/or - a fine of no more than IDR 1,000,000,000 (one billion rupiahs) ¹⁷

- 3. Refined Opium
 - the death penalty; or
 - a life sentence; or
 - imprisonment of no more than 20 years; and/or
 - a fine of no more than IDR 1,000,000,000 (one billion rupiahs)
- 4. Marijuana
 - the death penalty; or
 - a life sentence; or
 - imprisonment of no more than 20 years; and/or
 - a fine of no more than IDR 1,000,000,000 (one billion rupiahs)
- 5. Methamphetamine - Law No. 22 of 1997 does not specifically indicate the penalty for trafficking in methamphetamine.

10. THAILAND

The Thai legal system follows the civil law (code) system influenced by the common law, since most contents of the written legislation are impacted by the legal system of common law countries (e.g., England). Thailand has no jury system, and the system of precedents is not applied to the legal system. The Constitution is the supreme law of the country, outlining three essential functions: (1) the executive, (2) the legislative and (3) the judicial branches. The King is separate from all three branches and serves as the symbolic chief of the country. The executive branch consists of the prime minister and the cabinets. The prime minister is the leader of the government, who is elected from the members of the House of Representatives and cabinets. The legislative branch, including 200 members of senates and 500 members of the House of Representatives, has the main authority in the law-making process. Lastly, the judicial branch is headed by the chief judge of the Supreme Court. The hierarchy of the Thai judicial system has three levels, namely (1) courts of first instance, (2) courts of appeal and (3) the Supreme Court (Sandika). The Supreme Court is the highest court and has jurisdiction covering all provinces of Thailand. Courts of first instance include general courts, juvenile and family courts, as well as specialized courts (e.g., the central labour court, the central tax court, the central bankruptcy court and the central intellectual property and international trade court).

10.1 Narcotics Act, B.E. 2522 (1979)

Table 2 presents the judicial discretion in sentencing for main narcotic types in Thailand. Illicit drugs under the Thai Narcotics Act are divided into five categories: Category I (dangerous drugs, such as heroin and methamphetamine), Category II (e.g., morphine, cocaine and medicinal opium), Category III (e.g., those narcotics in the form of medicinal formula), Category IV (e.g., acetic anhydride, acetyl chloride and ingredients of narcotics categories I and II) and Category V (e.g., marijuana) (see Section 7 of Narcotics Act, B.E. 2522). It should be noted that methamphetamine is categorized under narcotics Category I, since the U.N. reported that Thailand has the highest rate of methamphetamine abuse (locally called Yaba) in the world [19].

Table 2. Thai judicial discretion in sentencing for drug trafficking offenses.

Narcotic	Quantity	Penalty
1. Cocaine (Category II)	100 grams	- imprisonment from 1 to 10 years; and/or - a fine of between 10,000 and 100,000 baht
2. Heroin (Category I)	100 grams	- the death penalty; or

3. Methamphetamine (Category I)	100 grams	- a life sentence - the death penalty; or - a life sentence
4. Marijuana (Category V)	10 kilograms	- imprisonment from 2 to 5 years; and/or - a fine of between 20,000 and 150,000 baht
5. Morphine (Category II)	100 grams	- imprisonment from 5 years to life sentence; and/or - a fine of no more than 50,000 baht

11. CONCLUSIONS

Southeast Asian countries perceive drug trafficking as the most serious issue, since the Golden Triangle, the world's second largest market of narcotics, is located in this region. Accordingly, there is no surprise that the way the governments in this region deal with drug problems is gaining more attention from the international community. The drug trafficking issue in Southeast Asia is being addressed at three levels: (1) the international cooperation through the treaty regime; (2) the United States' cooperation; and (3) the ASEAN drug control system. This study compared and contrasted domestic narcotics laws, as well as essential capital drug-related cases, in four Southeast Asian countries (Singapore, Malaysia, Indonesia and Thailand) to that of the United States' federal laws. In all instances, this study demonstrates that capital punishment is a disproportionate punishment to the gravity of drug-related offenses on the following grounds: (1) the consideration of drug trafficking as among the most serious crimes is questionable; (2) the use of the death penalty for drug offenses is an arbitrary exercise; and (3) there is a greater risk for wrongful conviction when using a mandatory death sentence.

First, despite the lack of a definitive statement on the term of the most serious crimes under Article 6 (2) of ICCPR, there is an implicit consensus that the most serious crime should be interpreted as life-threatening offenses or crimes that result in the loss of life (e.g., homicide). That is, many UN agencies (the UN Human Rights Committee, the UN General Assembly, the Economic and Social Council of the UN, UN Special Rapporteur and the UN Secretary-General) have an agreement regarding the meaning of the term most serious crimes. They are all likely to limit the use of the death penalty to include only intentional crimes with fatal outcomes. Second, it is apparent that the use of the death penalty for drug trafficking in this region is likely to be an arbitrary exercise, which is prohibited under the international human rights law (ICCPR). This arbitrary nature is demonstrated when crimes resulting in the death penalty in one country are only minor offenses in neighbouring countries. For instance, the amount of heroin that triggers the death penalty in Singapore is 15 grams of diamorphine (equivalent to 750 grams of normal heroin) as opposed to 15 grams of normal heroin in Malaysia. Also, methamphetamine is classified as the most serious narcotic under Category I in Thailand, while it is not specifically stated in Indonesian narcotics law.

Furthermore, there is a greater risk in wrongful convictions in countries using a mandatory death penalty based only on the quantity of narcotics involved in the case (e.g., Singapore and Malaysia). That is, for these two countries, case-specific circumstances and any mitigating factors would be ignored simply because a drug offender possessed illicit drugs over the limit prescribed under the law. As established in the *Yong Vui Kong* case in Singapore, the Supreme Court refused to consider case-specific circumstances or any mitigating factors (e.g., age) when reviewing that case. It cannot be denied that not

only drug traffickers, but also drug addicts have a greater risk of being executed, since they will be presumed to be trafficking if they possess narcotics over the limits prescribed under the narcotics law.

The principle of social justice is enshrined in Article 47, and it calls for the government to take action to guarantee that everyone has access to a better and healthier life. This entails making sure that all intoxicants are illegal and putting an end to their manufacturing and import.

The Indian Constitution's Articles 47 include the Directive Principles of State Policy. The government is guided by these values when developing policies and initiatives aimed at enhancing the quality of life for all citizens.

Principles of Article 47

Among the most important instructions are:

1. Prohibition of toxic drugs and drinks
2. The nation's citizens should live healthier lives by raising standards of living and nutrition.

Article 47 outlines the need to live a better lifestyle by outlawing narcotics and alcoholic beverages that cause intoxication. However, this post has drawn a lot of criticism and is controversial among the populace.

The government is required to take action to put these ideals into practice, so they are not merely empty words. If the courts believe the government is not doing enough to uphold the Directive Principles, they may also take action. Directive Principles are not, however, bound by law.

Consequences of Article 47

Every Indian person is impacted by Article 47 of the Directive Principles of State Policy. There is a significant conflict of interest among the nation's citizens as a result of this article. The clause asks that the center forbid the use of alcoholic beverages and illegal narcotics. People throughout the nation, however, voice a variety of complaints and viewpoints on the subject.

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