

Legal Aspects of Drug Abuse in India

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Summary: Both licit and illicit substances are being used extensively in our country. This chapter discusses in details various laws related to both groups of drugs. These include laws concerning licensing and abuse of licit substances and laws concerning criminal offences and penalties prescribed. Drug abuse is a major public health problem with extensive legal ramifications. In India, legal aspects of drug abuse involves two main areas :

Licensing laws- regulate production and retail supply.

Legislative laws- deal with offences committed under intoxication .

THE DRUG AND COSMETIC ACT, 1940.

It regulates the import, manufacture, distribution and sale of drugs and cosmetics. This act has two schedules. The first schedule deals with Ayurvedic and Siddha systems of drugs and second schedule deals with import of drugs and drugs manufactured, stocked and exhibited for sale or distribution.

This act deals with the maintenance of the standard of the quality of the drugs. It prohibits import, manufacture and sale of certain drugs

not of standard quality, misbranded and spurious drugs and proprietary medicines lacking ingredients including quantity or formula on label. This act also provides stringent punishment for contravention of provisions of act and rules thereof.

THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985.

This act provides provisions for the prohibitions for the cultivation and gathering of any portion

of coca, opium and cannabis plants or production, manufacture, possession, sale, purchase, transport, warehouse, use, consumption, import and export inter-state, import and export from India and transshipment of narcotic drugs and psychotropic substances.

Some of the important definitions under this act includes

1. **"Addict"** : a person who has dependence on any narcotic drugs or psychotropic substance.
2. **"Narcotic drug"** : coca leaf, cannabis(hemp), opium, poppy straw and includes all manufactured goods and
3. **"Psychotropic substance"** : any substance, natural or synthetic, or any natural material or any salt or preparation of such substance or material included in the list of psychotropic substances(n=110).
4. **"Cannabis (hemp)"**
 - (a) *charas* : the separated resin, in whatever form, whether crude or purified, obtained from the cannabis plant and also includes concentrated preparation and resin known as Hashish oil or liquid Hashish
 - (b) *ganja* : the flowering or fruiting top of the cannabis plant
5. **'Coca derivatives'** means-
 - (a) Crude cocaine (Any extract of cocaine leaf)
 - (b) Ecgonine and all the derivatives of ecgonine from which it can be recovered.
 - (c) All preparations containing more than 0.1% of cocaine

6. 'Opium' :

- (a) the coagulated juice of opium poppy and
- (b) any mixture, with or without any neutral material, of the coagulated juice of the opium poppy.

It does not include any preparation containing more than 0.2% of morphine.

7. 'Opium derivatives' :

- (a) Medicinal opium
- (b) Prepared opium used for smoking
- (c) Diacetylmorphine or heroin
- (d) any preparation containing more than 0.2% of morphine

This act empowers the central govt. to permit and regulate by rules

- (i) The cultivation and gathering of any portion of coca plant, or the production, possession, sale, purchase, transport, import or export inter-state, use or consumption of coca leaves.
- (ii) The cultivation of opium poppy.
- (iii) The production and manufacture of opium and production of poppy straw.
- (iv) Sale of opium and opium derivatives from the central government factories for export from India or sale to state Government or manufacturing chemists.
- (v) The manufacture of manufactured drugs, not including manufacture of medicinal opium or any other preparation containing manufactured drug from materials which the maker is lawfully entitled to possess
- (vi) The manufacture, possession, transport, import or export inter-state, sale or purchase, consumption or use of psychotropic substances.

(vii) The import to India and export from India and transshipment of narcotic drugs and psychotropic substances.

The State Government may by rules permit and regulate

- (i) The possession, sale, warehousing, purchase, transport, import and export inter-state, use and consumption of poppy straw.
- (ii) The possession, transport, import and export inter-State, purchase and consumption of opium.
- (iii) The cultivation of cannabis plant, production manufacture, possession, transport, import and export inter-State, purchase and consumption of cannabis
- (iv) The manufacture of medicinal opium or any preparation containing the manufactured drug from materials which the maker lawfully entitled to the process.
- (v) The production and manufacture of opium and production of poppy straw
- (vi) The sale of opium and opium derivatives from Central Government Factories for export from India or sale to State Government or manufacturing chemists.
- (vii) The possession, transport, import, inter-State, export inter-State, purchase, use or consumption of manufactured drugs other than prepared opium and of coca leaf and preparation containing any manufactured drugs.
- (viii) The manufacture and possession, of prepared opium from opium lawfully possessed by an addict registered with State Government on medical advice for his personal consumption.

Punishment for the contravention involving small quantity in relation to poppy straw, prepared opium, cannabis plant and preparations, psychotropic substances, and for illegal import into India, export from India or transshipment of narcotic drugs and psychotropic substances, is rigorous imprisonment for term up to six months or with fine up to 10,000 rupees or both. For the contravention involving quantity lesser than commercial quantity but greater than small quantity punishment is rigorous imprisonment for term up to ten years and with fine up to 100,000 rupees. For the contravention involving commercial quantity punishment is rigorous imprisonment for term up to ten years which may extend up to 20 years and fine up to 100,000 rupees which may extend up to 200,000 rupees. Punishment for the contravention in relation to coca plant and coca leaves is rigorous imprisonment for term up to ten years or fine up to 100,000 rupees.

Punishment for consumption of any narcotic drug or psychotropic substances like cocaine, morphine or other narcotic drug or any psychotropic substances specified by Central Government by Gazette notification is rigorous imprisonment for a term up to one year or fine up to 20,000 rupees or both. Punishment for consumption of narcotic drugs and psychotropic substances other than mentioned is rigorous imprisonment for term up to six months or fine up to 10,000 rupees or both. For second and each subsequent offence, punishment is rigorous imprisonment for a term, which may extend to one half of the maximum term of imprisonment and also fine up to one half of the maximum amount of fine.

Under section 64 A, any addict, who is charged with an offence punishable under section 27 (Punishment for external dealings) or with

offences involving small quantity of narcotic drug or psychotropic substances, who voluntary seeks treatment for de-addiction from hospital or an institution maintained and recognized by Government or local authority and undergoes treatment shall not be liable to prosecution. This immunity may be withdrawn if the addict does not undergo complete treatment.

Section 71, empowers the Government to establish centers for identification, treatment, education, aftercare, rehabilitation, social reintegration of addicts and for supply, of any narcotic drugs and psychotropic substances to the addicts registered with Government and to others where supply is medical necessity.

Small Quantities

Small Quantities

Hashish or Charas	-	5gm
Opium	-	5gm
Cocaine	-	125mg
Ganja	-	500gm
Heroin/Smack	-	250mg

THE DRUG (CONTROL) ACT, 1950

This act provide for the control of sale, supply and distribution of drugs. The act provides limitation on quantity which may be possessed at one time. Contravention of the provisions under this act shall be punishable by rigorous imprisonment for a term which may be extended to three years, or fine, or both.

LAWS PERTAINING TO CRIMINAL OFFENCES & DRUG ABUSE

As per section 85 of Indian Penal Code, "Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication,

incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law; provided that the thing which is intoxicated him was administered to him without the knowledge or against his will.

As per section 85 of Indian Penal Code, In cases where act done is not an offence unless done with particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he not had been intoxicated, unless the substance which intoxicated him was administered to him against his will.

LAWS PERTAINING TO ALCOHOL

Legal aspects of alcohol involves three main areas,

- i. Licensing laws regulating retail supply.
- ii. Legislation on drunkenness.
- iii. Road traffic legislation.

LICENSING LAWS

Prohibition is incorporated in the constitution of India among the directive principles of state policy.

Article 47 says: The state shall regard the raising level of nutrition & standard of living of its people as amongst its primary duties and in particular, the state shall endeavor to bring about the prohibition of the use except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health." Under the provisions of this act alcohol may be withdrawn from a state or sold with partial restrictions.

Cable TV Network (Regulation) Amendment Bill (2000) completely prohibits cigarette and alcohol advertisements.

DRUNKENNESS

Drunkenness is defined as the condition produced in a person who has taken alcohol in a sufficient quantity sufficient to cause him lose control of his faculties to such extent that he is unable to execute the occupation on which he is engaged. Under section 85 a person found drunken in public places or streets shall be punishable with imprisonment for a term which may be extended for three months & with fine which may extend to two thousand rupees or both

DRUNKEN DRIVING

DRUNKEN DRIVING shall be punishable under section 185 of Motor Vehicle Act, for first offence with imprisonment for a term which may be extended for six months, or with fine which may extend to two thousand rupees. For second or subsequent offence, if committed within three years of the commission of previous similar offence, with imprisonment for a term which may be extended for two years, or with fine which may extend to three thousand rupees or both. He is deemed guilty of drunken driving if

- a. His alcohol level in the blood exceeds 30 mg/100ml
- b. He is incapable of exercising proper control over the vehicle

LAWS PERTAINING TO TOBACCO AND SMOKING

The cigarette and other tobacco products (Prohibition of advertisements and regulation of trade and commerce, production, supply and distribution) act, 2003 extends to whole India. As per this act:

- i. Smoking is prohibited in public places. It is a compoundable offence. Punishment for smoking in public places is fine upto two hundred rupees.
- ii. Advertisements of cigarette or other tobacco products are not allowed. No person is allowed to take part in advertisements which directly or indirectly suggests or promotes the use or consumption of cigarette or other tobacco products. Contravention to this section shall be punishable (i) in case of first conviction with imprisonment up to two years or with fine up to one thousand rupees, or with both (ii) in case of second and subsequent conviction, with imprisonment up to five years or with fine up to five thousand rupees.
- iii. Specifications of warning including pictorial description of skull and cross bone are must on every packet of cigarette or other tobacco products.
- iv. Sale of cigarette or other tobacco products is punishable for the persons under the age of 18 years and within the radius of 100 yards of any educational institution. Punishment in this regard will be fine of two hundred rupees.

NURSES ROLE:

Nurses should be aware about the legal aspects related to the substance use and should take the responsibility to update her own knowledge so that she can avail this knowledge in providing comprehensive care to the patients, their family and the community. Nurses working with patients undergoing treatment for substance use or otherwise should first guard their own feelings & beliefs. The nurses should recognize the intrinsic value & dignity of all human beings. They usually have a belief that the persons those

who are using substances are of bad character and need to have an understanding that this is a disorder which needs to be treated.

The knowledge of legal aspects guides the practicing nurses in various areas of their professional practice.

DIRECT PATIENT CARE ROLE:

Confidentiality: The Nurse must respect the individual's right to maintain confidentiality and share information judiciously. She must ensure the right to privacy of all patients receiving substance use treatment in a specified unit (deaddiction center managed by state or central government). Statements should be made regarding this policy. These should be widely disseminated and she must ensure that all the patients have understood that confidentiality and privacy of records will be maintained and the circumstances under which the information might not be protected. Nurses must also ensure that all the personnel (professionals, non professionals, employees, volunteers and other staff) those who directly or indirectly involved in patient care must also respect this confidentiality.

There are specific instances in which confidentiality need not be maintained:

- (i) when the patient has provided prior written consent for release of information, including what information may be released, to whom, and the time limits for release.
- (ii) Internal communication within the treating team.
- (iii) When authorized by a court order.
- (iv) When the patient is suspected to be or is a known of child abuser.

- (v) In case of emergencies.

The Nurse should also take the required steps in protecting the patient information in case of computer based recording systems.

Informed choices: The nurse must respect the rights of her patients (receiving substance use treatment) as partner in care and help him/her in making informed choices. She should give accurate knowledge to the patients regarding the effects of these substances and the treatment options available. She should provide knowledge about harm minimization. She should not judge substance use as good or bad, but rather look at people's relationship to the substance and emphasize reduction of substance related harm and encourage safe substance use. She should respect the choices made by the patient and all communications should be in a non judgmental and non coercive manner

Medication Administration: The Nurse must understand that she can administer the drugs listed under the list of NDPS act to the patient dependent on these substances only after physician order (when the patient is registered under central or state deaddiction treatment center). These patients can keep with them their prescribed dose of drug.

Community health nurse: she assumes the responsibility to educate the public and the community as a whole about the legal aspects related to substance use. Alongwith the community leaders and legal personnel (police), she can take part in enforcement of the laws within the community. e.g. if a community health nurse finds a cigarette or other tobacco product seller in the vicinity of an educational institution then it is her moral and ethical responsibility to report to the relevant authorities. Similarly, if she observes the cultivation of the plants mentioned under

the act she should notify the community leaders or legal authority.

Occupational Health Nurse: Occupational health nurse shares the responsibility to educate the workers about the legal aspects related to the substance use. She also has an obligation to screen and refer the cases for the treatment. She has the responsibility to identify the risky behavior at the work place and do counseling of the workers for harm minimization and reduction of risky behavior.

Counselor: The nurse has the responsibility to provide the public information regarding the legal aspect related to the substance abuse at various levels and in various settings.

MANAGEMENT AND SUPERVISION ROLE

The registered Nurse has the custody of these medicines. She can administer them to the patient as per the physician's order. Nurse must ensure the count of the medicines being used for patients undergoing substance abuse treatment. Supply of the medicines should be maintained. Out of stock or non availability of certain medicines should be notified to the physician at an early stage.

By the knowledge of these prohibitions nurses can protect the vulnerable group of pregnant mothers and children from the harmful effects of these substances.

EDUCATION

The Nurse must up date her knowledge about the various legal aspects related to substance use and guide the other novice nurses, hospital staff and patients. Nurses shares the responsibility of educating laws related to

drunken driving, road traffic legislation, prohibitions related to smoking and use of other substances in public places.

The School health nurse should actively participate in disseminating health care policies relating to substance use and the relevant legislations to the young strata of the society. She can make the students aware about the various legal aspects e.g. drunken driving, drunkenness, prohibition of tobacco & other substances in public places and prohibitions related to the sale of these substances.

Forensic Nurses Role: Nurses can educate the patient about his legal status and his Rights and privileges. She can also interact with the police and other personnel regarding this aspect.

RESEARCH

The nurses should be involved in research related to these aspects. Till now lack of research in this area leads to insufficient data available for evidence based practice.

Suggested Reading

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The Drug (Control Act, 1950)

- Act provide for the control of sale, supply and distribution of drugs.

Legal Aspects of Drug Abuse in India

- Act provides limitation on quantity which may be possessed at one time.
- Contravention of the provisions under this act shall be punishable

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Laws Pertaining To Criminal Offences & Drug Abuse

- "Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law; provided that the thing which is intoxicated him was administered to him without the knowledge or against his will.

As per section 85 of Indian Penal Code

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Laws Pertaining To Alcohol

- Licensing laws.
- Legislation on drunkenness.
- Road traffic legislation.

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Licensing laws

- Prohibition is incorporated in the constitution of India among the directive principles of state policy as in article 47
- The state shall regard the raising level of nutrition & standard of living of its people as amongst its primary duties and in particular, the state shall endeavor to bring about the prohibition of the use except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health

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Drunkenness

- The condition produced in a person who has taken alcohol in a sufficient quantity sufficient to cause him loss control of his faculties to such extent that he is unable to execute the occupation on which he is engaged
- *Under section 85 a person found drunken in public places or streets shall be punishable with imprisonment for a term which may be extended for three months & with fine which may extend to two thousand rupees or both*

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Drunken Driving

- Under section 185 of Motor Vehicle Act Drunken Driving shall be punishable
- For first offence with imprisonment for a term which may be extended for six months, or with fine which may extend to two thousand rupees.
- For second or subsequent offence, if committed within three years of the commission of previous similar offence, with imprisonment for a term which may be extended for two years, or with fine which may extend to three thousand rupees or both.

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Laws Pertaining To Tobacco And Smoking

- Smoking is prohibited in public places
- Advertisements of cigarette or other tobacco products are not allowed
- Warning about harmful effects to be indicated on every packet.
- Sale to persons under the age of 18 years is punishable

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Nurses Role

- Direct Patient Care Role
- Confidentiality
- Informed choices
- Medication Administration
- Community health nurse
- Occupational Health Nurse
- Counselor

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Nurses Role

- Other roles
- Management and supervision role
- Education
- Occupational health
- Community services
- School health nurse
- Forensic nurses role
- RESEARCH