

Drug Trafficking: International and National Perspectives

Neelam Rani

Assistant Professor (in Laws),

GHG Institute of Law for Women, Sidhwan Khurd, Ludhiana (Punjab) and Research Scholar, Department of Laws, Panjab University, Chandigarh

Introduction

Globalization has transformed the world economy over the past few years. The spread of ideas and technology across borders has facilitated new avenues of trade, creating new markets and expanding others. One of the largest and most profitable of these industries is the market for illicit drugs. Drug trafficking is the most crucial and most dangerous phase of the illicit drug market.¹ Globalization and the technological advances like wireless communications and Internet have brought countries closer and made business transactions easier than before.²

Illicit drug trafficking is one the most significant transnational organized crimes³, which has become a serious issue confronting both

developing and developed countries. In most countries, despite years of drug suppression and prevention efforts, the cycle of drug trafficking and drug abuse continues which will considerably destroy the quality of life and hamper social, economic and cultural development of the nations, if remained unabated.⁴

In 1998, a special session of the UN General Assembly decided to work towards the "elimination or significant reduction" of illicit drug production and abuse by 2008, and adopted a series of sectoral plans to reach that objective.⁵

Since the earliest times, herbs, roots, barks, leaves and plants have been used to relieve pain and control diseases, as a medical boon. Unfortunately, certain drugs, produce enticing side effects, such as a feeling of euphoria, a sense of "feeling good", elation, serenity and power. The insidious long-term effects of chronic drug use and its impact on the user, the family, the community, and on society cannot be over emphasized, this is

1 Matthew S. Jenner, "International Drug Trafficking: A Global Problem with a Domestic Solution" 18 IJGLS 901- 902 (2011).

2 Tomer Broude & Doron Teichman, "Outsourcing and Insourcing Crime: The Political Economy of Globalized Criminal Activity", 62 VLR 4 (2009), available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1111399 (Visited on 26.3.2016).

3 The United Nations Convention against Transnational Organized Crime (article 3) gives a clear definition:

an offence is transnational in nature if:

- (a) It is committed in more than one State;
- (b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;
- (c) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or

(d) It is committed in one State but has substantial effects in another State

4 Shankar Pratap Singh, "Transnational Organized Crime: The Indian Perspective", 119th International Course Participant Papers, Resource Material Series No 59, at 572 available at: www.unafei.or.jp/english/pdf/RS_No59/No59_38PA_Singh.pdf. (Visited on 27.3.2016).

5 United Nations General Assembly Special Session on the World Drug Problem (UNGASS), New York, 8-10 June, 1998 (A/S-20/4, chapter V, section A).

why many nations have adopted various means and measures towards reducing, if not total eradication of the trade.⁶

Narcotic Drugs and Psychotropic Substances

A variety of herbs and a number of chemical substances used lawfully in the manufacture of pharmaceutical products are also used to manufacture illegal drugs. Therefore, it is pertinent to specify 'narcotic drugs' or 'internationally controlled substances'.⁷

"Psychotropic substances", "synthetic drugs", "psychoactive drugs" or "psychoactive substances" are different names for such substances. Psychotropic substances are drugs that have the properties of natural narcotics. They are chemically manufactured in laboratories from chemically processed substances and preparations that are not obtained from natural sources or plants.

"Natural Drugs" are used to refer to narcotics obtained from plants whether they maintain their natural form such as opium or have been converted into another form such as converting opium into heroin. The Schedules annexed to the Single Convention on Narcotic Drugs, 1961, and as amended by the 1972 Protocol, include the plants from which narcotics and their preparations are obtained such as the cannabis plant, the opium poppy, the coca leaves and their preparations such as cannabis, heroin, and cocaine.⁸

Historical Background and Development

- 6 Ogunniyi, Olayemi Jacob Britto & Bonifacio Aderemi, "Historical Perspective of International Efforts at Eradicating Illicit drug Trade and Abuse" 2 EJRS 53 (2014).
- 7 Jeeva Niriella, "Prevention of Drug Trafficking Globally: Problems and Perspectives", International Conference: Criminal Justice Under Stress, at 255.
- 8 *Id.* at 82.

Of International Standards On Combating Drug Trafficking

International drug treaties concluded between 1912 and 1972 provided the legal framework for the present International drug control system. The operation of the International control system is predicated on the concept of national control by individual states within the limits of their jurisdiction, in complete compliance with the provisions of the International treaties. Each state to a particular treaty is bound to adopt appropriate legislation, introduce necessary administrative and enforcement measures and co-operate not only with other countries but also with the established International drug control organs.⁹

The Shanghai Conference (1909)

The International Opium Commission met in Shanghai in 1909 for the first International conference on narcotics drugs, but because the participants did not have the necessary plenipotentiary powers to conclude a treaty, the result was simply fact-finding and a set of non-binding recommendations. The key question was whether medically-related drug matters, such as addiction and treatment, should be considered.¹⁰

The Hague International Opium Convention (1912)

On 1 December 1911, 12 countries agreed to meet at Hague to draft a treaty. Chapters I and II of the Hague Convention dealt with raw and prepared opium. Article 1 required parties

- 9 Olayemi Jacob Ogunniyi & Bonifacio Aderemi Britto, "Historical Perspective of International Efforts at Eradicating Illicit Drug Trade and Abuse", 2 EJRSS 54-59 (2014).
- 10 The History and Development of the Leading International Drug Control Conventions, Law and Government Division. *available at:* <http://www.parl.gc.ca/content/sen/committee/371/ille/library/history-e.htm> (Visited on 25.3.2016).

to "enact effective laws or regulations for the control of the production and distribution of raw opium" unless such laws were already in place. It also initiated principle of restricting opium use to medical and scientific purposes. Chapter IV was aimed at reducing drug trafficking in China. Chapter III focused on licensing, manufacturing and distribution controls on synthetic drugs.¹¹

The Hague International Opium Convention was the first drug control treaty and the first branding instrument of International law governing the shipment of narcotic drugs, aimed at controlling the transport of drugs deemed necessary for medical use.¹²

League of Nations

The League of Nations was created in 1919 after World War I. In 1920, League established Opium Advisory Committee on traffic and other dangerous drugs and to arrest and advice the League's council on the subject.

Three main conventions were developed under this League :

Geneva Opium Conventions (1924-1925)

Two separate treaties concluded in 1924 and 1925 under two different Conventions. The first Geneva Convention (1924) focused on opium-producing nations in which signatories were permitted to sell opium only through government-run monopolies and were required to end the trade completely within 15 years. The second Geneva Convention (1925) was intended to impose global controls over a wider range of drugs, including, for the first time, cannabis - described as "Indian hemp" in Article 11 of the Convention. This was aimed at supervising the statistical control system on Opium. Permanent Central Opium Board (PCOB) was established to

11 *Supra* note 10.

12 *Ibid.*

monitor the import certification system to control the illicit international drug trade.¹³

Geneva Narcotics Manufacturing and Distribution Limitation Convention (1931)

This convention placed limitations on the manufacture of cocaine, heroin and morphine, and to control their distribution. Parties were required to provide the estimates of their national drug requirements - for domestic medical and scientific purposes to the Permanent Central Opium Board so as to calculate the manufacturing limits for each signatory. A Drug Supervisory Body (DSB) was created to administer the system.¹⁴

Geneva Trafficking Convention (1936)

The Convention for the Suppression of the Illicit Traffic in Dangerous Drugs concluded in 1936. As the international law controlling the illegal shipment of narcotic drugs were not sufficient to deal with the transit of drugs, this Convention for the Supervision of the illicit Traffic in Dangerous Drugs was the first to call for the severe punishment for illicit drug trafficking.¹⁵

United Nations Conventions On Drug Trafficking

In 1945 League of Nations was replaced by United Nations. In 1946, the United Nations assumed the drug control functions and responsibilities formerly carried out by the League of Nations. All drug related issues were transferred to the United Nations Commission on Narcotic Drugs, established in 1946, as a functional commission of the Economic and Social Council.¹⁶

13 World Drug Report 2008, at 192-194. available at: https://www.unodc.org/.../WDR2008_100years_drug_control_league.pdf. (Visited on 25.3.2016).

14 *Supra* note 11.

15 *Ibid.*

16 *Supra* note 10.

Lake Success Protocol (1946)

This protocol is the instrument, which legally transferred the drug control functions previously exercised by the League of Nations to the United Nations. It came into force on October 10, 1947.¹⁷ The UN Economic and Social Council (ECOSOC) took over primary responsibility through its Commission on Narcotic Drugs (CND), which replaced the Opium Advisory Committee (OAC). Under the CND, the Division of Narcotic Drugs (DND) was charged with the preparatory work for conferences. The Permanent Central Opium Board (PCOB) and the Drug Supervisory Body (DSB) continued under the CND in their respective roles of compiling statistics for national estimates and administering previous treaties.¹⁸

Paris Protocol (1948)

In the pre-war years, Opium poppy, the coca bush and the cannabis plants were considered to be a threat and subject to control. After the end of Second World War, many other compounds had been synthesized which had dependence-producing effects. This whole new area of man-made substances was brought under the mantle of international law and control by the 1948 protocol, which entered into force on December 1, 1949, bringing under international control drugs outside the scope of the 1931 convention.

New York Opium Protocol (1953)

The 1953 Opium Protocol comprised the most stringent international drug control provisions to control the cultivation of the poppy, the production and distribution of opium and to limit the use of opium exclusively to medical and scientific needs. Opium production was restricted to seven states, to which parties could only import

¹⁷ *Ibid.*

¹⁸ *Supra* note 11.

or export. It was overtaken and terminated by the 1961 Single Convention.

The present system of worldwide drug control is regulated by the following three international conventions.

Single Convention on Narcotic Drugs (United Nations, 1961), as amended by the 1972 Protocol.

This convention has replaced the previous international agreements which had been developed in early years of the twentieth century. It has created a modern prohibitionist international drug control system. The convention, which entered into force on December 13, 1964 and was amended by the 1972 protocol, is regarded as a major achievement in the history of international effort to control narcotics. This convention established the International Narcotic Control Board (INCB) by combining the Permanent Central Opium Board and the Drug Supervisory Body to monitor the application of the Convention and to administer the system of estimates and statistical returns submitted annually by Parties.

One of the goals of the treaty was the extension of the existing control system to include the cultivation of plants that were grown as the raw material of natural narcotic drugs. It prohibit the practices of Opium smoking, Opium eating, Coca leaf chewing, hashish (cannabis) smoking and the use of cannabis plant for any known medical purpose.¹⁹

The Single Convention built on the trend of requiring Parties to develop increasingly punitive domestic criminal legislation. Subject to their constitutional limitations, Parties were to adopt distinct criminal offences, punishable preferably by imprisonment, for each of the

¹⁹ *Supra* note 10.

following drug-related activities in contravention of the Convention: cultivation, production, manufacture, extraction, preparation, possession, offering, offering for sale, distribution, purchase, and sale, delivery on any terms whatsoever, brokerage, dispatch, and dispatch in transit, transport, importation and exportation.²⁰

Convention on Psychotropic Substances (United Nations, 1971)

The Convention on Psychotropic Substances of 1971 establishes an international control system for psychotropic substances. It responded to the diversification and expansion of the spectrum of drugs of abuse and introduced controls over a number of synthetic drugs according to their abuse potential on the one hand and their therapeutic value on the other.²¹

This treaty designed to control psychoactive drugs such as amphetamine-type stimulants, barbiturates, benzodiazepines, and psychedelics signed in Vienna, Austria on 21 February 1971. The Single Convention on Narcotic Drugs of 1961 could not ban the many newly discovered psychotropics, since its scope was limited to drugs with cannabis, coca, and opium-like effects.

The Convention contains import and export restrictions and other rules aimed at limiting drug use to scientific and medical purposes. As of 2013, 183 member states are Parties to the treaty. Many laws have been passed to implement the Convention, including the U.S. Psychotropic Substances Act, the UK Misuse of Drugs Act

1971, and the Canadian Controlled Drugs and Substances Act.²²

International Drug Abuse Control Strategy (1981)²³

Due to sharp increase in drug abuse and illicit trafficking, Commission on Narcotic Drugs (CND) studies the possibility of launching a comprehensive and workable strategy for long range international drug Control Strategy (IDCS) containing a basic five year (1982 -1986) programme of action. It dealt with every aspect of drug control, abuse, trafficking, treatment, rehabilitation and crop substitution and proposals for action in these areas by member state.

Emphasis was on the ratification of the treaties, the participation of non-governmental organizations and agencies within the United Nations system to provide increased support to aid government for the enhancement of capacity for drug law enforcement.²⁴

Declaration on the Control of Drug Trafficking and Drug Abuse (1984)

It is a legal framework for combating trafficking in narcotic drugs and drug abuse in their specialized fields. It aims at the illegal production, illicit demand and illicit trafficking in drugs that impede economic and social progress constituting a grave threat to the security and development of many countries. The general assembly declared that the eradication of trafficking in narcotic drugs is the collective responsibility of all States,

²⁰ *Supra* note 11.

²¹ United Nations Office on Drugs and Crime, available at: <https://www.unodc.org/unodc/en/treaties/psychotropics.html> (Visited on 26.03.2016).

²² Convention on Psychotropic Substances, available at: https://en.wikipedia.org/wiki/Convention_on_Psychotropic_Substances (Visited on 26.3.2016).

²³ International Drug Abuse Control Strategy, Resolution 36/168 of 16 December 1981, available at: <http://www.un.org/documents/ga/res/37/a37r168.htm> (Visited on 23.3.2016).

²⁴ *Supra* note 10 at 55.

especially those affected by problems relating to illicit production, trafficking or abuse.²⁵

International Conference on Drug Abuse and Illicit Trafficking (1987)

This was aimed at combating the threat posed by drug abuse and illicit trafficking, to give the highest priority to the holding of the International Conference on Drug Abuse and Illicit Trafficking at Vienna in 1987 and to participate actively in the Conference in order to stimulate comprehensive world-wide co-operative action to combat the drug problem in all its forms at the national, regional and international levels.

It also provides guidelines for the suppression of illicit trafficking, and drafting of Comprehensive and Multidisciplinary outline of future activities relevant to the problems of drug abuse and illicit trafficking.²⁶

Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)

It extends the control regime to precursors, and focuses on establishing measures to combat illicit drug trafficking and related money-laundering, as well a strengthening the framework of international cooperation in criminal matters, including extradition and mutual legal assistance.²⁷

It requires the state parties to establish breaches of its terms as criminal offences under their national laws including the possession,

purchase and cultivation of illicit drugs for personal use and trafficking of psychoactive substances and the diversion of precursor chemicals.²⁸ Annexed to the 1988 Convention are two tables listing precursor chemicals, reagents and solvents which are frequently used in the illicit manufacture of narcotic drugs and psychotropic substances.²⁹

The United Nations General Assembly Of 1990

The United Nations General Assembly on February 23, 1990, agreed on a thirty point political declaration and a one hundred -points to fight an international war on drug abuse and to "protect mankind for the scourge of drug abuse and illicit trafficking. The year 1990-2000 was declared as the United Nations decade against drugs.

The United Nations bodies for drugs control

- **Commission on Narcotic Drugs:** It consists of representatives of countries and is tasked with establishing policies on drugs control and implementation of international conventions.
- **International Narcotics Control Board (INCB):** It is an independent and quasi-judicial control organ for the implementation of international conventions on drugs control and regulation of licit trade in drugs and psychotropic substances.
- **United Nations Office on Drugs and Crime (UNODC):** It coordinates international efforts to combat narcotic drugs

25 The General Assembly, Declaration on the Control of Drug Trafficking and Drug Abuse under Resolution 39/14214 on December 1984. *available at:* <http://www.un.org/documents/ga/res/39/a39r142.htm> (Visited on 26.03.2016).

26 The General Assembly, International Conference on Drug Abuse and Illicit Trafficking under Resolution 41/125 on 4 December 1986. *available at:* <http://www.un.org/documents/ga/res/41/a41r125.htm> (Visited on 26.03.2016).

27 United Nations Office on Drugs and Crime. *Available at:* <https://www.unodc.org/unodc/en/drug-trafficking/legal-framework.html> (Visited on 26.03.2016).

28 Working Document on the UN Conventions on Drugs, Prepared by the European Parliament, issued on 04.02.2002.

29 "The UN Drug Control Conventions - A Primer", *available at:* <https://www.tni.org/en/publication/the-un-drug-control-conventions#5> (Visited on 26.3.2016).

and psychotropic substances and raises the capacities of national bodies in countries to combat drugs and crime.³⁰

National Perspective

India's narcotic problem needs to be visualized from its geographical situation. India is flanked on either side by two regions which are internationally acknowledged as major sources of illicit opiates namely, South- West Asia (Afghanistan, Pakistan and Iran) known as 'Golden Crescent' and South-East Asia (Myanmar, Laos, Thailand) known as 'Golden Triangle'. Additionally, Nepal, a traditional producer of cannabis, both herbal and resinous, fringes the country in the North.

India is a traditional producer of licit opium for medicinal and scientific purposes. It is grown in three states, namely, Uttar Pradesh, Rajasthan and Madhya Pradesh under official control of Narcotics Commissioner. A part of the licit opium enters the illicit market in different forms. Although opium production is strictly under Government control in India, illicit poppy plantations have been reported in some places. Besides, there is illicit cultivation of opium in the hill tracks of some states.³¹

India has a large presence of chemical industries producing precursor materials like acetic anhydride, acetyl anthranilic acid, etc. for lawful purposes. These chemicals are also utilized for processing and manufacturing heroin. The illicit cultivation of opium as well as the precursor chemicals can be used for the manufacture of heroin. For the last several years, India has also become a base for the manufacture of heroin, particularly in and around the opium producing

districts of Uttar Pradesh, Madhya Pradesh and Rajasthan.³²

Heroin and hashish produced in the 'Golden Crescent' region are trafficked into India through the border states of Gujarat, Rajasthan, Punjab and Jammu and Kashmir.³³ According to the World Drug Report of 2010, there were 871,000 heroin user and 674,000 opium users in India in 2008.³⁴

National Standards On Combating Drug Trafficking

Treaties with Neighboring Countries

India has entered into bilateral and multilateral agreements with several countries including neighbours to combat the illicit trafficking of drugs and chemicals. Bilateral agreements were signed with Afghanistan (1990), Bangladesh (2006), Bhutan (2009), Myanmar (1993), and Pakistan (2011). These agreements have been instrumental in establishing a mechanism for joint investigations and other assistance 'to identify, suppress and prevent criminal activities of the international syndicates engaged in the illicit trafficking of narcotics drugs, psychotropic substances and precursor chemicals'.³⁵

SAARC Convention on Narcotics Drugs and Psychotropic substances, (1993) provides for regular meetings of Home Ministers and Home Secretaries of the member countries as well as for interactions among the members of SAARC Conference on Cooperation in Police matters.³⁶

30 *Supra* note 8 at 13.

31 *Supra* note 4.

32 *Id.* at 573.

33 Claude Markovits, "The Political Economy of Opium Smuggling in Early Nineteenth Century India: Leakage or Resistance?" 43 (1) MAS 94 (2009).

34 World Drug Report, (United Nations Office of Drug and Crime, 2010) at 40.

35 *Supra* note 32 at 48.

36 *Id.* at 49.

BIMSTEC Convention on Cooperation in Combating International Terrorism, Transnational Organised Crime and Illicit Drug Trafficking (2009) provides for a legal framework to all the member countries to combat drug trafficking and organised crime. Pentalateral Cooperation on Drug Control focuses on the prevention of illicit trade of precursor and other chemicals used for the manufacture of heroin.³⁷

India has signed Memoranda of Understanding on Narcotics Drugs related matters with Bhutan, Indonesia, Iran, Oman, USA and Pakistan. India has also established Joint Working Groups on Counter Terrorism with 27 countries wherein drugs related offences are discussed. India has also been participating in various conferences, interactions, and meetings such as Commission on Narcotics Drugs, Asia-Pacific International Drug Enforcement Conference, Regional International Drug Enforcement Conference, Anti-Drug Liaison Officials' Meeting for International Cooperation, CPDAP national Drug Focal Points Meetings, etc. organised to discuss various drug trafficking related matters.³⁸

Drug Law Enforcement Agencies in India

Narcotics Control Division, The Narcotic Control Bureau (NCB), Central Bureau of Narcotics (CBN) Directorate of Revenue Intelligence Central Bureau of Investigation, the Customs Commission, and the Border Security Force are agencies to combat the menace of drug abuse and drug trafficking in India.

Constitutional Framework in India

The Constitution of India directs the State to regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its

³⁷ *Ibid.*

³⁸ *Id.* at 50.

primary duties, and, in particular, to endeavour to bring about prohibition of consumption, except for medicinal purposes, of intoxicating drinks and drugs which are injurious to health.³⁹

Legislative Efforts

The Government of India has taken various legislative, administrative and preventive measures to counter drug trafficking in the country. Previously, there were The Opium Act, 1857, The Opium Act 1878, The Dangerous Drugs Act, 1930, which are repealed due to certain lacunas, hence, led to the enactment of The Narcotic Drugs and Psychotropic Substances Act, 1985.

Among the prominent legislative measures are the provisions of deterrent punishment under the NDPS Act, 1985, applications of preventive detention of drug traffickers under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA), notification of certain chemicals like acetic anhydride as a 'specified item' under the Customs Act, 1962 and India's land border with Myanmar falling within the territories of the States of Arunachal Pradesh, Nagaland, Manipur and Mizoram having been declared as 'specified areas' under the said Act for the purpose of checking illegal trafficking across the border.⁴⁰

The creation of the Narcotics Control Bureau as an apex coordinating and enforcement agency at the national level is one of the prominent administrative measures taken by the Government. The Narcotic Drugs & Psychotropic Substances (NDPS) Act, 1985, which was enforced with effect from 14 November 1985, provides for a minimum punishment of 10 years ' rigorous imprisonment and a fine of one hundred thousand Rupees extendable to 20 years

³⁹ The Constitution of India, art. 47.

⁴⁰ *Supra* note 4 at 574.

rigorous imprisonment and a fine of two hundred thousand Rupees. In respect of repeat offenses, the Act provides for the death sentence in certain circumstances. In remaining cases, a minimum punishment of 15 years rigorous imprisonment and a fine of Rs.1.5 hundred thousand, this is extendable up to 30 years rigorous imprisonment and fine of three hundred thousand Rupees. The courts have been empowered to impose fines exceeding the above limits for reasons to be recorded in their judgments.⁴¹

Conclusion

Finally we come to the conclusion that trafficking in drugs is a serious threat to the

⁴¹ *Ibid.*

security of the world. To combat the Drug trading organizations and the drug-trading network, there is a need of the enactment of stringent anti-drug laws and severe punishments should be accorded to drug stockists. Efforts should be made at the national level by all the countries in the world, to take a decisive action. Coordination among various agencies and cooperation among neighbour countries needs to be improved. For combating drug menace a comprehensive policy and legal frame work should be applied by complying with international norms and standards and a wide network of bilateral and multilateral treaties in order to prevent drug trafficking woldwide.